

RICHLAND COUNTY

REGULAR SESSION

AGENDA



TUESDAY DECEMBER 06, 2022

6:00 PM

COUNCIL CHAMBERS

Richland County Council 2021-2022



Deirek Pugh
District 2



Bill Malinowski
District 1



Overture Walker
District 8
Chair



Gretchen Barron
District 7



Yvonne McBride
District 3



Chakisse Newton
District 11



Allison Terracio
District 5



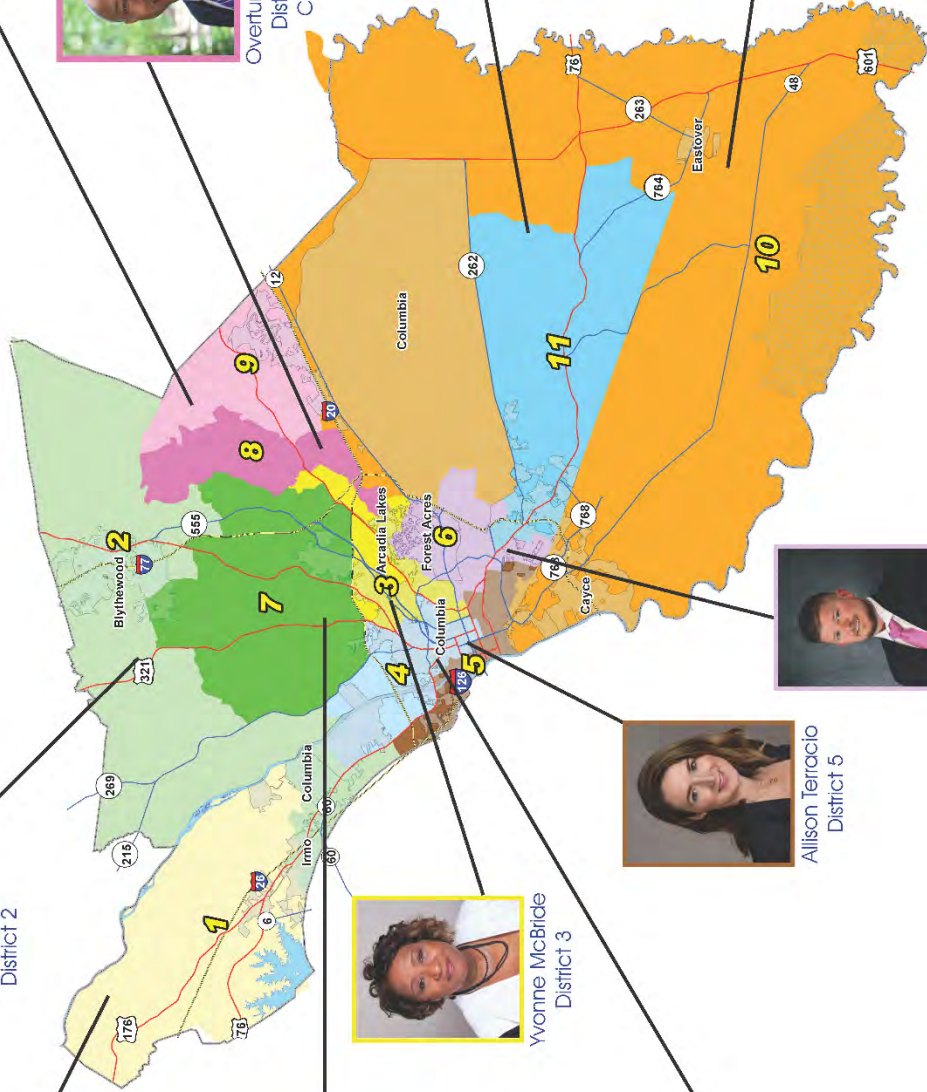
Paul Livingston
District 4



Joe Walker, III
District 6



Cheryl English
District 10





**Richland County
Regular Session**

AGENDA

December 06, 2022 - 6:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

1. **CALL TO ORDER** The Honorable Overture Walker,
Chair Richland County Council
 - a. ROLL CALL
2. **INVOCATION** The Honorable Derrek Pugh
3. **PLEDGE OF ALLEGIANCE** The Honorable Derrek Pugh
4. **APPROVAL OF MINUTES** The Honorable Overture Walker
 - a. Regular Session: November 15, 2022 [PAGES 12-20]
 - b. Zoning Public Hearing: November 17, 2022 [PAGES 21-23]
5. **ADOPTION OF AGENDA** The Honorable Overture Walker
6. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS** Patrick Wright,
County Attorney

After Council returns to open session, council may take action on any item, including any subsection of any section, listed on an executive session agenda or discussed in an executive session during a properly noticed meeting.

 - a. Comprehensive Council Rules
7. **CITIZEN'S INPUT** The Honorable Overture Walker
 - a. For Items on the Agenda Not Requiring a Public Hearing
8. **CITIZEN'S INPUT** The Honorable Overture Walker
 - a. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time.)

9. REPORT OF THE COUNTY ADMINISTRATOR
[PAGES 24-67]

Leonardo Brown,
County Administrator

a. Updates:

1. Alvin S. Glenn Detention Center Updates
2. Public Safety Salary Assessment

10. REPORT OF THE CLERK OF COUNCIL

Anette Kirylo,
Clerk of Council

11. REPORT OF THE CHAIR

The Honorable Overture Walker

12. OPEN / CLOSE PUBLIC HEARINGS

The Honorable Overture Walker

- a.** Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina, the Ritedose Corporation and TRC Propco, Inc. to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters
- b.** Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina and Epoch Properties, LLC, a company formerly known to the County as Project Coyote, to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

13. APPROVAL OF CONSENT ITEMS

- a.** 22-022MA
Jenny Reyes
RU to NC (8.63 Acres)
9200 Wilson Blvd.
TMS # R14600-03-41 [SECOND READING] [PAGES 68-69]
- b.** An Ordinance amending the Richland County Code of Ordinances; Chapter 16, Licenses and Miscellaneous Business Regulations; by the addition of Article VII, Residential Rental Property Registration and Regulations [FIRST READING] [PAGES 70-80]
- c.** Information Technology - Cybersecurity Modernization [PAGES 81-90]
- d.** Utilities Department - Shady Grove Pump Station Project Bid Award [PAGES 91-144]
- e.** Finance Department - Travel Policy Updates [PAGES 145-159]

The Honorable Overture Walker

- f. Richland County Sheriff's Department - Accreditation Manger [PAGES 160-162]
- g. County Partnership with Gateway to the Army Association Centennial Park Project [PAGES 163-175]

14. THIRD READING ITEMS

The Honorable Overture Walker

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina, the Ritedose Corporation and TRC Propco, Inc. to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [PAGES 176-209]
- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina and Epoch Properties, LLC, a company formerly known to the County as Project Coyote, to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [PAGES 210-243]

15. SECOND READING ITEMS

The Honorable Overture Walker

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina and Project Academy to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [PAGES 244-278]
- b. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; authorizing the execution and delivery of an infrastructure credit agreement by and among Richland County, South Carolina and Project Cheers to provide for certain infrastructure credits; and other related matters [PAGES 279-301]
- c. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Green Arrow; and other related matters [PAGES 302-325]
- d. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland

County, South Carolina and Project Golden Eagle to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [**PAGES 326-359**]

16. REPORT OF ECONOMIC DEVELOPMENT COMMITTEE

The Honorable Paul Livingston

- a. An Ordinance authorizing the option and acquisition of certain property located in Richland County; and other matters related hereto [FIRST READING] [**PAGES 360-376**]
- b. A Resolution approving and consenting to the sale of property by Unum Group, Unum Life Insurance Company of America, and Colonial Life & Accident Insurance Company (collectively, "Assignors") to TSO 1200 Colonial Life Blvd Retail, LP and TSO 1200 Colonial Life Blvd, LP; the partial assignment by Assignors to TSO 1200 Colonial Life Blvd Retail, LP and TSO 1200 Colonial Life Blvd, LP of two fee agreements by and between Assignors and Richland County, South Carolina; and other related matters [**PAGES 377-385**]
- c. Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the project, the increase of the phase termination date, and an update to the fee payment schedule and amount and other related matters [FIRST READING] [**PAGES 386-392**]

17. REPORT OF RULES & APPOINTMENTS COMMITTEE

The Honorable Gretchen Barron

- a. NOTIFICATION OF APPOINTMENTS
 - 1. Community Relations Council - One (1) Vacancy
 - a. Ryan Brown
 - b. Caitlin O'Neal
 - c. Franette Boyd
 - d. Quadrey Reeves
 - e. Virginia Crocker
 - f. Belinda McEachern
 - g. Sheron Harris

- h. Gethro Benn
 - i. Carol DuBose
 - j. Andrew Williamson
 - k. Tevin Spruill
 - l. Sharrell (Sambrone) Simmons
 - m. Kabrina Bass
 - n. Shandelle Simmons
 - o. Sybil Rosado
 - p. Leticia Wade
 - q. Wanda Oliver
 - r. Porscha Gatewood
 - s. Punam Patel
 - t. Christopher Clay
 - u. Keyia Stucks
 - v. Darryl Wray
2. Music Festival Commission - One (1) Vacancy
- a. Belinda McEachern
 - b. Sheron Harris
 - c. Timothy Brown
 - d. Stephen Rebl
 - e. Steven Brown
 - f. Frank Robinson
 - g. Lawrence Terry
 - h. Lynette Smith
3. Richland Library - Six (6) Vacancies:

