



- b. Business Friendly Task Force Update
- c. Northeast Landfill Work Session

### **Report Of The Clerk Of Council**

- 6. a. Council Retreat Location

### **Report Of The Chairman**

### **Presentations**

- 7. a. Palmetto Utilities
- b. Recreation Commission - CAPRA

### **Open/Close Public Hearings**

- 8. a. An Ordinance Amending the Richland Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto
- b. Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters

### **Approval Of Consent Items**

- 9. An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes **[THIRD READING] [PAGES 30-32]**
- 10. An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto **[THIRD READING] [PAGES 33-35]**
- 11. An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto **[THIRD READING] [PAGES 36-72]**
- 12. An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws,

1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto [**THIRD READING**] [**PAGES 73-100**]

13. An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes [**THIRD READING**] [**PAGES 101-119**]
14. An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company LLC, acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project ("FILOT Payments"); (3) the Company to claim certain special source credits against such FILOT Payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto [**THIRD READING**] [**PAGES 120-162**]
15. Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters [**THIRD READING**] [**PAGES 163-242**]
16. An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto [**THIRD READING**] [**PAGES 243-256**]
17. An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project [**THIRD READING**] [**PAGES 257-288**]

## **Second Reading Items**

18. An Ordinance Amending the Fiscal Year 2011-2012 Hospitality Tax Budget to appropriate \$25,000 of Hospitality Tax Undesignated Fund Balance for a grant to the Miss S.C. Pageant [**PAGES 289-291**]

## **Report Of Economic Development Committee**

19. a. Inducement Resolution for Project Dinner

## **Other Items**

20. Caughman Creek Property [**UNDER SEPARATE COVER**]
21. **REPORT OF THE FIRE AD HOC COMMITTEE**

## **Citizen's Input**

- 22. Must Pertain to Items Not on the Agenda

## **Executive Session**

## **Motion Period**

## **Adjournment**



# Richland County Council Request of Action

**Subject**

Resolution honoring the Recreation Commission's re-accreditation by CAPRA [WASHINGTON]

# Richland County Council Request of Action

**Subject**

Regular Session: December 6, 2011 [PAGES 6-23]

# MINUTES OF



## RICHLAND COUNTY COUNCIL REGULAR SESSION TUESDAY, DECEMBER 6, 2011 6:00 p.m.

*In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building.*

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### MEMBERS PRESENT:

Chair	Paul Livingston
Vice Chair	Damon Jeter
Member	Gwendolyn Davis Kennedy
Member	Valerie Hutchinson
Member	Norman Jackson
Member	Bill Malinowski
Member	Jim Manning
Member	L. Gregory Pearce, Jr.
Member	Seth Rose
Member	Kelvin Washington

**OTHERS PRESENT** – Milton Pope, Tony McDonald, Sparty Hammett, Roxanne Ancheta, Randy Cherry, Stephany Snowden, Tamara King, Melinda Edwards, John Hixson, Dale Welch, Nelson Lindsay, Sara Salley, Buddy Atkins, Larry Smith, Geo Price, Betty Etheredge, Daniel Driggers, Holland Ledger, Janet Claggett, Lillian McBride, Garry Baum, Brenda Carter, Rodolfo Callwood, Dwight Hanna, Monique Walters, Michelle Onley

### CALL TO ORDER

The meeting was called to order at 6:02 p.m.

### INVOCATION

The Invocation was given by the Honorable Joyce Dickerson

### PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Honorable Joyce Dickerson

### APPROVAL OF MINUTES

**Regular Session: November 15, 2011** – Mr. Pearce moved, seconded by Mr. Jeter, to reconsider the following item: “Hospitality Tax County Promotions Grant Program Changes.”

<b><u>For</u></b>	<b><u>Against</u></b>
Pearce	Malinowski
Jackson	Hutchinson
Jeter	Dickerson
Livingston	Kennedy
Manning	
Rose	
Washington	

The vote was in favor.

Mr. Pearce moved, seconded by Mr. Jeter, to defer this item until the January 10<sup>th</sup> Council meeting. The vote was in favor.

Mr. Malinowski requested that all ordinances be amended to remove the former Clerk of Council’s name.

Ms. Dickerson moved, seconded by Ms. Hutchinson, to approve the minutes as amended. The vote in favor was unanimous.

### ADOPTION OF AGENDA

Mr. Smith stated that the Fire Contract needed to be added to the Report of the Attorney for Executive Session.

Ms. Dickerson moved, seconded by Mr. Jackson, to adopt the agenda as amended. The vote in favor was unanimous.

**REPORT OF THE COUNTY ATTORNEY FOR EXECUTIVE SESSION MATTERS**

- a. **SCE&G**
- b. **Redistricting Update**
- c. **Medicare Retiree Group Health Insurance Benefits Services—Contractual Matter**
- d. **Fire Contract**

Mr. Jeter moved, seconded by Ms. Kennedy, to defer the following Executive Session Items: Darrell’s vs. Richland County; SOB Update; FN Manufacturing, LLC and McEntire Produce, Inc. The vote in favor was unanimous.

**OUTSIDE COUNSEL EXECUTIVE SESSION**

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**Council went into Executive Session at approximately 6:14 p.m. and came out at approximately 6:50 p.m.**  
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- a. **SCE&G** – Ms. Kennedy moved, seconded by Ms. Dickerson, to proceed as discussed in Executive Session. The vote was in favor.
- b. **Redistricting Update** – Ms. Kennedy moved, seconded by Ms. Dickerson, to authorize staff to proceed with the implementation of the redistricting plan and to clarify any issues related to the plan with DOJ as necessary. The vote in favor was unanimous.

**CITIZENS’ INPUT**

Mr. Manning moved, seconded by Mr. Jackson, to waive the rules to allow the citizen to speak. The vote in favor was unanimous.

Mr. David Lewis spoke regarding the CMRTA.

**REPORT OF THE COUNTY ADMINISTRATOR**

- a. **Legislative Delegation Update** – Mr. Pope stated that there will be a meeting of the Richland County Legislative Delegation on December 9<sup>th</sup> at 12 noon at the Midlands Technical College Student Center, Beltline Campus.

## REPORT OF THE CLERK OF COUNCIL

- a. **January Meeting Schedule** – Ms. Onley stated that staff is requesting that the January meeting schedule be altered to accommodate the agenda software update.
- b. **Annual Council Retreat, January 26-27, 2012, Clemson University Sandhills Research & Education Center, 900 Clemson Road** – Ms. Onley stated that the Council Retreat is scheduled to be held on January 26 and 27, 2012 at the Clemson Sandhills Research & Education Center on Clemson Road.

Council members requested that alternate locations be explored.

Mr. Washington moved, seconded by Mr. Malinowski, to defer this item until the December 13<sup>th</sup> Council meeting. The vote was in favor.

## REPORT OF THE CHAIRMAN

No report was given.

## PUBLIC HEARINGS

- **Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company, LLC, acting for itself, one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the Company to claim certain special source credits against such FILOT payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto** – No one signed up to speak.
- **Authorizing (1) the execution and delivery of a fee in lieu of tax incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself, one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a**

**multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto** – No one signed up to speak.

- **An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes** – No one signed up to speak.
- **Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters** – No one signed up to speak.
- **An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto** – No one signed up to speak.
- **An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto** – No one signed up to speak.
- **An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project** – No one signed up to speak.
- **An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes** – No one signed up to speak.

### APPROVAL OF CONSENT ITEMS

- **An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes [SECOND READING]**
- **An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto [SECOND READING]**
- **CDBG Allocation of Funds Decker Boulevard Specific**
- **Resolution to Distribute \$5,281.78 in Federal Forestry Funds**
- **Professional Services Property Acquisition adjacent to Jim Hamilton-LB Owens Airport**
- **Increase RCSD Deputy Current Pay**

Ms. Dickerson moved, seconded by Mr. Manning, to approve the consent items. The vote in favor was unanimous.

### THIRD READING

**Authorizing An Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Richland County, South Carolina, and Fairfield County, South Carolina, to expand the boundaries of the park to include certain real property located in Richland County; and other related matters** – Ms. Hutchinson moved, seconded by Mr. Malinowski, to defer this item until such time as it is ready to come back before Council. The vote in favor was unanimous.

**Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters** – Mr. Malinowski moved, seconded by Mr. Jackson, to approve this item

with the commencement date being amended to December 31, 2014. The vote in favor was unanimous.

## SECOND READING

**An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto** – Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

**An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto** – Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

**An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes** – Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

**An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company, LLC, acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project ("FILOT Payments"); (3) the Company to claim certain special source credits against such FILOT Payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto** – Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

**Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters**

– Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

**An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto** – Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

**An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project** – Ms. Hutchinson moved, seconded by Mr. Washington, to approve this item. The vote in favor was unanimous.

#### FIRST READING

**An Ordinance Amending the Fiscal Year 2011-2012 Hospitality Tax Budget to appropriate \$25,000 of Hospitality Tax Undesignated Fund Balance for a grant to the Miss S.C. Pageant** – Ms. Dickerson moved, seconded by Ms. Kennedy, to approve this item. The vote was in favor.

#### REPORT OF DEVELOPMENT AND SERVICES COMMITTEE

**Proposed Amendment to Settlement Agreement with Northeast Landfill** – Ms. Hutchinson stated that the committee recommendation was that Council conduct a work session prior to December 30<sup>th</sup> and include representatives from Republic Services, County Staff and the Conservation Commission.

Mr. Malinowski moved, seconded by Mr. Jackson, to schedule the work session for December 13<sup>th</sup>. A discussion took place.

Ms. Dickerson made a substitute motion, seconded by Ms. Hutchinson, to schedule the work session for December 20<sup>th</sup>. A discussion took place.

Mr. Washington made a second substitute motion, seconded by Ms. Hutchinson, to develop a roundtable made up of Republic Services, Conservation Commission, and the Soil & Water Department to review the technologies to protect the water quality in the community. A discussion took place.

Mr. Washington moved, seconded by Ms. Hutchinson, to call for the question. The vote in favor was unanimous.

<u>For</u>	<u>Against</u>
Hutchinson	Pearce
Jeter	Malinowski
Livingston	Jackson
Rose	Dickerson
Washington	Manning
	Kennedy

The second substitute motion failed.

<u>For</u>	<u>Against</u>
Pearce	
Hutchinson	
Jeter	
Livingston	
Dickerson	
Manning	

Mr. Malinowski moved, seconded by Mr. Jackson, to reconsider the vote.

<u>For</u>
Pearce
Malinowski
Jackson
Hutchinson
Jeter
Livingston
Dickerson
Kennedy
Rose

The vote was in favor of reconsideration.

Ms. Dickerson withdrew her substitute motion.

Mr. Livingston made a substitute motion, seconded by Mr. Pearce, to schedule the work session on December 20<sup>th</sup> immediately following the Zoning Public Hearing.

<u>For</u>	<u>Against</u>
Pearce	Malinowski
Hutchinson	Jackson
Jeter	Kennedy
Livingston	Rose
Dickerson	
Manning	
Washington	

The vote was in favor of the substitute motion.

**Old LRADAC Building Environmental Remediation and Demolition Project** – Ms. Hutchinson stated that the committee recommended to approve the award of a contract to Neo Corporation for the demolition of the LRADAC Building in the amount of \$349,600 and an additional 25% contingency, which would be \$87,400, but included in this project. A discussion took place.

The vote was in favor of the committee's recommendation.

#### **REPORT OF THE ADMINISTRATION AND FINANCE COMMITTEE**

**County Council Shirts** – Mr. Washington moved, seconded by Ms. Dickerson, to defer this item until the January 10<sup>th</sup> Council meeting.

**Approval of Competitive 2010 Local Emergency Management Performance Funds Grant** – Mr. Malinowski moved, seconded by Ms. Dickerson, to approve this item. The vote in favor was unanimous.

**Payment Procedures for County Grant Programs** – Mr. Washington moved, seconded by Mr. Jackson, to change the requirements for the neighborhood grants to provide up to \$1,500 upfront funding. A discussion took place.

The vote in favor was unanimous.

**Special DUI Prosecutor Grant** – Ms. Hutchinson moved, seconded by Ms. Dickerson, to approve this item. The vote in favor was unanimous.

**VOTE Federal Accessibility Grants for the Election Commission** – Mr. Jackson moved, seconded by Ms. Hutchinson, to approve this item. The vote was in favor.

**Action to Make Certain Department Heads with Contractual Responsibility At Will Employment Status [TO TABLE]** – Mr. Pearce stated that the committee recommended tabling this item. The vote in favor was unanimous.

**Responses from RFP to Medicare Retiree Group Health Insurance Benefit Services** – This item was taken up in Executive Session.

## REPORT OF RULES AND APPOINTMENTS COMMITTEE

### I. NOTIFICATION OF VACANCIES

- a. **Business Service Center Appeals Board—1** – Mr. Malinowski stated that the committee recommended advertising for this item. The vote in favor was unanimous.
- b. **Township Auditorium Board—1** – Mr. Malinowski stated that the committee recommended advertising for this item. The vote in favor was unanimous.

### II. NOTIFICATION OF APPOINTMENTS

- a. **Accommodations Tax Committee—4** – Mr. Malinowski stated that the committee recommended examining the qualifications for the committee prior to re-advertising. The vote in favor was unanimous.
- b. **Airport Commission—3** – Mr. Malinowski stated that the committee recommended re-appointing Mr. J. Russell Goudelock and Mr. Don Purcell and appointing Mr. Stuart C. Hope. The vote in favor was unanimous.
- c. **Appearance Commission—2** – Mr. Malinowski stated that the committee recommended examining the qualifications for the committee prior to re-advertising. The vote in favor was unanimous.

- d. **Board of Assessment Control—1** – Mr. Malinowski stated that the committee recommended examining the qualifications for the committee prior to re-advertising. The vote in favor was unanimous.
- e. **Building Codes Board of Adjustments—3** – Mr. Malinowski stated that the committee recommended examining the qualifications for the committee prior to re-advertising. The vote in favor was unanimous.
- f. **Business Service Center Appeals Board—1** – Mr. Malinowski stated that the committee recommended examining the qualifications for the committee prior to re-advertising. The vote in favor was unanimous.
- g. **Internal Audit Committee—1** – Mr. Malinowski stated that this item was held in committee pending a legal opinion. The vote in favor was unanimous.
- h. **Lexington/Richland Alcohol and Drug Abuse Council—2** – Mr. Malinowski stated that the committee recommended re-appointing Mr. Harbeson and re-advertising for the other vacancy.

Mr. Pearce made a substitute motion, seconded by Mr. Washington, to re-appoint Mr. Harbeson and Ms. Matheus. A discussion took place.

<u>For</u>	<u>Against</u>
Pearce	Malinowski
Livingston	Jackson
Washington	Hutchinson
	Jeter
	Dickerson
	Manning
	Kennedy
	Rose

The substitute motion failed.

<u>For</u>	<u>Against</u>
Malinowski	Pearce
Jackson	Rose
Hutchinson	Washington
Jeter	
Livingston	
Dickerson	
Manning	
Kennedy	

The vote was in favor of the committee's recommendation.

- i. **Richland Memorial Hospital Board—4** – Mr. Malinowski stated that the committee recommended re-appointing Ms. Rosalyn Woodson Frierson and Mr. Gerald Isreal, Jr. The other two applications will remain in committee pending a legal opinion. The vote in favor was unanimous.

### III. DISCUSSION FROM RULES AND APPOINTMENTS COMMITTEE

- a. **Motion that Council rules be amended such that when 5 or fewer people are signed up to speak on a non-agenda item they be allowed to speak after those speaking to an agenda item have finished (towards the beginning of the meeting). If 6 or more people are signed up to speak on a non-agenda item then Council's current rule will take affect [HUTCHINSON, JACKSON AND ROSE]** – The item was held in committee.

### OTHER ITEMS

**Report of the Clerk's Office Organization Ad Hoc Committee** – Mr. Jeter stated that the committee recommended accepting and posting the Executive Clerk to Council job description; the new Clerk of Council, as part of his/her duties, will make recommendations on the two existing positions in the Clerk's Office; the Clerk's Ad Hoc Committee will assist in conjunction with the Human Resources in screening of any applications; and one of the current employees will be involved in the selection of the Clerk.

Mr. Pearce moved, seconded by Mr. Malinowski, to divide the question. The vote in favor was unanimous.

Mr. Malinowski made a substitute motion, seconded by Mr. Jackson, to remove the Master's Degree or Bachelor's Degree requirement from the job description and retain four years of professional experience in government, administration/management, law or community education.

Mr. Pearce made a second substitute motion, seconded by Mr. Malinowski, to continue to operate with the two existing employees and appoint one of the existing employees as the Clerk of Council. A discussion took place.

Mr. Jackson made a friendly amendment that if the Clerk's Office discovered that they needed another employee they be allowed to come back to Council.

<u>For</u>	<u>Against</u>
Pearce	Jeter
Malinowski	Livingston
Jackson	Manning
Hutchinson	Kennedy
Dickerson	Washington
Manning	
Rose	

The vote was in favor of the second substitute motion.

**Report of the Fire Ad Hoc Committee** – Mr. Washington moved, seconded by Mr. Malinowski, to defer this item until the December 13<sup>th</sup> Council meeting. The vote was in favor.

**A Resolution to appoint and commission George William Catoe, Jr. as a code enforcement officer for the proper security, general welfare, and convenience of Richland County** – Mr. Pearce moved, seconded by Ms. Hutchinson, to approve this item. The vote in favor was unanimous.

**A Resolution to appoint and commission Karl L. Kinard as a code enforcement officer for the proper security, general welfare, and convenience of Richland County** – Mr. Pearce moved, seconded by Ms. Hutchinson, to approve this item. The vote in favor was unanimous.

#### CITIZENS INPUT

No signed up to speak.

**EXECUTIVE SESSION**

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**Council went into Executive Session at approximately 9:04 p.m. and came out at approximately 9:16 p.m.**  
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- a. Medicare Retiree Group Health Insurance Benefit Services—Contractual Matter** – Mr. Pearce moved, seconded by Mr. Malinowski, to accept the Human Resource Director’s recommendation. The vote in favor was unanimous.

**MOTION PERIOD**

**Based on Councilwoman Dickerson’s motion to return the CMRTA to the City of Columbia, I make a motion to direct staff to determine the financial impact on Richland County of such action on an annual basis with a projection out to 5 years [MALINOWSKI]** – This item was referred to the A&F Committee.

**Resolution honoring the Recreation Commission on being reaccredited by CAPRA [WASHINGTON]** – Mr. Washington moved, seconded by Mr. Malinowski, to adopt a resolution honoring the Recreation Commission on being reaccredited by CAPRA. The vote in favor was unanimous.

**Develop a Capital Projects Sales Tax for November 2012, with collections beginning May 1, 2013. The Capital Projects Sales Tax is a 1% increase, with 100% of the proceeds going towards identified capital projects in both the City, County and adjacent municipalities. It is a seven year tax, through 2019, expected to generate over \$400,000,000. A Priority Investment Element inventories potential funding sources and forecasted revenue available to finance planning initiatives, capital improvements, and other quality of life projects in the community should be used. Planning for roads, new parks, or new schools is the easy part; figuring out a long range capital plan to pay for them is the true challenge. New growth and development demand additional public services, roads, and utilities. Managing available revenue sources and enumerating project needs helps ensure that adequate capacity is available to serve the magnitude and timing of anticipated development. In essence, the Priority Investment Element would be a catalyst for the development of a more formalized Capital**

**Improvement Planning Process and the incorporation of capital planning elements in our annual budgets that looks beyond year to year budget cycles. The Element would require improved coordination across multiple disciplines; Land Use, Transportation, Schools, and other Public Facilities would be planned and programmed not in a vacuum, but in a manner which anticipates the impacts each has on the other. Plans, programs, policies, and capital projects recommended in the Priority Investment Act (PIA) address needs highlighted throughout the Comprehensive Plan for Richland County and the City of Columbia as well as related entities [JACKSON]** – This item was referred to the A&F Committee.

**Remove the 400ft separation between bars to have a more safe and friendly effective pedestrian environment [JACKSON]** – This item was referred to the D&S Committee.

**Permanently finance the bus by a \$5 vehicle registration fee for noncommercial vehicles and \$10 for commercial vehicles [JACKSON]** – This item was referred to the A&F Committee.

**Sheriff's Department Salary Increase Request [LIVINGSTON]** – This item was referred to the A&F Committee.

**Rezoning of Ridgeway Street from split commercial to residential [LIVINGSTON]** – This item was referred to the D&S Committee.

**Clarify accessory structure intent Section 26-22 of the Land Development Code [JACKSON]** – This item was referred to the D&S Committee.

**A resolution in support of naming Lower Richland High School Auditorium "Debbie Stroman Auditorium" for the most successful Girls Basketball Coach in the state [JACKSON]** – Mr. Jackson moved, seconded by Mr. Manning, to adopt a resolution in support of naming Lower Richland High School Auditorium "Debbie Stroman Auditorium". The vote in favor was unanimous.

**January Meeting Schedule** – Mr. Manning moved, seconded by Ms. Hutchinson, to hold the first Council meeting in January on January 10<sup>th</sup>.

## **ADJOURNMENT**

The meeting adjourned at approximately 9:25 p.m.

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Paul Livingston, Chair

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Damon Jeter, Vice-Chair

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Gwendolyn Davis Kennedy

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Joyce Dickerson

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Valerie Hutchinson

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Norman Jackson

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Bill Malinowski

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Jim Manning

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L. Gregory Pearce, Jr.

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Seth Rose

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Kelvin E. Washington, Sr.

The minutes were transcribed by Michelle M. Onley

# Richland County Council Request of Action

**Subject**

- a. Finch v.s Richland County
- b. FN Manufacturing, LLC
- c. McEntire Produce, Inc.
- d. Fire Contract

# Richland County Council Request of Action

**Subject**

For Items on the Agenda Not Requiring a Public Hearing

# Richland County Council Request of Action

**Subject**

- a. Legislative Delegation Update
- b. Business Friendly Task Force Update
- c. Northeast Landfill Work Session

# Richland County Council Request of Action

**Subject**

- a. Council Retreat Location

# Richland County Council Request of Action

**Subject**

- a. Palmetto Utilities
- b. Recreation Commission - CAPRA

# Richland County Council Request of Action

## **Subject**

- a. An Ordinance Amending the Richland Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto
  
- b. Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters

# Richland County Council Request of Action

## **Subject**

An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes  
**[THIRD READING] [PAGES 30-32]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_-11HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 23, TAXATION; ARTICLE VI, LOCAL HOSPITALITY TAX; SECTION 23-69, DISTRIBUTION OF FUNDS; SUBSECTION (a)(4); SO AS TO INCREASE THE AMOUNT OF FUNDING DEDICATED TO ORGANIZATIONS AND PROJECTS THAT GENERATE TOURISM IN THOSE AREAS WHERE RICHLAND COUNTY COLLECTS HOSPITALITY TAXES.

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 Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a) (4) is hereby amended to read as follows:

- (4) For the amounts distributed under the County Promotions program, funds will be distributed with a goal of ~~seventy-five~~ one hundred percent (~~75~~100%) dedicated to organizations and projects that generate tourism in the unincorporated areas of Richland County and in municipal areas where Hospitality Tax revenues are collected by the county. These shall include:
- a. Organizations that are physically located in the areas where the county collects Hospitality tax Revenues, provided the organization also sponsors projects or events within those areas;
  - b. Organizations that are not physically located in the areas where the county collects Hospitality Tax Revenues; however, the organization sponsors projects or events within those areas; and
  - c. Regional marketing organizations whose primary mission is to bring tourists to the region, including the areas where the county collects Hospitality Tax revenues.

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

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

SECTION IV. Effective Date. All sections of this ordinance shall be effective on and after \_\_\_\_\_, 2011.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_ DAY

OF \_\_\_\_\_, 2011

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading: November 15, 2011 (tentative)  
Second Reading: December 6, 2011 (tentative)  
Public Hearing: December 13, 2011 (tentative)  
Third Reading: December 13, 2011 (tentative)

# Richland County Council Request of Action

## **Subject**

An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto **[THIRD READING] [PAGES 33-35]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_ -11HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION; ARTICLE VII, BOARDS, COMMISSIONS AND COMMITTEES; SECTION 2-332, BOARDS, COMMISSIONS AND COMMITTEES CREATED; SUBSECTION (Q), INTERNAL AUDIT COMMITTEE; SO AS TO ADD MEMBERS THERETO.

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

SECTION I. The Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, commissions and committees created; Subsection (q), Internal Audit Committee; is hereby amended to read as follows:

(q) *Internal Audit Committee.*

- (1) *Creation.* There is hereby established an Internal Audit Committee which shall have the structure, organization, composition, purposes, powers, duties, and functions established below.
- (2) *Membership; terms.* The Internal Audit Committee shall be comprised of ~~three~~ five members of Council (the Council Chair, the A&F Committee Chair, ~~and~~ the D&S Committee Chair, the Economic Development Committee Chair, and the Rules and Appointments Committee Chair), two citizens appointed by a majority vote of the Council at large, and an employee appointed by the County Administrator. The citizens' and the employee's terms shall be one year in length, with up to three term renewals permitted. The Council members' terms shall be for as long as they serve in the capacity of Council Chair or Committee Chair.
- (3) *Duties and responsibilities.*
  - (a) The Internal Audit Committee shall develop with the Internal Auditor, for recommendation to the full Council for approval by majority vote, an audit schedule (which shall include areas to be reviewed, their priority and the timelines for completion), audit progress, audit follow- up, and special needs; and shall work to assure maximum coordination between the work of the Internal Auditor and the needs of the chief executive officer, the legislative body, and any other contractually hired auditors, as necessary or appropriate.
  - (b) The Internal Audit Committee shall review, for recommendation to Council for approval by majority vote, all areas of County operations for which County funds are levied, collected, expended, or otherwise used. This includes departments or offices reporting to the County Administrator, departments or offices headed by elected or appointed officials, millage agencies, legislatively appointed Commissions receiving County funding, nonprofit organizations receiving grant monies from County funds, and any other organization receiving any type of funding for any purpose from the County.

(c) The Internal Audit Committee shall oversee the responsibilities of the Internal Auditor, as stated in the negotiated contract with the Internal Auditor.

(d) The Internal Audit Committee shall present to the full Council a written report regarding each audit conducted by the Internal Auditor following the Internal Auditor's report to the Internal Audit Committee for each audit. Additionally, in conjunction with the budget process, the Internal Audit Committee shall annually present to the full Council a written summary report regarding the audits, progress, findings, and any other appropriate information relating to the internal audits conducted during the past fiscal year following the Internal Auditor's summary report to the Internal Audit Committee.

(e) The Internal Audit Committee shall annually review the Internal Auditor and anyone else working in such a capacity for adherence to government auditing standards in conducting its work to ensure quality service and independence as defined by those standards. (These are the federal Government Accounting Office's "Yellow Book" standards). A subsequent report of the Committee's findings shall be presented to Council for their information.

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

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

SECTION IV. Effective Date. All sections of this ordinance shall be effective from and after \_\_\_\_\_.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2011.

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading:  
Second Reading:  
Public Hearing:  
Third Reading:

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto **[THIRD READING] [PAGES 36-72]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

**RICHLAND COUNTY  
ORDINANCE**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BETWEEN RICHLAND COUNTY, SOUTH CAROLINA (THE "COUNTY") AND FEDEX GROUND PACKAGE SYSTEM, INC., ACTING FOR ITSELF AND FOR ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), IN CONNECTION WITH THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE COUNTY TO COVENANT IN SUCH AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Richland County, South Carolina (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 "FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" (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; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, FedEx Ground Package System, Inc., a corporation organized and existing under the laws of Delaware, acting for itself and for one or more affiliates or other project sponsors (the "Company") proposes to establish certain distribution and related facilities in the County (the "Project"), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, in the aggregate at least \$11,000,000 in the Project as set forth below; and

WHEREAS, the County has determined, *inter alia*, that the Project would subserve the purposes of the Act and would be directly and substantially beneficial to the County, the taxing entities of the County and the citizens and residents of the County due to the jobs created or retained, or caused to be created or retained, and the investment made, or caused to be made, by the Company, which contribute to the tax base and the economic welfare of the County; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to undertake the Project in the County, the County adopted a resolution on November 15, 2011 (the "Inducement Resolution") whereby the County agreed to accept certain negotiated FILOT payments and to designate the Project as part of a multi-county industrial or business park, which incentives are set forth in greater detail herein and in the form of the Fee in Lieu of Tax and Incentive Agreement (the "Incentive Agreement") presented to this meeting, which Incentive Agreement is to be dated, as of December 1, 2011 or such other date as may be agreed to by the parties; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. The findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed except as otherwise, specifically modified by this Ordinance or the Incentive Agreement. In the event of any disparity or ambiguity, the terms of this Ordinance and the Incentive Agreement shall supercede the Inducement Resolution. Capitalized terms used and not otherwise defined herein shall have the means ascribed thereto in the Incentive Agreement. In accordance with Section 12-44-40(I) of the FILOT Act, the County make the following findings and determinations:

- (a) The Project will constitute a "project" within the meaning of the FILOT Act; and
- (b) The Project, and the County's actions herein, will subserve the purposes of the FILOT Act; and
- (c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and
- (d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project to the County are greater than the costs to the County.

Section 2.

(a) The County hereby agrees to enter into and Incentive Agreement with the Company, which Incentive Agreement shall constitute a fee agreement pursuant to the FILOT Act. Under the terms of the Incentive Agreement, the Company will agree (i) to invest, or cause to be invested, in the aggregate at least \$11,000,000 with respect to the

Project (the “Minimum Contractual Investment Requirement”) during the period commencing with the date of the Company’s initial expenditure with respect to the Project, whether before or after the effective date of the Incentive Agreement, and ending on the fifth anniversary of the end of the property tax year in which the initial property comprising the Project is placed in service (as described in and calculated in accordance with the first sentence of Section 12-44-30(13) of the FILOT Act, the “Compliance Period”), and the County, under certain conditions to be set forth in the Incentive Agreement, will agree to accept negotiated fee in lieu of *ad valorem* tax payments with respect to the Project as determined in accordance with in **Section 2(d)** hereof (the “FILOT Payments”). The Incentive Agreement shall contain such additional terms and conditions as set forth hereinafter, and as shall be mutually satisfactory to the County and the Company.