- a. Lucia Jacobs
- b. Alyssa Daniel
- c. Chelsea Richard
- d. Carol D. Tyler
- e. Frank Robinson
- f. Nicholas Outen
- g. Mary Hahn
- h. Jonathan Robertson
- i. Torre Stocker
- j. Jabari Bodrick
- k. Lee Rambo (*Incumbent)
- l. Constantina Green
- m. William Stork (*Incumbent)
- n. Erin Johnson (*Incumbent)
- o. Anthony Morgan
- p. S. Blakely Copeland Cahoon
- q. Lashawnte McCray-Sarvis
- r. Wesley Hickman
- s. Stephanie Frazier
- t. Lady June Cole
- u. Cynthia Cox
- v. Burlean Moses
- w. Walker Caudle
- x. Ramonda L. Pollard

- 4. Township Auditorium Board - Two (2) Vacancies

- a. Alyssa Daniel
- b. Frank Robinson
- c. Deanne Wages
- d. Tonya Ahtonen
- e. Dr. Travien L. Capers

18. REPORT OF THE TRANSPORTATION AD HOC COMMITTEE

The Honorable Jesica Mackey

- a. Resurfacing Package T [PAGES 393-399]
- b. Lake Tide Summit Credit Sales [PAGES 400-403]

19. OTHER ITEMS

The Honorable Overture Walker

- a. FY23 - District 2 Hospitality Tax Allocations:
 - 1. Big Red Barn Retreat - \$ 5,000 [PAGES 404-405]
- b. FY23 - District 7 Hospitality Tax Allocations:
 - 1. Westwood High School - \$3,000 [PAGES 406-407]
- c. FY23 - District 9 Hospitality Tax Allocations:
 - 1. Divine Nine Foundation - \$10,000 [PAGES 408-409]

20. EXECUTIVE SESSION

Patrick Wright,
County Attorney

After Council returns to open session, council may take action on any item, including any subsection of any section, listed on an executive session agenda or discussed in an executive session during a properly noticed meeting.

21. MOTION PERIOD

- a. Motion to amend Council Rules - Rule 4.1 Ad Hoc Committees

The title should be changed to read Standing and Ad Hoc Committees for the heading.

Below the heading should be the wording “Standing and Ad Hoc Committees will be appointed by the Chair on an as needed basis and shall follow the same rules and procedures as Council.”
- b. Direct the Administrator to create regulations for the operation of Short Term Rentals (STRs) in unincorporated Richland

The Honorable Bill Malinowski

The Honorable Bill Malinowski

County. Those regulations would be listed as an amendment to the current Ordinance relating to residential rental property regulations similar to the Absentee Landlord Ordinance that is currently being considered. Consideration should be given to licensing, safety measures, number of occupants allowed, effects on infrastructure such as sewer and water, EMS and Law Enforcement potential response and not having them create a nuisance in the neighborhood.

22. ADJOURNMENT

The Honorable Overture Walker



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



Richland County Council
REGULAR SESSION
MINUTES
November 15, 2022 – 6:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Overture Walker, Chair; Jesica Mackey, Vice-Chair; Bill Malinowski, Derrek Pugh, Yvonne McBride, Paul Livingston, Allison Terracio, Joe Walker, Gretchen Barron, Overture Walker, Cheryl English, and Chakisse Newton

OTHERS PRESENT: Michelle Onley, Jennifer Wladischkin, Kyle Holsclaw, Judy Carter, Michael Byrd, Angela Weathersby, Justin Landy, Dale Welch, Michael Maloney, Aric Jensen, Patrick Wright, Leonardo Brown, Anette Kirylo, Sandra Haynes, Tamar Black, Susan O’Cain, Jeff Ruble, Dwight Hanna, Ashiya Myers, Abhijit Deshpande, Crayman Harvey, Stacey Hamm, Sarah Harris, Bill Peters, John Ansell, Brittney Terry-Hoyle, Chelsea Bennett, Casey White, and Lori Thomas

1. **CALL TO ORDER** – Chairman Overture Walker called the meeting to order at approximately 6:00 PM.

2. **INVOCATION** – The Invocation was led by the Honorable Cheryl English.

3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by the Honorable Cheryl English.

POINT OF PERSONAL PRIVILEGE – Ms. Terracio recognized that Representative Leon Howard and COMET Vice-Chair John Furgess were in the audience.

4. **PRESENTATION OF PROCLAMATIONS**

- a. A Proclamation Recognizing the Omicron Phi Chapter of Omega Psi Phi on their 96th Anniversary [PUGH] – Ms. Tamar Black read the proclamation into the record.

5. **APPROVAL OF MINUTES**

- a. Regular Session: November 1, 2022 – Ms. Newton noted her vote was incorrectly recorded on Item 14(c) “An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article II, County Council; Section 2-14, Compensation of Council Members; so as to reflect the new annual salary for County Council”.

Ms. Newton moved to approve the minutes as corrected, seconded by Ms. Barron.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

6. **ADOPTION OF AGENDA** – Mr. Patrick Wright, County Attorney, stated there were 2 additional items for Executive Session. The items are the opioid litigation update and the Council compensation ordinance.

Ms. Barron moved to adopt the agenda as amended, seconded by Ms. Newton.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

7. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS**

- a. Personnel Matter: Employee Evaluation Report
- b. Contractual Matter: Project Golden Eagle
- c. Opioid Litigation Update
- d. Council Compensation Ordinance Update

Mr. Pugh moved to go into Executive Session, seconded by Ms. Terracio.

In Favor: Pugh, Livingston, Terracio, Barron, O. Walker, Mackey, English, and Newton

Opposed: Malinowski, McBride, and J. Walker

The vote was in favor.

***Council went into Executive Session at approximately 6:12 PM
and came out at approximately 6:47 PM***

Ms. Barron moved to come out of Executive Session, seconded by Ms. Mackey.

No actions were taken by Council during Executive Session.

- a. Personnel Matter: Employee Evaluation Report – Received as information.
- b. Contractual Matter: Project Golden Eagle – Received as information.

8. **CITIZENS' INPUT**

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

- 1. Jamari Pratt, 1530 Harden Street, Columbia, SC 29204
- 2. Mazetta Alston, 4221 Highland Park Drive, Columbia, SC 29204
- 3. Shirley Geiger, 4202 Pine Forest Drive, Columbia, 29204
- 4. Angela McCullough, 4015 Evergreen Drive, Columbia, SC 29204
- 5. John Furgess
- 6. Representative Leon Howard, 2425 Barhamville Road, Columbia, SC 29204
- 7. Abigail Carte, 2 Jasmine Court, Beaufort, SC 29907
- 8. Jasher Cox, 1530 Harden Street, Columbia, SC 29204

Ms. Newton stated, for the record, Item 19 “Motion Period” is not going to be voted on tonight. The Chair will refer the motion to a committee, where it will be vetted before it comes back to Council for action.

CITIZENS' INPUT

- 9.
- a. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time)
 - 1. Cynthia Smith, 835 Greenville Circle, Columbia, SC 29210

10. **REPORT OF THE COUNTY ADMINISTRATOR**

- a. Updates:
 - 1. State Lobbyist – Mr. Leonardo Brown, County Administrator, stated the County is seeking a state lobbyist to assist with its efforts to gain state funding.

Ms. Barron inquired if the entity the County previously utilized would be considered for the upcoming solicitation.

Mr. Brown responded the previous entity was brought in under an emergency procurement process. We are now going through a regular procurement process. The entity is eligible to submit a bid for the services.

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November 15, 2022**

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Ms. Barron inquired if there was preferential treatment of the entity since they were our previous lobbyist.

Mr. Brown replied there is no extra benefit for them in this situation.

2. Diversity Officer – The County has advertised for a Diversity Officer.

Ms. McBride suggested changing the title from Diversity Officer to Diversity Director. In addition, to ensure there is a Diversity Office that would be equipped with a director and administrative assistant.

3. American Rescue Plan Act Grant Funding Requests – Included in the agenda packet is an overview of the total dollar amounts of ARPA funding requested.

Ms. McBride requested a more in-depth report that details geographic equity, the amount of funds requested and the number of grant applications received.

Mr. Brown replied staff will attempt to parse out the information, as the idea behind the application was to make it convenient for entities to apply.

4. Allen University Property Request – 1741 Cushman Drive – Staff has prepared an informational briefing related to the request. Included in the briefing are relevant Council minutes and the previous real estate transaction executed in 2013. In addition, the “Acquisition, Lease, and Disposal of County Real Property” policy is included. The appraisal of the property was forwarded to Council members under separate cover.

Ms. McBride stated it was her understanding, the motion indicated we would be willing to sell the property to Allen University contingent upon the soil impact study. She does not want them to spend these funds and the County decides not to sell the property or give the impression of misleading them.

Ms. McBride moved to direct the Administrator to move forward with the sale of the property to Allen University contingent upon the soil impact study, seconded by Ms. Barron.

Mr. Brown noted Allen University requested to be able to do the soil sample. The County did not require/request the sample. The university was aware that one was not contingent on the other.

Ms. McBride stated her intent is that we move forward to negotiate the sale contingent on the soil study.

Mr. Malinowski noted the agenda documentation indicates the property sale was tabled. He believes we have a process that needs to be followed before any further action is taken.

Ms. McBride stated the sale of the property was not tabled. The use of the property was what was tabled. The property was to be used for an EMS Office, but we did not have the funds available.

Mr. Malinowski noted, when it comes to disposal of property, the “Acquisition, Lease and Disposal of County Real Property” policy indicates a list has to be created and maintained by the Administrator, published for the public, and move forward from there. Prior to disposal, the Procurement Manager shall publish a notice on the County’s website and a newspaper of general circulation. In addition, the Administrator has not given his determination on how much of the property is surplus and can be sold. He does not think a motion for sale is properly before us, at this time.