(b) If the Company meets the Minimum Contractual Investment Requirement prior to the end of the initial Compliance Period as specified in **Section 2(a)** above, the Company may request an extension of up to 5 years to the period for completion of the Project (the Compliance Period, including any extension thereof, is sometimes referred to herein as the “Investment Period”) and the County may approve and grant such an extension in its sole discretion.

(c) Subject to the provisions of the FILOT Act and the Incentive Agreement, the annual FILOT Payments shall commence with respect to the property tax year in which the first property comprising a part of the Project is placed in service and shall continue for a period of twenty (20) years thereafter; provided that, if the Project is placed in service during more than one year, each year’s investment during the Investment Period, including any extension thereof, shall be subject to the FILOT Payments for a period of twenty (20) years.

(d) The FILOT Payments shall be determined using: (1) an assessment ratio of 8%; (2) a millage rate of 489.3 mills, which millage rate shall remain fixed for the term of the FILOT Payments; (3) the fair market value of the Project, determined in accordance with the FILOT Act; and (4) and such other terms and conditions as are specified in the Incentive Agreement.

Section 3. The County, with the consent of the City of Columbia, will insure that the Project will be included, if not already included, and will remain, within the boundaries of a multi-county industrial or business 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 Project during the Investment Period, including any extension thereof, any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.

Section 4. The provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement were set out in this Ordinance in its entirety. The Chair of the Council, or the Vice Chair of the Council in the event the Chair is absent, is hereby authorized, empowered,

and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized and directed to attest the same; and the Chair of the Council, or the Vice Chair of the Council in the event the Chair is absent, is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company.

Section 5. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon advice of legal counsel to the County, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 6. The Chair of the Council, or the Vice Chair of the Council in the event the Chair is absent, and the County Administrator, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement and to carry out the transactions contemplated thereby and by this Ordinance.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall be effective upon adoption of the Council.

[End of Ordinance]

Enacted in meeting duly assembled December 13, 2011.

RICHLAND COUNTY, SOUTH CAROLINA

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Paul Livingston, Chair, County Council  
Richland County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Michelle M. Onley, Clerk to County Council  
Richland County, South Carolina

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 13, 2011

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

FEDEX GROUND PACKAGE SYSTEM, INC.

Dated as of December 1, 2011

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of December 1, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and FEDEX GROUND PACKAGE SYSTEM, INC., a corporation organized and existing under the laws of the State of Delaware, acting for itself and for one or more affiliates or other project sponsors (the “Company”);

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

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” (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; and (iii) 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

WHEREAS, the Company proposes to establish certain distribution and related facilities in the County (the “Project”), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, in the aggregate at least \$11,000,000 in the Project by the end of the Compliance Period (as defined below); and

WHEREAS, the County has determined the 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 Project in the County, the County Council adopted a Resolution on November 15, 2011 (the “Inducement Resolution”), whereby the County agreed to provide FILOT and multi-county industrial or business park benefits, which are set forth in greater detail herein; and

WHEREAS, 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 set forth herein and, by an Ordinance enacted by the Council on December 13, 2011, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises; the potential investment 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.

“*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 Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in or providing funds for the 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 the owner of the Land, building and other real property comprising a portion of the Project are the only Co-Investors.

“*Company*” shall mean FedEx Ground Package System, Inc., a Delaware corporation, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** 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 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 Project will be placed in service in the Property Tax Year ending on May 31, 2012 and that in such event, the Compliance Period will end on May 31, 2017.

“*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 previously subject to property taxes in South Carolina, 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 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 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.

“*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 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 November 15, 2011 with respect to the Project.

“*Investment Period*” shall mean the period for completion of the 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 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 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 \$11,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors in the aggregate in the Project during the Compliance Period.

“*Minimum Statutory Investment Requirement*” shall mean investment in the 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 Negotiated FILOT Payments.

*“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 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 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 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; PROVIDED, HOWEVER, THAT UNLESS AND UNTIL THE COMPANY SHALL NOTIFY THE COUNTY TO THE CONTRARY IN WRITING, ONLY MACHINERY, EQUIPMENT AND OTHER PERSONAL PROPERTY OWNED BY THE COMPANY SHALL BE CONSIDERED NEGOTIATED FILOT 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.

*“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.

*“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, *e.g.*, with respect to the Company, the period ending on May 31 of each year; provided, however, that the Property Tax Year for the Company shall control for purposes of determining the Compliance Period and Investment Period.

*“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.

*“Sponsor”* and *“Sponsor Affiliate”* shall mean an entity whose investment with respect to the 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 is the only Sponsor, and there are no 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, the inclusion and maintenance of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby. The County has obtained or will obtain all consents and approvals required to consummate the transactions contemplated by this Agreement. With respect to the Multi-County Park Agreement, the County has obtained or will obtain the approval by Fairfield County and will use its best efforts to secure the consent of the City of Columbia (“City”). The County cannot guaranty that the City will provide its consent on terms that are acceptable to the County.

(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 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 corporation 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 May 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 Project primarily for distribution and/or related activities.

(c) 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 Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Multi-County Park Designation. The County will take all appropriate actions within its control to insure that the Project will be included within the boundaries of the Multi-County Park, and that the Project 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 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. Because the Project is also located within the City, the City must consent to the inclusion of the Project within the Multi-County Park. The County cannot guarantee that the City will provide its consent on terms that are acceptable to the County.

Section 3.03. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and any other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the 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 a court 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 Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT, and agrees, if requested, to enter into a lease purchase agreement with the Company and any other Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate the intended benefits of this Agreement. The Company acknowledges, if a court of competent jurisdiction determines that all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and any other Sponsor or Sponsor Affiliate 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 Project to the County at the expense of the Company or such other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, 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 such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project for Ten Dollars (\$10.00).

#### ARTICLE IV

#### COVENANTS OF COMPANY

Section 4.01. Minimum Contractual Investment Requirement. The Company agrees that it will comply with, or cause compliance with, the Minimum Contractual Investment Requirement, by the end of the Compliance Period.

Section 4.02. Investment in Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the 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 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 May 31, 2015.

(b) Expenditures by all 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, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Except as provided in the succeeding sentence, aggregate investment shall generally be determined without regard to depreciation by reference to the property returns of the Company and all Co-Investors filed with respect to the 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 Negotiated FILOT Act. The County acknowledges that the Co-Investor which owns the Land, building and other real property comprising a portion of the Project has invested or will invest at least [\$7,000,000] in the Project, and, accordingly, that \$[7,000,000] shall be deemed invested in the Project as of the date of this Agreement for purposes of the Minimum Contractual Investment Requirement.

(c) The Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for an extension of the Investment Period beyond the Compliance Period of up to five years, 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/or its designated Co-Investors shall retain title, or other property rights, to its respective portion of the Project throughout the Term of this Agreement, and the County hereby consents to any action by the Company or any Co-Investor to mortgage, lease, or encumber all or any portion of the Project, including, without limitation, in connection with any financing transactions.

(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 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 Project, including, without limitation, any Negotiated FILOT Property, have become inadequate,

obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company, or such Co-Investor, 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.

(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 returns filed with respect to the 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 Negotiated FILOT 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 returns filed with respect to the 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 Negotiated FILOT 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. Failure to Comply with Minimum Contractual Investment Requirement. If the Company does not comply, or cause compliance, with the Minimum Contractual Investment Requirement by the end of the Compliance Period, but has nevertheless complied, or caused compliance, with the Minimum Statutory Investment Requirement, then the County shall have the right to terminate prospectively the Negotiated FILOT Payments, and in such event, the Project shall become subject to regular *ad valorem* taxes or FILOT Payments under the Multi-County Park Agreement, as applicable.

Section 4.04. 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 that it imposes no charges in the nature of impact fees or

recurring fees in connection with the incentives authorized by this Agreement or the Project, and, aside from attorneys' fees described 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 \$3,500 or less, and the Company agrees to pay such legal fees to the County on or before December 31, 2011.

Section 4.05. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and any other Co-Investor shall use the Project as it deems fit for any lawful purpose.

Section 4.06. 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 4.07. Records and Reports. The Company and any other Co-Investor will each maintain such books and records with respect to the Project as will permit the identification of those portions of the Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, and 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 any 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 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.

(c) The Company shall also provide annually the information required by the Resolution adopted by the County Council, a copy of which is attached hereto as **Exhibit B**.

(d) The County agrees to provide the Company with written notice of any failure to comply with the reporting requirements set forth in this **Section 4.07**. If the Company fails to comply with such reporting requirements within thirty (30) days following receipt of such notice, the County may elect to suspend the incentives hereunder for the year in which such failure occurs and such suspension shall be the County's sole remedy for such failure to comply with the reporting requirements.

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 any 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 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. FOR PURPOSES OF THIS AGREEMENT, UNLESS AND UNTIL THE COMPANY SHALL NOTIFY THE COUNTY TO THE CONTRARY IN WRITING, ONLY MACHINERY, EQUIPMENT AND OTHER PERSONAL PROPERTY OWNED BY THE COMPANY SHALL BE CONSIDERED NEGOTIATED FILOT PROPERTY. 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, 2014. 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 8%; (2) a millage rate equal to 489.3 mills with respect to 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 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 Payments, 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 Project at 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 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(e)(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 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 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 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 Project, then the Negotiated FILOT Payments with respect to that portion of the 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 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 Project satisfies the Minimum Statutory Investment Requirement by the end of the Compliance Period, but subsequently falls below the Minimum Statutory Investment Requirement, without regard to depreciation, the 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) 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 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 Negotiated FILOT 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 Sponsor or Sponsor Affiliate 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 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 any 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 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 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 Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or such Co-Investors or any of their respective Affiliates or operates such assets for the Company or such Co-Investors or any of their respective Affiliates or is leasing portion of the Project in question from the Company or such Co-Investors 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-Investors, an Affiliate of the Company or such Co-Investors, 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 such Co-Investors 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 hereunder; (iii) to the extent the transferee or financing entity shall become obligated to pay make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or such Co-Investors (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or such Co-Investors, 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 such Co-Investors 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 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 such Co-Investors 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 such Co-Investors 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 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 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 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 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 day the last Negotiated FILOT Payment is made hereunder.

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 Project in which event the Project, or such portion of the 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. The County may unilaterally terminate this Agreement if the Company ceases operation at the Project for a period of more than one year.

## 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 Sponsor or Sponsor Affiliate (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 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 Sponsor or Sponsor Affiliate, 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 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 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, South Carolina  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29202  
Fax: 803-576-2137

with a copy (which shall not constitute notice) to:

Parker Poe Adams & Bernstein, LLP  
Attn: Ray E. Jones, Esquire  
P.O. Box 1509  
Columbia, SC 29202  
Fax: 803-255-8017

(b) if to the Company:

FedEx Ground Package System, Inc. #0292  
Attn: Debbie Dillinger, Tax Advisor – FedEx Services  
1000 FedEx Drive  
Moon Township, PA 15108  
Fax: 412-859-5082

with a copy (which shall not constitute notice) to:

FedEx Ground Package System, Inc. #0292  
Attn: Legal Department  
1000 FedEx Drive  
Moon Township, PA 15108  
Fax: 412-859-5413

with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC  
April C. Lucas, Esquire  
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, Chairman, County Council  
Richland County, South Carolina

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Michelle M. Onley, Clerk to County Council  
Richland County, South Carolina

FEDEX GROUND PACKAGE SYSTEM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

ALL that parcel of land located in the City of Columbia, County of Richland, State of South Carolina, containing 17.237 Acres (850831 square feet), and being shown as Parcel "A" on ALTA/ACSM land title survey prepared for Federal Express by Baxter Land Surveying Co., Inc., dated June 29, 2011, and having the following courses and boundaries:

Beginning at the center line of Shorecrest Drive and Shop Road, the point of commencement (POC), and running South 36 degrees 49 minutes 04 seconds East a distance of 757.60 feet to a No. 4 Rebar (N), located at the common point of Parcel "B", the right-of-way of Shop Road and property of Shop Grove Holdings, LLC and running North 89 degrees 32 minutes 34 seconds West a distance of 36.25 feet to a No. 4 Rebar (N), thence turning and running in a convex curved line having a radius of 325.00 feet, a chord bearing of South 31 degrees 23 minutes 40 seconds West, a chord distance of 188.52 feet to a No. 4 Rebar (N), thence turning and running South 14 degrees 37 minutes 31 seconds West a distance of 117.53 feet to a No. 4 Rebar (N), the Point of Beginning (POB) and running South 75 degrees 23 minutes 44 seconds East, along property of Shop Grove Holdings, LLC, a distance of 595.67 feet to a No. 4 Rebar (N), thence turning and running South 14 degrees 36 minutes 16 seconds West, along property of L.T. Shannon et al., a distance of 935.87 feet to a No. 1 and ¼ inch pipe (O), thence continuing South 14 degrees, 38 minutes 48 seconds West, along property of Frances S. Smoak, a distance of 322.86 feet to a No. 4 Rebar (N), thence turning and running North 75 degrees 39 minutes 08 seconds West, along property of Shop Grove Holdings, LLC, a distance of 595.89 feet to a No. 4 Rebar (N), thence turning and running North 14 degrees 37 minutes 31 seconds East, along property of Shop Grove Holdings, LLC, a distance of 1261.40 feet to a No. 4 Rebar (N), the POB.

## EXHIBIT B

### A RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING ECONOMIC DEVELOPMENT PROJECTS IN RICHLAND COUNTY

WHEREAS, the Richland County Council encourages and supports economic development within the County; and

WHEREAS, the Richland County Council desires to ensure the maximum economic advantage for those industries locating in the County while providing for public disclosure of certain direct local cost and benefits of economic development incentives; and

WHEREAS, the Richland County Council has determined that the most prudent manner of providing such information is by the submission of annual reports by the industries that receive economic development incentives from the County,

NOW, THEREFORE, BE IT RESOLVED BY THE RICHLAND COUNTY COUNCIL that the following requirements are hereby enacted:

1. Every company awarded an incentive by Richland County in exchange for the location or expansion of a facility or facilities within Richland County shall submit the following information annually, said information being due on or before January 31 of each year, throughout the length of the incentives.
  - a. Name of company;
  - b. Cumulative capital investment (less any removed investment) to date as a result of the project;
  - c. Cumulative ad valorem taxes (if any) and fee in lieu payments made in connection with the facility;
  - d. Net jobs created to date as a result of the project;
  - e. List of all employees for reporting year by residential zip code only;
  - f. Community service involvement, including Zip Codes of assisted organizations, which shall include a description of the company's financial and in-kind donations made to organizations in the County during the preceding year, as well as such other information as the company desires to share regarding its community activities.
2. All information required pursuant to this Resolution shall be submitted to the Richland County Administrator's Office at the following address by the required date.

Richland County Administrator  
Attn: Economic Development  
P.O. Box 192  
Columbia, SC 29202

Exhibit B -1

NPCOL1:2576097.4-LOCAL\_AGR-(SJM) 041919-0002

3. The Richland County Administrator, or his / her designee, is hereby authorized to require the submission of the above information. In the event that additional information is reasonably requested by the County regarding the project or any of the items listed in section 1 above, the company shall have thirty (30) days from the notification by the County Administrator in which to comply with such request.
4. This Resolution supersedes prior Economic Development Accountability Resolutions adopted by Richland County Council.
5. The substance of this Resolution will be incorporated into each Memorandum of Understanding, PILOT document, or other associated document(s), where applicable.
6. In the event that any company shall fail to provide the required information, or any portion thereof, said company may be required to return all incentives, or a dollar amount equal thereto, to Richland County. Such incentives, or the dollar amount equal thereto, shall be paid to Richland County within 60 days after the date upon which the information was originally due.

SIGNED and SEALED this 21<sup>st</sup> day of December, 2010, having been adopted by the Richland County Council, in meeting duly assembled, on the 14<sup>th</sup> day of December, 2010.

RICHLAND COUNTY COUNCIL

BY:   
Paul Livingston, Chair

ATTEST this the 5 day of  
January 2010, 2011

  
Michelle Onley, Assistant Clerk of Council

Exhibit B -2

NPCOL1:2576097.4-LOCAL\_AGR-(SJV) 041919-00002

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto **[THIRD READING] [PAGES 73-100]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

**AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND BOTTLING GROUP, LLC AND MATTERS RELATING THERETO.**

WHEREAS, Richland County (the “County”), a public body corporate and politic organized and existing under the laws of the State of South Carolina has, by an Inducement Resolution adopted on \_\_\_\_\_ (the “Resolution”), committed to enter into a Fee Agreement with Bottling Group, LLC (the “Company”), which shall provide for payments of fees-in-lieu of taxes for a project qualifying under the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “Act”);

WHEREAS, the County and the Company desire to enter into a Fee Agreement as defined in the Act concerning new and/or additional manufacturing, testing, research, development and/or operational capacity and/or an expansion at an existing manufacturing facility located in the County and any and all activities relating thereto, and which will consist of certain land, buildings or other improvements thereon and/or all machinery, apparatus, equipment, office facilities, furnishings and other personal property to be installed therein (which properties and facilities constitute a project under the Act and are referred to hereinafter as the “Project”). The Project is expected to provide significant economic benefits to the County and surrounding areas. In order to induce the Company to locate the Project in the County, the County hereby agrees to charge a fee-in-lieu of taxes with respect to the Project and otherwise make available to the Company certain benefits intended by the Act;

WHEREAS, it is anticipated that the Project will represent an investment of approximately \$10 million in taxable property in the County (without regard to whether some or all of the investment is included as economic development property under the Act but excluding property tax exempt investments);

WHEREAS, there has been prepared and presented to this meeting of Richland County Council (the “County Council”) the proposed form of the Fee Agreement between the County and the Company; and

WHEREAS, it appears that the Fee Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

**Section 1.** Pursuant to the Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings on the basis of the information supplied to it by the Company:

(a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;

(b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;

(c) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against their general credit or taxing power;

(d) The purposes to be accomplished by the Project are proper governmental and public purposes;

(e) The benefits of the Project are greater than the costs; and

(f) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property, within the meaning of the Act.

**Section 2.** In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement which is before this meeting and filed with the Clerk to County Council are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chair of the County Council and the County Administrator be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved, upon advice of counsel, by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

**Section 3.** The Chair of County Council, the County Administrator and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

**Section 4.** The consummation of all transactions contemplated by the Fee Agreement is hereby approved and authorized.

**Section 5.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 6.** The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

**Section 7.** All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

RICHLAND COUNTY COUNCIL

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

Chair  
Richland County Council

ATTEST:

\_\_\_\_\_  
Clerk to Council

First Reading: \_\_\_\_\_, 2011  
Second Reading: \_\_\_\_\_, 2011  
Public Hearing: \_\_\_\_\_, 2011  
Third Reading: \_\_\_\_\_, 2011



**DRAFT**  
**11/29/11**

**FEE AGREEMENT**

BETWEEN

**RICHLAND COUNTY, SOUTH CAROLINA**

AND

**BOTTLING GROUP, LLC**

DATED  
AS OF  
DECEMBER 1, 2011

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## **FEE AGREEMENT**

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into as of \_\_\_\_\_, 2011, by and between RICHLAND COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the "County Council") as governing body of the County; and Bottling Group, LLC, a Delaware limited liability company (the "Company").

### **WITNESSETH:**

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act"), to enter into a Fee Agreement with companies meeting the requirements of such Act, which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

WHEREAS, the County and the Company desire to enter into a Fee Agreement regarding the Project;

WHEREAS, pursuant to the Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs;

WHEREAS, pursuant to an Inducement Resolution adopted on December 13, 2011 (Resolution No. \_\_\_\_\_) (the "Inducement Resolution"), the County committed to enter into a Fee Agreement with the Company, which shall provide for payments of fees-in-lieu of taxes for a project qualifying under the Act;

WHEREAS, it is anticipated that the Project will represent an investment of at least \$10 million in taxable property in the County; and

WHEREAS, pursuant to Ordinance No. \_\_\_\_\_ adopted on December 13, 2011 (the "Ordinance"), as an inducement to the Company to develop the Project, and in consideration of the investment expectations listed above, the County Council authorized the County to enter into a Fee Agreement with the Company which identifies the property comprising the Project as economic development property under the Act subject to the terms and conditions hereof.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained and other value, the parties hereto agree as follows:

**ARTICLE I  
WAIVER OF RECAPITULATION; DEFINITIONS**

**SECTION 1.1. *Waiver of Statutorily Required Recapitulation.*** Pursuant to Section 12-44-55(B) of the Act, the County and the Company waive any and all compliance with any and all of the provisions, items or requirements of Section 12-44-55. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55, then the County agrees, to the extent permitted by law, to waive all penalties and fees for the Company's noncompliance.

**SECTION 1.2. *Rules of Construction; Use of Defined Terms.*** Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project are or may be located in a Multi-County Industrial Park and, as such, are or may be exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the "MCIP Provision"). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Fee Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

**SECTION 1.3. *Definitions.***

**“Act”** means Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as in effect on the date hereof, as the same may be amended from time to time.

**“Administration Expenses”** means the reasonable and necessary out-of-pocket legal fees and expenses incurred by the County with respect to this Agreement; provided, however, that no such expense shall be considered an Administration Expense unless the County furnishes to the Company 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 has been or will be computed.

**“Applicable Governmental Body”** means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

**“Authorized County Representative”** means the County Administrator.

**“Chair”** means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

**“Clerk”** means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

**“Commencement Date”** means the last day of the property tax year when Project property is first placed in service, except that this date must 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 Company have entered into this Fee Agreement.

**“Company”** means Bottling Group, LLC, a Delaware limited liability company qualified to do business in South Carolina, and its successors and assigns.

**“County Administrator”** means the County Administrator of the County (or person or persons authorized to perform the duties thereof in the absence of the County Administrator).

**“County Council”** means the County Council of the County.

**“County”** means Richland County, South Carolina, and its successors and assigns.

**“Documents”** means the Ordinance and this Fee Agreement.

**“DOR”** means the South Carolina Department of Revenue and any successor thereto.

**“Equipment”** means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other personal property to the extent such property becomes a part of the Project under this Fee Agreement.

**“Event of Default”** means any Event of Default specified in Section 9.1 of this Fee Agreement.

**“Fee Agreement”** means this Fee Agreement dated as of December 1, 2011, between the County and the Company.

**“Fee Term”** means the duration of this Fee Agreement with respect to each Stage of the Project as specified in Section 5.3 hereof.

**“Improvements”** means improvements to the Real Property together with any and all additions, accessions, replacements and substitutions thereto or therefor, and all fixtures now or hereafter attached thereto, to the extent such additions, accessions, replacements, and substitutions become part of the Project under this Fee Agreement.

**“Inducement Resolution”** means the Resolution No. \_\_\_\_\_ of the County Council adopted on November 15, 2011, committing the County to enter into the Fee Agreement.

**“Investment Period”** means the period beginning with the first day that economic development property for the Project property is purchased or acquired, and ending on the last day of the fifth property tax year following the Commencement Date, subject to extension of such period as provided in Section 3.2(b) hereof. Expenditures relating to property placed in service by the Company on or after January 1, 2011, and before the last day of such fifth property tax year are within the Investment Period.

**“MCIP Law”** means the provisions of Article VIII, Section 13, Paragraph D of the Constitution of the State of South Carolina 1895, as amended, and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

**“Multi-County Industrial Park” or “MCIP”** means an industrial or business park established by two or more counties acting under the provisions of the MCIP Law.

**“Ordinance”** means the Ordinance adopted by the County on December 13, 2011, authorizing this Fee Agreement.

**“Payments-in-Lieu-of-Taxes”** means the payments to be made by the Company pursuant to Section 5.1 of this Fee Agreement.

**“Project”** means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof which are eligible for inclusion as economic development property under the Act and become subject to this Fee Agreement. The parties agree that Project property shall consist of such property so identified by the Company in connection with its annual filing with DOR of an SCDOR PT-300, or such comparable form, and with such schedules as DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

**“Real Property”** means the land identified on Exhibit A hereto, together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto to the extent such become a part of the Project under this Fee Agreement; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, to the extent such Improvements and fixtures become part of the Project under this Fee Agreement.

**“Replacement Property”** means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

**“Stage”** in respect of the Project means the year in which Equipment, Improvements and Real Property, if any, are placed in service during each year of the Investment Period.

**“State”** means the State of South Carolina.

Any reference to any agreement or document in this Article or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda and modifications to such agreement or document.

## **ARTICLE II LIMITATION OF LIABILITY; INDUCEMENT**

**SECTION 2.1. *Limitation of Liability.*** Any obligation which the County may incur for the payment of money as a result of the transactions described in the documents shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the documents.

**SECTION 2.2. *Inducement.*** The County and the Company acknowledge that pursuant to the Act, and subject to the provisions of the Act and this Fee Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that the Company has indicated that this factor, among others, has induced the Company to enter into this Fee Agreement.

## **ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 3.1. *Representations and Warranties of the County.*** The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, to the best knowledge of the County Administrator, violate, conflict with or will result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, statute, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(d) All consents, authorizations and approvals required on the part of the County and other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(e) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) Based on information supplied by the Company, the Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered economic development property under the Act.

**SECTION 3.2. *Covenants by the County.*** The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary by the Company in connection with the Project, including but not limited to performance of its obligations in the Documents, and in accordance with the Act all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) Upon receipt of written request from the Company, the County agrees to give due and proper consideration to any request the Company may make for one or more extensions of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act. Such extension, if any, may be authorized by a resolution of County Council. Upon the granting of any such extension the County agrees to cooperate with the Company in assisting the Company to file with the DOR a copy of such extension within the time period required under the Act.

**SECTION 3.3. *Representations and Warranties of the Company.*** The Company makes the following representations and warranties to the County:

(a) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and qualified to do business in the State of South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, statute, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained unless the failure to have or obtain such consent, authorization or approval does not have a material adverse effect on the Company.

(d) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(e) The Company commits to a Project comprising an investment of at least \$10 million in taxable property in the County. This taxable property includes property placed in service during the Investment Period, including but not limited to property placed in service during 2011 before or after the effective date of this Agreement.

## **ARTICLE IV COMMENCEMENT AND COMPLETION OF THE PROJECT; MODIFICATIONS**

### **SECTION 4.1. *The Project.***

(a) The Company has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain economic development property which comprises the Project.

(b) Pursuant to the Act, the Company and the County hereby agree that all qualifying property comprising the Project shall be economic development property as defined under the Act.

(c) Notwithstanding any other provision of this Fee Agreement, the Company may place real property and/or personal property into service at any time under this Fee Agreement, but only real property and/or personal property placed into service during the Investment Period (and Replacement Property) will qualify as economic development property under the Act.

**SECTION 4.2. *Diligent Completion.*** The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project and may terminate this Fee Agreement with respect to all or a portion of the Project as set forth in Article X.

**SECTION 4.3. *Modifications to Project.*** Subject to compliance with applicable laws, the Company may make or cause to be made from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

**ARTICLE V**  
**PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF**  
**PROPERTY; REPLACEMENT PROPERTY; FEE TERM; MINIMUM INVESTMENT**

**SECTION 5.1. *Payments-in-Lieu-of-Taxes.*** The parties acknowledge that under Article X, Section 3 of the South Carolina Constitution, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) The Company has agreed to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 8.0% and a millage rate equal to 489.3 mils. Subject in all events to the provisions of the Act, the fair market value of the Project shall be determined as follows:

- (i) for any real property, if real property is constructed for the fee or is purchased in an arm's length transaction, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; otherwise, real property must be reported at its fair market value for ad valorem property taxes as determined by appraisal; and
- (ii) for personal property, using the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

If, by the end of the Investment Period, the Company invests at least \$15 million in taxable property in the Project (excluding property tax-exempt investments), then, beginning the following year, the applicable assessment ratio under this subsection shall be reduced from 8.0% to 6.0%. It shall be the Company's sole responsibility to notify the County in writing of the achievement of the \$15 million investment threshold. Such notification shall be accompanied by supporting documentation and any further information as may be reasonable requested by the County. Any consequences relating to a delay by the Company in providing such notification to the County shall be the sole responsibility of the Company. The Company expressly acknowledges that the County is not required to monitor the Company's progress toward achievement of the \$15 million investment threshold.

The County acknowledges that if the Company invests at least \$15 million in the Project and the Act is amended in a way that would allow for a millage rate of less than 489.3 mils or an assessment ratio of less than 6.0%, then the Company will request that this Fee Agreement be amended to provide for such lower millage rate and/or assessment ratio. The Council agrees to consider any such request.

(b) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(c) The Company shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with respect to the property tax year following the year in which Project property is first placed in service. The Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to subsections (a) and (b) above for a period not exceeding 20 years following the year in which such property is placed in service. Pursuant to and subject to the Act, (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to subsections (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year; (ii) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Act were not allowed; (iii) more than one piece of Replacement Property can replace a single piece of economic development property; (iv) Replacement Property does not have to serve the same function as the property it is replacing; (v) Replacement Property is entitled to the Payments-in-Lieu-of-Taxes pursuant to subsections (a) and (b) above for the period of time remaining on the 20-year period for the property which it is replacing; and (vi) Replacement Property is deemed to replace the oldest property subject to this Fee Agreement, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service.

(e) If by the end of the Investment Period, the Company does not invest at least \$10 million in taxable property in the Project (as described in Section 3.3(e)), this Fee Agreement shall terminate and the Company shall make the payments to the County required by Section 12-44-140(B) of the Act. Once the Company meets the \$10 million investment threshold (as described in Section 3.3(e)), it shall no longer be subject to such potential payment obligation.

(f) If at any time during the term of this Fee Agreement following the end of the Investment Period, the Company's investment based on income tax basis without regard to depreciation falls below the \$2.5 million minimum investment required under the Act, the Company no longer qualifies for the Payments-in-Lieu-of-Taxes provided under subsection (a) above in accordance with Section 12-44-140(C) of the Act, and the Project property will become subject to normal property tax calculation from that point forward, but not retroactively.

**SECTION 5.2. *Disposal of Property; Replacement Property.***

(a) In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section. Subject to the provisions of Section 5.1(d) and this Section with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Section 5.1(a) hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to subsection (a) above. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, to the extent permitted by the Act, such property shall be treated as Replacement Property.

(c) In no event shall the disposal of property by the Company result in any retroactive or prospective obligation of the Company to make additional payments under this Fee Agreement.

**SECTION 5.3. *Fee Term.*** With respect to each Stage of the Project, the applicable term of this Fee Agreement shall be from the first day of the property tax year after the property tax year in which such Stage is placed in service through the last day of the property tax year which is 20 years thereafter; provided, that the maximum term of this Fee Agreement shall not be more than 20 years from the end of the last year of the Investment Period or such longer period of time as may be applicable upon the granting of any extension permitted under the Act. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the earlier to occur of (a) payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1 hereof, or (b) exercise by the Company of its option to terminate pursuant to Section 10.1 hereof.

If necessary in order to implement the 20-year term referred to in the foregoing paragraph of this Section, the Company agrees to remove property from this Fee Agreement after the end of the twentieth year of such property being subject to the Payments-in-Lieu-of Taxes; provided, however, that the Company shall be required to maintain the minimum \$2.5 million investment under Section 5.1(f) hereof until the twentieth anniversary of the end of the Investment Period to avoid an automatic termination of this Fee Agreement pursuant to Section 5.1(f) hereof and Section 12-44-140(C) of the Act.

## **ARTICLE VI PROPERTY TAX EXEMPTION AND ABATEMENT**

**SECTION 6.1. *Protection of Tax Exempt Status of the Project.*** In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State of South Carolina or any political subdivision thereof, the County and the Company covenant that:

(a) to the extent allowed by law, all rights and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located, provided, however, that the Company may terminate this Fee Agreement as provided in Section 10.7; and

(c) the Company will maintain the identity of the Project as a "project" in accordance with the Act.

**SECTION 6.2. *Rescission and Reversion in the Event of Termination.*** In the event it shall be determined by a court of competent jurisdiction that the Project or any portion thereof are subject to State, County, or other local property taxes, then, at the option of the Company, the provisions of Section 11.4 hereof shall apply, either to the Project as a whole or to such portion thereof as the Company may elect.

## **ARTICLE VII EFFECTIVE DATE**

**SECTION 7.1. *Effective Date.*** This Fee Agreement shall become effective as of the date first written above.

## **ARTICLE VIII SPECIAL COVENANTS**

**SECTION 8.1. Confidentiality/Limitation on Access to Project.** The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets and techniques and that any disclosure of any information relating to such processes and materials, services, equipment, trade secrets or techniques, including but not limited to disclosures of financial, sales or other information concerning the Company's operations could result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, subject to the provisions of Section 11.10 hereof, except as required by law, and except as operating for other purposes in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other industrial facility in the County), neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; or (iii) notwithstanding the expectation that the County shall not receive any confidential or proprietary information, if the County should nevertheless receive any such information, neither the County nor any employee, agent, or contractor of the County shall knowingly disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with reasonable advance notice of such requirement before making such disclosure.

**SECTION 8.2. Indemnification Covenants.**

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability based upon those reasons set forth in subsection (b) below. Such indemnification obligation shall survive any termination of this Fee Agreement.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its County Council members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, or (iii) by reason of the condition or operation of the Project, including claims, liabilities or losses arising in connection with the violation of any statutes or regulations, if the County or any of its county council members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its County Council

members, officers, agents and employees against all pecuniary claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim. The provisions of this Section shall survive any termination of this Fee Agreement.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents and employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees.

**SECTION 8.3. *Assignment and Leasing.*** With the County's consent, which shall not be unreasonably withheld, any or all of the Company's interest in the Project and/or this Fee Agreement may be transferred or assigned by the Company or any assignee to any other entity, in accordance with the Act; provided, however, that such consent is not required in connection with financing related transfers or any other transfers not requiring the consent of the County under the Act. The County agrees that the County Council can provide any consent required under the Act or this Section either by a resolution of County Council or by a letter or other writing executed by the Authorized County Representative. Except as otherwise required by the Act or this Fee Agreement, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of this Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Act.

## **ARTICLE IX EVENTS OF DEFAULT AND REMEDIES**

**SECTION 9.1. *Events of Default Defined.*** The occurrence of any one or more of the following events shall be an "Event of Default" under this Fee Agreement:

(a) If the Company shall fail to make any Payment-in-Lieu-of-Taxes or payment of any other amount required under this Fee Agreement and such failure shall continue for 30 days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition, or agreement required herein to be observed or performed by the Company (other than as referred to in subsection (a) above), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County; provided if by reason of "*force majeure*" as hereinafter defined the Company is unable in whole or in part to carry out any such covenant, condition, or agreement or if it takes longer than 30 days to cure such default and the Company is diligently attempting to cure such default during such period, there shall be no Event of Default during such inability. The term "*force majeure*" as used herein shall mean circumstances not reasonably within the control of the parties, such as, without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council;

insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect; or

(d) The Company shall cease business operations at the facility at which the Project is located.

**SECTION 9.2. Remedies on Default.** Whenever any Event of Default shall have happened and be subsisting, the County may terminate this Fee Agreement and/or take whatever action at law or in equity may appear legally required or necessary or desirable to collect any payments then due. Although the parties acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49) and the Act relating to the enforced collection of taxes, and shall have a first priority lien status as provided in Section 12-44-90 of the Act and Chapters 4 and 54 of Title 12, Code of Laws of South Carolina 1976, as amended.

**SECTION 9.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the County or Company is intended to be exclusive of any other available remedy or remedies, but in each and every instance such remedy shall be cumulative and shall be in addition to every other remedy given under the Documents or now or hereafter existing at law or in equity or by statute. Unless otherwise provided herein or in the other Documents, no delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**SECTION 9.4. No Additional Waiver Implied by One Waiver.** In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

## ARTICLE X COMPANY OPTION TO TERMINATE

**SECTION 10.1. Company Option to Terminate.** From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Fee Agreement with respect to the entire Project or any portion thereof. Except as provided in Section 5.1(e) hereof, upon termination of all or part of this Fee Agreement, the Company will become liable, prospectively

but not retroactively, for ad valorem property taxes on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for amounts already due and owing under this Fee Agreement (including payments for retroactive *ad valorem* taxation as provided in Section 5.1(e)), which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1(c), or, if the termination is of the entire Project, then within 120 days of termination.

## **ARTICLE XI MISCELLANEOUS**

**SECTION 11.1. *Leased Equipment.*** The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Section 5.1(a), to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from one or more third parties under any form of lease, then such personal property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Equipment covered by this Fee Agreement, if properly undertaken as part of the Project in accordance with such law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible personal property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Administrator, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith.

**SECTION 11.2. *Notices.*** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section:

If to the Company:

Bottling Group, LLC  
Director of Pepsico Tax  
7700 Legacy Drive  
Plano, Texas 75024  
Attention: Director of Pepsico Tax

With a copy to:

Bottling Group, LLC  
One Pepsi Way  
Somers, NY 10589

Attention: General Counsel

Nelson Mullins Riley & Scarborough LLP  
1320 Main Street  
17th Floor  
Columbia, SC 29210  
Attention: George B. Wolfe, Esq.

If to the County:

Richland County, South Carolina  
2020 Hampton Street  
Columbia, SC 29204  
Attention: County Economic Developer

With a copy to:

Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450  
Columbia, SC 29210  
Attention: Ray E. Jones, Esq.

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; or (2) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

**SECTION 11.3. *Binding Effect.*** This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 11.4. *Rescission and Severability.*** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event, at the expense and sole discretion of the Company, the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

**SECTION 11.5. *Payments Due on Saturday, Sunday and Holidays.*** Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

**SECTION 11.6. *Fiscal Year; Property Tax Year.*** If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall, as appropriate, be revised accordingly, to the extent allowed by law.

**SECTION 11.7. *Amendments, Changes and Modifications.*** Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent, including specifically and without limitation any County consent referred to in this Fee Agreement, may be provided by a resolution of County Council.

**SECTION 11.8. *Execution of Counterparts.*** This Fee Agreement may be executed in several counterparts, each of which shall constitute an original instrument.

**SECTION 11.9. *Law Governing Construction of Fee Agreement.*** The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

**SECTION 11.10. *Filings.***

(a) The Company shall provide the County Auditor and the County Assessor with a copy of all annual filings made by the Company to DOR pursuant to this Fee Agreement and the Act. Further, the Company shall cause a copy of this Agreement, as well as a copy of the completed DOR Form PT-443, to be filed with the County Auditor, the County Assessor and DOR within thirty (30) days after the date of execution and delivery hereof.

(b) Notwithstanding any other provision of this Section, 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, to the extent allowed by law.

(c) The Company shall comply with the annual filing requirements set forth in the Resolution adopted by the County Council on December 21, 2010, a copy of which is attached hereto; provided, however, that the Company shall not be required to disclose any employee by name or other personally identifiable information.

**SECTION 11.11. *Headings.*** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**SECTION 11.12. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

**SECTION 11.13. *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 February 29, 2012, after receiving written notice from the County specifying the nature of such expenses and requesting payment of the same; provided, however, that the County's attorneys' fees for all work relating to the drafting, review, and negotiation of the Inducement Resolution, this Fee Agreement, and related documents shall not exceed \$3,500.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA, and BOTTLING GROUP, LLC, pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Chairman  
Richland County Council

ATTEST:

\_\_\_\_\_  
Clerk to Council

**BOTTLING GROUP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DESCRIPTION OF LAND**

~#4841-1320-3213 v.5~

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes **[THIRD READING] [PAGES 101-119]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

**STATE OF SOUTH CAROLINA  
RICHLAND COUNTY**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED FEE IN LIEU OF TAX AGREEMENT BETWEEN RICHLAND COUNTY, SOUTH CAROLINA, AND SPIRAX SARCO, INC.; AND OTHER MATTERS RELATING THERETO INCLUDING, WITHOUT LIMITATION, PAYMENT OF A FEE IN LIEU OF TAXES

WHEREAS, Richland County, South Carolina (the “County”), acting by and through its County Council (the “County Council”), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into agreements to provide for payment of a fee in lieu of taxes pursuant to the Act and, to accept any grants for such projects through which powers the industrial development of the State of South Carolina (the “State”) and 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 and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, the County is authorized by the provisions of Title 4, Chapters 1 and 29 (jointly the “Credit Act”) of the Code of Laws of South Carolina, 1976, as amended (the “Code”) to provide an infrastructure tax credit (the “Infrastructure Credit”), secured by and payable solely from revenues of the County from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution and the Act, for the purpose of defraying a portion of the cost of designing, acquiring, constructing, improving or expanding the infrastructure serving the County in order to enhance the economic development of the County; and

WHEREAS, the County and Fairfield County have established a joint county industrial and business park (the “Park”) by entering into an Agreement for Development for a Joint County Industrial Park (the “Park Agreement”) in which the Project (herein below defined) will be included; and

WHEREAS, Spirax Sarco, Inc., a corporation duly incorporated under the laws of the State of Delaware (the “Company”), has requested the County to participate in executing an Inducement Agreement and Millage Rate Agreement, and an Amended Fee Agreement (the “Amended Fee Agreement”) pursuant to the Act for the purpose of authorizing and of acquiring and expanding its site, buildings and facilities, by construction and purchase, certain land, a building or buildings, and machinery, apparatus, and equipment, for the purpose of the development of a facility for the manufacturing and production of steam generation equipment. The expansion Project will involve an investment of at least an additional Ten Million Dollars (\$10,000,000) in the Amended Fee

Agreement and has requested the County to extend its right to invest in said Amended Fee Agreement by the maximum five (5) year period permitted pursuant to Section 12-44-30 (13) of the Act by amending the Fee Agreement. and also is requesting to extend its right to invest in that certain Fee Agreement (the "Project"), all as more fully set forth in the Fee Agreement attached hereto; and

WHEREAS, the Company has requested the County to extend its right to invest in the certain Amended Fee Agreement by the maximum five (5) year period permitted pursuant to Section 12-44-30 (13) of the Act by amending the Fee Agreement.

WHEREAS, based on the Company's representations, the County has determined that the Project would benefit the general public welfare of the County by providing service, employment, recreation or other public benefits not otherwise provided locally; and, that the Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either; and, that the purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes; and, that the inducement of the location or expansion of the Project within the County and State is of paramount importance; and, that the benefits of the Project will be greater than the costs; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that the Project would be a "project" as that term is defined in the Act and that the Project would subserve the purposes of the Act; and

WHEREAS, the County is authorized by the Act to execute an amended fee in lieu of tax agreement, as defined in the Act, with respect to any such project; and

WHEREAS, the Amended Fee Agreement shall continue to provide the Company with an Infrastructure Credit in an amount equal to Twenty (20%) percent of the fee in lieu of ad valorem tax payments paid by the Company to the County pursuant to the Amended Fee Agreement (defined below), on qualified investment property (as defined in the Act) for the five (5) year investment period from January 1, 2009 until December 31, 2014 with the resulting fees in lieu of tax being finally due and payable from January 15, 2011 until January 15, 2015; and

WHEREAS, the County Council has previously entered into and executed the aforesaid Inducement Agreement and Millage Rate Agreement, by its Resolution adopted on \_November 15, 2011; and, will by this County Council Ordinance, authorize an amended fee in lieu of tax agreement, to continue the grant of an Infrastructure Credit in accordance with the Credit Act (the "Amended Fee Agreement"); and

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Fee Agreement by and between the County and the Company which includes the agreement for payment of a payment in lieu of tax and the grant of an Infrastructure Credit; and

WHEREAS, it appears that the Fee Agreement, which is now before this meeting, is in

appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED by Richland County, South Carolina, as follows:

Section 1. In order to promote industry, develop trade and utilize and employ the manpower, agricultural products and natural resources of the State by assisting the Company to expand a manufacturing facility in the State, and acquire by acquisition or construction a building or buildings and/or various machinery, apparatus, and equipment, all as a part of the Project to be utilized for the purpose of a facility for the manufacturing and production of steam generation equipment, the execution and delivery of an Amended Fee Agreement, to continue the grant of an Infrastructure Credit, with the Company for the Project is hereby authorized, ratified and approved.

Section 2. Based on the Company's representations, it is hereby found, determined and declared by the County Council, as follows:

(a) The Project will constitute a "project" as said term is referred to and defined in the Act, and the County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act;

(b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County;

(c) The Project will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

(d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either;

(e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes;

(f) The inducement of the location or expansion of the Project within the County and State is of paramount importance; and,

(g) The benefits of the Project will be greater than the costs.

Section 3. Pursuant to the authority of the Act and the Credit Act, there is hereby authorized to be provided, and shall be provided, the Infrastructure Credit of the County to the Company in the amount of Twenty (20%) percent of the fee in lieu of ad valorem tax payments for the qualified investment property (as defined in the Act) for the five (5) year investment period from January 1, 2009 until December 31, 2014 with the resulting fees in lieu of tax being finally due and payable from January 15, 2011 until January 15, 2015.

Nothing in this Ordinance shall be construed as an obligation or commitment by the County to expend any of its funds other than the portion of the fee in lieu of ad valorem tax payments represented by the Infrastructure Credit derived by the County which shall be payable solely as a credit against the fee in lieu of ad valorem tax payments due by the Company to the County for the Project.

Section 4. The form, terms and provisions of the Amended Fee Agreement presented to this meeting and filed with the Clerk of the County Council be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Amended Fee Agreement were set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk of the County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Amended Fee Agreement in the name and on behalf of the County, and thereupon to cause the Amended Fee Agreement to be delivered to the Company. The Amended Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as are both: (a) not materially adverse to the County, and (b) approved by the officials of the County executing the same, upon the advice of counsel to the County, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Amended Fee Agreement now before this meeting.

Section 5. The Chairman of the County Council and the Clerk of the County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things reasonably necessary to effect the execution and delivery of the Amended Fee Agreement.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provisions shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 7. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

Passed and approved this 13th day of December, 2011

RICHLAND COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Paul Livingston, Chairman of County Council  
Richland County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Michelle Onley, Interim Clerk to County Council  
Richland County, South Carolina

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 13, 2011

FIRST AMENDMENT TO FEE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

SPIRAX SARCO, INC.  
a Delaware Corporation

Dated as of December 1, 2011

Amending that certain Fee Agreement entered into between the parties and dated February 3, 2009.

## FIRST AMENDMENT TO FEE AGREEMENT

THIS FIRST AMENDMENT TO FEE AGREEMENT (this “First Amendment”) amending the 2009 Fee Agreement (the “2009 Fee Agreement” dated as of February 3, 2009 is made and entered into as of December 1, 2011, by and between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Richland County Council (the “County Council”) as the governing body of the County, and SPIRAX SARCO, INC. (the “Company”), a corporation duly incorporated and existing under the laws of the State of Delaware. Except as the terms thereof are amended hereby, the 2009 Fee Agreement shall be remain in full force and effect. All capitalized terms herein not otherwise defined shall have the meanings assigned to them in the 2009 Fee Agreement.

### WITNESSETH:

(a) The County is authorized by Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “Act”) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property, to induce such industries to locate in the State and to encourage industries now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State.

(b) Pursuant to the Act, the County finds that (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefit not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against its

general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public.

(c) Pursuant to an Inducement Agreement dated as of November 1, 2011 between the County and the Company (the “Inducement Agreement”) authorized by a resolution adopted by the County Council on November 15, 2011 (“Inducement Resolution”), the Company has agreed to expand its operations in the County through the acquisition of an additional site described on Exhibit A attached hereto, buildings and equipment to be used for manufacturing of and production of steam generation equipment (the “Project”), which shall involve an additional investment by the Company of \$10,000,000 (the “Expansion Investment”).

(d) In consideration of the Company’s commitment to the Expansion Investment, the County and Company desired to amend the 2009 Fee Agreement in order to provide for a two year extension of the Investment Period (as defined in the 2009 Fee Agreement) and to expressly permit the Expansion Investment to qualify for the Infrastructure Tax Credit

(e) Pursuant to an Ordinance adopted on December 13, 2011 (the “Fee Ordinance”), as an inducement to the Company to develop the Project and at the Company's request, the County Council authorized the County to enter into this First Amendment.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation of the County:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

Section 1.1    Representations of the County.    The County hereby represents and warrants to the Company as follows:

(a)    The County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to enter into the transactions contemplated by this First Amendment and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this First Amendment.

(b)    The Project as represented by the Company to the County constitutes a “project” within the meaning of the Act.

(c)    By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property under the Act.

Section 1.2    Representations of the Company.    The Company hereby represents and warrants to the County as follows:

(a)    The Company is duly organized and in good standing under the laws of the State of Delaware, is qualified to do business in the State, has power to enter into this First Amendment, and by proper company action has duly authorized the execution and delivery of this First Amendment.

(b)    The Company's execution and delivery of this First Amendment and its compliance with the provisions hereof will not result in a default, not waived or cured, under any company restriction or any agreement or instrument to which the Company is now a party or by which it is bound.

(c) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project for the purpose of a manufacturing facility for the manufacturing and production of steam generation equipment and conducting other legal activities and functions with respect thereto, and for such other purposes permitted under the Act as the Company may deem appropriate.

(d) The Expansion Investment will involve an investment by the Company of an additional Ten Million (\$10,000,000) in fee in lieu of tax eligible investments in the Project by December 31, 2016.

## ARTICLE II

### AMENDMENTS TO 2009 FEE AGREEMENT

Section 2.1 Extension of Investment Period. The Investment Period shall be extended, as permitted by the Act, from December 31, 2014 to December 31, 2016. This extension is being made to accommodate the Expansion Investment and to allow the real and personal property comprising the Project to receive fee in lieu of tax benefits as provided under the 2009 Fee Agreement.

Section 2.2 Eligibility of Expansion Investment Site. The real property acquired by the Company and more fully described in Exhibit A attached hereto shall be added as an eligible site for the location of the Expansion Investment. Provided, the existing building on the site shall not be included as eligible economic development property but additions, fixtures and upgrades to the building performed since its acquisition by the Company may be included.

Section 2.3 Eligibility of Expansion Investment of Infrastructure Tax Credit. The Expansion Investment shall be eligible for the Infrastructure Tax Credit. The five year benefit period of the Infrastructure Tax Credit commenced on January 15, 2011 and shall terminate on

January 15, 2015. The Infrastructure Tax Credit shall be calculated based on 20% of the total annual fee in lieu of tax payments made in connection with the Expansion Investment and the original investment contemplated under the 2009 Fee Agreement.

Section 2.4 Clawback of Infrastructure Tax Credit Benefits. If the Company does not invest at least \$10,000,000 by December 31, 2016, then the Company shall reimburse the County for any Infrastructure Credits the company previously claimed according to the following formula:

Amount Invested/\$10,000,000 \* Infrastructure Credits claimed

As an example, assuming the Company invested \$5,000,000 by the end of the Investment Period and had collected \$189,000 in Infrastructure Credits, the reimbursement would be:

$[1 - (\$5,000,000/\$10,000,000)] * \$189,000$

=  $[1 - 1/2] * \$189,000$

The Company would owe \$94,500

The Company shall repay this amount in equal monthly installments during the 3 months immediately following the end of the Investment Period.

ARTICLE III

MISCELLANEOUS

Section 3.1    Indemnification Covenants. (a) The Company shall and agrees to indemnify and save the County, its County Council members, officers, employees, or agents harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Term, and, the Company further, releases the County, its County Council members, officers, employees or agents from and shall indemnify and save the County, its County Council members, officers, employees or agents, harmless against and from all claims arising during the Term from (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this First Amendment, (iii) any act of negligence of the Company or any of its agents, contractors, servants, employees, or licensees, (iv) any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of the Company, (v) any environmental violation, condition, or effect, or (vi) the administration by the County of this First Amendment or the performance by the County of its obligations hereunder. The Company shall indemnify and save the County harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County or other indemnified party, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the County, its members of County Council, agents, officers, or employees, shall not incur pecuniary liability by

reason of the terms of this First Amendment, or the undertakings required of the County hereunder, by reason of the performance of any act requested of it by the Company, or by reason of the operation of the Project 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 the County, its members of County Council, agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding.

These indemnification covenants shall be considered included and incorporated by reference in subsequent documents after the closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

Section 3.2    Reimbursement of Legal Fees and Expenses.    If the Company shall default under any of the provisions of this First Amendment and the County shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company contained herein, the Company will, within thirty (30) days of demand therefor, reimburse the reasonable fees of such attorneys and such other reasonable expenses so incurred by the County.

Section 3.3    Reimbursement of County's Expenses.    The Company shall pay the County, or its designated officers, agents and employees, for expenses, including attorneys' fees, related to negotiations, preparation and review of this First Amendment, and related documents, or otherwise

arising out of or relating to the Project in an amount not to exceed \$7,500. The Company shall pay the County, or its designated officers, agents and employees, for other expenses incurred arising out of or relating to this First Amendment, and related documents, and any future amendment(s) thereto, any transactions contemplated by this First Amendment, and related documents, and any future amendment(s) thereto, or otherwise arising out of or relating to the Project, including attorneys' fees resulting from this First Amendment and any future amendment(s) to this First Amendment, or related documents, promptly upon request therefor, but in no event later than 30 days after receiving written notice from the County requesting payment of such expenses, which notice must contain a general description of the expense incurred.

Section 3.4    Counterparts.    This First Amendment may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 3.5    Governing Law; Entire Agreement.    As always subject to and limited by the Home Rule Act, the Act, and other applicable law, this First Amendment is governed by the provisions hereof and the applicable laws of the State of South Carolina.

Section 3.6    Amendments.    The provisions of this First Amendment may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 3.7    Further Assurance.    From time to time, and at the sole expense of the Company, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this First Amendment.

Section 3.8    Severability.    If any provision of this First Amendment is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate

the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible to locate the Project in the County.

Section 3.9    Execution Disclaimer. Notwithstanding any other provision, the County is executing this First Amendment as a statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance on representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this First Amendment to be executed in its name and behalf by the County Chairman and to be attested by the Clerk to County Council; and the Company has caused this First Amendment to be executed by its duly authorized officer, all as of the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Paul Livingston, Chairman of County Council  
Richland County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Michelle Onley, Clerk to County Council  
Richland County, South Carolina

SPIRAX SARCO, INC.

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

Don B. Harrison

Its: Vice President Finance/CEO

EXHIBIT "A"

All that certain piece, parcel or lot of land, situate, lying and being near the Town of Blythewood, in the County of Richland, State of South Carolina, containing 8.27 acres, being shown and delineated on a plat prepared for Spirax Sarco, Inc. by Inman Land Surveying Company, Inc. dated September 21, 2011, and recorded in Record Book 1717, page 2696. Reference being craved to said plat for specific metes, bounds and distances. All measurements being a little more or less.

Tax Map No.: 17600-01-25

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company LLC, acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project ("FILOT Payments"); (3) the Company to claim certain special source credits against such FILOT Payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto **[THIRD READING] [PAGES 120-162]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

**RICHLAND COUNTY  
ORDINANCE**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BETWEEN RICHLAND COUNTY, SOUTH CAROLINA (THE "COUNTY") AND WESTINGHOUSE ELECTRIC COMPANY LLC, ACTING FOR ITSELF AND FOR ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), IN CONNECTION WITH THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE COUNTY TO COVENANT IN SUCH AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO THE PROJECT ("FILOT PAYMENTS"); (3) THE COMPANY TO CLAIM CERTAIN SPECIAL SOURCE CREDITS AGAINST SUCH FILOT PAYMENTS; (4) THE BENEFITS OF A MULTI-COUNTY PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (5) OTHER MATTERS RELATING THERETO.

WHEREAS, Richland County, South Carolina (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 "FILOT Act"), Sections 4-1-175 and 4-29-68 of the Code (collectively, the "Special Source Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park 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 authorize investors to claim certain special source credits against such FILOT payments ("Special Source Credits"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate any Special Source Credits granted to investors; and

WHEREAS, Westinghouse Electric Company LLC, a limited liability company organized and existing under the laws of Delaware, acting for itself and for one or more affiliates or other project sponsors, (the "Company") proposes to establish certain manufacturing and related facilities in the County (the "Project"), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, in the aggregate of approximately \$60,000,000 in the Project; and

WHEREAS, the County has determined, *inter alia*, that the Project would subserve the purposes of the Act and would be directly and substantially beneficial to the County, the taxing entities of the County and the citizens and residents of the County due to the jobs created or retained, or caused to be created or retained, and the investment made, or caused to be made, by the Company, which contribute to the tax base and the economic welfare of the County; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to undertake the Project in the County, the County adopted a resolution on November 15, 2011 (the "Inducement Resolution") whereby the County agreed to accept certain negotiated FILOT payments, to authorize the Company to claim certain Special Source Credits and to designate the Project as part of a multi-county industrial or business park, which incentives are set forth in greater detail herein and in the form of the Fee in Lieu of Tax and Incentive Agreement (the "Incentive Agreement") presented to this meeting, which Incentive Agreement is to be dated, as of December 1, 2011 or such other date as may be agreed to by the parties; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. The findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed except as otherwise, specifically modified by this Ordinance or the Incentive Agreement. In the event of any disparity or ambiguity, the terms of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the means ascribed thereto in the Incentive Agreement. In accordance with Section 12-44-40(I) of the FILOT Act, the County make the following findings and determinations:

- (a) The Project will constitute a "project" within the meaning of the FILOT Act; and
- (b) The Project, and the County's actions herein, will subserve the purposes of the FILOT Act; and
- (c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and
- (d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project to the County are greater than the costs to the County.

Section 2.

(a) The County hereby agrees to enter into and Incentive Agreement with the Company, which Incentive Agreement shall constitute a fee agreement pursuant to the FILOT Act. Under the terms of the Incentive Agreement, the Company will agree (i) to invest, or cause to be invested, in the aggregate at least \$35,000,000 with respect to the Project (the “Minimum Contractual Investment Requirement”) during the period commencing with the date of the initial expenditure by or on behalf of the Company with respect to the Project, whether before or after the effective date of the Incentive Agreement, and ending on the fifth anniversary of the end of the property tax year in which the initial property comprising the Project is placed in service (as described in and calculated in accordance with the first sentence of Section 12-44-30(13) of the FILOT Act, the “Compliance Period”), and the County will agree to the incentive arrangements summarized below and as specified in greater detail in the Incentive Agreement and subject to the terms and conditions thereof. The Incentive Agreement shall contain such additional terms and conditions as set forth hereinafter, and as shall be mutually satisfactory to the County and the Company.

(b) The County will agree in the Incentive Agreement to accept negotiated fee in lieu of *ad valorem* tax payments with respect to the Project as determined in accordance with in **Section 2(e)** hereof and the Incentive Agreement (the “FILOT Payments”).

(c) If the Company meets the Minimum Contractual Investment Requirement prior to the end of the initial Compliance Period as specified in **Section 2(a)** above, then the period for completion of the Project shall automatically extend for another five years in accordance with the provisions of Section 12-44-30(13) of the FILOT Act for a total period of ten years (the Compliance Period, including any extension thereof, sometimes referred to herein as the “Investment Period”).

(d) Subject to the provisions of the FILOT Act and the Incentive Agreement, the annual FILOT payments with respect shall commence with respect to the property tax year in which the first property comprising a part of the Project is placed in service and shall continue for a period of twenty (20) years thereafter; provided that, if the Project is placed in service during more than one year, each year’s investment during the Investment Period, including any extension thereof, shall be subject to the FILOT Payments for a period of twenty (20) years.

(e) The FILOT payment shall be determined using: (1) an assessment ratio of 6%; (2) a millage rate of 409.3 mills, which millage rate shall remain fixed for the term of the FILOT Payments; (3) the fair market value of the Project, determined in accordance with the FILOT Act; and (4) and such other terms and conditions as are specified in the Incentive Agreement.