Ms. McBride stated, if we gave Allen University the approval to conduct the soil study, we should have addressed all of this upfront. This is a historical black university that has done awesome things for Richland County. Now that we are in a position to help the university, as well as the community, there are all these hiccups. Her desire is to legally move forward to pursue the sale of the property.

Mr. Brown stated Allen University communicated with him they understood the soil study was a part of the process, and nothing was contingent. He never led them to believe anything otherwise. Mr. Malinowski listed several items the Council can choose to make a determination concerning the process, but the policy also says, “Any other method determined by the County Administrator, with the approval of County Council, to be commercially reasonable considering the type and location of the property involved.” He noted the policy became effective in 2019.

Mr. Wright stated the determination of whether you want to sell the property is to be determined by Council, then you would follow the process.

Ms. Barron stated, for clarification, Ms. McBride’s motion is to determine whether or not Council would like to sell the property.

Ms. McBride responded her motion was to allow the Administrator to sell the property to Allen University contingent upon the impact study.

Ms. Barron inquired if this process is the same one utilized when discussing the Economic Development project in Executive Session.

Mr. Brown replied the way this item was presented would not be considered the same process Economic Development follows. While there have been remarks and comments this would be an economic impact, what you normally have with that process is information about job creation, impact, overall value, etc. This is about the County having a property that someone wants to purchase and what the County wants to do in regard to the request.

Ms. Barron stated we have an opportunity to bring light in a dark place on Two Notch Road. Council has talked about changing the narrative about what we do in Richland County. This is a game-changer for the community.

Ms. Newton stated, for clarification, if the soil sample comes back and indicates this is not a good location, and the university decides they do not want to buy it, it would end negotiations.

Ms. McBride responded in the affirmative.

Ms. Newton inquired if the motion is to sell the property or negotiate the sale of the property.

Ms. McBride responded the motion is to allow the sale of the property to Allen University contingent upon the soil impact study. The motion would take the university out of limbo by allowing negotiations.

Ms. Newton inquired if a motion to sell the property is synonymous with opening the negotiation process.

Mr. Wright responded, at this point, negotiation would be the proper approach since there are no numbers on the table.

Ms. Newton noted she would feel more comfortable if the motion was to enter into negotiations. She does have some other considerations that have nothing to do with the merits of this project, but she would like to see them addressed. The original purpose of this property was to address the EMS Department's needs.

Ms. McBride responded she should have used the term negotiate to make it clear we would have to negotiate the costs/selling price.

Mr. Wright stated, for clarification, the motion should be to authorize the County Administrator to enter into negotiations to sell the property.

Ms. McBride amended her motion to authorize the County Administrator to enter into negotiations for the sale of the property.

Ms. Newton inquired if the contingency is still a part of the amended motion.

Ms. McBride responded in the affirmative.

Mr. Malinowski noted Mr. Brown has not indicated whether he supports selling any part of this property.

Mr. Brown indicated it is Council's decision.

Ms. Barron stated it has been a number of years since the property was purchased for EMS. It is her understanding the County does not have the funds to move forward with the EMS Office.

Mr. Brown responded, at this time, the County does not have funds allocated to move forward with building the EMS Office.

Mr. O. Walker stated the Cushman Drive property was purchased in 2013 to construct an Emergency Operations Center ("EOC). Currently, the EOC is located in the basement of the Administration Building.

Mr. Brown affirmed Mr. O. Walker's statement.

Mr. O. Walker inquired about what made the Cushman Drive property unique.

Mr. Brown responded there were a number of items, which are notated in the agenda packet, which communicated why the site would be ideal for an Emergency Operations Center.

Mr. O. Walker inquired if there are a bevy of parcels around the County that would be compatible with the needs of the EOC.

Mr. Brown responded those types of properties are more difficult to come by. Currently, we do not have another site identified.

Mr. O. Walker indicated his predecessor made a motion in 2020 to start the process of moving the EOC out of the basement of the Administration Building. It is his understanding the matter was tabled. He inquired why the matter was tabled.

Mr. Brown responded he does not know why Council decided to table the matter.

Mr. O. Walker stated Mr. Brown requested ARPA funds be utilized to construct the EOC facility.

Mr. Brown indicated one of his initial requests was for funding to be geared toward the EOC. There were decisions made that funding would go to different places, so there is currently no funding available.

Ms. McBride stated the EOC is a needed and worthy project. There are many other worthwhile projects, unfortunately, the funding was not available. It was not a priority in the Strategic Plan. The interest came back when we began discussing the sale of the property. She noted we do not know about properties available now, and we still have the property at Columbia Mall. Whenever we are able to get the funding, we would have a number of different properties to look at. She noted Council did not approve funding to continue with the EOC facility. In addition, the community members never had anyone come out and talk with them about an EOC facility being constructed on Cushman Drive.

Mr. O. Walker indicated he agrees this item is important to Allen University and the community. He struggles with whether this is the right parcel in light of the needs expressed by the Administrator. His practice has been not to force his colleagues to accept certain things in their district(s). Ms. McBride has made it clear to him in private conversations, as well as publicly tonight, the EOC is not something she or her constituents want in her district.

Ms. McBride responded she provided several properties that could be investigated. She noted the Sheriff's Department and the Coroner's Office are located in that community. Therefore, placing the EOC in this area would be too much.

Ms. Mackey stated, for clarification, the Administrator has not received an offer but will come back to Council once he is provided an offer.

Ms. McBride responded in the affirmative.

In Favor: McBride, Livingston, Terracio, Barron, O. Walker, Mackey, English, and Newton

Opposed: Malinowski and J. Walker

Recusal: Pugh (due to being an employee of Allen University)

The vote was in favor.

5. County Partnership with Gateway to the Army Association – The Gateway to the Army Association is requesting approval for Richland County to serve as the primary applicant and fiscal agent for its \$650,000 request to the SC Dept. of Veterans Affairs to complete the Centennial Park Project located at Ft. Jackson. This item will appear on the November 17, 2022, Administration & Finance Committee agenda.

b. Administrator's Nomination:

1. Fire Suppression Services – Intergovernmental Agreement Extension – Mr. Brown stated the County currently has an agreement that is set to expire. After speaking with Chief Aubrey Jenkins; Mr. Michael Byrd, Emergency Management Director; and Ms. Teresa Wilson, City Manager, we believe it best to extend the agreement utilizes one year with renewable terms. We do not want to impact ISO ratings. Currently, the County has a (2) ISO rating and the City has a (1) ISO rating.

Mr. Livingston moved to allow the County Administrator to execute a one-year extension, with two (2) one-year renewable terms, seconded by Ms. Mackey.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The vote in favor was unanimous.

2. Request for Letter of Support – State Purchase – McEntire Joint National Guard Base – Mr. Brown stated the request is to allow McEntire Joint National Guard Base to proceed with acquiring property to add to their clear zone.

Ms. Barron moved to allow McEntire Joint National Guard Base to proceed with the acquisition to expand their clear zone, seconded by Ms. Newton.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Mr. J. Walker moved to reconsider Items 10(b)(1) and (2), seconded by Ms. Terracio.

Opposed: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The motion for reconsideration failed.

Mr. Malinowski stated he heard on a local news station the County is planning on moving administrative offices to the Columbia Place Mall. The report indicated they contacted Council members, but Council members did not have a date or time. He requested an update from the Administrator.

Mr. Brown responded he is not aware of this plan.

POINT OF PERSONAL PRIVILEGE – Ms. Barron thanked staff for their assistance in facilitating the District 7 Townhall on Monday, November 14th.

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

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

13. **APPROVAL OF CONSENT ITEMS**

- a. 22-023MA, Gerald A. Lee, RS-MD to RM-MD (3.12 Acres), W/S Archie Drive, TMS# R17116-01-01 [THIRD READING]
- b. 22-016MA, John Stephenson, M-1 to RS-LD (138.5 Acres), B/S Longwood Road, TMS # R18900-02-01 [THIRD READING]
- c. 22-029MA, Douglas Putlock, NC to RS-MD (3 Acres), 1012 Bickley Road, TMS # R02415-02-01 [THIRD READING]
- d. 22-032MA, Ervin Capers, HI to RU (4.86 Acres), 208 & 217 Gatehill Road & E/S McCords Ferry Rd., TMS # R38800-02-09, R38900-03-06 and R38900-03-07 [THIRD READING]

Mr. Malinowski moved to approve Items 13(a) – (d), seconded by Ms. Newton.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider Consent Items a, b, c, and d, seconded by Mr. Malinowski.

Opposed: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The motion for reconsideration failed.

14. **SECOND READING ITEMS**

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina, and Project Wellness to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters – Mr. J. Walker moved to approve this item, seconded by Ms. Barron.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

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15. **REPORT OF DEVELOPMENT AND SERVICES COMMITTEE**

- a. An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation [FIRST READING] – Mr. Pugh moved to refer this item back to the D&S Committee, seconded by Mr. J. Walker.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The vote in favor was unanimous.

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

- a. Department of Public Works – Solid Waste & Recycling – Articulated Dump Truck – Mr. Malinowski stated this item was forwarded to Council without a recommendation. He noted the Fleet Manager, after considering all of the issues, recommends purchasing the Caterpillar.

Mr. Livingston inquired as to the recommendation of staff.

Mr. Brown responded staff recommends the Caterpillar equipment, based on their ability to immediately provide the equipment.