(f) The County will also agree in the Incentive Agreement that the Company may claim Special Source Credits against its FILOT Payments for ten (10) years in accordance with the provisions of the Special Source Act and the Incentive Agreement.

If the aggregate investment in the Project equals or exceeds \$35,000,000 prior to the end of the Compliance Period, the annual Special Source Credit shall equal 20% of the annual FILOT Payments. The Special Source Credits shall increase to 30% of the annual FILOT Payments during the year in which the aggregate investment in the Project equals or exceeds \$85,000,000, provided, however, that there shall be no extension of the ten-year period when the Special Source Credits apply.

(g) The County and the Company previously entered into a Fee In Lieu of Tax Agreement dated as of December 1, 2003 (the "Prior FILOT Agreement") to extend to all property placed in service during the "Investment Period" specified in the Prior FILOT Agreement. The County agrees that the period for payment of the negotiated "FILOT Payments" with respect to each annual increment of investment subject to the Prior FILOT Agreement shall be extended to thirty (30) years as authorized by Section 12-44-30(21) of the FILOT Act.

Section 3. The County will insure that the Project will be included, if not already included, and will remain, within the boundaries of a multi-county industrial or business 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 Project during the Investment Period, including any extension thereof, any additional jobs creation 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 authorized herein.

Section 4. The provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement were set out in this Ordinance in its entirety. The Chair of the Council, or the Vice Chair of the Council in the event the Chair is absent, is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized and directed to attest the same; and the Chair of the Council, or the Vice Chair of the Council in the event the Chair is absent, is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company.

Section 5. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon advice of legal counsel to the County, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 6. The Chair of the Council, or the Vice Chair of the Council in the event the Chair is absent, and the County Administrator, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement and to carry out the transactions contemplated thereby and by this Ordinance.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall be effective upon adoption of the Council.

[End of Ordinance]

Enacted in meeting duly assembled December 13, 2011.

RICHLAND COUNTY, SOUTH CAROLINA

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Paul Livingston, Chair, County Council  
Richland County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Michelle Onley, Clerk to County Council  
Richland County, South Carolina

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 13, 2011

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

WESTINGHOUSE ELECTRIC COMPANY LLC

Dated as of December 1, 2011

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of December 1, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and WESTINGHOUSE ELECTRIC COMPANY LLC, a limited liability company organized and existing under the laws of the State of Delaware, acting for itself and for 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 certain manufacturing and related facilities in the County (the “Project”), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, in the aggregate of approximately \$60,000,000 in the Project by the end of the Compliance Period (as defined below); and

WHEREAS, the County and the Company previously entered into a Fee In Lieu of Tax Agreement dated as of December 1, 2003 (the “2003 Fee Agreement”) to extend to all property placed in service during the “Investment Period” specified in the 2003 Fee Agreement, and the County has agreed to extend the period for payment of the negotiated FILOT payments with respect to each annual increment of investment subject to the 2003 Fee Agreement to thirty (30) years as authorized by Section 12-44-30(21) of the Negotiated FILOT Act; and

WHEREAS, the County has determined the 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 Project in the County, the County Council adopted a Resolution on November 15, 2011 (the "Inducement Resolution"), whereby the County agreed to provide FILOT, Special Source Credit and multi-county industrial or business park benefits, which are set forth in greater detail herein; and

WHEREAS, 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 set forth herein and, by an Ordinance enacted by the Council on December 13, 2011, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises; the potential investment 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, the Special Source Act and the Multi-County Park 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 Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in or providing funds for the 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 is the only Co-Investor.

“*Company*” shall mean Westinghouse Electric Company, a Delaware limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** 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 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 Project will be placed in service in the Property Tax Year ending on March 31, 2012 and that in such event, the Compliance Period will end on March 31, 2017.

“*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 previously subject to property taxes in South Carolina, 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 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 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.

“*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 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 November 15, 2011 with respect to the Project.

“*Investment Period*” shall mean the period for completion of the Project, which shall be initially equal to the Compliance Period; provided, however, that, if the Company and any Co-Investors in the aggregate meet the Minimum Contractual Investment Requirement by the end of the Compliance Period, the period for completion of the Project shall automatically extend for another five years; and 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 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 \$35,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors in the aggregate in the Project during the Compliance Period.

“*Minimum Statutory Investment Requirement*” shall mean investment in the 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 Negotiated FILOT Payments.

“*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 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 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 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.

“*Project*” shall mean the Land and, to the extent placed in service by the Company or any Co-Investor during the Investment Period: (i) all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; and (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, together with any Replacement Property; provided, however, that the term “Project” for purposes of this Agreement shall exclude any property covered by a negotiated FILOT under the 2003 FILOT Agreement.

“*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, *e.g.*, with respect to the Company, the period ending on March 31 of each year; provided, however, that the Property Tax Year for the Company shall control for purposes of determining the Compliance Period and Investment Period.

“*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 Personal Property*” shall mean that portion of the Special Source Property consisting of machinery, equipment and other personal property, but excluding personal property which becomes incorporated into the real property portion of the Project as a fixture.

“*Special Source Property*” 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, machinery, equipment and other personal property and any other property permitted by the Special Source Act, which is to be 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 Property shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, any additions or improvements to any of the foregoing, and Special Source Personal Property, whether paid for by the Company or any other Co-Investors directly or through lease payments.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the 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 is the only Sponsor and there are no 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.

“*2003 Fee Agreement*” shall mean that certain Fee In Lieu Of Tax Agreement between the County and the Company dated as of December 1, 2003.

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 the Special Source Credits as set forth herein, the inclusion and maintenance of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby. The County has obtained all consents and approvals required to consummate the transactions contemplated by this Agreement or the Multi-County Park Agreement including, without limitation, the approval by Fairfield County.

(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 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 March 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 Project primarily for manufacturing 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 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 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 Project within the County and as reimbursement for investment in certain Special Source Property, 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 against the first ten Negotiated FILOT Payments with respect to the Project. If the aggregate investment in the Project equals or exceeds \$35,000,000 prior to the end of the Compliance Period, the annual Special Source Credits shall equal 20% of the annual FILOT Payments for a period of ten years. The Special Source Credits shall increase to 30% of the annual FILOT Payments during the year in which the aggregate investment in the Project equals or exceeds \$85,000,000, provided, however, there shall be no extension of the ten-year period when the Special Source Credits apply. 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 Property funded from time to time in connection with the 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 Project, by reducing the total original FILOT Payment otherwise due with respect to such property by the amount of such Special Source Credits. Each Claiming Entity shall provide the County with a certification showing the amount of Special Source Credits being claimed and the calculations therefor in substantially the form set forth in **Exhibit B** hereto.

(c) The Company shall notify the County of the amount of any Special Source Credits allocated to Special Source Personal Property and any removal thereof from the Project to the extent not replaced with property of equal or greater value, which replacement property need not serve the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Special Source Personal Property. To the extent that the Company so allocates any Special Source Credits to Special Source Personal Property and later removes such Special Source Personal Property from the Project without replacement as provided hereinabove, the Negotiated FILOT Payments which would be applicable to such Special Source Personal Property absent such removal shall continue for a period of two years.

(d) 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 PROJECT.

Section 3.03. Multi-County Park Designation. The County will take all appropriate actions to insure that the Project will be included within the boundaries of the Multi-County Park, and that the Project 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 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 Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the 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 a court 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 determines that all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and any other Sponsor or Sponsor Affiliate 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 Project to the County at the expense of the Company or such other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, 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 such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project for Ten Dollars (\$10.00).

Section 3.05. Extension of Payment Period under 2003 Fee Agreement. Section 5.01(b) of the 2003 Fee Agreement is hereby amended to provide for a thirty (30) year payment period for each annual increment of investment covered by the negotiated FILOT payments under the 2003 Fee Agreement for a total of thirty-seven (37) years, and the term of the 2003 Fee Agreement is extended accordingly.

## ARTICLE IV

### COVENANTS OF COMPANY

Section 4.01. Minimum Contractual Investment Requirement. The Company agrees that it will comply with, or cause compliance with, the Minimum Contractual Investment Requirement, by the end of the Compliance Period.

Section 4.02. Investment in Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the 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 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 March 31, 2015.

(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, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined without regard to depreciation by reference to the property returns of the Company and all Co-Investors filed with respect to the 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 Negotiated FILOT Act.

(c) To encourage the Company to continue to invest in the Project, if the Company and any Co-Investors in the aggregate meet the Minimum Contractual Investment Requirement by the end of the Compliance Period, the period for completion of the Project shall automatically extend for another five years. There shall be no extension, however, beyond the Compliance Period of the period for meeting the Minimum Statutory Investment Requirement.

(d) The Company and/or its designated Co-Investors shall retain title, or other property rights, to its respective portion of the Project throughout the Term of this Agreement, and the County hereby consents to any action by the Company or any Co-Investor to mortgage, lease, or encumber all or any portion of the Project, including, without limitation, in connection with any financing transactions.

(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 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 Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company, or such Co-Investor, 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.

(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 returns filed with respect to the 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 Negotiated FILOT 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 returns filed with respect to the 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 Negotiated FILOT 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 Property. The Company agrees that it will provide, or cause Co-Investors to provide, funding for the Special Source Property related to the establishment of the Project.

Section 4.04. Failure to Comply with Minimum Contractual Investment Requirement. If the Company does not comply, or cause compliance, with the Minimum Contractual Investment Requirement by the end of the Compliance Period, but has nevertheless invested or caused to be invested at least \$10,000,000 in the Project, the Company shall continue to be eligible to take advantage of the Negotiated FILOT hereof; however, in such event, the County may elect to terminate the Special Source Credits provided for herein prospectively. In addition, should the Company fail to reach or cause to be reached the \$10,000,000 threshold, the Company shall reimburse the County, within sixty (60) days of receipt of a written request, for the value of all Special Source Credits received pursuant to the terms of this Agreement, and the County may, at its election, terminate the Negotiated FILOT prospectively.

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 that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement or the Project, and,

aside from attorneys' fees described 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 \$3,500 or less, and the Company agrees to pay such legal fees to the County on or before December 31, 2011.

Section 4.06. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and any other Co-Investor shall use the 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 any other Co-Investor will each maintain such books and records with respect to the Project as will permit the identification of those portions of the Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, and 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 any 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 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.

(c) The Company shall also provide annually the information required by the

Resolution adopted by the County Council on December 14, 2010, a copy of which is attached hereto as **Exhibit C**.

(d) The County agrees to provide the Company with written notice of any failure to comply with the reporting requirements set forth in this **Section 4.08**. If the Company fails to comply with such reporting requirements within thirty (30) days following receipt of such notice, the County may elect to suspend the incentives hereunder for the year in which such failure occurs and such suspension shall be the County's sole remedy for such failure to comply with the reporting requirements.

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 any 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 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, **2014**. 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) a millage rate equal to 409.3 mills with respect to 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 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 Payments, 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 Project at 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 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(e)(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 (20) 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 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 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 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 Project, then the Negotiated FILOT Payments with respect to that portion of the 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 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 Project satisfies the Minimum Statutory Investment Requirement by the end of the Compliance Period, but subsequently falls below the Minimum Statutory Investment Requirement, without regard to depreciation, the 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) 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 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 Negotiated FILOT 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 Sponsor or Sponsor Affiliate 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 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 any 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 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 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 Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or such Co-Investors or any of their respective Affiliates or operates such assets for the Company or such Co-Investors or any of their respective Affiliates or is leasing portion of the Project in question from the

Company or such Co-Investors 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-Investors, an Affiliate of the Company or such Co-Investors, 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 such Co-Investors 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 hereunder; (iii) to the extent the transferee or financing entity shall become obligated to pay make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or such Co-Investors (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or such Co-Investors, 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 such Co-Investors 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 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 such Co-Investors 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 such Co-Investors 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 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 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 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 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 day the last Negotiated FILOT Payment is made hereunder.

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 Project in which event the Project, or such portion of the 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. The County may unilaterally terminate this Agreement if the Company ceases operations at the Project for a period of more than one year.

## 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 Sponsor or Sponsor Affiliate (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 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 Sponsor or Sponsor Affiliate, 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 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 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, South Carolina  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29202  
Fax: 803-576-2137

with a copy (which shall not constitute notice) to:

Parker Poe Adams & Bernstein, LLP

Attn: Ray E. Jones, Esquire  
P.O. Box 1509  
Columbia, SC 29202  
Fax: 803-255-8017

(b) if to the Company:

Westinghouse Electric Company, LLC  
Attn: Ronald W. Yeakle  
5801 Bluff Road  
Columbia, South Carolina 29201  
Fax: 803-647-2025

with a copy (which shall not constitute notice) to:

Westinghouse Electric Company, LLC  
Attn: General Counsel  
Westinghouse Electric Company  
Suite 138  
1000 Westinghouse Drive  
Cranberry Township, PA 16066  
Fax 724-940-8508

with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC  
April C. Lucas, Esquire  
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, Chairman, County Council  
Richland County, South Carolina

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Michelle M. Onley, Clerk to County Council  
Richland County, South Carolina

WESTINGHOUSE ELECTRIC COMPANY LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION**

The Expansion Project's address is 5801 Bluff Road, Columbia, South Carolina 29201.

All that certain piece, parcel or tract of land situate in Richland County, South Carolina bounded and described as follows:

Commencing at S.C. Grid Monument "NUCLEAR" point being the point of Commencement; thence S 40-20-51 E 1281.75 feet to a found concrete monument, said point being the point of BEGINNING; thence S 55-46-14 W 1693.17 feet; thence S 37-29-22 E 739.24 feet; thence S 29-43-42 W 383.62 feet; thence South 31-15-31 W 499.41 feet; thence S 31-32-36 W 269.0 feet; thence S 31-28-45 West 2100.0 feet; thence 31-28-52 W 63.57 feet; thence S 41-12-02 W 118.95 feet; thence S 52-33-50 W 230.18 feet; thence S 57-08-28 W 173.08 feet; thence S 40-29-36 W 158.91 feet; thence S 11-22-02 W 73.35 feet; thence S 46-12-42 W 157.29 feet; thence N 83-16-41 W 145.85 feet; thence S 44-19-03 W 124.23 feet; thence S 9-30-35 W 76.82 feet; thence 26-58-23 W 145.59 feet; thence South 50-03-07 West 110.86 feet; thence S 32-08-05 W 64.78 feet; thence S 71-06-27 W 144.85 feet; thence S 61-59-35 W 105.47 feet; thence S 69-18-42 W 25.97 feet; thence N 52-58-30 W 98.54 feet; thence N 49-41-04 W 1535.89 feet to a found concrete monument; thence N 53-04-20 W 148.12 feet to a found concrete monument; thence N 59-08-01 W 1101.08 feet to a found concrete monument; thence N 58-38-52 W 783.91 feet to a found concrete monument; thence N 59-13-48 W 709.99 feet to a found concrete monument; thence N 59-13-51 W 1000.0 feet to a found concrete monument; thence N 59-13-56 W 413.09 feet to an Iron pipe; thence N 59-13-36 W 36.0 feet; thence S 35-14-25 W 233.64 feet; thence S 37-47-49 W 164.50 feet; thence S 55-52-50 W 199.51 feet; thence S 68-54-07 W 330.52 feet; thence S 65-10-12 W 213.57 feet; thence S 82-11-13 W 183.35 feet; thence S 88-21-27 W 598.04 feet; thence N 71-46-21 W 359.87 feet; thence N 54-03-15 W 202.61 feet; thence N 47-40-27 W 226.53 feet; thence N 31-04-45 W 624.64 feet; thence 19-51-18 W 59.04 feet; thence N 37-10-11 E 93.27 feet; thence N 10-57-59 W 115.10 feet; thence N 34-27-41 W 39.91 feet; thence N 52-27-42 E 87.38 feet to a found concrete monument; thence N 59-25-46 E 701.86 feet to a found concrete monument; thence N 60-13-19 E 719.41 feet to a found concrete monument; thence N 59-01-53 E 1602.38 feet to a found concrete monument; thence N 59-27-40 E 1023.84 feet to a found concrete monument; thence N 59-23-34 E 976.28 to a found concrete monument; thence S 67-39-38 E 720.73 feet to a found Iron pipe; thence N 67-54-40 E 1598.02 feet to a found Iron pipe; thence S 32-03-16 E 117.02 feet; thence D 62-22-36 E 60.84 feet; thence S 67-22-19 E 106.63 feet; thence S 72-50-56 East 35.17 feet; thence N 30-17-41 E 66.02 feet; thence N 75-09-43 E 141.31 feet; thence N 86-02-41 E 100.60 feet; thence N 7-25-02 E 37.85 feet; thence S 83-50-13 E 197.09 feet; thence N 85-12-05 E 100.77 feet; thence N 85-28-32 E 100.72 feet; thence N 41-37-26 W 1125.72 feet to a concrete monument; thence N 42-21-29 E 1080.35 feet to a found Iron pipe; thence S 82-25-26 E 429.03 feet to a found Iron pipe; thence N 42-19-43 E 1034.66 feet to a found concrete monument; thence with the right of way of S.C. State Highway No. 48 S 40-18-05 E 4884.76 feet to the point and place of BEGINNING.

Exhibit A-1

NPCOL1:2631738.3-LOCAL\_AGR-(SSC) 032330-00010

LESS AND EXCEPTING: That certain parcel heretofore deeded to South Carolina Electric & Gas Company to provide for a sub-station serving the property.

DERIVATION: Deed Book 92 at Page 780.

Exhibit A-2

NPCOL1:2631738.3-LOCAL\_AGR-(SSC) 032330-00010

## EXHIBIT B

### CERTIFICATION OF REGARDING SPECIAL SOURCE CREDITS

Reference is made to that certain Fee in Lieu of Tax and Incentive Agreement dated as of December 1, 2011 (the "Agreement") between Westinghouse Electric Company LLC (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

In accordance with **Section 3.02** of the Agreement, the undersigned authorized officer of the Company and each Co-Investor (each a "Claiming Entity") certifies to the County as follows:

1. The Company has agreed, pursuant to **Section 4.01** of the Agreement, that, together with all Co-Investors, it will invest not less than \$35,000,000 (without regard to depreciation or other diminution in value) at the Project prior to March 31, 2017. To date, the Company and its Co-Investors have collectively invested \$ \_\_\_\_\_ in the Project.

2. Pursuant to **Section 3.02(a)** of the Agreement, the Claiming Entity is entitled to claim Special Source Credits against the annual FILOT Payments it makes with respect to the Project for a period of ten years, commencing with the Property Tax Year ending \_\_\_\_\_, 201\_, as follows:

(i) If the aggregate investment in the Project equals \$35,000,000 prior to the end of the Compliance Period, the Special Source Credits shall equal to twenty percent (20%) of each such annual FILOT Payment.

(ii) The Special Source Credits shall increase to thirty percent (30%) of each such annual FILOT Payment during the year in which the aggregate investment in the Project equals or exceeds \$85,000,000; provided, however, that there shall be no extension of the ten-year period when the Special Source Credit apply.

3. The Company and all Co-Investors have expended to date in the aggregate (without regard to depreciation or other diminution in value) not less than \$ \_\_\_\_\_ upon Special Source Property ("Reimbursable Costs"), and the Company and all Co-Investors have heretofore claimed an aggregate of \$ \_\_\_\_\_ in Special Source Credits ("Prior Credits"), leaving \$ \_\_\_\_\_ in funding for Special Source Property not heretofore reimbursed through Special Source Credits ("Remaining Reimbursable Costs").

4. The Special Source Property reported in the preceding section includes \$ \_\_\_\_\_ (without regard to depreciation or other diminution in value) attributable to Special Source Personal Property. During the Property Tax Year ending \_\_\_\_\_, 20\_\_ and/or the immediately preceding Property Tax Year, Special Source Personal Property with an investment value of \$ \_\_\_\_\_ was removed from the Project without replacement in the manner specified in Section 3.02(c) of the Agreement. The portion of the Negotiated FILOT Payment which would have been due with respect to the Special Source Personal Property so

Exhibit B -1

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removed in the year of removal is, in the aggregate, \$ \_\_\_\_\_. The Claimant shall pay such amount to the County on or before the due date for the Negotiated FILOT Payment specified in the next succeeding section.

5. The property tax notice(s) for tax year \_\_\_\_\_ provided by the County Auditor with respect to the Project specifies that the FILOT Payments due with respect to the Project from the Company and all Co-Investors investing in the Project on January 15, 20\_\_ total \$ \_\_\_\_\_. [twenty/thirty] percent ([20/30]%) of such amount is \$ \_\_\_\_\_ (“Current Credits”).

6. The Current Credits, together with all Prior Credits heretofore claimed pursuant to the Agreement, do not, in the aggregate, exceed the aggregate cost of Special Source Property funded by the Company and Co-Investors.

7. The amount due from the County to the Claiming Entity as an allowable Special Source Credit, is \$ \_\_\_\_\_. The Claiming Entity has deducted such amount from the FILOT Payment with respect to the Project for Property Tax Year \_\_\_\_\_.

IN WITNESS WHEREOF, I have executed this Certificate to be effective as of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_,  
Claiming Entity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 20\_\_

## EXHIBIT C

### A RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING ECONOMIC DEVELOPMENT PROJECTS IN RICHLAND COUNTY

WHEREAS, the Richland County Council encourages and supports economic development within the County; and

WHEREAS, the Richland County Council desires to ensure the maximum economic advantage for those industries locating in the County while providing for public disclosure of certain direct local cost and benefits of economic development incentives; and

WHEREAS, the Richland County Council has determined that the most prudent manner of providing such information is by the submission of annual reports by the industries that receive economic development incentives from the County.

NOW, THEREFORE, BE IT RESOLVED BY THE RICHLAND COUNTY COUNCIL that the following requirements are hereby enacted:

1. Every company awarded an incentive by Richland County in exchange for the location or expansion of a facility or facilities within Richland County shall submit the following information annually, said information being due on or before January 31 of each year, throughout the length of the incentives.
  - a. Name of company;
  - b. Cumulative capital investment (less any removed investment) to date as a result of the project;
  - c. Cumulative ad valorem taxes (if any) and fee in lieu payments made in connection with the facility;
  - d. Net jobs created to date as a result of the project;
  - e. List of all employees for reporting year by residential zip code only;
  - f. Community service involvement, including Zip Codes of assisted organizations, which shall include a description of the company's financial and in-kind donations made to organizations in the County during the preceding year, as well as such other information as the company desires to share regarding its community activities.
2. All information required pursuant to this Resolution shall be submitted to the Richland County Administrator's Office at the following address by the required date.

Richland County Administrator  
Attn: Economic Development  
P.O. Box 192  
Columbia, SC 29202

Exhibit C -1

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3. The Richland County Administrator, or his / her designee, is hereby authorized to require the submission of the above information. In the event that additional information is reasonably requested by the County regarding the project or any of the items listed in section 1 above, the company shall have thirty (30) days from the notification by the County Administrator in which to comply with such request.
4. This Resolution supercedes prior Economic Development Accountability Resolutions adopted by Richland County Council.
5. The substance of this Resolution will be incorporated into each Memorandum of Understanding, FILOT document, or other associated document(s), where applicable.
6. In the event that any company shall fail to provide the required information, or any portion thereof, said company may be required to return all incentives, or a dollar amount equal thereto, to Richland County. Such incentives, or the dollar amount equal thereto, shall be paid to Richland County within 60 days after the date upon which the information was originally due.

SIGNED and SEALED this 21<sup>st</sup> day of December, 2010, having been adopted by the Richland County Council, in meeting duly assembled, on the 14<sup>th</sup> day of December, 2010.

RICHLAND COUNTY COUNCIL

BY:   
Paul Livingston, Chair

ATTEST this the 5 day of  
January ~~2010~~ 2011

  
Michelle Onley, Assistant Clerk of Council

Exhibit C -2

NPCOL1:2631738.3-LOCAL\_AGR-(SSC) 032330-00010

# Richland County Council Request of Action

## **Subject**

Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters **[THIRD READING] [PAGES 163-242]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing:

STATE OF SOUTH CAROLINA )

)

ORDINANCE # \_\_\_\_\_

COUNTY OF RICHLAND )

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT ROCKY I AND PROJECT ROCKY II, AS SPONSORS, TO PROVIDE FOR FEE-IN-LIEU OF *AD VALOREM* TAXES AND OTHER INCENTIVES; AUTHORIZING THE GRANT OF SPECIAL SOURCE REVENUE CREDITS; AND OTHER RELATED MATTERS.**

**WHEREAS**, Richland County, South Carolina (hereinafter referred to as the “County”), acting by and through its County Council (the “County Council”), is empowered under and pursuant to the provisions of the Fee in Lieu of Tax Simplification Act, Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Act”), to enter into fee agreements with industries in connection with the acquisition, enlargement or improvement of industrial and commercial enterprises within the State of South Carolina (the “State);

**WHEREAS**, under the terms of the Act, the County may enter into an arrangement which provides for a fee in lieu of taxes for a qualifying project as provided in Sections 12-44-40 and 12-44-50 of the Act; and

**WHEREAS**, Rocky I owns certain real property located within the County, and is considering the construction thereon of certain manufacturing facilities and the acquisition and installation of certain equipment and other personal property related thereto;

**WHEREAS**, Rocky II owns certain real property located within the County, and is considering the construction thereon of certain distribution facilities and the acquisition and installation of certain equipment and other personal property related thereto;

**WHEREAS**, in order to induce Rocky I and Rocky II to consider the County for the construction, equipping and installation of such facilities (collectively, the “Project”), the County Council adopted a Resolution, dated November 15, 2011 (the “Inducement Resolution”), whereby (i) the Project was identified as a “project” for purposes of the Act, and (ii) the County evidenced its intent to (a) enter into a fee in lieu of tax arrangement with Rocky I and Rocky II (identified therein collectively as “Project Rocky”) with respect thereto, and (b) offer certain special source credits and other incentives to Rocky I and Rocky II with respect thereto;

**WHEREAS**, in connection with the Project, Rocky I and Rocky II have agreed that the aggregate capital investment in the Project for the period referred to in the hereinafter defined Fee Agreements will equal or exceed \$128,635,000.00;

**WHEREAS**, the County desires to provide assistance to Rocky I and Rocky II in the form of the fee-in-lieu-of-tax provided for in the Act, certain special source credits, and certain other incentives, and in connection therewith, to make the Project available to Rocky I and Rocky II

under and pursuant to the terms of fee in lieu of tax and incentive agreements to be entered into between the County and Rocky I and Rocky II (the “Fee Agreements”);

**WHEREAS**, the County Council has caused to be prepared and presented to the County Council the form of the Fee Agreements which the County proposes to execute and deliver, and the same are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

**NOW THEREFORE, BE IT ORDAINED** by the County Council of Richland County, South Carolina, as follows:

Section 1. It is hereby found, determined and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in Section 12-44-30(16) of the Act, and the Fee Agreements will promote the purposes enumerated in the Act, and in all respects conform to the provisions and requirements of the Act;
- (b) It is anticipated that the Project will benefit the general public welfare of the County by providing or maintaining employment and other public benefits not otherwise provided locally;
- (c) Neither the Project, the Fee Agreements, nor any documents or agreements entered into by the County in connection therewith will constitute or give rise to any pecuniary liability of the County or a charge against its general credit or taxing power;
- (d) The purposes of the Project are proper governmental and public purposes;
- (e) The inducement of the Project within the County and State is of paramount importance, and the benefits of the Project to the public will be greater than the costs; and
- (f) The Fee Agreements obligate the Company to pay all amounts payable as fees in lieu of taxes with respect to the Project.

Section 2. The form, terms and provisions of the Fee Agreements presented to this meeting and filed with the Clerk to County Council are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the same were set out in this Ordinance in their entirety. The Chairman of County Council (or in the absence of the Chairman, for any reason, the Vice Chairman or acting Chairman), is hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreements in the name and on behalf of the County, and thereupon to cause the same to be delivered to Rocky I and Rocky II. The Fee Agreements are to be in substantially the form now before this meeting and hereby approved, or with such changes therein as may be required or deemed appropriate by the officials of the County executing the same, with the advice of counsel, provided in no event may any changes be materially adverse to the County, in order to accomplish the purposes of the transactions authorized by this Ordinance, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Fee Agreements now before this meeting.

Section 3. The above-referenced official of the County is authorized to execute and deliver such other closing and related instruments, documents, certificates and other papers as are necessary to effect the delivery of the Fee Agreements and as are customary in financing arrangements of this type.

Section 4. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

Section 5. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage.

[SIGNATURE PAGE TO FOLLOW]

**RICHLAND COUNTY COUNCIL**

**(SEAL)**

By: \_\_\_\_\_  
Name: Paul Livingston  
Title: Chairman County Council

**ATTEST:**

\_\_\_\_\_  
Name: Michelle Onley  
Title: Clerk of County Council

Richland County, South Carolina

Introduction: November 15, 2011

Second Reading: December 6, 2011

M: \_\_\_\_\_ S: \_\_\_\_\_

Public Hearing: December 6, 2011

Third Reading: December 13, 2011

M: \_\_\_\_\_ S: \_\_\_\_\_

Publication: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

**COUNTY OF RICHLAND**

I, the undersigned Clerk of County Council, Richland County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received unanimous approval by the County Council at its meetings of November 15, 2011, December 6, 2011 and December 13, 2011, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

---

Name: Michelle Onley  
Title: Clerk of County Council

Richland County, South Carolina

Dated: December 13, 2011

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

ROCKY I

Dated as of December \_\_\_\_, 2011

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”), dated as of December 13, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and ROCKY I, a corporation organized and existing under the laws of the State of Delaware (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 thereof (the “FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof; the “Special Source Act”) (collectively, the “Act”), and in order to promote the economic development of the County and surrounding areas by inducing investors to locate and/or expand industrial and commercial properties (“Economic Development Property”) within the County, thereby expanding the tax base in the County and creating jobs for its citizens: (i) to enter into agreements with such investors pursuant to which such investors will make negotiated fee in lieu of *ad valorem* tax (“FILOT”) payments with respect to such Economic Development Property; (ii) to permit investors to claim special source credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for qualifying expenditures 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 (“Special Source Improvements”); and (iii) to create, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, the Company plans a significant investment within the jurisdiction of the County through the construction of a manufacturing facility and the equipping and furnishing thereof (the “Project”), and the Company anticipates that, should its plans proceed as expected, that it will invest approximately \$107,635,000 in connection with the Project within the County and create approximately 250 new full-time jobs; and

WHEREAS, an affiliate of the Company, Rocky II, plans a significant investment within the County through the construction of a distribution facility and the equipping and furnishing thereof (“Project Rocky II”), and Rocky II anticipates that, should its plans proceed as expected, that it will invest approximately \$21,000,000 in connection with the Project within the County and create approximately 27 new full-time jobs; and

WHEREAS, the County has determined that the Project will subserve the purposes of the Act; the Company is a Project Sponsor and the Project constitutes Economic Development Property 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 Project in the County, the County adopted a Resolution on November

15, 2011, pursuant to which the County agreed to negotiate in good faith a FILOT agreement, subject to approval by ordinance of the County Council; and

WHEREAS, the County authorized the foregoing actions to be taken for the benefit of the Company, and ratified all prior actions taken with respect to the Project (including the inducement documents in the name of "Project Rocky") pursuant to an Ordinance enacted on December 13, 2011; and

WHEREAS, 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 set forth herein.

NOW, THEREFORE, in consideration of the premises; the potential jobs and investment 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** 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, collectively, the FILOT Act, the Multi-County Park Act and the Special Source Act, as amended through the date hereof.

“*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 attorneys’ fees; 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 invoice or 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.

“*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(A)(18) and (19) of the Code, any Corporate Affiliate of the Company, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising part of the Project, any financing entity or other third party investing in or providing funds for the 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 8.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Act. The Company has not identified any Sponsor, Sponsor Affiliate or other Co-Investor as of the date of execution and delivery of this Agreement.

“*Company*” shall mean ROCKY I, a Delaware corporation, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 7.02** or **8.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

“*Company Project Commitments*” shall mean an investment of at least \$107,635,000 in Economic Development Property at the Project and the creation of at least 250 new full-time jobs.

“*Corporate Affiliate*” shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of the Company or which is owned in whole or in part by the Company or by any partner, shareholder, or owner of the Company.

“*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.

“*Deficiency Payment*” shall have the meaning specified in **Section 5.01(e)** hereof.

“*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 the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Code, excluding specifically any Non-Qualifying Property.

“*Event of Default*” shall mean an Event of Default, as set forth in **Section 10.01** hereof.

“*Existing Property*” shall mean property proscribed from becoming Economic Development Property under this Agreement pursuant to Section 12-44-110 of the Code, 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 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 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; (c) property purchased by or on behalf of the Company 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 invests, or causes to be invested, at least an additional \$45,000,000 in the 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 Code.

“*FILOT*” shall mean fee in lieu of *ad valorem* property taxes.

“*FILOT Act*” shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

“*FILOT Payments*” or “*FILOT Revenues*” shall mean the payments to be made by the Company pursuant to **Section 5.01** hereof.

“*Investment Period*” shall mean the period for completion of the Project, which shall be equal to the Statutory Investment Period unless hereinafter extended by Resolution of the Council; provided that there shall be no extension of the period for meeting the Minimum

Investment Requirement beyond the Statutory Investment Period, all determined as specified in Section 12-44-30(13) of the Code.

“*Land*” shall mean the land upon which the Project would 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.

“*Minimum Investment Requirement*” shall mean investment in the Project within the County by any one of the Company or any Sponsor or Sponsor Affiliate of not less than \$107,635,000 prior to the end of the Statutory Investment Period.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to a 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 initial multi-county park agreement.

“*Multi-County Park Act*” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“*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 Project consisting of Economic Development Property which qualifies pursuant to the FILOT Act for the assessment ratio and negotiated millage rate described in **Section 5.01(b)(i)** hereof.

“*Non-Qualifying Property*” shall mean that portion of the facilities located on the Land and consisting of: (i) Existing Property; (ii) except as to Replacement Property, property which the Company 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 FILOT Act, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to **Section 4.03(a)(ii)** hereof.

“*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 other real property improvements constructed thereon; (ii) all machinery, equipment, furnishings and other personal property acquired by or on behalf of the Company for use on or about the Land; and (iii) any Replacement Property; provided, however, that, except as to the Land and any Replacement Property, the term 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 by the end of the Investment Period, and the term Project shall be deemed to exclude any Existing Property or other Non-Qualifying Property.

“*Project Rocky II Commitments*” shall mean an investment of at least \$21,000,000 in Economic Development Property at Project Rocky II and the creation of at least 27 new full-time jobs.

“*Property Tax Year*” shall mean the annual period which is equal to the fiscal year of the Company, *i.e.*, the period ending on December 31 of each year.

“*Released Property*” shall include Economic Development Property which is scrapped, sold, disposed of, or released from this Agreement by the Company pursuant to **Section 4.03** hereof and Section 12-44-50(B) of the Code; any portion of the Economic Development Property constituting infrastructure which the Company dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; and any Economic Development Property 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 Released 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 Code.

“*Special Source Act*” shall mean Section 4-1-175 of the Code, as amended through the date hereof.

“*Special Source Credits*” shall mean the credits described in **Section 3.03** hereof.

“*Special Source Improvements*” shall mean any qualifying infrastructure defined under Section 4-29-68 of the Code, as amended through the date hereof, and shall be deemed to include initially, for purposes of this Agreement, 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 Co-Investor directly or through lease payments.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 8.03** hereof and Sections 12-44-30(A)(18) or (19) and Section 12-44-130 of the Code if the statutory investment requirements are met.

“*State*” shall mean the State of South Carolina.

“*Statutory Investment Period*” shall mean the period commencing on the date of the first expenditures with respect to the Project and ending five (5) years after the end of the Property Tax Year in which the initial phase of the Project is placed in service, all as specified in Section 12-44-30(13) of the Code. For illustrative purposes, if the initial phase of the Project should be placed in service in the Property Tax Year ending on December 31, 2011, the end of the Statutory Investment Period would be December 31, 2016.

“*Term*” shall mean the term of this Agreement, as set forth in **Section 9.01** hereof.

“*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 the 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, the Negotiated FILOT Payments and Special Source Credit arrangements as set forth herein, the inclusion of the 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 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 arrangements set forth herein.

(c) This Agreement has been duly 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 undersigned representatives of the County, conflict with or constitute a breach of, or a default under, any existing 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 undersigned representatives of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the undersigned representatives of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any South Carolina court or before any South Carolina governmental authority or arbitration board or tribunal, any of which to the best knowledge of the undersigned representatives of the County could materially adversely affect this Agreement or which could 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 corporation validly existing and in good standing under the laws of the State of Delaware; 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 \_\_\_\_\_ of each year, and the Company will notify the County of any changes in the fiscal year of the Company.

(b) If the Company elects to go forward with the Project, the Company and/or one or more Corporate Affiliates will operate the Project primarily for the purpose of commercial services and be entitled to all the rights and benefits provided hereunder.

(c) The agreements with the County with respect to the FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to consider locating 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 this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

[End of **Article II**]

## ARTICLE III

### CERTAIN UNDERTAKINGS OF THE COUNTY

Section 3.01 Agreement to Accept 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 Project consisting of Economic Development Property until this Agreement expires or is sooner terminated. The County makes no warranty, either express or implied, as to the title to any part of the Project or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs.

#### Section 3.02 Special Source Credits.

(a) As reimbursement for the Company's investment in Special Source Improvements pursuant to **Section 4.04** hereof, the County agrees that the Company shall be entitled to claim annual Special Source Credits in amounts equal to 60% of its annual FILOT payments during the first ten (10) years of the Term of this Agreement, subject to adjustment as provided herein, all in accordance with the Special Source Act. In no event shall the aggregate amount of the Special Source Credits exceed the amount heretofore or hereafter expended by the Company or any Co-Investor with respect to Special Source Improvements relating to the Property. The Company shall claim such Special Source Credits by filing with the County Administrator and the County Auditor, at the time it makes its FILOT Payment, an Annual Special Source Credit Certification (substantially in the form of **Exhibit B-1** hereto) showing the amount of aggregate investment in the Project and Special Source Improvements and the calculation of the Special Source Credits. The amount of such Special Source Credit, after confirmation by the County and the County's agreement therewith, shall be deducted by the County from its annual FILOT bill.

(b) EXCEPT FOR THE REDUCTIONS IN THE FILOT PAYMENTS DESCRIBED IN SECTION 3.2(a), THE COUNTY SHALL HAVE NO FINANCIAL OBLIGATION OF ANY KIND RELATING TO THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN.

(c) If (i) the Company does not achieve the Company Project Commitments by the end of the Statutory Investment Period, or (ii) Project Rocky II does not achieve the Project Rocky II Commitments by the end of the Statutory Investment Period, then the County reserves the right to terminate or adjust the Special Source Credits in accordance with the provisions of subsection (d) hereof. The County may exercise such option to terminate or adjust the Special Source Credits in accordance with subsection (d) hereof at any time following the date that is the earliest of (i) the date the Company files with the County Administrator and the County Auditor, an Annual Aggregate Project Certification (substantially in the form of **Exhibit B-2** hereto) stating whether the aggregate investment and job creation requirements of this Agreement have or have not reached (or are not anticipated to reach) the Company Project Commitments by the end of the Statutory Investment Period, or (ii) the final day of the Statutory Investment Period. The Company shall file such Annual Aggregate Project Certification at such time

it files its Annual Special Source Credit Certificate. Such Annual Aggregate Project Certification and Annual Special Source Credit Certificate shall be sent by way of regular mail delivery to the County Administrator, the County Economic Developer and the County Auditor.

(d) In the event that (i) the Company does not achieve the Company Project Commitments by the end of the Statutory Investment Period or (ii) Project Rocky II does not achieve the Project Rocky II Commitments by the end of the Statutory Investment Period, then the County reserves the right to adjust or terminate the Special Source Credits as follows:

(i) In the event that the Company fails to invest at least \$2,500,000 in the Project within the Statutory Investment Period, this Agreement shall terminate retroactively. In such case, the Company shall pay to the County the amount of all Special Source Credits claimed during the Statutory Investment Period. Such amount shall be due and payable together with any Deficiency Payment due in accordance with the provisions of **Section 5.01(f)** hereof.

(ii) In the event that the Company fails to achieve the Company Project Commitments by the end of the Statutory Investment Period, but nonetheless, (i) the Company achieves 85% of the Company Project Commitments (with respect to investment requirements and job creation requirements) and (ii) Rocky II achieves at least 85% of the Project Rocky II Commitments, then the County shall not adjust or terminate the Special Source Credits in accordance with this **Section 3.02**.

(iii) In the event that the Company invests at least \$2,500,000 in the Project within the Statutory Investment Period, but fails to achieve at least 85% of the Company Project Commitments (with respect to investment requirements and job creation requirements), then the County reserves the right to retroactively and prospectively reduce the amount of the annual Special Source Credit in accordance with the actual percentage of achievement of the Company Project Commitments as of the end of the Statutory Investment Period. For example, if the Company achieves 80% of the Company Project Commitments as of the end of the Statutory Compliance Period, then the Company would be entitled to claim 80% of the Special Source Credits allowed in **Section 3.02(a)** hereof, and to the extent that the Company had claimed a greater Special Source Credit during the Statutory Investment Period, then the difference between such greater amount and the reduced amount will be due and payable by the Company as a Deficiency Payment as set forth in **Section 5.01(e)** hereof.

(e) In the event that the Land should be annexed by the City of Columbia at any time during the Term of this Agreement, the Company shall be entitled to claim, in addition to the Special Source Credits set forth above, each year during the Term of this Agreement, a Special Source Credit against the Negotiated FILOT Payment, in an amount equivalent to any property taxes assessed by or on behalf of the City of Columbia against the Land and/or the Project.

Section 3.03 Related Undertakings.

(a) The County will designate the Project as part of a Multi-County Park pursuant to the Multi-County Park Act and will, to the extent permitted by law, use its best, reasonable efforts to maintain such designation on terms which provide any additional job tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks for all jobs created by the Company during the Investment Period and which facilitate the Special Source Credit arrangements set forth herein.

(b) The County hereby agrees to use its best efforts to pursue and assist the Company in pursuing the maximum amount of grant funds possible for construction of infrastructure which is reasonably required in connection with the Project, without any commitment, whatsoever, on the part of the County that any such grant funds will be available. Further, the County shall render customary assistance to the Company in obtaining necessary permits required for the Project.

(c) The County, at its sole expense, has or will conduct a traffic study of this intersection in connection with the Project. Subject to approval of the South Carolina Department of Transportation of the plans for the same, the County will expend up to a total of \$450,000 for (i) the installation of a traffic signal at the intersection of Pineview Road Extension and American Italian Way, which shall be completed within 6 months of issuance of a certificate of occupancy for the Project; and (ii) any road improvements required as a result of the increased traffic requirements of the Project. The funding commitment of up to a total of \$450,000 made in this section shall be comprised of County funds and those provided by third parties other than the Company.

(d) The County acknowledges that the construction plans for the Project entail the removal of trees at the Project site. The Company shall use commercially reasonable efforts to protect both “grand trees” and “protected trees” as defined under County ordinance. To the extent any grand trees or protected trees must be removed to accommodate design challenges presented by the Project, they shall be replaced utilizing a 1 to 1 ratio pursuant to the “alternative compliance” provisions of the applicable County ordinance.

(e) The County will employ its Expedited Review Process for all phases of the review and approval of the plans and specifications for the Project.

[End of **Article III**]

## ARTICLE IV

### INVESTMENT BY THE COMPANY IN PROJECT AND SPECIAL SOURCE IMPROVEMENTS; MAINTENANCE AND MODIFICATION

#### Section 4.01 Acquisition and Development of Project.

(a) The Company agrees that in order to fully qualify for the benefits of this Agreement it must acquire and/or develop, or cause to be acquired and/or be developed, the Project, as the same shall be determined from time to time by the Company in its sole discretion, and to achieve the Company Project Commitments by the end of the Statutory Investment Period; provided, however, that the benefits provided to the Company under this Agreement shall be subject to adjustment or termination as provided in **Sections 3.02** and **5.01** hereof if the Company does not achieve the Company Project Commitments. As required by Section 12-44-30(2) of the Code, at least a portion of the assets comprising the 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 executed and delivered.

(b) Expenditures by Co-Investors shall, together with expenditures by the Company, count toward all investment requirements set forth in this Agreement, including, to the full extent permitted by the FILOT Act, the Minimum Investment Requirement. Aggregate investment shall generally be determined by reference to the Property Tax Returns of the Company and any Co-Investor pertaining to the Project and filed with respect to each Property Tax Year during the Investment Period.

(c) To encourage the Company to increase its investment in the Project, if the investment in the Project reaches at least \$107,635,000 by the end of the Statutory Investment Period and the Company commits to additional investment in the Project, upon the Company's written request, the County, acting by Resolution, will consider extension of the period for completion of the Project for up to an additional five years (the "Extended Investment Period") (such Statutory Investment Period or Extended Investment Period, as the case may be, referred to herein as the "Investment Period"); provided, however, that there shall be no extension of the period for meeting the Minimum Investment Requirement beyond the Statutory Investment Period.

(d) The Company and/or its designated Co-Investor shall retain title to the Project throughout the Term of this Agreement, and the Company and any such Co-Investor shall have full right to mortgage or encumber the Project in connection with any financing transaction as the Company deems suitable.

Section 4.02 Maintenance of Project. During the Term of this Agreement, and subject to the Company's rights under **Section 4.03** hereof, the Company at its own expense will keep and maintain the Project in good operating condition.

Section 4.03 Modification of Project.

(a) As long as no Event of Default exist 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 during the Investment Period, at its own expense, add all such real and personal property as the Company in its discretion deems useful or desirable to the Economic Development Property qualifying for the Negotiated FILOT under **Section 5.01** hereof without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 8.01** hereof with respect to Economic Development Property, in any instance where the Company in its discretion determines that any items included in the Project, including any Economic Development Property and 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.

(iii) The Company may, at any time and in its discretion by written notice to the County, remove any Economic Development Property, real or personal, from the Negotiated FILOT 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.

(b) If the Company sells, leases, or otherwise disposes of any portion of, the Land to a third party that is not a Co-Investor, the Company shall deliver to the County, within 30 days thereafter, a new **Exhibit A** to this Agreement. If the Company adds any real property to the Land, the Company shall deliver to the County, within 30 days thereafter, a new **Exhibit A** to this Agreement.

(c) All Economic Development Property sold, leased or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

(d) No release of Project Property effected under the provisions of this Agreement shall entitle the Company to any abatement or diminution of the amounts payable by the Company hereunder except the FILOT payment as specified in **Section 5.01**.

Section 4.04 Funding for Special Source Improvements. Company hereby agrees to provide funding for the Special Source Improvements related to the acquisition and construction of the Project.

[End of **Article IV**]

## ARTICLE V

### FILOT PAYMENTS

#### Section 5.01 FILOT Payments.

(a) In accordance with the Act, the parties hereby agree that, during the Term hereof, there shall be due annually with respect to that portion of the Project constituting Economic Development Property, whether owned by the Company or by a Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this Section, 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. If the Company designates any Sponsor or Sponsor Affiliates pursuant to **Section 8.03** hereof, the Company must notify the County in writing at the time of such designation as to whether the Company or the Sponsor or Sponsor Affiliate shall be primarily liable for the FILOT Payments hereunder. Unless and until such notification is received, and the County consents in writing, the Company shall be primarily liable for all FILOT Payments and other obligations due hereunder.

(b) The Company elects to calculate the Negotiated FILOT Payments in accordance with Section 12-44-50(A)(1)(b)(i) of the Code, and, subject to adjustment pursuant to paragraph (j) below for failure to meet or maintain the Minimum Investment Requirement and to adjustment pursuant to the other provisions of this **Section 5.01**, in accordance with the following provisions:

(i) For each annual increment of investment in Economic Development Property, the annual Negotiated FILOT Payments shall be payable for a consecutive period of up to 20 years. Accordingly, if such Economic Development 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 consecutive period of 20 years, up to an aggregate of 25 years or, if the Investment Period is extended to the Extended Investment Period, up to an aggregate of 30 years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) a millage rate of 409.3, which is the millage rate applicable in the County as of June 30, 2011 for the particular taxing district in which the Land is located, fixed for the entire term of this Agreement; and (3) the fair market value of such Economic Development Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Code, 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) as determined by the Department of Revenue.

(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 Economic Development 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 disposes of any part of the Economic Development Property within the meaning of Section 12-44-50(B) of the Code and as provided in **Section 4.03(a)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Economic Development Property 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 value of the Project or such portion thereof;

(iii) to increase such payments in the event the Company adds any Economic Development Property (other than Replacement Property) to the Project; or

(iv) to adjust such payments if the Company elects to convert any portion of the Economic Development Property from the Negotiated FILOT to *ad valorem* taxes, as permitted by **Section 4.03(a)(iii)**.

(d) Upon the Company's installation 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 thirty-year period applicable to the Released Property.

(ii) The Company shall maintain records sufficient to identify all Replacement Property, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the Released Property.

(e) In the event that, for any reason, the 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 Project consisting of Economic Development 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 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, 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 Economic Development Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company 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 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 with respect to the portion of the Economic Development 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, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f) If the Company fails to invest at least \$2,500,000 in the Project within the Statutory Investment Period, this Agreement shall be terminated retroactively. In such case, the Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment (including any Special Source Credits claimed by the Company during the Statutory Investment Period) shall be due and payable within 90 days of written notice from the County to the Company of such Deficiency Payment.

(g) If the Company invests \$2,500,000 in the Project within the Statutory Investment Period, but (i) the Company fails to achieve the Company Project Commitments within the Statutory Investment Period or (ii) Rocky II fails to achieve the Project Rocky II Commitments within the Statutory Investment Period, then the County reserves the right to terminate this Agreement prospectively as of the date of the

expiration of the Statutory Investment Period. In such case the Project shall revert to *ad valorem* taxation as of the date of the expiration of the Statutory Investment Period, but the Company shall not be required to make any Deficiency Payment with respect to the Negotiated FILOT Payments made during the Statutory Investment Period. Notwithstanding the foregoing provisions, however, the County shall not terminate this Agreement in accordance with this subsection (g) so long as (i) the Company has achieved at least 85% of the Company Project Commitments by the end of the Statutory Investment Period and (ii) Rocky II has achieved at least 85% of the Project Rocky II Commitments by the end of the Statutory Investment Period.

(h) If the Company fails to maintain its investment at the level of \$2,500,000 (without regard to depreciation) for the duration of this Agreement, the County reserves the right to terminate this Agreement retroactively. If the County terminates this Agreement retroactively, the Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment shall be due and payable with respect to such property within 30 days of the County provided written notice to the Company of such Deficiency Payment. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to maintain a \$2,500,000 investment, Section 12-44-140(D) of the Code provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(i) In accordance with the provisions of **Sections 4.01(b)** and **8.03** hereof except for Existing Property, the fair market value of all property utilized by the Company at the Project site, whether owned by the Company outright or utilized by the Company 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.

(j) 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 ninety (90) days following receipt by the Company of notice that there has been a final determination by the County that such a Deficiency Payment or other retroactive payment is due.

[End of **Article V**]

## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

Section 6.01 Payment of Administration Expenses. Within thirty (30) days after receipt of an invoice, the Company will pay the County's attorneys' fees incurred to date in an amount not to exceed \$5,000. Thereafter, the Company will reimburse the County from time to time for its Administration Expenses, including attorneys' fees, promptly upon written request therefor, but in no event later than December 31, 2011. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement, and, aside from the attorneys' fees, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby.

Section 6.02 Indemnification.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its past, present, and future employees, elected officials, officers and agents (the "Indemnified Parties") harmless against and from all claims by or on behalf of any Person arising from the County's performance of its obligations under this Agreement. If such claim shall be made against any Indemnified Party, then subject to the provisions of paragraph (b) below, the Company shall defend them in any such action or proceeding.

(b) Notwithstanding anything herein to the contrary, the Company shall not be required to indemnify any Person against any claim or liability (i) occasioned by acts of such Person which are unrelated to the performance of the County's obligations hereunder; (ii) resulting from such Person's own negligence, bad faith, fraud, deceit or willful misconduct; (iii) for which the Company was not given the reasonable opportunity to contest; or (iv) to the extent such claim or liability is covered by insurance pertaining to the loss sustained. An Indemnified Party may not avail itself of the indemnification provided in this **Section 6.02** unless it provides the Company with prompt notice of the existence or threat of any such 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 reasonable time in which to defend against such claim. Upon such notice, the Company shall resist or defend against any such claim, action or proceeding at its expense, using counsel of its choice. The Company shall be entitled to manage and control the defense of or response to any claim, charge, lawsuit, regulatory proceeding or other action, for itself and the Indemnified Parties; provided that the Company shall not be entitled to settle any matter at the separate expense or liability of any Indemnified Party without the consent of such Indemnified Party. To the extent that any Indemnified Party desires to use separate counsel for any reason other than a conflict of interest, such Indemnified Party shall be responsible for its independent legal fees.

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 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, all as provided in Section 12-44-90 of the Code.

[End of **Article VI**]

## ARTICLE VII

### PARTICULAR COVENANTS AND AGREEMENTS

Section 7.01 Use of Project for Lawful Activities. During the Term of this Agreement, the Company shall use the Project as it deems fit for any lawful purpose authorized pursuant to the Act.

Section 7.02 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 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 (except, in either case, where the resulting, surviving, or transferee entity is the Company or an Corporate Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby consents). The resulting, surviving or transferee entity, if not the Company, shall, within sixty (60) days following any such merger, consolidation or transfer, provide the County with written notification of such event together with a copy of the written instrument by which such resulting, surviving, or transferee entity has assumed the rights and obligations of the Company under this Agreement. The Company acknowledges that, except as permitted herein, transfers of this Agreement or Economic Development Property may cause the Economic Development 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 7.03 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 which are placed in service in each Property Tax Year during the Investment Period, the amount of investment in the Project and in Special Source Improvements, and its computations of all Negotiated FILOT Payments and Special Source Credits and to comply with all reporting requirements of the State and the County applicable to Economic Development Property under the Act, including without limitation the reports required by 12-44-90 of the Code (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the code for a recapitulation of the terms of this Agreement. Specifically, the Company shall provide the following:

(a) Each year during the Term hereof, the Company shall deliver to the County Administrator, County Auditor and the County Assessor a copy of its most recent annual filings made with the Department of Revenue with respect to the 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 Administrator, County Auditor and the County Assessor of the County and of any 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 may, by clear, written designation, conspicuously marked, 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 comply with all reasonable, written requests made by the Company 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.

(c) The Company shall also provide annually the information required by the Resolution adopted by the County Council on December 21, 2010, a copy of which is attached hereto as **Exhibit C**.

[End of **Article VII**]

## ARTICLE VIII

### CONVEYANCES; ASSIGNMENTS; SPONSORS AND SPONSOR AFFILIATES

Section 8.01 Conveyance of Liens and Interests: Assignment. The Company 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 Economic Development Property 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 Economic Development Property, 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 Economic Development Property, as long as the transferee in any such arrangement leases the Economic Development Property in question to the Company or any of its Corporate Affiliates or operates such assets for the Company or any of its Corporate Affiliates or is leasing such Economic Development Property in question from the Company or any of its Corporate Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to property so transferred: (i) except in connection with any transfer to a Corporate Affiliate of the Company, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the written consent of the County; (ii) except where a financing entity which is the income tax owner of all or part of the Economic Development Property, is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing or where the transfer relates to Released Property pursuant to **Section 4.03** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent that the transferee or financing entity shall become obligated to pay make Negotiated FILOT Payments hereunder, the transferee shall assume the then current basis of the Company (or other income tax owner) in the Economic Development Property transferred; (iv) 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 transfer agreement; and (v) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Economic Development Property may cause all or part of the Economic Development 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 8.02 Sponsors and Sponsor Affiliates. The County hereby authorizes the Company to designate from time to time Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(18) or (19), respectively, and Section 12-44-130 of the Code, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the 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 Corporate Affiliates of the Company or other Persons described in **Section 8.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Sections 12-44-

30(18) or (19) and Section 12-44-130 of the Code must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to or greater than \$2,500,000 at the Project prior to the end of the Statutory Investment Period, the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof in accordance with Section 12-44-30(18) of the Code. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate so designated within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service assets to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Code.

[End of **Article VIII**]

## ARTICLE IX

### TERM; TERMINATION

Section 9.01 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 day the last Negotiated FILOT Payment is made hereunder.

Section 9.02 Termination. The County and the Company may agree to terminate this Agreement at any time, or the Company may, at its option, terminate this Agreement at any time, in which event the 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 such retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights, as it would have with respect to *ad valorem* taxes and the County's rights owing hereunder at the time of such termination shall survive any such termination. The County may unilaterally terminate this Agreement if the Company or any approved assignees of this Agreement ceases operations at the Project.

[End of **Article IX**]

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default by the 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 Negotiated FILOT Payments, which default shall not have been cured within 30 days following receipt of written notice of such default 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 ninety (90) days after the County shall have given the Company written notice of such default; provided, the County may, in its discretion, grant the Company a longer period of time as necessary to cure such default if the Company proceeds with due diligence to cure such default; and provided further, that no Event of Default shall exist under this paragraph (b) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Company has contested the occurrence of such default.

The Company’s failure to meet any investment 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 to make certain additional payments to the County, all as set forth in **Sections 3.03, 4.01 and 5.01** hereof.

Section 10.02 Remedies on Event of Default by the Company. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies:

(a) terminate this Agreement by delivery of written notice to the Company not less than 60 days prior to the termination date specified therein;

(b) 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 calculation of the Negotiated FILOT pursuant hereto as provided in **Section 7.03** hereof; or

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the Company’s FILOT Payment obligations hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect FILOT Payments as if they were delinquent *ad valorem* tax payments.

Section 10.03 Application of Monies upon Enforcement of Remedies against Company. Any monies 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 Negotiated FILOT in accordance with **Section 5.01** hereof.

Section 10.04 Default by the 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 X**]

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 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 11.02 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Sponsor or Sponsor Affiliates designated pursuant to **Section 8.03** hereof and their respective successors and assigns as permitted hereunder.

Section 11.03 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) As to the County:

Richland County  
2020 Hampton Street  
Columbia, South Carolina 29204  
Attn.: J. Milton Pope, Administrator

- (b) with a copy (which shall not constitute notice) to:

Ray E. Jones, Esquire  
Parker Poe Adams & Bernstein LLP  
Post Office Box 1509  
Columbia, South Carolina 29202-1509  
Phone: 803-253-8917  
Fax: 803-255-8017  
Email: [rayjones@parkerpoe.com](mailto:rayjones@parkerpoe.com)

Larry Smith, Esquire  
County Attorney  
Richland County  
2020 Hampton Street  
Columbia, South Carolina 29204

(c) As to the Company:

ROCKY I

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

(d) with a copy (which shall not constitute notice ) to:

W. Lindsay Smith, Esquire  
Womble Carlyle Sandridge & Rice, PLLC  
Post Office Box 10208  
Greenville, South Carolina 29603-0208  
Phone: 864-255-5403  
Fax: 864-255-5483  
Email: [lsmith@wcsr.com](mailto:lsmith@wcsr.com)

And

Bo Segers, Associate General Counsel  
Rocky I  
315 Cool Springs Boulevard  
Franklin, Tennessee 37067  
Phone: 615-807-4502  
Fax: \_\_\_\_\_  
Email: [bo.segers@effem.com](mailto:bo.segers@effem.com)

Section 11.04 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 11.05 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 11.06 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 11.07 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 11.08 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be original but all of which shall constitute but one and the same instrument.

Section 11.09 Amendments. Subject to the limitations set forth in Section 12-44-40(J)(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 11.10 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 11.11 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 Administrator and/or County Auditor without necessity of further proceedings. To the extent that 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.