Mr. Livingston moved to support the staff's recommendation, seconded by Mr. J. Walker.

In Favor: Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

Opposed: Malinowski

The vote was in favor.

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

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The vote in favor was unanimous.

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

- a. Committing to negotiate a fee-in-lieu of ad valorem taxes agreement between Richland County and Project Academy; identifying the project, and other matters related thereto – Mr. Livingston stated the committee recommended approval of this item.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina, and Project Academy to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [FIRST READING] – Mr. Livingston stated the committee recommended approval of this item.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

- c. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Green Arrow; and other related matters [FIRST READING] – Mr. Livingston stated the committee recommended approval of this item.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

- d. Committing to negotiate a fee-in-lieu of ad valorem taxes agreement between Richland County and Project Golden Eagle; identifying the project, and other matters related thereto – Mr. Livingston stated the committee recommended approval of this item.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

- e. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina, and Project Golden Eagle to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [FIRST READING BY TITLE ONLY] – Mr. Livingston stated the committee recommended approval of this item.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

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

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

18. **EXECUTIVE SESSION**

- a. Opioid Litigation Update
b. Council Compensation Ordinance Update

Ms. Barron moved to go into Executive Session, seconded by Ms. Terracio.

In Favor: Pugh, McBride, Livingston, Terracio, Barron, O. Walker, Mackey, English, and Newton

Opposed: Malinowski and J. Walker

The vote was in favor.

*Council went into Executive Session at approximately 8:09 PM
and came out at approximately 8:17 PM*

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

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

The vote in favor was unanimous.

No actions were taken by Council during Executive Session.

- a. Opioid Litigation Update – Received as information.
b. Council Compensation Ordinance Update – Received as information.

19. **MOTION PERIOD**

- a. Direct the Administrator to work with Legal to create an ordinance that restricts Airbnb rentals to properties in the General Commercial (GC) zoning categories only. Penalties for violations should be included. [MALINOWSKI] – The Chair referred this item to the Planning Commission.

20. **ADJOURNMENT** – Mr. J. Walker moved to adjourn the meeting, seconded by Ms. Newton.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English, and Newton

**Regular Session
November 15, 2022**

-8-

The vote in favor was unanimous.

The meeting adjourned at approximately 8:21 PM.



Richland County Council
Zoning Public Hearing
MINUTES
November 17, 2022 – 7:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Bill Malinowski, Derrek Pugh, Paul Livingston, Allison Terracio, Gretchen Barron, Overture Walker, Cheryl English, and Chakisse Newton.

OTHERS PRESENT: Geo Price, Angela Weathersby, Justin Landy, Kyle Holsclaw, Anette Kirylo, Patrick Wright, Michelle Onley, Tamar Black and Tina Davis-Gooden, Andrea Hannah-Dennis.

II. **CALL TO ORDER** – Chairman Overture Walker called the meeting to order at approximately 7:00 PM. He noted for the record Vice-Chairwoman Mackey is not in attendance due to a family engagement. Councilman Joe Walker and Councilwoman McBride are attending via zoom however due to the Council Rules they will not be able to actively participate.

III. **ADDITIONS/DELETIONS TO THE AGENDA**- There were no additions/deletions to the agenda.

IV. **ADOPTION OF AGENDA** – Ms. Barron moved to adopt the agenda as distributed, seconded by Ms. Terracio.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton.

Not Present: McBride, J. Walker, and Mackey.

The vote in favor was unanimous.

V. **OPEN PUBLIC HEARING**

a. **MAP AMENDMENTS [ACTION]**

1. Case # 22-017MA
Chandler Roy
HI to RS-MD (121.52 Acres)
E/S Farrow Road
TMS# R17600-02-32 & R17600-02-46

Mr. Geo Price, Zoning Administrator, noted the applicant has requested a withdrawal of the re-zoning request.

Mr. Pugh moved to accept the applicant's withdrawal, seconded by Mr. Malinowski.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton

Not Present: McBride, J. Walker, and Mackey

The vote in favor was unanimous.

2. Case # 22-019MA
Bill Theus
PUD to PUD (55.2 Acres)
Wilson Boulevard
TMS# R14900-04-01, R14800-02-22, R14800-02-32, R14800-02-27, R14800-02-35
and R14800-02-29

Mr. Price indicated staff is requesting for this item be deferred.

Ms. Barron noted she held a town hall meeting. During the town hall, we learned more about the development, and staff realized how effective these town halls can be.

Ms. Barron moved to defer the public hearing and this item to the December Zoning Public Hearing, seconded by Mr. Malinowski.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton.

Not Present: McBride, J. Walker, and Mackey.

The vote in favor of deferral was unanimous.

3. Case # 22-022MA
Jenny Reyes
RU to NC (8.63 Acres)
9200 Wilson Boulevard
TMS# R14600-03-41

Mr. O. Walker opened the floor to the public hearing.

No one signed up to speak.

The floor to the public hearing was closed.

Ms. Barron moved to approve the rezoning request, seconded by Mr. Malinowski.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton.

Not Present: McBride, J. Walker, and Mackey.

The vote in favor was unanimous.

4. Case # 22-033MA
Hyconic Holding, LLC
RU to RM-MD (49.98 Acres)
10013 Wilson Blvd.
TMS# R14800-05-17

Mr. O. Walker opened the floor to the public hearing.

1. Ms. Dawne Bodenhamer, 100 Sterling Lane, Laurinburg, NC 28352
2. Ms. Janet Robinson, 1170 Hollis Pond Road, Blythewood, SC 29016
3. Mr. Rhett Kelly, 117 Kaminer Mill Court, Lexington, SC 29072
4. Mr. Robin Fugate, 10101 Wilson Boulevard, Blythewood, SC 29016
5. Mr. Robert Crossland, 9953 Wilson Boulevard, Blythewood, SC 29016
6. Mr. Landon Sahagun, 4 Idlebrook Circle, Columbia, SC 29229
7. Mr. Thomas Robertson, 117 Deer Walk, Blythewood, SC 29016
8. Mr. Kevin Williams, 1130 Parade Ground Court Clover, SC 29710

The floor to the public hearing was closed.

Ms. Barron stated she has formally requested, through our State Senator, a traffic and environmental study for three specific areas in District 7. She does not know when they

are going to start or finish these studies. She believes it is a priority due to the growth in the area. We need to make sure when we build, we build with the future in mind, and we build smart. She noted it is not automatic this property will go to R-3.

Ms. Barron moved to deny the rezoning request, seconded by Mr. Pugh.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton.

Not Present: McBride, J. Walker, and Mackey

The vote to deny was unanimous.

5. Case # 22-034MA
Larry D. Rumph
OI to RC (2 Acres)
8442 Old Percival Road
TMS# R22602-02-02

Mr. O. Walker opened the floor to the public hearing.

1. Mr. Larry Rumph, 8436 Old Percival Road, Columbia, SC 29223

The floor to the public hearing was closed.

Ms. English moved to defer this item until the December Zoning Public Hearing, seconded by Ms. Barron.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton.

Not Present: McBride, J. Walker, and Mackey.

The vote in favor was unanimous.

6. Case # 22-035MA
Samantha Kozlowski
RS-MD to GC (3.98 Acres)
NX2630 Clemson Road
TMS# R20200-01-39

Mr. O. Walker opened the floor to the public hearing.

1. Ms. Samantha Kozlowski, 1695 Twelve Mile Road, Berkley, MI 48072

The floor to the public hearing was closed.

Ms. Barron moved to deny the rezoning request, seconded by Mr. Pugh.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton.

Not Present: McBride, J. Walker, and Mackey.

The vote in favor was unanimous.

VI. **ADJOURNMENT** – Ms. English moved, to adjourn the meeting, seconded by Ms. Barron.

In Favor: Malinowski, Pugh, Livingston, Terracio, Barron, O. Walker, English, and Newton

Not Present: McBride, J. Walker, and Mackey

The vote in favor was unanimous.

The meeting adjourned at approximately 7:39 PM.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Report of the County Administrator

Regular Session - December 06, 2022

UPDATES FOR CONSIDERATION:

1. **Alvin S. Glenn Detention Center Updates**
2. **Public Safety Salary Assessment**

ADMINISTRATOR'S NOMINATION:

Items in this section require action that may prejudice the County's interest in a discernable way (i.e. time sensitive, exigent, or of immediate importance)

There are no items for nomination.

ATTACHMENTS:

1. PowerPoint Presentation – Detention Center Ad Hoc Committee Meeting – November 17, 2022
2. Public Safety Salary Assessment



ALVIN S. GLENN OVERVIEW & IMPROVEMENT PLAN

Crayman J Harvey, MS, Interim Director

OVERVIEW

- The Alvin S. Glenn Detention Center (ASGDC) is responsible for the incarceration of adult and juvenile offenders in a fashion that provides for the protection of public and institutional safety as well as the delivery of a constitutional level of service to those incarcerated. ASGDC has approximately 279 employees.
- In light of the several serious security incidents at ASGDC, the department has begun a review and improvement plan of the following key concerns. Significant, swift changes are necessary for the betterment of the employees who work at ASGDC and the detainees at the facility.



KEY CONCERNS

- With resources and support from the County Administrator, Detention Center leadership began an aggressive improvement plan for the following key concerns:
 - Staffing Updates
 - Hiring Initiatives
 - Remaining Personnel Needs
 - Facility Updates
 - Medical Provider
 - Medical Health Initiatives
 - Food Provider
 - Kitchen Enhancements
 - Telecommunications Provider
 - Technology Initiatives
 - Remaining Technology Needs
 - Officer/Detainee Safety, Security and Wellness Initiatives
 - Physical Structure Enhancements (Dormitories)



HIRING INITIATIVES

- To improve the recruiting process for detention officers/staff, ASGDC has and is willing to use various tools to attract candidates such as radio ads, job fair participation, employment websites, job placement organizations as well as conducting on-site weekend interviews.
- The County Administrator recognized the importance of retention and recruiting and has implemented the following strategies:
 - Salary increase for entry level officers
 - Referral Bonus
 - Retention Bonus
 - Overtime option remains to ensure appropriate staffing levels



HIRING EVENT

9 a.m. - 4 p.m.
Saturday, Oct. 29

Alvin S. Glenn Detention Center
201 John Mark Dial Drive, Columbia

You must be at least 21 to apply.

Qualifications include:

- Proof of high school diploma/GED
- S.C. driver's license
- Social Security card
- 10-year driving history
- Drug screening

Interviews will be conducted upon passing a background check.

FOR MORE INFO

Contact the Recruiting Division:
803-576-3216 or 803-576-3231



BONUS PAY

\$10,000*

*FOR NEW HIRES:
\$5,000 PAID OVER 12 MONTHS

- \$1,000 in first payroll
- \$500 after 90 days
- \$1,000 after 6 months
- \$500 after 9 months
- \$2,000 after 12 months (with certification)

*RETENTION:
\$5,000 PAID OVER 12 MONTHS (AFTER SERVICE ANNIVERSARY)

- \$1,000 in first payroll
- \$500 after 90 days
- \$1,000 after 6 months
- \$500 after 9 months
- \$2,000 after 12 months

REFERRAL BONUS ALSO AVAILABLE

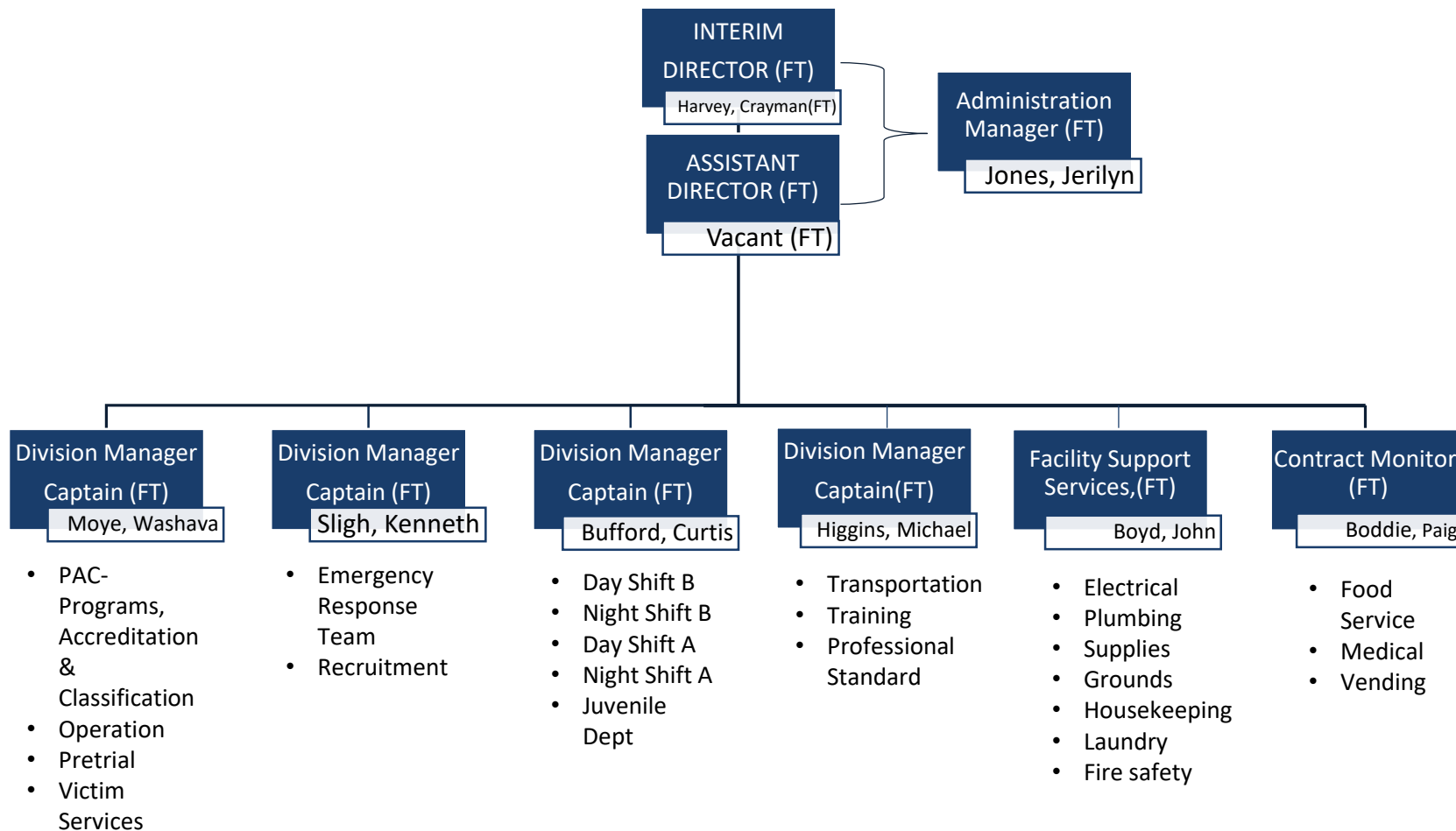
CERTIFIED OFFICERS' MINIMUM SALARY

\$40,000



Alvin S. Glenn Detention Center Organizational Chart

As of: 10/20/2022



STAFFING CHART

INSTITUTION :		<i>Alvin S Glenn Detention Center</i>						DATE :		<i>OCTOBER -20-2022</i>	
POST	CURRENT	# OF DAYS POSTED	OFFICERS PER SHIFT					TOTAL STAFF PER 24 HRS	REC RELIEF FACTOR	REQUIRED # OF FTES	
			8 HR 1st	8 HR 2nd	8 HR 3rd	12 HR DAY	12 HR NIGHT				
OUTSIDE PERIMETER OFFICER	0	7				1	1	2	2.54	5.08	
FRONT LOBBY OFFICER	0	7				2	2	4	2.54	10.16	
CONTROL ROOM OFFICER	1	7				1	1	2	2.54	5.08	
TRANSPORTATION OFFICER	2	5	24					24	1.00	24.00	
PROPERTY CONTROL OFFICER	0	7				1	1	2	2.54	5.08	
EDUCATION OFFICER	0	5	1					1	1.00	1.00	
PROGRAM OFFICER	0	5	1					1	1.00	1.00	
CLASSIFICATION OFFICER	2	7				2	2	4	1.00	4.00	
ATTORNEY OFFICER	0	5				1	1	2	1.00	2.00	
CAFETERIA OFFICER	0	7				1		1	2.54	2.54	
HOUSING UNIT OFFICER (18 UNITS)	82	7				36	36	72	2.54	182.88	
SUPERVISORS											
CAPTAIN-DIVISION MANAGER(S)	4	5	4					4	1.00	4.00	
LIEUTENANTS-WATCH COMMANDERS	4	7				1	1	2	2.54	5.08	
SERGEANT-ASSISTANT WATCH COMMANDERS	20	7				5	5	10	2.54	25.40	
LIEUTENANT-TRANSPORTATION	0	7	1					1	1.00	1.00	
SERGEANT-T-TRANSPORTATION	1	7	3					3	2.54	7.62	
LIEUTENANT-RECRUITMENT	1	7	1					1	1.00	1.00	
SERGEANT-RECRUITMENT	1	5	1					1	1.00	1.00	
LIEUTENANT-PROGRAMS/ACCEDICATION	1	5	1					1	1.00	1.00	
LIEUTENANT-TRAINING	1	5	1					1	1.00	1.00	
LIEUTENANT-PAC	1	5	1					1	1.00	1.00	
SERGEANT-PAC	1	7				1	1	2	2.54	5.08	
SERGEANT-ATTORNEY	0	7				1	1	2	2.54	5.08	
LIEUTENANT-JUVENILE	1	5	1						1.00	1.00	
SERGEANT-JUVENILE	2	7				1	1	2	2.54	5.08	
TOTAL SECURITY STAFF	125									307.16	



MEDICAL PROVIDER

- Following the departure of the former medical provider, WellPath, on June 12, 2022, the department acquired Advance Correctional Healthcare (ACH).
- ACH is a two-fold medical provider that provides medical and mental health services. Such services aid the detention center in ensuring detainees receive the best comprehensive medical care while in custody. The provided mental health service has significantly changed the method and philosophy of how to manage mentally ill detainees.



FOOD PROVIDER

- Summit Food Service has been with the department for 16 years. Most recently, the food service provider was audited by DHEC and received an unsatisfactory grade.
- After implementation of a corrective action plan, the department received a satisfactory grade. During execution of the corrective plan, staff determined the kitchen requires a complete overhaul due to wear and tear.