Section 11.12 Limited Obligation of the County with Respect to Project. THE PROJECT SHALL GIVE RISE TO NO PECUNIARY LIABILITY OF THE COUNTY OR ANY INCORPORATED MUNICIPALITY NOR TO ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

[End of **Article XI**]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

RICHLAND COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Paul Livingston, Chair of County Council  
Richland County, South Carolina

[SEAL]

By: \_\_\_\_\_  
Michelle Onley, Clerk to County Council  
Richland County, South Carolina

Date: \_\_\_\_\_, 2011

ROCKY I

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

Date: \_\_\_\_\_, 2011

**EXHIBIT A**

**LEGAL DESCRIPTION**

[INSERT DESCRIPTION OF TAX PARCEL R16200-06-01]

**EXHIBIT B-1**

**ANNUAL SPECIAL SOURCE CREDIT CERTIFICATION**

Reference is made to that certain Fee In Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement") between ROCKY I (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

In accordance with **Section 3.02** of the Agreement, the undersigned authorized officer of the Company certifies to the County as follows:

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$107,635,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 2016.

2. [Insert either (a) or (b) below, as applicable:

(a) The Statutory Investment Period has not yet elapsed. To date, the Company and all Co-Investors have invested in the aggregate \$\_\_\_\_\_ (without regard to depreciation) in the Project, and the Company anticipates that investment in the Project will aggregate at least \$107,635,000 prior to the end of the Statutory Investment Period.

or

(b) The Company and all Co-Investors invested in the aggregate not less than \$107,635,000 (without regard to depreciation) in the Project prior to the end of the Statutory Investment Period.]

3. The Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the FILOT payment due on \_\_\_\_\_, 20\_\_.

4. The Company and all Co-Investors have to date expended in the aggregate (without regard to depreciation) not less than \$\_\_\_\_\_ upon Special Source Improvements ("Reimbursable Costs"), and the Company has heretofore claimed an aggregate of \$\_\_\_\_\_ in Special Source Credits ("Prior Credits"), leaving \$\_\_\_\_\_ in funding for Special Source Improvements not heretofore reimbursed through Special Source Credits ("Unreimbursed Costs").

5. The invoice for FILOT payments for tax year \_\_\_\_\_ provided to the Company by the County Auditor specifies that the FILOT payment due on \_\_\_\_\_, 20\_\_ is \$\_\_\_\_\_.

6. The Company is entitled to a Special Source Credit calculated as follows:

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7. The sum of the Allowable Credit calculated in paragraph 6 hereof (\$\_\_\_\_\_) plus aggregate Prior Credits (\$\_\_\_\_\_) is \$\_\_\_\_\_, and such sum does not exceed the total Reimbursable Costs of \$\_\_\_\_\_ as set forth in paragraph 4 hereof, all as specified in accordance with **Section 3.02** of the Agreement.

8. The amount due from the County to the Company on \_\_\_\_\_, 20\_\_ as a Special Source Credit is \$\_\_\_\_\_. The Company has deducted such amount from the FILOT Payment accompanying this certificate.

IN WITNESS WHEREOF, I have executed this Certificate to be effective as of the day of \_\_\_\_\_, 20\_\_.

ROCKY I

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

**EXHIBIT B-2**

**ANNUAL AGGREGATE PROJECT CERTIFICATION**

Reference is made to that certain Fee In Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement") between ROCKY I (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

In accordance with **Section 3.02** of the Agreement, the undersigned authorized officer of the Company certifies to the County as follows:

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$107,635,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 2016.

2. [Insert either (a) or (b) below, as applicable:

(a) The Company and all Co-Investors invested in the aggregate not less than \$107,635,000 (without regard to depreciation) and created at least 250 new full-time jobs at the Project prior to the end of the Statutory Investment Period. In accordance with **Section 3.02** of the Agreement, the Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the Personal Property FILOT Payment due on \_\_\_\_\_, 20\_\_.

or

(b) As of the end of the Statutory Investment Period, the Company and all Co-Investors invested in the aggregate less than \$107,635,000 (without regard to depreciation) and created at least 250 new full-time jobs at the Project [or, if applicable, as of the date hereof, the Company does not anticipate that investment in the Project will aggregate to at least \$107,635,000 and involve the creation of at least 250 new full-time jobs prior to the end of the Statutory Investment Period]. To date, the Company has claimed an aggregate of \$ \_\_\_\_\_ in Special Source Credits. In accordance with **Section 3.02** of the Agreement, the County has the right to terminate or adjust the Special Source Credits under such circumstances.]

IN WITNESS WHEREOF, I have executed this Certificate to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ROCKY I

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

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

ROCKY II

Dated as of December \_\_\_\_, 2011

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”), dated as of December 13, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and ROCKY II, a corporation organized and existing under the laws of the State of Delaware (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 thereof (the “FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof; the “Special Source Act”) (collectively, the “Act”), and in order to promote the economic development of the County and surrounding areas by inducing investors to locate and/or expand industrial and commercial properties (“Economic Development Property”) within the County, thereby expanding the tax base in the County and creating jobs for its citizens: (i) to enter into agreements with such investors pursuant to which such investors will make negotiated fee in lieu of *ad valorem* tax (“FILOT”) payments with respect to such Economic Development Property; (ii) to permit investors to claim special source credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for qualifying expenditures 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 (“Special Source Improvements”); and (iii) to create, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, the Company plans a significant investment within the jurisdiction of the County through the construction of a distribution facility and the equipping and furnishing thereof (the “Project”), and the Company anticipates that, should its plans proceed as expected, that it will invest approximately \$21,000,000 in connection with the Project within the County and create approximately 27 new full-time jobs; and

WHEREAS, an affiliate of the Company, Rocky I, plans a significant investment within the jurisdiction of the County through the construction of an expansion to an existing manufacturing facility and the equipping and furnishing thereof (“Project Rocky I”), and Rocky I anticipates that, should its plans proceed as expected, it will invest approximately \$107,635,000 in conjunction with the Project within the County and create at least 250 new full-time jobs; and

WHEREAS, the County has determined that the Project will subserve the purposes of the Act; the Company is a Project Sponsor and the Project constitutes Economic Development Property 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 Project in the County, the County adopted a Resolution on November

15, 2011, pursuant to which the County agreed to negotiate in good faith a FILOT agreement, subject to approval by ordinance of the County Council; and

WHEREAS, the County authorized the foregoing actions to be taken for the benefit of the Company, and ratified all prior actions taken with respect to the Project (including the inducement documents in the name of "Project Rocky") pursuant to an Ordinance enacted on December 13, 2011; and

WHEREAS, 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 set forth herein.

NOW, THEREFORE, in consideration of the premises; the potential jobs and investment 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** 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, collectively, the FILOT Act, the Multi-County Park Act and the Special Source Act, as amended through the date hereof.

“*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 attorneys’ fees; 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 invoice or 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.

“*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(A)(18) and (19) of the Code, any Corporate Affiliate of the Company, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising part of the Project, any financing entity or other third party investing in or providing funds for the 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 8.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Act. The Company has not identified any Sponsor, Sponsor Affiliate or other Co-Investor as of the date of execution and delivery of this Agreement.

“*Company*” shall mean ROCKY II, a Delaware corporation, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 7.02** or **8.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

“*Company Project Commitments*” shall mean an investment of at least \$21,000,000 in Economic Development Property at the Project and the creation of at least 27 new full-time jobs.

“*Corporate Affiliate*” shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of the Company or which is owned in whole or in part by the Company or by any partner, shareholder, or owner of the Company.

“*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.

“*Deficiency Payment*” shall have the meaning specified in **Section 5.01(e)** hereof.

“*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 the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Code, excluding specifically any Non-Qualifying Property.

“*Event of Default*” shall mean an Event of Default, as set forth in **Section 10.01** hereof.

“*Existing Property*” shall mean property proscribed from becoming Economic Development Property under this Agreement pursuant to Section 12-44-110 of the Code, 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 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 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; (c) property purchased by or on behalf of the Company 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 invests, or causes to be invested, at least an additional \$45,000,000 in the 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 Code.

“*FILOT*” shall mean fee in lieu of *ad valorem* property taxes.

“*FILOT Act*” shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

“*FILOT Payments*” or “*FILOT Revenues*” shall mean the payments to be made by the Company pursuant to **Section 5.01** hereof.

“*Investment Period*” shall mean the period for completion of the Project, which shall be equal to the Statutory Investment Period unless hereinafter extended by Resolution of the Council; provided that there shall be no extension of the period for meeting the Minimum

Investment Requirement beyond the Statutory Investment Period, all determined as specified in Section 12-44-30(13) of the Code.

“*Land*” shall mean the land upon which the Project would 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.

“*Minimum Investment Requirement*” shall mean investment in the Project within the County by any one of the Company or any Sponsor or Sponsor Affiliate of not less than \$21,000,000 prior to the end of the Statutory Investment Period.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to a 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 initial multi-county park agreement.

“*Multi-County Park Act*” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“*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 Project consisting of Economic Development Property which qualifies pursuant to the FILOT Act for the assessment ratio and negotiated millage rate described in **Section 5.01(b)(i)** hereof.

“*Non-Qualifying Property*” shall mean that portion of the facilities located on the Land and consisting of: (i) Existing Property; (ii) except as to Replacement Property, property which the Company 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 FILOT Act, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to **Section 4.03(a)(ii)** hereof.

“*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 other real property improvements constructed thereon; (ii) all machinery, equipment, furnishings and other personal property acquired by or on behalf of the Company for use on or about the Land; and (iii) any Replacement Property; provided, however, that, except as to the Land and any Replacement Property, the term 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 by the end of the Investment Period, and the term Project shall be deemed to exclude any Existing Property or other Non-Qualifying Property.

“*Project Rocky I Commitments*” shall mean an investment of at least \$107,635,000 in Economic Development Property at Project Rocky I and the creation of at least 250 new full-time jobs.

“*Property Tax Year*” shall mean the annual period which is equal to the fiscal year of the Company, *i.e.*, the period ending on December 31 of each year.

“*Released Property*” shall include Economic Development Property which is scrapped, sold, disposed of, or released from this Agreement by the Company pursuant to **Section 4.03** hereof and Section 12-44-50(B) of the Code; any portion of the Economic Development Property constituting infrastructure which the Company dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; and any Economic Development Property 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 Released 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 Code.

“*Special Source Act*” shall mean Section 4-1-175 of the Code, as amended through the date hereof.

“*Special Source Credits*” shall mean the credits described in **Section 3.03** hereof.

“*Special Source Improvements*” shall mean any qualifying infrastructure defined under Section 4-29-68 of the Code, as amended through the date hereof, and shall be deemed to include initially, for purposes of this Agreement, 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 Co-Investor directly or through lease payments.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 8.03** hereof and Sections 12-44-30(A)(18) or (19) and Section 12-44-130 of the Code if the statutory investment requirements are met.

“*State*” shall mean the State of South Carolina.

“*Statutory Investment Period*” shall mean the period commencing on the date of the first expenditures with respect to the Project and ending five (5) years after the end of the Property Tax Year in which the initial phase of the Project is placed in service, all as specified in Section 12-44-30(13) of the Code. For illustrative purposes, if the initial phase of the Project should be placed in service in the Property Tax Year ending on December 31, 2011, the end of the Statutory Investment Period would be December 31, 2016.

“*Term*” shall mean the term of this Agreement, as set forth in **Section 9.01** hereof.

“*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 the 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, the Negotiated FILOT Payments and Special Source Credit arrangements as set forth herein, the inclusion of the 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 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 arrangements set forth herein.

(c) This Agreement has been duly 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 undersigned representatives of the County, conflict with or constitute a breach of, or a default under, any existing 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 undersigned representatives of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the undersigned representatives of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any South Carolina court or before any South Carolina governmental authority or arbitration board or tribunal, any of which to the best knowledge of the undersigned representatives of the County could materially adversely affect this Agreement or which could 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 corporation validly existing and in good standing under the laws of the State of Delaware; 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 \_\_\_\_\_ of each year, and the Company will notify the County of any changes in the fiscal year of the Company.

(b) If the Company elects to go forward with the Project, the Company and/or one or more Corporate Affiliates will operate the Project primarily for the purpose of commercial services and be entitled to all the rights and benefits provided hereunder.

(c) The agreements with the County with respect to the FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to consider locating 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 this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

[End of **Article II**]

## ARTICLE III

### CERTAIN UNDERTAKINGS OF THE COUNTY

Section 3.01 Agreement to Accept 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 Project consisting of Economic Development Property until this Agreement expires or is sooner terminated. The County makes no warranty, either express or implied, as to the title to any part of the Project or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs.

#### Section 3.02 Special Source Credits.

(a) As reimbursement for the Company's investment in Special Source Improvements pursuant to **Section 4.04** hereof, the County agrees that the Company shall be entitled to claim annual Special Source Credits in amounts equal to 60% of its annual FILOT payments during the first ten (10) years of the Term of this Agreement, subject to adjustment as provided herein, all in accordance with the Special Source Act. In no event shall the aggregate amount of the Special Source Credits exceed the amount heretofore or hereafter expended by the Company or any Co-Investor with respect to Special Source Improvements relating to the Property. The Company shall claim such Special Source Credits by filing with the County Administrator and the County Auditor, at the time it makes its FILOT Payment, an Annual Special Source Credit Certification (substantially in the form of **Exhibit B-1** hereto) showing the amount of aggregate investment in the Project and Special Source Improvements and the calculation of the Special Source Credits. The amount of such Special Source Credit, after confirmation by the County and the County's agreement therewith, shall be deducted by the County from its annual FILOT bill.

(b) EXCEPT FOR THE REDUCTIONS IN THE FILOT PAYMENTS DESCRIBED IN SECTION 3.2(a), THE COUNTY SHALL HAVE NO FINANCIAL OBLIGATION OF ANY KIND RELATING TO THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN.

(c) If (i) the Company does not achieve the Company Project Commitments by the end of the Statutory Investment Period, or (ii) Project Rocky I does not achieve the Project Rocky I Commitments by the end of the Statutory Investment Period, then the County reserves the right to terminate or adjust the Special Source Credits in accordance with the provisions of subsection (d) hereof. The County may exercise such option to terminate or adjust the Special Source Credits in accordance with subsection (d) hereof at any time following the date that is the earliest of (i) the date the Company files with the County Administrator and the County Auditor, an Annual Aggregate Project Certification (substantially in the form of **Exhibit B-2** hereto) stating whether the aggregate investment and job creation requirements of this Agreement have or have not reached (or are not anticipated to reach) the Company Project Commitments by the end of the Statutory Investment Period, or (ii) the final day of the Statutory Investment Period. The Company shall file such Annual Aggregate Project Certification at such time it files its

Annual Special Source Credit Certificate. Such Annual Aggregate Project Certification and Annual Special Source Credit Certificate shall be sent by way of regular mail delivery to the County Administrator, the County Economic Developer and the County Auditor.

(d) In the event that (i) the Company does not achieve the Company Project Commitments by the end of the Statutory Investment Period or (ii) Project Rocky I does not achieve the Project Rocky I Commitments by the end of the Statutory Investment Period, then the County reserves the right to adjust or terminate the Special Source Credits as follows:

(i) In the event that the Company fails to invest at least \$2,500,000 in the Project within the Statutory Investment Period, this Agreement shall terminate retroactively. In such case, the Company shall pay to the County the amount of all Special Source Credits claimed during the Statutory Investment Period. Such amount shall be due and payable together with any Deficiency Payment due in accordance with the provisions of **Section 5.01(f)** hereof.

(ii) In the event that the Company fails to achieve the Company Project Commitments by the end of the Statutory Investment Period, but nonetheless, (i) the Company achieves 85% of the Company Project Commitments (with respect to investment requirements and job creation requirements) and (ii) Rocky I achieves at least 85% of the Project Rocky I Commitments, then the County shall not adjust or terminate the Special Source Credits in accordance with this **Section 3.02**.

(iii) In the event that the Company invests at least \$2,500,000 in the Project within the Statutory Investment Period, but fails to achieve at least 85% of the Company Project Commitments (with respect to investment requirements and job creation requirements), then the County reserves the right to retroactively and prospectively reduce the amount of the annual Special Source Credit in accordance with the actual percentage of achievement of the Company Project Commitments as of the end of the Statutory Investment Period. For example, if the Company achieves 80% of the Company Project Commitments as of the end of the Statutory Compliance Period, then the Company would be entitled to claim 80% of the Special Source Credits allowed in **Section 3.02(a)** hereof, and to the extent that the Company had claimed a greater Special Source Credit during the Statutory Investment Period, then the difference between such greater amount and the reduced amount will be due and payable by the Company as a Deficiency Payment as set forth in **Section 5.01(e)** hereof.

(e) In the event that the Land should be annexed by the City of Columbia at any time during the Term of this Agreement, the Company shall be entitled to claim, in addition to the Special Source Credits set forth above, each year during the Term of this Agreement, a Special Source Credit against the Negotiated FILOT Payment, in an amount equivalent to any property taxes assessed by or on behalf of the City of Columbia against the Land and/or the Project.

Section 3.03 Related Undertakings.

(a) The County will designate the Project as part of a Multi-County Park pursuant to the Multi-County Park Act and will, to the extent permitted by law, use its best, reasonable efforts to maintain such designation on terms which provide any additional job tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks for all jobs created by the Company during the Investment Period and which facilitate the Special Source Credit arrangements set forth herein.

(b) The County hereby agrees to use its best efforts to pursue and assist the Company in pursuing the maximum amount of grant funds possible for construction of infrastructure which is reasonably required in connection with the Project, without any commitment, whatsoever, on the part of the County that any such grant funds will be available. Further, the County shall render customary assistance to the Company in obtaining necessary permits required for the Project.

(c) The County, at its sole expense, has or will conduct a traffic study of this intersection in connection with the Project. Subject to approval of the South Carolina Department of Transportation of the plans for the same, the County will expend up to a total of \$450,000 for (i) the installation of a traffic signal at the intersection of Pineview Road Extension and American Italian Way, which shall be completed within 6 months of issuance of a certificate of occupancy for the Project; and (ii) any road improvements required as a result of the increased traffic requirements of the Project. The funding commitment of up to a total of \$450,000 made in this section shall be comprised of County funds and those provided by third parties other than the Company.

(d) The County acknowledges that the construction plans for the Project entail the removal of trees at the Project site. The Company shall use commercially reasonable efforts to protect both “grand trees” and “protected trees” as defined under County ordinance. To the extent any grand trees or protected trees must be removed to accommodate design challenges presented by the Project, they shall be replaced utilizing a 1 to 1 ratio pursuant to the “alternative compliance” provisions of the applicable County ordinance.

(e) The County will employ its Expedited Review Process for all phases of the review and approval of the plans and specifications for the Project.

[End of **Article III**]

## ARTICLE IV

### INVESTMENT BY THE COMPANY IN PROJECT AND SPECIAL SOURCE IMPROVEMENTS; MAINTENANCE AND MODIFICATION

#### Section 4.01 Acquisition and Development of Project.

(a) The Company agrees that in order to fully qualify for the benefits of this Agreement it must acquire and/or develop, or cause to be acquired and/or be developed, the Project, as the same shall be determined from time to time by the Company in its sole discretion, and to achieve the Company Project Commitments by the end of the Statutory Investment Period; provided, however, that the benefits provided to the Company under this Agreement shall be subject to adjustment or termination as provided in **Sections 3.02** and **5.01** hereof if the Company does not achieve the Company Project Commitments. As required by Section 12-44-30(2) of the Code, at least a portion of the assets comprising the 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 executed and delivered.

(b) Expenditures by Co-Investors shall, together with expenditures by the Company, count toward all investment requirements set forth in this Agreement, including, to the full extent permitted by the FILOT Act, the Minimum Investment Requirement. Aggregate investment shall generally be determined by reference to the Property Tax Returns of the Company and any Co-Investor pertaining to the Project and filed with respect to each Property Tax Year during the Investment Period.

(c) To encourage the Company to increase its investment in the Project, if the investment in the Project reaches at least \$21,000,000 by the end of the Statutory Investment Period and the Company commits to additional investment in the Project, upon the Company's written request, the County, acting by Resolution, will consider extension of the period for completion of the Project for up to an additional five years (the "Extended Investment Period") (such Statutory Investment Period or Extended Investment Period, as the case may be, referred to herein as the "Investment Period"); provided, however, that there shall be no extension of the period for meeting the Minimum Investment Requirement beyond the Statutory Investment Period.

(d) The Company and/or its designated Co-Investor shall retain title to the Project throughout the Term of this Agreement, and the Company and any such Co-Investor shall have full right to mortgage or encumber the Project in connection with any financing transaction as the Company deems suitable.

Section 4.02 Maintenance of Project. During the Term of this Agreement, and subject to the Company's rights under **Section 4.03** hereof, the Company at its own expense will keep and maintain the Project in good operating condition.

Section 4.03 Modification of Project.

(a) As long as no Event of Default exist 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 during the Investment Period, at its own expense, add all such real and personal property as the Company in its discretion deems useful or desirable to the Economic Development Property qualifying for the Negotiated FILOT under **Section 5.01** hereof without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 8.01** hereof with respect to Economic Development Property, in any instance where the Company in its discretion determines that any items included in the Project, including any Economic Development Property and 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.

(iii) The Company may, at any time and in its discretion by written notice to the County, remove any Economic Development Property, real or personal, from the Negotiated FILOT 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.

(b) If the Company sells, leases, or otherwise disposes of any portion of, the Land to a third party that is not a Co-Investor, the Company shall deliver to the County, within 30 days thereafter, a new **Exhibit A** to this Agreement. If the Company adds any real property to the Land, the Company shall deliver to the County, within 30 days thereafter, a new **Exhibit A** to this Agreement.

(c) All Economic Development Property sold, leased or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

(d) No release of Project Property effected under the provisions of this Agreement shall entitle the Company to any abatement or diminution of the amounts payable by the Company hereunder except the FILOT payment as specified in **Section 5.01**.

Section 4.04 Funding for Special Source Improvements. Company hereby agrees to provide funding for the Special Source Improvements related to the acquisition and construction of the Project.

[End of **Article IV**]

## ARTICLE V

### FILOT PAYMENTS

#### Section 5.01 FILOT Payments.

(a) In accordance with the Act, the parties hereby agree that, during the Term hereof, there shall be due annually with respect to that portion of the Project constituting Economic Development Property, whether owned by the Company or by a Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this Section, 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. If the Company designates any Sponsor or Sponsor Affiliates pursuant to **Section 8.03** hereof, the Company must notify the County in writing at the time of such designation as to whether the Company or the Sponsor or Sponsor Affiliate shall be primarily liable for the FILOT Payments hereunder. Unless and until such notification is received, and the County consents in writing, the Company shall be primarily liable for all FILOT Payments and other obligations due hereunder.

(b) The Company elects to calculate the Negotiated FILOT Payments in accordance with Section 12-44-50(A)(1)(b)(i) of the Code, and, subject to adjustment pursuant to paragraph (j) below for failure to meet or maintain the Minimum Investment Requirement and to adjustment pursuant to the other provisions of this **Section 5.01**, in accordance with the following provisions:

(i) For each annual increment of investment in Economic Development Property, the annual Negotiated FILOT Payments shall be payable for a consecutive period of up to 20 years. Accordingly, if such Economic Development 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 consecutive period of 20 years, up to an aggregate of 25 years or, if the Investment Period is extended to the Extended Investment Period, up to an aggregate of 30 years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) a millage rate of 409.3, which is the millage rate applicable in the County as of June 30, 2011 for the particular taxing district in which the Land is located, fixed for the entire term of this Agreement; and (3) the fair market value of such Economic Development Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Code, 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) as determined by the Department of Revenue.

(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 Economic Development 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 disposes of any part of the Economic Development Property within the meaning of Section 12-44-50(B) of the Code and as provided in **Section 4.03(a)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Economic Development Property 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 value of the Project or such portion thereof;

(iii) to increase such payments in the event the Company adds any Economic Development Property (other than Replacement Property) to the Project; or

(iv) to adjust such payments if the Company elects to convert any portion of the Economic Development Property from the Negotiated FILOT to *ad valorem* taxes, as permitted by **Section 4.03(a)(iii)**.

(d) Upon the Company's installation 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 thirty-year period applicable to the Released Property.

(ii) The Company shall maintain records sufficient to identify all Replacement Property, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the Released Property.

(e) In the event that, for any reason, the 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 Project consisting of Economic Development 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 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, 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 Economic Development Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company 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 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 with respect to the portion of the Economic Development 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, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f) If the Company fails to invest at least \$2,500,000 in the Project within the Statutory Investment Period, this Agreement shall be terminated retroactively. In such case, the Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment (including any Special Source Credits claimed by the Company during the Statutory Investment Period) shall be due and payable within 90 days of written notice from the County to the Company of such Deficiency Payment.

(g) If the Company invests \$2,500,000 in the Project within the Statutory Investment Period, but (i) the Company fails to achieve the Company Project Commitments within the Statutory Investment Period or (ii) Rocky I fails to achieve the Project Rocky I Commitments within the Statutory Investment Period, then the County reserves the right to terminate this Agreement prospectively as of the date of the

expiration of the Statutory Investment Period. In such case the Project shall revert to *ad valorem* taxation as of the date of the expiration of the Statutory Investment Period, but the Company shall not be required to make any Deficiency Payment with respect to the Negotiated FILOT Payments made during the Statutory Investment Period. Notwithstanding the foregoing provisions, however, the County shall not terminate this Agreement in accordance with this subsection (g) so long as (i) the Company has achieved at least 85% of the Company Project Commitments by the end of the Statutory Investment Period and (ii) Rocky I has achieved at least 85% of the Project Rocky I Commitments by the end of the Statutory Investment Period.

(h) If the Company fails to maintain its investment at the level of \$2,500,000 (without regard to depreciation) for the duration of this Agreement, the County reserves the right to terminate this Agreement retroactively. If the County terminates this Agreement retroactively, the Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment shall be due and payable with respect to such property within 30 days of the County provided written notice to the Company of such Deficiency Payment. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to maintain a \$2,500,000 investment, Section 12-44-140(D) of the Code provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(i) In accordance with the provisions of **Sections 4.01(b)** and **8.03** hereof except for Existing Property, the fair market value of all property utilized by the Company at the Project site, whether owned by the Company outright or utilized by the Company 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.

(j) 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 ninety (90) days following receipt by the Company of notice that there has been a final determination by the County that such a Deficiency Payment or other retroactive payment is due.

[End of **Article V**]

## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

Section 6.01 Payment of Administration Expenses. Within thirty (30) days after receipt of an invoice, the Company will pay the County's attorneys' fees incurred to date in an amount not to exceed \$5,000. Thereafter, the Company will reimburse the County from time to time for its Administration Expenses, including attorneys' fees, promptly upon written request therefor, but in no event later than December 31, 2011. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement, and, aside from the attorneys' fees, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby.

Section 6.02 Indemnification.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its past, present, and future employees, elected officials, officers and agents (the "Indemnified Parties") harmless against and from all claims by or on behalf of any Person arising from the County's performance of its obligations under this Agreement. If such claim shall be made against any Indemnified Party, then subject to the provisions of paragraph (b) below, the Company shall defend them in any such action or proceeding.

(b) Notwithstanding anything herein to the contrary, the Company shall not be required to indemnify any Person against any claim or liability (i) occasioned by acts of such Person which are unrelated to the performance of the County's obligations hereunder; (ii) resulting from such Person's own negligence, bad faith, fraud, deceit or willful misconduct; (iii) for which the Company was not given the reasonable opportunity to contest; or (iv) to the extent such claim or liability is covered by insurance pertaining to the loss sustained. An Indemnified Party may not avail itself of the indemnification provided in this **Section 6.02** unless it provides the Company with prompt notice of the existence or threat of any such 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 reasonable time in which to defend against such claim. Upon such notice, the Company shall resist or defend against any such claim, action or proceeding at its expense, using counsel of its choice. The Company shall be entitled to manage and control the defense of or response to any claim, charge, lawsuit, regulatory proceeding or other action, for itself and the Indemnified Parties; provided that the Company shall not be entitled to settle any matter at the separate expense or liability of any Indemnified Party without the consent of such Indemnified Party. To the extent that any Indemnified Party desires to use separate counsel for any reason other than a conflict of interest, such Indemnified Party shall be responsible for its independent legal fees.

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 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, all as provided in Section 12-44-90 of the Code.

[End of **Article VI**]

## ARTICLE VII

### PARTICULAR COVENANTS AND AGREEMENTS

Section 7.01 Use of Project for Lawful Activities. During the Term of this Agreement, the Company shall use the Project as it deems fit for any lawful purpose authorized pursuant to the Act.

Section 7.02 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 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 (except, in either case, where the resulting, surviving, or transferee entity is the Company or an Corporate Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby consents). The resulting, surviving or transferee entity, if not the Company, shall, within sixty (60) days following any such merger, consolidation or transfer, provide the County with written notification of such event together with a copy of the written instrument by which such resulting, surviving, or transferee entity has assumed the rights and obligations of the Company under this Agreement. The Company acknowledges that, except as permitted herein, transfers of this Agreement or Economic Development Property may cause the Economic Development 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 7.03 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 which are placed in service in each Property Tax Year during the Investment Period, the amount of investment in the Project and in Special Source Improvements, and its computations of all Negotiated FILOT Payments and Special Source Credits and to comply with all reporting requirements of the State and the County applicable to Economic Development Property under the Act, including without limitation the reports required by 12-44-90 of the Code (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the code for a recapitulation of the terms of this Agreement. Specifically, the Company shall provide the following:

(a) Each year during the Term hereof, the Company shall deliver to the County Administrator, County Auditor and the County Assessor a copy of its most recent annual filings made with the Department of Revenue with respect to the 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 Administrator, County Auditor and the County Assessor of the County and of any 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 may, by clear, written designation, conspicuously marked, 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 comply with all reasonable, written requests made by the Company 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.

(c) The Company shall also provide annually the information required by the Resolution adopted by the County Council on December 21, 2010, a copy of which is attached hereto as **Exhibit C**.

[End of **Article VII**]

## ARTICLE VIII

### CONVEYANCES; ASSIGNMENTS; SPONSORS AND SPONSOR AFFILIATES

Section 8.01 Conveyance of Liens and Interests: Assignment. The Company 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 Economic Development Property 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 Economic Development Property, 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 Economic Development Property, as long as the transferee in any such arrangement leases the Economic Development Property in question to the Company or any of its Corporate Affiliates or operates such assets for the Company or any of its Corporate Affiliates or is leasing such Economic Development Property in question from the Company or any of its Corporate Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to property so transferred: (i) except in connection with any transfer to a Corporate Affiliate of the Company, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the written consent of the County; (ii) except where a financing entity which is the income tax owner of all or part of the Economic Development Property, is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing or where the transfer relates to Released Property pursuant to **Section 4.03** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent that the transferee or financing entity shall become obligated to pay make Negotiated FILOT Payments hereunder, the transferee shall assume the then current basis of the Company (or other income tax owner) in the Economic Development Property transferred; (iv) 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 transfer agreement; and (v) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Economic Development Property may cause all or part of the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Notwithstanding anything to the contrary set forth herein, the County hereby authorizes and approves the assignment of the Project and this Agreement to

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Section 8.02 Sponsors and Sponsor Affiliates. The County hereby authorizes the Company to designate from time to time Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(18) or (19), respectively, and Section 12-44-130 of the Code, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make

investments with respect to the 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 Corporate Affiliates of the Company or other Persons described in **Section 8.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Sections 12-44-30(18) or (19) and Section 12-44-130 of the Code must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to or greater than \$2,500,000 prior to the end of the Statutory Investment Period, the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof in accordance with Section 12-44-30(18) of the Code. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate so designated within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service assets to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Code.

[End of **Article VIII**]

## ARTICLE IX

### TERM; TERMINATION

Section 9.01 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 day the last Negotiated FILOT Payment is made hereunder.

Section 9.02 Termination. The County and the Company may agree to terminate this Agreement at any time, or the Company may, at its option, terminate this Agreement at any time, in which event the 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 such retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights, as it would have with respect to *ad valorem* taxes and the County's rights owing hereunder at the time of such termination shall survive any such termination. The County may unilaterally terminate this Agreement if the Company or any approved assignees of this Agreement ceases operations at the Project.

[End of **Article IX**]

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default by the 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 Negotiated FILOT Payments, which default shall not have been cured within 30 days following receipt of written notice of such default 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 ninety (90) days after the County shall have given the Company written notice of such default; provided, the County may, in its discretion, grant the Company a longer period of time as necessary to cure such default if the Company proceeds with due diligence to cure such default; and provided further, that no Event of Default shall exist under this paragraph (b) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Company has contested the occurrence of such default.

The Company’s failure to meet any investment 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 to make certain additional payments to the County, all as set forth in **Sections 3.03, 4.01 and 5.01** hereof.

Section 10.02 Remedies on Event of Default by the Company. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies:

(a) terminate this Agreement by delivery of written notice to the Company not less than 60 days prior to the termination date specified therein;

(b) 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 calculation of the Negotiated FILOT pursuant hereto as provided in **Section 7.03** hereof; or

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the Company’s FILOT Payment obligations hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect FILOT Payments as if they were delinquent *ad valorem* tax payments.

Section 10.03 Application of Monies upon Enforcement of Remedies against Company. Any monies 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 Negotiated FILOT in accordance with **Section 5.01** hereof.

Section 10.04 Default by the 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 X**]

ARTICLE XI

MISCELLANEOUS

Section 11.01 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 11.02 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Sponsor or Sponsor Affiliates designated pursuant to **Section 8.03** hereof and their respective successors and assigns as permitted hereunder.

Section 11.03 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) As to the County:

Richland County  
2020 Hampton Street  
Columbia, South Carolina 29204  
Attn.: J. Milton Pope, Administrator

(b) with a copy (which shall not constitute notice) to:

Ray E. Jones, Esquire  
Parker Poe Adams & Bernstein LLP  
Post Office Box 1509  
Columbia, South Carolina 29202-1509  
Phone: 803-253-8917  
Fax: 803-255-8017  
Email: [rayjones@parkerpoe.com](mailto:rayjones@parkerpoe.com)

Larry Smith, Esquire  
County Attorney  
Richland County  
2020 Hampton Street  
Columbia, South Carolina 29204

(c) As to the Company:

ROCKY II

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

(d) with a copy (which shall not constitute notice ) to:

W. Lindsay Smith, Esquire  
Womble Carlyle Sandridge & Rice, PLLC  
Post Office Box 10208  
Greenville, South Carolina 29603-0208  
Phone: 864-255-5403  
Fax: 864-255-5483  
Email: [lsmith@wcsr.com](mailto:lsmith@wcsr.com)

And

Bo Segers, Associate General Counsel  
Rocky II  
315 Cool Springs Boulevard  
Franklin, Tennessee 37067  
Phone: 615-807-4502  
Fax: \_\_\_\_\_  
Email: [bo.segers@effem.com](mailto:bo.segers@effem.com)

Section 11.04 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 11.05 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 11.06 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 11.07 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 11.08 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be original but all of which shall constitute but one and the same instrument.

Section 11.09 Amendments. Subject to the limitations set forth in Section 12-44-40(J)(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 11.10 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 11.11 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 Administrator and/or County Auditor without necessity of further proceedings. To the extent that 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.

Section 11.12 Limited Obligation of the County with Respect to Project. THE PROJECT SHALL GIVE RISE TO NO PECUNIARY LIABILITY OF THE COUNTY OR ANY INCORPORATED MUNICIPALITY NOR TO ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

[End of **Article XI**]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

RICHLAND COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Paul Livingston, Chair of County Council  
Richland County, South Carolina

[SEAL]

By: \_\_\_\_\_  
Michelle Onley, Clerk to County Council  
Richland County, South Carolina

Date: \_\_\_\_\_, 2011

ROCKY II

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

Date: \_\_\_\_\_, 2011

**EXHIBIT A**

**LEGAL DESCRIPTION**

[INSERT DESCRIPTION OF TAX PARCEL R19000-05-07]

**EXHIBIT B-1**

**ANNUAL SPECIAL SOURCE CREDIT CERTIFICATION**

Reference is made to that certain Fee In Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement") between ROCKY II (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

In accordance with **Section 3.02** of the Agreement, the undersigned authorized officer of the Company certifies to the County as follows:

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$21,000,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 2016.

2. [Insert either (a) or (b) below, as applicable:

(a) The Statutory Investment Period has not yet elapsed. To date, the Company and all Co-Investors have invested in the aggregate \$\_\_\_\_\_ (without regard to depreciation) in the Project, and the Company anticipates that investment in the Project will aggregate at least \$21,000,000 prior to the end of the Statutory Investment Period.

or

(b) The Company and all Co-Investors invested in the aggregate not less than \$21,000,000 (without regard to depreciation) in the Project prior to the end of the Statutory Investment Period.]

3. The Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the FILOT payment due on \_\_\_\_\_, 20\_\_.

4. The Company and all Co-Investors have to date expended in the aggregate (without regard to depreciation) not less than \$\_\_\_\_\_ upon Special Source Improvements ("Reimbursable Costs"), and the Company has heretofore claimed an aggregate of \$\_\_\_\_\_ in Special Source Credits ("Prior Credits"), leaving \$\_\_\_\_\_ in funding for Special Source Improvements not heretofore reimbursed through Special Source Credits ("Unreimbursed Costs").

5. The invoice for FILOT payments for tax year \_\_\_\_\_ provided to the Company by the County Auditor specifies that the FILOT payment due on \_\_\_\_\_, 20\_\_ is \$\_\_\_\_\_.

6. The Company is entitled to a Special Source Credit calculated as follows:

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7. The sum of the Allowable Credit calculated in paragraph 6 hereof (\$\_\_\_\_\_) plus aggregate Prior Credits (\$\_\_\_\_\_) is \$\_\_\_\_\_, and such sum does not exceed the total Reimbursable Costs of \$\_\_\_\_\_ as set forth in paragraph 4 hereof, all as specified in accordance with **Section 3.02** of the Agreement.

8. The amount due from the County to the Company on \_\_\_\_\_, 20\_\_ as a Special Source Credit is \$\_\_\_\_\_. The Company has deducted such amount from the FILOT Payment accompanying this certificate.

IN WITNESS WHEREOF, I have executed this Certificate to be effective as of the day of \_\_\_\_\_, 20\_\_.

ROCKY II

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

**EXHIBIT B-2**

**ANNUAL AGGREGATE INVESTMENT CERTIFICATION**

Reference is made to that certain Fee In Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement") between ROCKY II (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

In accordance with **Section 3.02** of the Agreement, the undersigned authorized officer of the Company certifies to the County as follows:

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$21,000,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 2016.

2. [Insert either (a) or (b) below, as applicable:

(a) The Company and all Co-Investors invested in the aggregate not less than \$21,000,000 (without regard to depreciation) and created at least 27 new full-time jobs at the Project prior to the end of the Statutory Investment Period. In accordance with **Section 3.02** of the Agreement, the Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the Personal Property FILOT Payment due on \_\_\_\_\_, 20\_\_.

or

(b) As of the end of the Statutory Investment Period, the Company and all Co-Investors invested in the aggregate less than \$21,000,000 (without regard to depreciation) and created at least 27 new full-time jobs at the Project [or, if applicable, as of the date hereof, the Company does not anticipate that investment in the Project will aggregate to at least \$21,000,000 and involve the creation of at least 27 new full-time jobs prior to the end of the Statutory Investment Period]. To date, the Company has claimed an aggregate of \$ \_\_\_\_\_ in Special Source Credits. In accordance with **Section 3.02** of the Agreement, the County has the right to terminate or adjust the Special Source Credits under such circumstances.]

IN WITNESS WHEREOF, I have executed this Certificate to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ROCKY II

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

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto **[THIRD READING] [PAGES 243-256]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

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

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE CREDIT AGREEMENT BY AND BETWEEN RICHLAND COUNTY AND KOYO CORPORATION OF U.S.A., SO AS TO PROVIDE, AMONG OTHER THINGS, SPECIAL SOURCE REVENUE CREDITS FOR A PROJECT; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.**

WHEREAS, Richland County, South Carolina (the “County”), acting by and through its County Council (the “County Council”), is authorized by Sections 12-44-70, 4-1-175, and 4-29-68 of the Code of Laws of South Carolina, 1976, as amended (the “Act”), to provide special source revenue credits, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County; and

WHEREAS, Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the “Company”), operates a manufacturing facility located in the County (the “Facility”); and

WHEREAS, the Facility is located in a multi-county park (the “Park”) pursuant to an Agreement for Designation of the I-77 Corridor Regional Industrial Park Phase II made and entered into as of April 19, 1994 by and between the County and Fairfield County; and

WHEREAS, the Company has made and intends to make continuing and further investment at the facility (the “Project”) and has requested the County provide certain economic development incentives to the Company related to such investment; and

WHEREAS, the Company has placed certain assets in service at the Project during the calendar years 2003 through 2007 (property tax years 2004 through 2008)((the “Assets”) and, by virtue of the Project being in a Park, the Company has made tax payments to the County attributable to these assets under Section 4-1-170, et. al., and otherwise applicable law; and

WHEREAS, the County has now agreed to grant the Company a special source revenue credit (the “SSRC”) against a portion of certain future tax payments attributable to the Assets; and

WHEREAS, the Company has caused to be prepared and presented to the Council the form of the Infrastructure Credit Agreement by and among the County and the Company (the “Agreement”), which provides for a special source revenue credit against a portion of certain future tax payments attributable to the Assets as set forth in the Agreement; and

WHEREAS, it appears that the Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended; and

WHEREAS, in order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina (the "State") by assisting the Company to expand or locate an industrial facility in the State, the Council enacts this ordinance.

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

Section 1. Approval of Agreement. The Agreement is approved as follows:

(a) The form, terms, and provisions of the Agreement presented to this meeting and filed with the Clerk to County Council (the "Clerk") are approved and all of the terms, provisions, and conditions of the Agreement are incorporated by reference. The Chairman of the County Council (the "Chairman") and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Agreement in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Agreement to be delivered to the Company.

(b) The Agreement to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are approved by the County officials executing the Agreement. The County officials shall consult the attorney for the County (the "County Attorney") with respect to any changes to the Agreement. The execution of the Agreement by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Agreement now before this meeting.

(c) If under the Agreement or the Act any future actions of the Company (including, without limitation, the supplementation of the exhibits thereto and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the Chairman or the Richland County Administrator (the "County Administrator") upon affirmative resolution of the County Council to the extent permitted by law. The County officials shall consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

Section 2. Execution of Document. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things reasonably necessary to effect the execution and delivery of the Agreement and the County's performance of its obligations under the Agreement.

Section 3. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be

invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 4. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

RICHLAND COUNTY COUNCIL

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

(SEAL)

Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 13, 2011



## INFRASTRUCTURE CREDIT AGREEMENT

THIS INFRASTRUCTURE CREDIT AGREEMENT, dated as of \_\_\_\_\_, 2011 (the "Agreement"), by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (the "County") and KOYO CORPORATION OF U.S.A., a South Carolina corporation (the "Company").

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Sections 12-44-70, 4-1-175, and 4-29-68 of the Code of Laws of South Carolina, 1976 (the "Code"), as amended, to provide a special source revenue credit for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County; and

WHEREAS, the Company operates a manufacturing facility located in the County (the "Facility"); and

WHEREAS, the Facility is located in a multi-county park (the "Park") pursuant to an Agreement for Designation of the I-77 Corridor Regional Industrial Park Phase II made and entered into as of April 19, 1994 by and between the County and Fairfield County; and

WHEREAS, the Company has made and intends to make continuing and further investment at the Facility (the "Project") and has requested the County provide certain economic development incentives to the Company related to such investment; and

WHEREAS, the Company has placed certain assets in service at the Project during the calendar years 2003 through 2007 (property tax years 2004 through 2008)(the "Assets") and, by virtue of the Project being in a Park, the Company has made tax payments to the County attributable to these assets under Section 4-1-170, et. al., and otherwise applicable law; and

WHEREAS, the County has now agreed to grant the Company a special source revenue credit (the "SSRC") against a portion of certain future tax payments attributable to the Assets; and

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I  
DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein 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*.

“Act” shall mean, collectively, Title 4, Chapter 29 and Sections 4-1-170, -172 & -175 of the Code.

ARTICLE II  
REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County.

(a) The County represents and warrants that: (i) it is a body politic and corporate and a political subdivision of the State of South Carolina; (ii) it is authorized by the Act to enter into this Agreement; (iii) it has approved this Agreement in accordance with the procedural requirements of the Act and any other applicable state law; and (iv) it has authorized its officials to execute and deliver this Agreement.

(b) The County will take all reasonable actions and use its best efforts to ensure that the Project is located in the Park or any other joint county industrial and business park for the longer of the term of this Agreement or such period of time as is necessary to allow the Company and any related parties to receive the benefit of the incentives provided in this Agreement.

SECTION 2.02. Representations by the Company. The Company represents and warrants that it: (i) is or will be validly existing and in good standing under the laws of the state of organization or incorporation; (ii) is or will be authorized to transact business in the State of South Carolina; (iii) has the power to enter into this Agreement; (iv) has by proper action approved this Agreement; and (v) has authorized its officials to execute and deliver this Agreement.

SECTION 2.03. Covenants of County and Company.

The County and Company covenant, each to the other, that they will from time to time and at the expense of the Company execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that 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 relating to indebtedness payable solely from a revenue-producing project or from a special source, which source does not involve revenues from any tax or license) 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, or any other political subdivision of the State.

### ARTICLE III

#### SPECIAL SOURCE REVENUE CREDIT

##### SECTION 3.01. Special Source Revenue Credit.

(a) Subject to Section 3.02 below, the County shall provide to the Company a Special Source Revenue Credit against the tax payments attributable solely to the Assets (the "MCIP Payments"), equal to sixty-five percent (65%), beginning for the property tax year 2011 (payment for which is due on or about January 15, 2012) and continuing through the property tax year 2027 (payment for which is due on or about January 15, 2028). To assist the County in calculating the MCIP Payments, the Company shall annually provide the County with a certificate or schedule reflecting the Company's calculation of the MCIP Payment. (b) THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDIT IN THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE STATED MCIP PAYMENTS PAID BY THE COMPANY, AND DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION RELATING TO INDEBTEDNESS PAYABLE SOLELY FROM A REVENUE-PRODUCING PROJECT OR FROM A SPECIAL SOURCE, WHICH SOURCE DOES NOT INVOLVE REVENUES FROM ANY TAX OR LICENSE) AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE SPECIAL SOURCE REVENUE CREDIT.

(c) 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 of any warranty herein included or for any breach or default by the County of any of the foregoing is limited solely and exclusively to the provision of a Special Source Revenue Credit against the MCIP Payments. The County is not required to execute or perform any of its duties, obligations, powers, or covenants in this Agreement except to the extent of the MCIP Payments received from the Company.

SECTION 3.02. Investment and Job Creation Requirement. The Company shall invest at least \$20,000,000 in the Project and create at least twenty-five (25) new full-time jobs at the Project by December 31, 2018. This investment and job creation requirement is not independent and not in addition to the related such requirements committed by the Company in that certain First Amendment to Fee Agreement dated as of the same date herein.

## ARTICLE IV

### CONDITIONS TO DELIVERY OF AGREEMENT

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the ordinance of the County approving the SSRC, duly certified by the Clerk of the County Council under its corporate seal to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) Such additional certificates (including appropriate no-litigation certificates and certified copies of ordinances, resolutions, or other proceedings adopted by the County), instruments or other documents as the Company may reasonably request.

SECTION 4.02. Transfers of Project. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, to others. No sale, lease, conveyance, or grant shall relieve the County from the County's obligations to provide the Special Source Revenue Credit to the Company or its assignee, provided, however, that the assignee has agreed to be bound by the Company's obligations under this Agreement.

SECTION 4.03. Assignment by County. The County shall not attempt to assign, transfer, or convey its obligation to provide the Special Source Revenue Credit hereunder to any other Person.

## ARTICLE V

### EVENTS OF DEFAULT; LEGAL PROCEEDINGS; REMEDIES; NONWAIVER

SECTION 5.01. Events of Default. The following shall be "Events of Default" under this Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make any payments within the times specified in this Agreement, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

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

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of

30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

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

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

#### SECTION 5.02. Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may terminate this Agreement in which case the Company is not entitled to the SSRC.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement; or
- (2) terminate this Agreement.

SECTION 5.03. Reimbursement of Legal Fees and Expenses and Other Expense. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefore, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

SECTION 5.04. Nonwaiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy in this Agreement. No waiver of any provision in this Agreement shall be effective unless the same shall be in writing and signed by the waiving party hereto.

## ARTICLE VI

### MISCELLANEOUS

SECTION 6.01. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, 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 6.02. Provisions of Agreement for Sole Benefit of County and Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person 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 6.03. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement and the Special Source Revenue Credit shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.04. No Liability for Personnel of County or Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in an individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Credit or the Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 6.05. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States first-class registered mail, postage prepaid, addressed as follows:

- (a) if to the County:
- Richland County, South Carolina  
P. Nelson Lindsay  
Director  
Richland County Economic Development  
2020 Hampton Street, Suite 4069  
PO Box 192  
Columbia, SC 29202

with a copy to: Ray E. Jones, Esquire  
Parker Poe Adams & Bernstein, LLP  
1201 Main Street, Suite 1450  
Columbia, South Carolina 29201

(b) if to the Company: Koyo Corporation of U.S.A.  
Attention: Eddie Byrd  
P.O. Drawer 967  
Orangeburg, SC 29116

with copies to: McNair Law Firm, P.A.  
Attn: Erik P. Doerring, Esq.  
1221 Main Street, Suite 1800 (29201)  
P.O. Box 11390 (29211)  
Columbia, South Carolina

The County and the Company may, by notice given under this Section 6.05, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.06. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.07. 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 6.08. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.09. Administration Expenses. The Company agrees to reimburse the County from time to time for its Administrative Expenses promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County. The written request shall include a description of the nature of the Administrative Expenses. As used in this section, "Administrative Expenses" means the reasonable and necessary out-of-pocket expenses, including reasonable attorneys' fees, incurred by the County with respect to this Agreement and all documents and other incentive documents related to this Agreement, including, but not limited to, the multi-county park documents; the fulfillment of its obligations under this Agreement and the multi-county park documents; and in the implementation and administration of the terms and provisions of the documents after the date of execution thereof but only in case such are incurred as a result of a request by the Company for a modification, assignment, or a termination of such documents by the Company, or as a result of a bankruptcy of the Company or a default by the Company under the terms of this Agreement.

SECTION 6.10. 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 of this Agreement.

SECTION 6.11. Indemnification

(a) The Company shall and agrees to indemnify and save the County, its County Council members, officers, employees or agents, present and future, and past County employees or agents who have worked on the Project and any documents or matters related to the Project (each, an “Indemnified Party”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Term, and, Company, further, releases each Indemnified Party from and shall indemnify and save each Indemnified Party harmless against and from all claims arising during the Term from (i) any condition of the Project, (ii) any breach or default on the part of Company in the performance of any of its obligations under this Agreement, (iii) any act of negligence of Company or any of its agents, contractors, servants, employees, or licensees, (iv) any act of negligence of any assignee or sublessee of Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, (v) any environmental violation, condition, or effect, or (vi) the administration by any Indemnified Party of this Fee Agreement or the performance by any Indemnified Party of the County’s obligations hereunder. Company shall indemnify and save each Indemnified Party harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County or any other Indemnified Party, Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that each Indemnified Party shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the performance of any act requested of it by the Company, or by reason of the operation of the Project 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 an Indemnified Party should incur any such pecuniary liability, then in such event the Company shall indemnify and hold that Indemnified Party harmless against all claims by or on behalf of any person, firm, or corporation, 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, and upon notice, the Company shall defend them in any such action or proceeding.

(c) These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the Chair of its County Council and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council, and Koyo Corporation of U.S.A. has caused this Agreement to be executed by its authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

\_\_\_\_\_  
Paul Livingston, Chair, County Council

ATTEST:

\_\_\_\_\_  
Clerk to Council

**KOYO CORPORATION OF U.S.A.**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project **[THIRD READING] [PAGES 257-288]**

## **Notes**

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Third Reading:  
Public Hearing: December 6, 2011

## FIRST AMENDMENT OF FEE AGREEMENT

This First Amendment of Fee Agreement (the "Amendment") is made and entered into as of \_\_\_\_\_, 2011, 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 Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the "Company").

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined in the Fee Agreement (as that term is defined below), and if not defined therein shall have the meaning as defined in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"); and

WHEREAS, the Company operates a manufacturing facility located in the County (as defined in the Fee Agreement, the "Project"); and

WHEREAS, the County and the Company entered into that certain Fee Agreement, effective as of December 31, 2008 (the "Fee Agreement"), a copy of which is attached hereto as Exhibit A, by which there was created a fee-in-lieu-of-tax arrangement with respect to certain property owned by Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$30,000,000 in the Project by December 31, 2013 (the "Investment Period"); and

WHEREAS, as of the date hereof, the Company has invested at least \$14 million in the Project, as originally required by the Fee Agreement; and

WHEREAS, the laws of the State of South Carolina allow an extension of the Investment Period for up to five additional years prior to the expiration of the initial five-year period in which to add further and additional investment to a project, and the increase of the term of a fee agreement of up to thirty (30) years; and

WHEREAS, the Company intends to make continuing and further investment in the Project and has requested the County provide certain economic development incentives to the Company by amending the Fee Agreement to authorize the extension of the Investment Period for an additional five years (the "Investment Period Extension") and the extension of the Term from 20 to 30 years (as that term is defined in the Fee Agreement) (the "Term Extension" and, collectively with the Investment Period Extension, the "Extensions") for the Project; and

WHEREAS, the County and the Company now desire to amend the Fee Agreement to memorialize such agreements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

1. Extension of the Investment Period. The Investment Period for investments under Section 3.5 of the Fee Agreement shall be extended until December 31, 2018 pursuant to Section 12-44-30(13) of the Act, and all other sections of the Agreement shall be revised to allow for such five-year extension of the Investment Period.

2. Extension of the Term. The Term of the Fee Agreement pursuant to Section 4.1 of the Fee Agreement shall be extended until midnight on December 31 of the thirtieth (30<sup>th</sup>) year after the last year during which any portion of the Project is placed in service or the last FILOT Payment is made under the Fee Agreement, whichever is later, pursuant to Section 12-44-30(21) of the Act, and all other sections of the Agreement shall be revised to allow for such extension of the Term.

3. Additional Investment and Jobs Creation; Clawback. The Company shall invest at least an additional \$20,000,000 and create at least twenty-five (25) new full-time jobs (“New Jobs”) at the Project before the end of the Investment Period, as extended. However, if by December 31, 2018 the Company has not invested a total of at least \$50 million at the Project and created the New Jobs, and provided written certification of same to the County Administrator, the Term Extension shall be null and void and Section 4.1 of the Fee Agreement shall be deemed so amended.

4. Severability. If any term, provision, or any portion of this Amendment shall to any extent and for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this Amendment shall be valid and enforceable to the fullest extent permitted by the law.

IN WITNESS WHEREOF, Richland County, South Carolina, has executed this First Amendment of Fee Agreement by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council, and the Company has executed this First Amendment of Fee Agreement by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

RICHLAND COUNTY, SOUTH CAROLINA

WITNESSES:

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

By: \_\_\_\_\_  
Paul Livingston, Chairman, County Council  
of Richland County, South Carolina

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Clerk to County Council of  
Richland County, South Carolina

WITNESSES:

Koyo Corporation of U.S.A.

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

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

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

EXHIBIT A

Fee Agreement

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

**AN ORDINANCE AUTHORIZING THE FIRST AMENDMENT OF THAT CERTAIN FEE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND KOYO CORPORATION OF U.S.A., RELATING TO, WITHOUT LIMITATION, THE PAYMENT TO RICHLAND COUNTY OF A FEE IN LIEU OF TAXES, AN EXTENSION OF THE INVESTMENT PERIOD TO ALLOW FOR CONTINUING AND FURTHER INVESTMENT IN THE PROJECT, AND THE EXTENSION OF THE TERM OF THE PROJECT.**

WHEREAS, Richland County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution (the "Constitution"), the Code of Laws of South Carolina, 1976, as amended (the "Code"), and the case law of the courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; and

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code (the "Act") to enter into certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute "projects" as defined in the Act) and to accept any grants for such projects; and

WHEREAS, through employment of the powers granted by the Act, the County is empowered to promote the economic and industrial development of the State of South Carolina (the "State") and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State and thus use and employ the manpower, agricultural products, and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally by providing for the exemption of such project from property taxes and for the payment of a fee in lieu of property taxes (a "fee agreement," as defined in the Act); and

WHEREAS, Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the "Company"), operates a manufacturing facility located in the County (as defined in the Fee Agreement, as that term is defined below, the "Project"); and

WHEREAS, the County and the Company entered into that certain Fee Agreement, effective as of December 31, 2008 (the "Fee Agreement") by which there was created a fee-in-lieu-of-tax arrangement with respect to certain property owned by Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$30,000,000 in the Project by December 31, 2013 (the "Investment Period"); and

WHEREAS, as of the date hereof, the Company has invested at least \$14 million in the Project, as originally required by the Fee Agreement; and

WHEREAS, the laws of the State of South Carolina allow an extension of the Investment Period for up to five additional years prior to the expiration of the initial five-year period in which to add further and additional investment to a project, and the increase of the term of a fee agreement of up to thirty (30) years; and

WHEREAS, the Company intends to make continuing and further investment in the Project and has requested the County provide certain economic development incentives to the Company by amending the Fee Agreement to authorize the extension of the Investment Period for an additional five years (the "Investment Period Extension") and the extension of the Term from 20 to 30 years (as that term is defined in the Fee Agreement) (the "Term Extension" and, collectively with the Investment Period Extension, the "Extensions") for the Project; and

WHEREAS, the County and the Company now desire to amend the Fee Agreement to memorialize such agreements; and

WHEREAS, all capitalized terms not specifically defined herein, shall have the meaning as defined in the Fee Agreement, and if not defined therein shall have the meaning as defined in the Act; and

WHEREAS, the County has determined that the Extensions would directly and substantially benefit the general public welfare of the County by inducing the Company to make further investments in the County, thereby providing for the creation of jobs and employment in the County, the increase of the ad valorem tax base of the County, and service, employment or other public benefits not otherwise provided locally; and that the Extensions give rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either; and

WHEREAS, the purposes to be accomplished by the Extensions, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes and the inducement of continued utilization of the Project which is located in the County and State are of paramount importance and the benefits of the Project will be greater than the costs; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the First Amendment of Fee Agreement (the "Amendment") by and between the County and the Company memorializing the Extensions; and

WHEREAS, the County desires to authorize the Extensions, and it appears that the Amendment now before this meeting is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

Section 1. Extension of the Investment Period. The Investment Period for investments under Section 3.5 of the Fee Agreement shall be extended until December 31, 2018 pursuant to Section 12-44-30(13) of the Act, and all other sections of the Agreement shall be revised to allow for such five-year extension of the Investment Period.

Section 2. Extension of the Term. The Term of the Fee Agreement pursuant to Section 4.1 of the Fee Agreement shall be extended until midnight on December 31 of the thirtieth (30<sup>th</sup>) year after the last year during which any portion of the Project is placed in service or the last FILOT Payment is made under the Fee Agreement, whichever is later, pursuant to Section 12-44-30(21) of the Act, and all other sections of the Agreement shall be revised to allow for such extension of the Term.

Section 3. Approval of Amendment. The Amendment is approved as follows:

(a) The form, terms, and provisions of the Amendment presented to this meeting and filed with the Clerk to County Council (the “Clerk”) are approved and all of the terms, provisions, and conditions of the Amendment are incorporated by reference. The Chairman of the County Council (the “Chairman”) and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Amendment in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Amendment to be delivered to the Company.

(b) The Amendment to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are approved by the County officials executing the Amendment. The County officials shall consult the attorney for the County (the “County Attorney”) with respect to any changes to the Amendment. The execution of the Amendment by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Amendment now before this meeting.