KITCHEN DOOR REPLACEMENT

Before



After



KITCHEN CURRENT DEFICIENCIES

MISSING CONNECTIONS TO SINK



MISSING TILE



KITCHEN CURRENT DEFICIENCIES CONTINUED

TILE MISSING



OLD EQUIPMENT REMOVAL



KITCHEN CURRENT DEFICIENCIES CONTINUED



Floor in Need of Replacement



KITCHEN CURRENT DEFICIENCIES CONTINUED



TELECOMMUNICATION PROVIDER

- The department switched detainee communication providers from Amtel to ViaPath.
- Compared to the former communication contractor, ViaPath is able to provide tablets which offer beneficial services such as:
 - Attorneys can meet with their clients from remote locations
 - Families can meet with detainees from remote locations
 - Detainees can access the Law Library
 - Recreation services (i.e. movies, games, reading materials)



TECHNOLOGY INITIATIVES

- After careful review of the facility's operation, leadership determined technology improvements were required to improve efficiency:
 - Use of a body scanner for all employees before entering the most secure area of the facility.
 - Software to store policies & training materials ("PowerDms")
- In spite of improvement, two additional key security pieces of technology are required:
 - The current camera system is outdated, and camera coverage is not sufficient.
 - The internally created jail management system cannot support the demands of the department. Necessary data cannot be retrieved to assist with legal matters.



OFFICER/DETAINEE SAFETY; SECURITY WELLNESS INITIATIVES

- To reduce incidents among detainees, assaults, fights, and sexual misconduct, ASGDC strategically evaluated the current population within all housing areas and identified that the classification system needed revision.
- According to state standards, the classification system/plan is designed to properly assign detainees/inmates to classification categories for placement in housing and other detention specific functional situations based upon consideration of sex; age; sentenced/non-sentenced; criminal sophistication; seriousness of crime; assaultive/non-assaultive behavior; medical rules; and other applicable criteria.



OFFICER/DETAINEE SAFETY, SECURITY WELLNESS INITIATIVES

- The revised system, along with transitioning detainees to the most appropriate housing area, decreases staff fear and enhances safety.
- Changes include:
 - Established a mental health unit for females & males
 - Previously, males were housed in Special Housing Unit (SHU), and females remained in female general population
 - Established a medical unit
 - Previously, males were housed in SHU
 - Reassigned the vulnerable population (older detainees) to a more stable and safer environment to reduce victimization
 - Established a step-down unit for the most aggressive detainees
 - This unit allows the most violent detainees to receive the same services as other detainees (i.e. recreation and reduction of isolation)
 - Previously, detainees were housed in SHU on “lockdown” status, keeping them in their rooms typically 23 hours a day.
 - Reduced detainee population within the most aggressive phase/units.



OFFICER/DETAINEE SAFETY, SECURITY WELLNESS INITIATIVES

- Emphasis was placed on detainees' improved care via use of jail management best practices.
- Previously, detainees did not have adequate recreation equipment and/or scheduled time periods that allowed indoor/outdoor exercise.
- To combat negative behaviors and increase detainee/inmate improved care, management incorporated several tools to aid security staff. Housing units received:
 - Outdoor half-court basketball goals
 - Tablets for recreation (i.e. games, movies) and/or family/attorney visitation
 - Hair clippers
- These tools are incentive based and are available if detainee behavior meets disciplinary criteria
- Staff has consulted with the former SCDC Deputy Director of Programs regarding programs and volunteers for ASGDC



PHYSICAL STRUCTURE ENHANCEMENTS

- Following reassessment of the facility's infrastructure, survey of the facility for potential vulnerabilities, and feedback from security staff and outside constituents, ASGDC leadership is committed to improving the physical security of the facility and ensuring a safe working environment. These changes will include:
 - Remodeling ASGDC Kitchen
 - Kitchen cooler & freezer door replacement
 - Installation of heavy Lexan break-resistant glass throughout the facility
 - Utilized for constant detainee observation
 - Installation of service ports (flaps) to general population unit/rooms
 - Utilized for quickly isolating/containing detainees in their designated room
 - Will reduce the usage of a lock down unit, previously known as Special Housing Unit (SHU)
 - Remodeling Special Housing Unit
 - Remodeling All Units (First two units: SHU & Yankee)
 - Units will receive a complete overhaul of up-to-date standards (i.e. plumbing, painting, installation of correctional equipment (toilets & sinks), electrical light fixtures).



PHYSICAL STRUCTURE ENHANCEMENTS

- To ensure the safety of all employees and detainees, ASGDC strengthened security practices to eliminate the introduction of contraband into the facility. Practices include:
 - The use of a body scanner for all employees before entering the most secure area of the facility
 - Increased facility “shakedowns”
 - Acquired more security equipment (handcuffs, leg-irons, etc.)
 - Reviewing 364 policies
 - Software to store policies & training materials (“PowerDms”)
 - Created an Accreditation committee with American Correctional Association facility auditors and quality assurance employees who review, update, and ensure best practices are incorporated within the facility.
 - Created a “tip line”
 - Posted signage throughout facility regarding “No Smoking” areas & contraband
 - Increased collaboration with Richland County Sheriff Department



PHYSICAL STRUCTURE ENHANCEMENTS



DORMITORIES SINK/TOILET-REPLACEMENT



SUMMARY

- ASGDC has seen significant improvements and changes over these past couple of months. New staff are being added to the ranks of the department which enhances the safety of the facility.
- Though the improvements are significant, challenges still remain. The Richland County Sheriff Department (RCSD) has advised ASGDC it will cease transporting detainees to Magistrate's Court. This significant change adds an additional burden to ASGDC. Security staffing remains low, so this change requires additional resources to manage the demand and/or requirements of the courts. Resources that will allow security staff to safely perform the additional duty include:
 - Additional officers
 - Additional security equipment (i.e. weapons, protective vests)
 - Additional secure vehicles



SUMMARY

- Incorporating best management practices for the juvenile population is another challenge. In contrast to the Department of Juvenile Justice, the current juvenile philosophy coupled with available resources is punitive.
- Though the population is low and fluid, the current philosophy does not fit the national best practice of therapeutic versus punitive juvenile detention. ASGDC, with the aid of the County's Public Defender, is transitioning toward a less restrictive philosophy with its youth.
- Some changes include:
 - Reduction of room confinement
 - Youth are receiving more time outside their rooms
 - Outside Recreation
 - Youth are receiving weekly outside recreation time
 - Indoor recreation will consist of board/video games
 - Tablets
 - Will incorporate opportunities for each youth to watch movies, play games, and/or video chat with family
 - Additional food
 - Youth will receive an extra meal (bagged lunch) after dinner



SUMMARY

- To continue its pursuit of national best practices for its juvenile population, ASGDC needs additional staff and resources:
 - Program manager (to manage day-to-day operations)
 - Social worker (liaison for the youth and outside parties while providing clinical services)
 - Activity therapist (will provide a range of activities and programs under the guideline of improving cognitive, emotional, and social behavior)



CLOSING & THANK YOU

In closing, I would like to thank Mr. Brown and his team for assisting ASGDC with its current improvements and those to follow. As previously stated, the constant support and resources will enhance the detention center.

I would also like to applaud this body of legislation for allowing my team and me to report on the conditions of ASGDC. I believe with the support from the Council and the County Administrator, ASGDC's future will be bright, and the staff will continue to be proud Richland County employees.



RICHLAND COUNTY PUBLIC SAFETY SALARY ASSESSMENT

December 6, 2022



FY 2023 CONSIDERATIONS

- Five public safety departments have experienced hiring and retention difficulties relative to compensation.
- Sheriff - 27 vacancies for deputies of 409 positions
- Solicitor - 7 vacancies for attorneys of 33 positions
- Public Defender - 11 vacancies for attorneys of 41 positions
- CASA - 2 vacancies for attorneys of 4 positions
- EMS - 27 vacancies for paramedics of 91 positions
- After working together, we can address these issues WITHIN the departments' salary budget.
- This is possible by the use of vacant positions and COLA increases that were not used because of turnover.



STATISTICAL COMPARISON OF SIMILAR COUNTIES SHERIFF DEPARTMENTS

	County Total Population	Municipal Population	Unincorporated Population	Annual Budget	Cost per Constituent	Budget Includes Detention	Base Salary For Deputy I	Dept FT Positions	Positions per 1,000 Population
Richland	419,051	153,943	265,109	54,678,976	206.25	No	35,431	537	2.026
Greenville	533,834	165,897	367,937	63,570,483	172.78	No	45,749	743	2.019
Horry**	365,579	80,739	284,840	48,589,037	170.58	No	45,511	399	1.401
Charleston	413,024	129,896	283,128	53,999,998	190.73	No	41,038	376	1.328
Lexington	300,137	65,820	234,318	32,461,918	138.54	No	43,848	293	1.250
York	288,595	126,899	161,696	33,440,516	206.81	No	42,000	234	1.447
Berkley	235,987	118,568	117,419	21,436,216	182.56	No	50,681	224	1.908
Average*					177.00		44,805	409	1.489

*Average does not include Richland County

**Horry County has 96 Sheriff employees and 303 Police Department Employees



COMPARISON FOR SOLICITORS ATTORNEYS

County	Job Title	Job Code	Hours	Staff Totals	Minimum	Maximum	Mid-Point
Richland	ASST SOLICITOR	1808	37.50	33	52,483	89,887	69,911
Aiken	ASST SOLICITOR	1808	40.00	12	56,924	79,693	68,308
Berkeley	ASST SOLICITOR	1808	37.50	12	62,319	99,710	81,014
Charleston	ASST SOLICITOR	1808	40.00	23	58,864	101,254	80,059
Dorchester	ASST SOLICITOR	1808	40.00	15	50,000	105,000	77,500
Edgefield	ASST SOLICITOR	1808	40.00	6	52,518	79,239	65,878
Florence	ASST SOLICITOR	1808	40.00	4	47,785	73,271	60,528
Greenville	ASST SOLICITOR	1808	37.50	6	65,712	100,460	83,086
Lee	ASST SOLICITOR	1808	40.00	1	43,000	56,500	49,750
Oconee	ASST SOLICITOR	1808	37.50	2	54,489	89,357	71,923
Spartanburg	ASST SOLICITOR	1808	37.50	33	76,264	122,022	99,143
Sumter	ASST SOLICITOR	1808	37.50	15	44,284	107,603	75,944
York	ASST SOLICITOR	1808	40.00	17	53,204	74,234	63,719
				Average	55,447	90,695	73,071

Average does not include Richland County



COMPARISON FOR PUBLIC DEFENDER ATTORNEYS

<u>County</u>	<u>Job Title</u>	<u>Job Code</u>	<u>Hours</u>	<u>Staff Totals</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Mid-Point</u>
Richland	ASST PUBLIC DEFENDER	1808	37.50	41	52,483	89,887	69,911
Aiken	ASST PUBLIC DEFENDER	1806	40.00	7	50,020	70,028	60,024
Beaufort	ASST PUBLIC DEFENDER	1806	40.00	20	55,000	75,000	65,000
Charleston	ASST PUBLIC DEFENDER	1806	40.00	28	58,864	101,254	80,059
Florence	ASST PUBLIC DEFENDER	1806	40.00	9	51,039	78,298	64,668
Greenville	ASST PUBLIC DEFENDER	1806	37.50	10	65,712	100,460	83,086
Spartanburg	ASST PUBLIC DEFENDER	1806	37.50	19	71,275	114,039	92,657
Sumter	ASST PUBLIC DEFENDER	1806	37.50	11	44,284	107,603	75,944
York	ASST PUBLIC DEFENDER	1806	40.00	13	53,024	74,234	63,629
				Average	56,152	90,115	73,133

Average does not include Richland County



RECOMMENDED INCREASES

- Sheriff – Sworn Non-Exempt Only Earning Less than \$55,000
 - Of 409 positions 357 would receive increases between \$80 and \$4,999 averaging \$2,215
 - Deputy I Starting Salary (Certified) would increase to \$45,000
 - Deputy III Starting Salary would increase to \$36,508
- Solicitor – Attorneys Only
 - Entry Attorney Salary would increase to \$62,000 from \$52,483
 - Staggered increases by position and years of service
- Public Defender – Attorneys Only
 - Entry Attorney Salary would increase to \$62,000 from \$52,483
 - Staggered increases by position and years of service
- CASA – Attorney’s Only
 - Entry Attorney Salary would increase to \$62,000 from \$52,483
- EMS – Paramedics Only
 - Salary increases averaging 4.75% would be implemented



FUTURE IMPACTS

- FY 2023 is half year but increases would recur as a full year in FY 2024

FY 2024 Impacts

Sheriff	\$1,100,000
Solicitor	\$ 394,000
Public Defender	\$ 489,400
CASA	\$ 47,700
EMS	<u>\$ 426,500</u>
Total	\$2,457,600



OPTIONS FOR FUTURE FUNDING

Option A

- 5% reduction in operating expenditures County wide

Option B

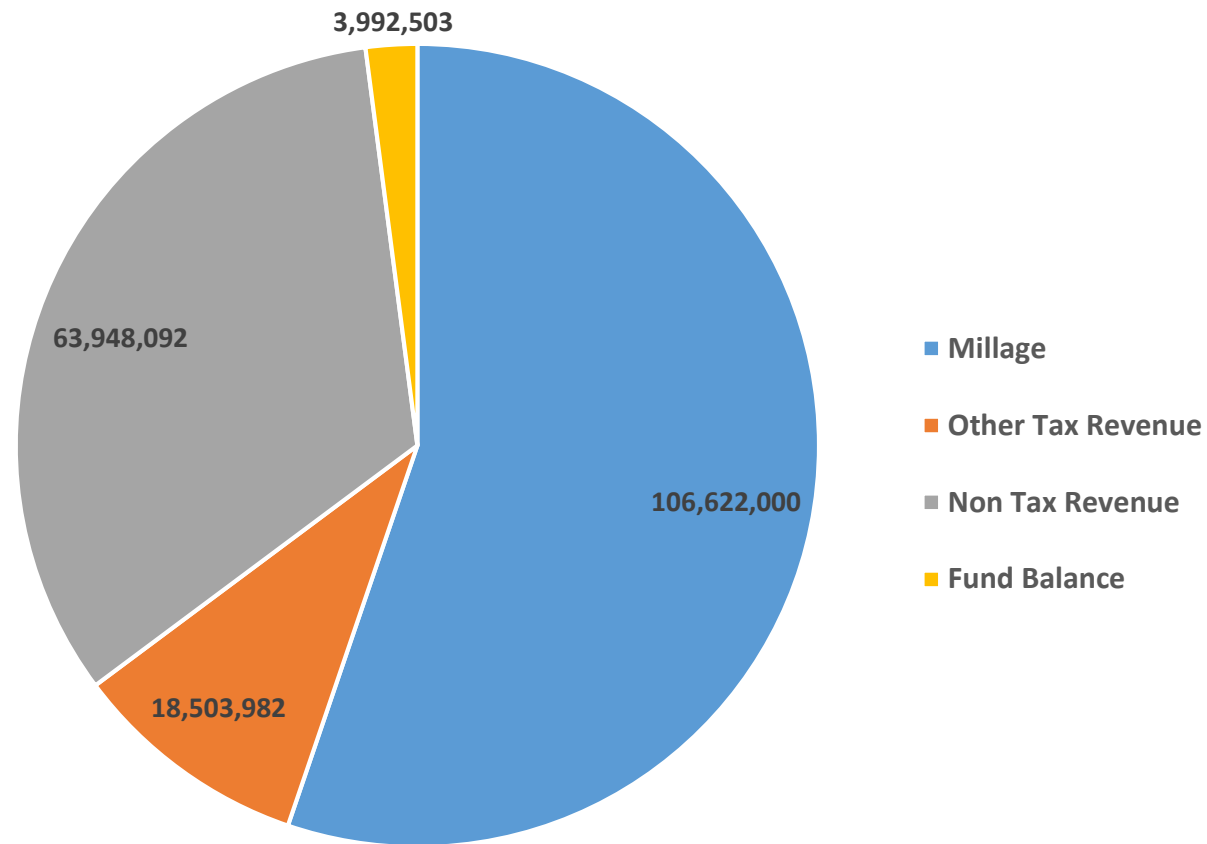
- Allocate \$2,457,800 from ARPA Public Safety funds

Option C

- Increase tax collections by 1.5 mills



FY 2023 BUDGET GENERAL FUND FUNDING SOURCE ALLOCATION



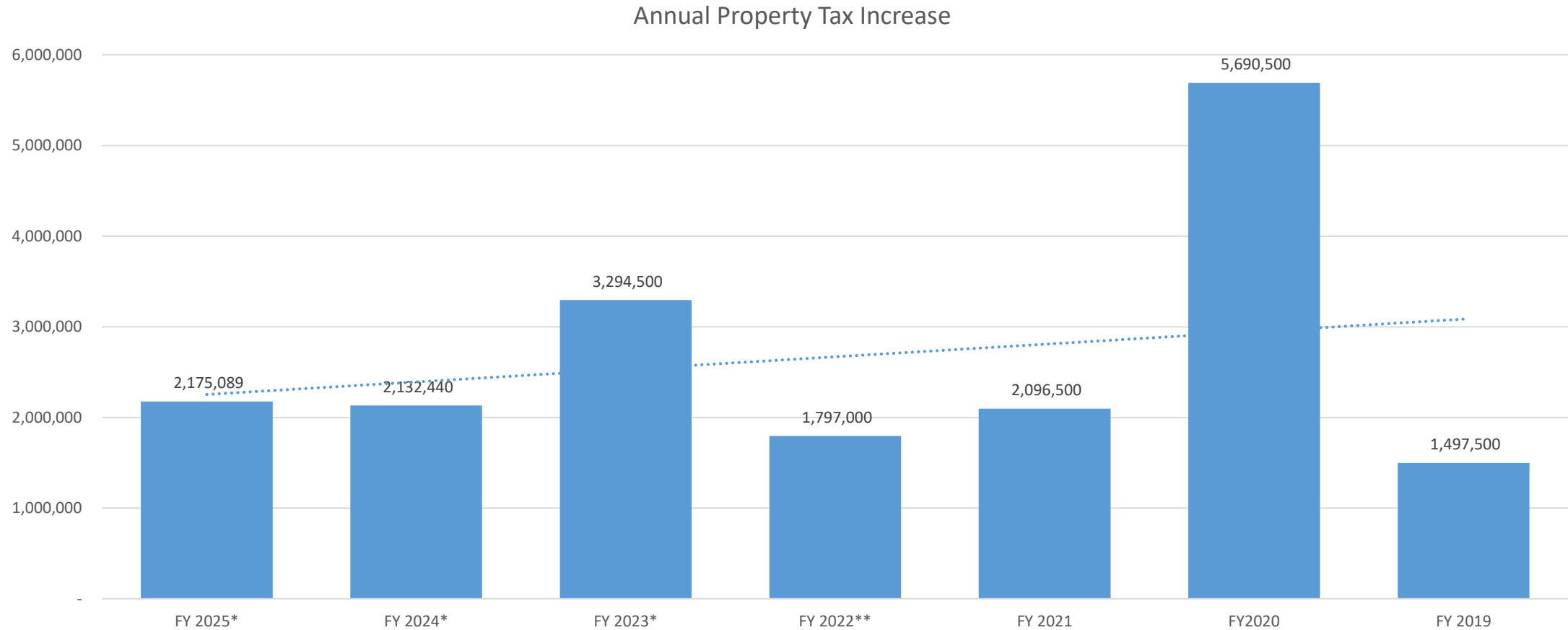
PROPERTY TAX REVENUE PROJECTED COLLECTIONS