(c) If under the Amendment or the Act any future actions of the Company (including, without limitation, the supplementation of the exhibits thereto and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the Chairman or the Richland County Administrator (the “County Administrator”) upon affirmative resolution of the County Council to the extent permitted by law. The County officials shall consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

(d) The Amendment shall provide that the Company will invest at least an additional \$20,000,000 and create at least twenty-five (25) new full-time jobs (“New Jobs”) at the Project before the end of the Investment Period, as extended.

(e) The Amendment shall provide that if by December 31, 2018 the Company has not invested a total of at least \$50 million at the Project and created the New Jobs, and

provided written certification of same to the County Administrator, the Term Extension shall be null and void and Section 4.1 of the Fee Agreement shall be deemed so amended.

Section 4. Execution of Document. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things reasonably necessary to effect the execution and delivery of the Amendment and the County’s performance of its obligations under the Amendment.

Section 5. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 6. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 7. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

RICHLAND COUNTY COUNCIL

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

(SEAL)

Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Clerk of Council

RICHLAND COUNTY ATTORNEY’S OFFICE

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

First Reading: November 15, 2011  
Second Reading: December 6, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 13, 2011

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF RICHLAND                )

I, the undersigned, Clerk to County Council of Richland County (“County Council”), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on three separate days. At least one day passed between first and second reading and at least seven days between second and third reading. At each meeting, a quorum of the County Council was present and remained present throughout the meeting.

To the best of my knowledge, the County Council has not taken any action to repeal the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Richland County Council, South Carolina, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

**FEE AGREEMENT**

**by and between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**KOYO CORPORATION OF U.S.A.**

**Effective as of December 31, 2008**

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KOYO CORPORATION OF U.S.A.  
AND  
RICHLAND COUNTY, SOUTH CAROLINA**

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## FEE AGREEMENT

### KOYO CORPORATION OF U.S.A.

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into effective as of the Commencement Date (as defined hereinafter) by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and KOYO CORPORATION OF U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the "Company"). The County and the Company are sometimes jointly referred to in this Fee Agreement as the "parties," or severally referred to as a "party."

#### WITNESSETH:

WHEREAS, the Act, as defined herein, empowers the several counties of the State of South Carolina to enter into a fee agreement with an industry as an optional method of providing fee in lieu of property tax benefits for a project; and

WHEREAS, the County is authorized to enter into this Fee Agreement by passage of a resolution and an ordinance that summarize the fee in lieu of property tax provisions to be incorporated in a fee agreement between the Company and the County; and

WHEREAS, the Company desires to expand its existing manufacturing facility located within the County (the "Facility") through the expansion of an existing building(s) and the addition of machinery and equipment at the Facility (the "Project") and has requested the County to commit to provide certain inducements to the Company by entering into this Fee Agreement; and

WHEREAS, the parties desire to define the terms under which the Project will qualify for fee in lieu of property tax treatment.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained and the mutual benefits to be derived by the parties, the receipt and adequacy of which are acknowledged by the parties, the County and the Company agree as follows:

#### 1. DEFINITIONS

##### 1.1. *Specific Definitions*

In addition to the words and terms elsewhere defined in this Fee Agreement, the following words and terms as used herein shall have the following meanings unless the context or use indicates a different meaning or intent.

"Act" means the Fee in Lieu of Tax Simplification Act of 1997, S.C. Code § 12-44-10, *et seq.*, as amended.

*"Additional Payments"* shall have the meaning set forth in Section 4.3 of this Fee Agreement.

*"Administrative Expenses"* means the reasonable and necessary expenses incurred by the County in reviewing, implementing or amending this Fee Agreement and the Related Documents, including, without limitation, legal fees and expenses incurred by the County, but excluding the salaries and overhead of County personnel. Prior to an Event of Default, no expense shall be considered an Administrative Expense until the County has furnished to the Company a statement in writing indicating in reasonable detail the amount of such expense and the reason it has been or will be incurred. Expenses incurred in connection with a general taxpayer challenge to the validity of the Act shall not be deemed an Administrative Expense unless the Company requests the County to defend the suit on Company's behalf.

*"Authorized Company Representative"* means any person or persons at the time authorized to act on behalf of the Company including, without limitation, the president, any vice president, the secretary, and the treasurer of the Company.

*"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 the Project or a portion of the Project is first placed in service, as defined in the Act.

*"Company"* means Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina, and any surviving, resulting or transferee limited liability company, corporation, partnership or other business entity in any merger, consolidation or transfer of assets permitted under this Fee Agreement.

*"Completion Date"* means December 31, 2013, or such earlier date as may be specified by the Company pursuant to Section 3.2 hereof, or such later date, if any, that the County approves in its discretion pursuant to the extension provisions of Section 12-44-30(13) or other applicable provisions of the Act.

*"Cost" or "Cost of the Project"* means the cost to the Company of acquiring the Project, by construction, purchase, or lease, and shall be deemed to include, whether incurred prior to or after the Commencement Date: (a) costs incurred for architects, engineers, designers, landscape architects, attorneys, estimators, and other Project consultants; (b) costs incurred for labor, materials and other expenses to contractors, builders and suppliers in connection with the acquisition, construction and installation of the Project; (c) Project financing costs, (d) the cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction and installation of the Project; (e) the expenses of the Company for tests, 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 Project; (f) other costs that the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction and installation of the Project; (g) costs incurred by the Company for the acquisition and insuring of

any interest in the land upon which the Project is located; (h) costs incurred for the Project by third parties on behalf of the Company; and (i) any sums required to reimburse the Company for advances made by it for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of 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, all whether or not reimbursed by the County or by third parties, all as reflected on the Company's property tax return Form PT-300, with all attachments and schedules thereto, as filed with the Department of Revenue.

*"County"* means 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"* means the governing body of the County and its successors.

*"Default"* means an event or condition, the occurrence of which would, after the passage of any time permitted for cure or the giving of notice or both, become an Event of Default as defined in Section 7.1 hereof.

*"Department of Revenue"* means the South Carolina Department of Revenue or its successor agency.

*"Equipment"* means all equipment, machinery, furnishings, and other personal property of Company that are made part of the Project by placing it in service in the County during the Project Period, and any other property described in *Exhibit B* attached hereto and made a part hereof, including all Replacement Property that is personal property of the Company.

*"Event of Default"* means any of those events set forth in Article 7 of this Fee Agreement.

*"Fair Market Value"* shall have the meaning set forth in Section 5.1(B) of this Fee Agreement.

*"Fee Agreement"* means this Fee Agreement as originally executed and from time to time supplemented or amended as permitted herein.

*"FILOT Payments"* shall have the meaning set forth in Section 5.1 of this Fee Agreement.

*"Independent Counsel"* means an attorney duly admitted to practice law in the State of South Carolina who does not represent either party to this Agreement.

*"Inducement Resolution"* means the inducement resolution passed by County Council in which County identified the Project and agreed to consider offering the economic development incentives provided for in this Fee Agreement.

*"Ordinance"* means the ordinance of the County Council that authorizes execution and delivery of this Fee Agreement and other applicable Related Documents by the County.

"Person" means any individual, association, corporation, partnership, limited liability company, unincorporated organization, joint venture, trust, or government or agency or political subdivision thereof.

"Project" shall have the meaning set forth in the recitals hereof, as further defined herein, and shall specifically mean the Real Property and the Equipment.

"Project Period" means the five (5) year period beginning with the Commencement Date.

"Real Property" means the real property, if any, made part of the Project during the Project Period, including any leasehold improvements or other capital expenditures of the Company that qualify as economic development property under the Act, as more fully described in *Exhibit A* attached hereto, as from time to time supplemented by the Company, and all Replacement Property that is real property.

"Related Documents" means this Fee Agreement, the Ordinance, and any documents to which the County and/or the Company are parties that are reasonably required for the consummation of the transactions contemplated hereby or thereby.

"Replacement Property" means all property that is placed in service as a replacement for a portion of the Project, to the maximum extent permitted by the Act.

"State" means the State of South Carolina.

"Term" means the duration of this Fee Agreement.

## **1.2. References to Fee Agreement**

The words "hereof," "herein," "hereunder" and other words of similar import refer to this Fee Agreement.

## **2. REPRESENTATIONS AND WARRANTIES**

### **2.1. Representations and Warranties by the County**

The County warrants that:

(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 Fee Agreement and to carry out the County's obligations hereunder. Based on representations of the Company, the Project constitutes or will constitute a "project" within the meaning of the Act. By proper action by County Council, the County has been duly authorized to execute and deliver this Fee Agreement;

(B) Prior to the delivery of this Fee Agreement, the County has adopted the Inducement Resolution and enacted the Ordinance;

(C) The execution and delivery of this Fee Agreement and compliance by the County with the terms and conditions thereof, will not constitute a material breach of, or a material default under any existing law, regulation, decree, or order, or any material agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound; and

(D) To the best of its knowledge, 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 that would materially, adversely affect the validity or enforceability of this Fee Agreement.

## **2.2. Representations and Warranties by Company**

The Company represents and warrants that:

(A) The Company is a corporation organized and in good standing under the laws of the State of South Carolina and has power to enter into this Fee Agreement, and, by proper action, has been duly authorized to execute and deliver this Fee Agreement;

(B) The execution and delivery of this Fee Agreement and compliance by the Company with the terms and conditions hereof, will not constitute a material breach of, or a material default under, (i) any existing law, regulation, decree, or order, or (ii) any material term, condition, or provision of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound; and will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company that would materially restrict the Company's ability to make any payments hereunder, other than as may be permitted by this Fee Agreement;

(C) No event has occurred and no condition exists with respect to the Company that would constitute an "Event of Default" as described in Section 7.1 hereof;

(D) The Company intends to operate the Project for the purposes permitted by this Fee Agreement or the Act or other purposes expressly agreed upon in writing by the parties;

(E) The execution of this Fee Agreement by the County and the Company has been instrumental in inducing the Company to expand its Facility in the County and in the State;

(F) To the best of its knowledge, 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 that would materially and adversely affect the validity or enforceability of this Fee Agreement; and

(G) The Project constitutes or will constitute a "project" within the meaning of the Act.

### **3. CONSTRUCTION, ACQUISITION, AND PURCHASE OF PROJECT**

#### **3.1. *Construction and Acquisition of Project***

The Company shall construct and acquire the Project and shall do all other things deemed necessary by the Company in connection with the Project. The Company shall identify in writing, to the extent required by the Department of Revenue, any portion of the Project placed in service that is not then already adequately described in this Fee Agreement or supplements thereto as a portion of the Project. The Company shall maintain such records in connection with the construction or acquisition of the Project as are reasonably necessary to (i) permit ready identification thereof and (ii) confirm the date(s) on which the Project or portions of the Project were placed in service.

#### **3.2. *Completion Date***

The Completion Date(s) shall be evidenced to the County by a written statement by an Authorized Company Representative certifying the Completion Date and stating that, to the best of his knowledge and information, the acquisition or construction of the Project, or a phase thereof, has been completed and placed in service as of the stated Completion Date and shall state the total cost as of the Completion Date. The certificate of completion may state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or which may subsequently come into being.

#### **3.3. *Completion of the Project***

The Company shall cause the Project to be completed and shall pay or cause to be paid all of the Cost of the Project, provided that this shall not be deemed to preclude financing of some or all of the Cost of the Project on such terms as the Company shall determine.

#### **3.4. *Amendments to Exhibits***

The Company may supplement *Exhibit A* and *Exhibit B* from time to time provided that the supplements are consistent with the terms of this Fee Agreement and the Act and notice of such supplement is given to the County in accordance with the notice provisions of this Fee Agreement.

#### **3.5. *Minimum Investment Commitment***

Before the Completion Date, the Company will invest at least Thirty Million Dollars (\$30,000,000) in taxable property constituting part of the Project (the "Minimum Investment Threshold").

#### **3.6. *Licenses and Permits; Assistance in Obtaining***

To the extent permitted by law, the County will use its reasonable best efforts to expedite all building and construction permit applications and will use its reasonable best efforts to assist the Company in securing all other state, county and local construction, environmental and other

permits, approvals and consents which may be necessary or desirable in connection with the Project on a timely basis.

If any application is made to a governmental or other agency by the Company or the County for any permit, license, or approval to do or to perform certain things necessary for the proper performance of this Fee Agreement, the Company and the County shall execute, upon the request of the other party, such applications as may reasonably be requested or required.

#### **4. TERM, FEES AND ADDITIONAL PAYMENTS**

##### **4.1. Term**

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 twentieth (20th) 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.

##### **4.2. FILOT Payments**

The Company shall pay to the County all amounts due and payable as FILOT Payments pursuant to Section 5.1 hereof. Unless otherwise expressly provided in the Act, returns for the FILOT Payments shall be filed and FILOT Payments shall be payable at the same time, and subject to the same penalty assessments, that *ad valorem* property tax returns and tax payments for the Project would otherwise be due and payable under applicable State law and regulations in the absence of this Fee Agreement.

##### **4.3. Additional Payments**

In addition to the Fee Payments and other amounts payable under Section 5.1, the Company shall pay, as "Additional Payments," to or on behalf of the County any Administrative Expenses and any other amounts payable by the Company under this Agreement. Such Additional Payments shall be payable by the Company within thirty (30) calendar days of receipt by the Company from the County of a statement in writing indicating in reasonable detail the amount of such Additional Payments and the reason they have been incurred.

##### **4.4. Failure to Pay in a Timely Manner**

If the Company fails to make in a timely manner any of the payments required in this Article 4, 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, together with interest and penalties for which the Company is liable under applicable law thereon, along with Administrative Expenses, from the date the payment was due, at the rate per annum which is equal to the rate required by law for late payment of *ad valorem* taxes or, in the case of the FILOT Payments, an amount equal to any interest required by law for late payment of comparable *ad valorem* property taxes. In the event of any failure on the part of the Company to pay any such amounts, liabilities or

obligations, the County shall have all rights, powers and remedies provided for herein, by law, equity or otherwise, including without limitation with respect to non-payment of FILOT Payments hereunder the imposition and enforcement of a lien against the Project for tax purposes, as provided in Section 12-44-90 of the Act and the collection of Administrative Expenses.

## **5. FILOT PAYMENTS AND TAX CREDITS**

### **5.1. FILOT Payments; Calculation and Timing**

(A) The parties acknowledge that during the Term of this Fee Agreement, the Project is exempt from *ad valorem* property taxes. However, in lieu of *ad valorem* property taxes, the Company shall make twenty (20) annual FILOT Payments for each portion of the Project placed in service each year during the Project Period.

(B) The amount of FILOT Payments due and payable shall be that which would be due in *ad valorem* property taxes if the Project were subject to *ad valorem* property taxes, but using (i) an assessment ratio of six percent (6%), (ii) a millage rate of 405.5 mills (which millage rate shall remain applicable and fixed throughout the Term of this Fee Agreement), and (iii) a fair market value of the Project Property to be determined according to the Act (the "Fair Market Value").

(C) Pursuant to Section 12-44-60 of the Act, the Company may elect to include Replacement Property as part of the Project to the maximum extent permitted by the Act.

(D) Any part of the Project subject to the fee payment may be disposed, and the Fair Market Value of the Project used to calculate FILOT Payments shall be reduced by the Fair Market Value of the disposed property.

(E) If the Act, any portion of the Act, and/or the FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County intend that this Fee Agreement be reformed so as to afford the Company the maximum benefit then permitted by law. If the Project is not eligible for FILOT Payments, the Company shall be entitled to receive (i) the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time; (ii) all allowable depreciation, allowances and adjustments to Fair Market Value; and (iii) such other credits, abatements and exemptions from *ad valorem* taxes, as are allowed by law.

(F) If the Company does not meet the Minimum Investment Threshold as of the Completion Date, the Company agrees repay the County the full amount of the difference between the FILOT Payments and the amount of *ad valorem* property taxes that would have otherwise been due and payable by the Company if the Project were subject to *ad valorem* property taxes since the Commencement Date. The Company shall make any such repayment no later than ninety (90) days after the Completion Date.

## **5.2. Tax Deductions, Credits and Exemptions**

Unless otherwise precluded by the Act, applicable law or judicial decision, the Company shall be entitled to all applicable federal, state and local investment tax credits, exemptions, allowances and deductions for depreciation and diminution in value, and other similar tax relief provisions relating to the Project. At the request of the Company, the County shall do all things as are reasonably necessary or proper to confirm and receive those benefits, provided the Company shall pay the expenses incurred in that undertaking.

## **5.3. Abating FILOT Payments**

If the Project is damaged or destroyed, the subject of condemnation proceedings, or otherwise adversely impacted by theft, casualty, or other cause, and the damage, destruction, condemnation, or adverse impact reduces the Project's fair market value, the FILOT Payments shall be abated in the same manner as *ad valorem* property taxes would be abated if the Project were subject to *ad valorem* property taxes to the fullest extent allowed by the Act.

## **6. OTHER COVENANTS**

### **6.1. Use of Project**

The Company shall have the right during the Term of this Fee Agreement to use the Project, as a project, for any lawful purpose authorized by the Act. At the time of entering into this Fee Agreement, however, it is the intent of the Company to use the Project for the primary purpose of manufacturing ball and roller bearings and related activities.

### **6.2. Limitation of County's Liability**

Anything herein to the contrary notwithstanding, any obligation the County may incur hereunder, including an obligation for the payment of money, shall not be deemed to constitute a debt or general obligation of the County but shall be payable solely and exclusively from the revenues and receipts derived by the County from this Fee Agreement, and the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power.

### **6.3. No Liability of County Personnel**

All covenants, agreements and obligations of the County contained herein shall be deemed to be covenants, 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 individual capacity.

### **6.4. Transfer of Project; Financing**

Pursuant to Section 12-44-120 (A) of the Act, (a) an interest in this Fee Agreement and the Project, or (b) an equity interest or other interest in an entity with an interest in this Fee Agreement or the Project, or both, may be transferred to another entity at any time; provided that the Company shall not be released from its obligations without the County's prior written

consent. Whenever consent of the County is required under the Act or this Fee Agreement for any of the foregoing transactions, such consent shall not be unreasonably withheld.

#### **6.5. *Financing***

Financing, lending, security, sale-leaseback, assignments, leases, subleases, or similar arrangements are permitted in accordance with Sections 12-44-120 (B) and (C) of the Act. The Company shall cause the County and the Department of Revenue to be notified of a financing-related transfer of the Fee Agreement or the Project within sixty (60) days of such transfer. Such notice shall be in writing and shall include the identity of each transferee and any other information required by the Department of Revenue with any appropriate returns.

#### **6.6. *Leasing of Project***

The Company may at any time lease or sublease the Project or portions of the Project on such terms as the Company may determine in its sole discretion, provided that such terms are not inconsistent with this Fee Agreement. No lease or sublease shall reduce any of the obligations of the Company hereunder unless expressly approved in writing by the County.

#### **6.7. *Filing of Annual Report of Investment in Project***

The Company shall provide to the County a copy of the annual return to the Department of Revenue or equivalent showing the investment of the Company in the Project (currently, Form PT-300S). The County shall accord this information the same degree of confidentiality as is required for the Department of Revenue. The Company shall also make all other filings required from time to time by Section 12-44-90 of the Act.

#### **6.8. *Waiver of Statutorily Required Recapitulation***

Pursuant to Section 12-44-55(B) of the Act, the County and the Company and any Sponsors waive any and all compliance with any and all of the provisions, items, or requirements of Section 12-44-55.

#### **6.9. *Indemnification***

(a) Company shall and agrees to indemnify and save the County, its County Council members, officers, employees or agents who have worked on documents or matters arising out of or relating to the Project (each, an "Indemnified Party"), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done, in connection with documents or matters arising out of or relating to the Project during the Term, and, Company, further, releases each Indemnified Party from and shall indemnify and save each Indemnified Party harmless against and from all claims arising during the Term from (i) any condition of the Project, (ii) any breach or default on the part of Company in the performance of any of its obligations under this Fee Agreement, (iii) any act of negligence of Company or any of its agents, contractors, servants, employees, or licensees, (iv) any act of negligence of any assignee or sublessee of Company, or of any agents, contractors,

servants, employees, or licensees of any assignee or sublessee of Company, (v) any environmental violation, condition, or effect, or (vi) the administration by any Indemnified Party of this Fee Agreement or the performance by any Indemnified Party of the County's obligations hereunder. Company shall indemnify and save each Indemnified Party harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County or any other Indemnified Party, Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that each Indemnified Party shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the performance of any act requested of it by the Company, or by reason of the operation of the Project 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 an Indemnified Party should incur any such pecuniary liability, then in such event the Company shall indemnify and hold that Indemnified Party harmless against all claims by or on behalf of any person, firm, or corporation, 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, and upon notice, the Company shall defend them in any such action or proceeding.

These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

## **7. EVENTS OF DEFAULT AND REMEDIES**

### **7.1. *Events of Default by Company***

Any one or more of the following events shall constitute an "Event of Default" by Company:

(A) if default shall occur in the due and punctual payment of any Additional Payments to the County, which default shall not have been cured within thirty (30) days following receipt of written notice thereof from the County;

(B) if FILOT Payments, together with any interest or penalties thereon, shall not have been paid within the maximum time that would be permitted by law if the Project were subject to *ad valorem* property taxes;

(C) if the Company shall fail to perform or comply with any other terms of this Fee Agreement, other than those referred to in the foregoing Subsections (A) or (B), and such default shall (i) continue for thirty (30) calendar days after the County has given the Company written notice of such default, or (ii) in the case of any such default that can be cured, but cannot be cured with due diligence within such thirty (30) day period, if the Company shall fail to proceed promptly and with due diligence to cure the same within such additional period as may be

necessary to complete the curing of the same with all due diligence not to exceed ninety (90) days;

(D) if the Company shall file a voluntary petition seeking an order for relief in bankruptcy; or shall be adjudicated insolvent; or shall file any petition or answer or commence a case seeking reorganization, composition, readjustment, liquidation or similar order for relief for itself under any present or future statute, law or regulation; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company or of the Project; or shall make any general assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due;

(E) if a petition shall be filed or a case shall be commenced against the Company seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation, and shall remain undismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive); or if any trustee, receiver or liquidator of the Company or of all or any substantial part of its properties or of the Project shall be appointed without the consent or acquiescence of the Company and such appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive); or

(F) if any material representation or warranty made by the Company herein proves untrue in any material and adverse respect as of the date of making the representation or warranty.

## **7.2. Remedies on Event of Default by Company**

Upon the occurrence of any Event of Default, the County, may, at its option, take any one or more of the following actions: (i) terminate this Fee Agreement by thirty (30) days notice in writing specifying the termination date; (ii) take whatever action at law or in equity as may appear necessary or desirable to collect the sums under Article 4 then due and thereafter to become due. In all events, if the Company fails to make Fee Payments due under Section 5.1, the County shall have the same enforcement, lien, and collection rights and remedies as it would have had for the non-payment of *ad valorem* taxes.

## **7.3. Default by County**

Upon the failure of the County to perform any obligation it may have under this Fee Agreement or the Related Documents in a timely manner, or if no time for performance is specified, then within ninety (90) days following written notice thereof from the Company to the County, the Company may pursue any remedy permitted by this Fee Agreement or available by law or in equity, including, but not limited to, specific performance or suit for *mandamus*.

# **8. MISCELLANEOUS**

## **8.1. Rights and Remedies Cumulative**

Each right, power and remedy of the County or of the Company provided for in this Fee Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Fee 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 Fee 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.

**8.2. *Successors and Assigns***

The terms and provisions of this Fee Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**8.3. *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 (a) personally delivered by any entity which provides written evidence of such delivery, or (b) sent by United States first class mail, postage prepaid (in which event notice shall be deemed to occur two (2) calendar days after the date postmarked), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid (in which event notice shall be deemed to occur on the date on which delivery was accepted or rejected by the recipient). Notices, demands and requests shall be addressed as follows or to such other places as may be designated in writing by such party by proper notice to the other party.

(a) As to the County:

Richland County  
P.O. Box 192  
Columbia, South Carolina 29202  
Attention: County Administrator  
Telephone: (803) 576-2054  
Facsimile: (803) 576-2137

With a Copy to:

Parker Poe Adams & Berstein LLP  
1201 Main Street, Suite 1450  
Columbia, South Carolina 29201  
Attn: Michael E. Kozlarek  
Telephone: (803) 253-8924  
Facsimile: (803) 255-8017

(b) As to the Company:

Koyo Corporation of U.S.A.  
P.O. Drawer 967  
Orangeburg, South Carolina 29116  
Attention: J. Edward Byrd, Jr.  
Telephone: (803) 536-6200  
Facsimile: (803) 534-0599

With a Copy to:

McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
Attention: Erik P. Doerring  
Telephone: (803) 799-9800  
Facsimile: (803) 753-3277

**8.4. *Next Succeeding Business Day***

Unless otherwise expressly provided by applicable law, in any case in which the last date for action by or notice to a party falls on a Saturday, Sunday or date that is an official state or federal holiday in the place in which the address is located, then the action required or notice to be given may be made or given on the next succeeding business day with the same effect as if given as required by this Fee Agreement.

**8.5. *Applicable Law; Entire Understanding***

Except as otherwise provided by the Home Rule Act, the Act, and other applicable law, this Fee Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Fee 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

**8.6. *Severability***

If any material provision of this Fee 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 unless the effect thereof would render enforcement of the remaining provisions unconscionable.

**8.7. *Execution Disclaimer***

Notwithstanding any other provision, the County is executing this Fee Agreement as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance on representations by the Company that

this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

**8.8. *Headings and Table of Contents; References***

The headings of the Fee Agreement and any Table of Contents or Index annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. Unless otherwise clearly indicated by the context, all references in this Fee Agreement to particular Articles, Sections or Subsections are references to the designated Articles, Sections or Subsections of this Fee Agreement.

**8.9. *Multiple Counterparts***

This Fee 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.

**8.10. *Amendments***

This Fee Agreement may be amended only by a writing signed by all parties hereto.

**8.11. *Waiver***

Any party hereunder 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.

**8.12. *NON-DISCLOSURE OF COMPANY INFORMATION***

The County, and County Council, acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing processes and techniques and that any disclosure of any information relating to such processes and techniques and the economics thereof would result in substantial harm to the Company and could thereby have a significant detrimental impact on Company and its employees. Consequently, to the extent permitted by law, the County agrees to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the nature, description and type of the machinery, equipment, processes and techniques, and financial information relating thereto ("Confidential Information"), which may be obtained from the Company, its agents or representatives, except as may otherwise expressly be required by applicable law. The County, and County Council, shall not disclose and shall cause all employees, agents and representatives of the County not to disclose such Confidential Information to any person or entity other than in accordance with the terms of the Fee Agreement and as required by law.

[End of Page; Signatures on Next Page]

IN WITNESS WHEREOF, the parties have executed this Fee Agreement effective as of the Commencement Date.

**RICHLAND COUNTY, SOUTH CAROLINA**

By: Valerie Hutchinson  
~~Joseph McEachern, Chairman, County~~ Valerie Hutchinson,  
Council of Richland County, South Acting Chair  
Carolina

**ATTEST:**

Michelle Cannon-Finch  
Michelle Cannon-Finch, Clerk to County Council  
Richland County, South Carolina

Richland County Attorney's Office  
Elizabeth J. Mc  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

**KOYO CORPORATION OF U.S.A.**

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

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Fee Agreement effective as of the Commencement Date.

**RICHLAND COUNTY, SOUTH CAROLINA**

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

Joseph McEachern, Chairman, County  
Council of Richland County, South  
Carolina

**ATTEST:**

\_\_\_\_\_  
Michielle Cannon-Finch, Clerk to County Council  
Richland County, South Carolina

**KOYO CORPORATION OF U.S.A.**

By: Y. Teramoto

Name: YOICHI TERAMOTO

Title: VICE PRESIDENT

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL PROPERTY**

None.

## **EXHIBIT B**

### **DESCRIPTION OF PERSONAL PROPERTY**

All trade fixtures, furnishings, equipment, machinery, facilities and other personal property owned by Company that are purchased and used in connection with the Project.

# Richland County Council Request of Action

**Subject**

An Ordinance Amending the Fiscal Year 2011-2012 Hospitality Tax Budget to appropriate \$25,000 of Hospitality Tax Undesignated Fund Balance for a grant to the Miss S.C. Pageant **[PAGES 289-291]**

**Notes**

First Reading: December 6, 2011

Second Reading:

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_-11HR

AN ORDINANCE AMENDING THE FISCAL YEAR 2011-2012 HOSPITALITY TAX BUDGET TO APPROPRIATE \$25,000 OF HOSPITALITY TAX UNDESIGNATED FUND BALANCE FOR A GRANT TO THE MISS S.C. PAGEANT.

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. That the amount of twenty-five thousand dollars (\$25,000) be appropriated in the Hospitality Tax Fund. Therefore, the Fiscal Year 2011-2012 Hospitality Tax Annual Budget is hereby amended as follows:

HOSPITALITY TAX - REVENUE

Revenue appropriated July 1, 2011 as amended:	\$ 8,325,267
Appropriation of undesignated fund balance:	<u>25,000</u>
Total Hospitality Tax Revenue as Amended:	\$ 8,350,267

HOSPITALITY TAX - EXPENDITURES

Expenditures appropriated July 1, 2011 as amended:	\$ 8,325,267
Grant Award:	<u>25,000</u>
Total Hospitality Tax Expenditures as Amended:	\$ 8,350,267

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 enforced from and after \_\_\_\_\_, 2010.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_ DAY

OF \_\_\_\_\_, 2011

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading:  
Second Reading:  
Public Hearing:  
Third Reading:

# Richland County Council Request of Action

**Subject**

- a. Inducement Resolution for Project Dinner

# Richland County Council Request of Action

**Subject**

Caughman Creek Property [**UNDER SEPARATE COVER**]

# Richland County Council Request of Action

**Subject**

**REPORT OF THE FIRE AD HOC COMMITTEE**

# Richland County Council Request of Action

**Subject**

Must Pertain to Items Not on the Agenda