General Fund Tax Collections Growth average \$2.1 million annually



PROPERTY TAX REVENUE PROJECTED GROWTH



FY 2020 was reassessment year tax collections and COVID-19 revenue

* Indicates projections

** Estimated unaudited

Average Growth is 2.4%



Richland County
Government

RICHLAND COUNTY SHERIFFS DEPARTMENT FUNDING

Richland County Sheriff Department		
Funding Fiscal Year 2023		
Richland County Sheriff Department	42,957,828	78.6%
Special Duty	1,415,284	2.6%
Health Insurance Account	3,834,097	7.0%
Transfer to SRO From General Fund	1,996,712	3.7%
Transfer to Victims Advocate From General Fund Prorata Portion	408,256	0.7%
Fleet Lease	1,620,000	3.0%
Non-Departmental Expenses	286,526	0.5%
Workers Compensation and Liability Insurance	2,160,273	4.0%
Total FY 2023 Fiscal General Fund Allocation	54,678,976	
Richland County Sheriff Department Personnel Expenditures		
Salaries, tax and retirement	39,258,823	90.0%
Other Personnel Related Expenditures	4,374,165	10.0%
Total Personnel Related Expenditures	43,632,988	
Total Personnel Related Expenditures to General Fund Allocation	79.8%	



RICHLAND COUNTY SHERIFFS DEPARTMENT FUNDING MILLAGE COMPARISON

Richland County Sheriff Department	
Funding as a Percentage of County Expenditures	
Total County General Fund Expenditures	193,066,577
Total Richland County Sheriff Department General Fund Allocation	54,678,976
Richland County Sheriff Department Percentage of Total General Fund Expenditures	28.32%

Richland County Sheriff Department Funding Relative to	
Property Tax Millage	
Value of Mill	1,780,000
County General Fund Millage	59.9
Richland County Sheriff Department Funding in Mills	30.7
Richland County Sheriff Department Funding as a Percentage of General Fund Millage	51.3%



TOTAL RICHLAND COUNTY SHERIFFS DEPARTMENT FUNDING ALL SOURCES

FY22-23 Richland County Sheriff Department Appropriations		
Unit	Type of Expenditure	Amount
Sheriff	Operating	\$ 7,519,277
	Personnel	\$ 35,438,571
Victim Assist	Operating	\$ 29,304
	Personnel	\$ 684,997
Special Duty	Operating	\$ -
	Personnel	\$ 1,415,284
School Resource Officers	Operating + Personnel + Capital	\$ 7,099,320
Title IV-D - Civil Process	Operating	\$ 13,950
	Personnel	\$ 43,278
Active Grants	Operating + Personnel	\$ 5,085,981
Non-Departmental	County-wide security cameras	\$ 118,526
	Beeepers/Cell Phones/Pagers	\$ 168,000
	Health Insurance	\$ 3,834,097
	Risk Management (Workers' Compensation and Liability)	\$ 2,160,273
	Vehicle Lease Program	\$ 1,620,000
Grand Total		\$ 65,230,858



SOLICITOR FUNDING

	FY 2023 Budget	Percentage
Personnel	4,874,630	82.8
Health Insurance	552,500	9.3
Operating	308,781	5.2
Capital	2,314	.001
Victims Assistance Transfer	153,870	2.6
Total	5,892,095	

The Solicitor's Office is funded by General Funds and Grants.
The above reflects no grant funding. Grants are typically for specific uses.



PUBLIC DEFENDER FUNDING

	FY 2023 Budget	Percentage
General Fund Transfers In	3,826,423	70.5
State Appropriations	1,600,000	29.5
Total	5,426,423	
Personnel	5,426,423	100



Questions



Richland County Council Request for Action

Subject:

22-022MA
Jenny Reyes
RU to NC (8.63 Acres)
9200 Wilson Blvd.
TMS # R14600-03-41

Notes:

First Reading: November 17, 2022
Second Reading:
Third Reading:
Public Hearing: November 17, 2022

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. ____-22HR

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R14600-03-41 FROM RURAL DISTRICT (RU) TO NEIGHBORHOOD COMMERCIAL DISTRICT (NC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R14600-03-41 from Rural District (RU) to Neighborhood Commercial District (NC).

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

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

Section IV. Effective Date. This ordinance shall be effective from and after _____, 2022.

RICHLAND COUNTY COUNCIL

By: _____
Overture Walker, Chair

Attest this _____ day of
_____, 2022

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: November 17, 2022
First Reading: November 17, 2022
Second Reading: December 6, 2022
Third Reading: December 13, 2022

Richland County Council Request for Action

Subject:

An Ordinance amending the Richland County Code of Ordinances; Chapter 16, Licenses and Miscellaneous Business Regulations; by the addition of Article VII, Residential Rental Property Registration and Regulations

Notes:

November 17, 2022 – The D&S Committee recommended Council approve the proposed ordinance and business license amendments, and to include the following language: “If the owner shall not reside within a 50-mile radius of the registered address or reside within Richland County, then all the above information is required.”

First Reading:

Second Reading:

Third Reading:

Public Hearing:

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

Prepared by:	Aric Jensen, AICP	Title:	Assistant County Administrator
Department:	Administration	Division:	
Date Prepared:	November 3, 2022	Meeting Date:	November 17, 2022
Legal Review	Patrick Wright via email	Date:	November 8, 2022
Budget Review	Abhijit Deshpande via email	Date:	November 7, 2022
Finance Review	Stacey Hamm via email	Date:	November 7, 2022
Approved for consideration:	County Administrator	Leonardo Brown, MBA, CPM	
Meeting/Committee	Development & Services		
Subject	Absentee Landlord Ordinance and Registration		

RECOMMENDED/REQUESTED ACTION:

Staff recommends approval of proposed ordinance amendments and business license amendments to full Council.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

At this time no additional personnel or equipment are required to implement the proposed ordinance amendments; however, as population and development increases, there will need to be a commensurate growth in personnel to administer and enforce these statutes and practices.

Applicable department/grant key and object codes:

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Not applicable

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

Not applicable

MOTION OF ORIGIN:

I move to direct the County Attorney to work with the County Administrator to research and draft an absentee landlord ordinance. The ordinance should provide potential remedies for individuals who violate county ordinances and provide, via supplemental documentation, a comprehensive review of the legal impacts [potentially] associated with the adoption of such an ordinance.

Council Member	Chakisse Newton, District 11, and Joyce Dickerson, formerly District 2
Meeting	Regular Session
Date	November 19, 2019

STRATEGIC & GENERATIVE DISCUSSION:

Background

At the July 28, 2022 D&S Committee Meeting, the Committee directed the Administrator to perform two tasks and to present the work product for consideration at the September 27 Meeting:

First, to create an online portal and database for absentee landlord registration using an existing software platform such as E-Trackit (which is currently used for entering and processing land use permit related applications).

Second, as necessary, amend the County Code to:

- Affirmatively state that a property owner, property manager, and any tenant may be cited and held responsible for the violation of a county ordinance related to zoning, building safety, and property maintenance;
- Affirmatively state that any County Code Enforcement Officer or Public Safety Officer can issue a citation for any violation of a County code;
- Require that the owner of any non-owner-occupied residential property or unit provide and keep current within the County’s online database a mailing address, phone number, and email address for an authorized agent located within 50 miles of the property;
- Require a business license for any person or entity that owns 2 or more non-owner-occupied residential units for lease, OR require that any person or entity that owns 2 or more non-owner-occupied residential units for lease contract with a professional property management firm that has a current Richland County business license and that pays equivalent licensing fees.

At the September 27, 2022 meeting, the Committee reviewed the proposal and directed staff to prepare a response in the form of an addendum in advance of the October 11, 2022 meeting.

At the October 11, 2022 D&S Committee Meeting, the Committee reviewed the materials provided in the briefing addendum, asked questions of staff, but did not request any additional changes or modifications. As such, the item is now properly before the Committee for action.

Updated Work schedule

- 01-Mar-2022 Workgroup committee meeting #1, 1st Draft workplan completed
- 01-Apr-2022 Workgroup committee meeting #2, 2nd Draft workplan completed
- 24-May-2022 Workplan update to D&S Committee
- 27-Jun-2022 Presentation and Committee Direction
- 26-Jul-2022 Committee Direction to Prepare Ordinance Language
- 27-Sep-2022 D&S Committee Review and Direction
- 11-Oct-2022 Committee Review
- ★ 17-Nov-2022 Committee Action
- 13-Dec-2022 County Council First Reading
- TBD Feb-2023 County Council Public Hearing and Second Reading
- TBD Mar-2023 County Council Third Reading

ADDITIONAL COMMENTS FOR CONSIDERATION:

An Addendum was provided to the Committee at the 11 October 2022 meeting in response to questions from the Committee Members.

ATTACHMENTS:

1. Agenda Briefing Addendum
2. Proposed Ordinance Language



Agenda Briefing Addendum

Prepared by:	Aric Jensen, AICP	Title:	Assistant County Administrator
Department:	Administration	Division:	
Date Prepared:	October 11, 2022	Meeting Date:	September 27, 2022
Approved for Consideration:	County Administrator		Leonardo Brown, MBA, CPM
Committee:	Development & Services		
Agenda Item:	5a. I move to direct the County Administrator to work with the County Attorney to research and draft an absentee landlord ordinance. The ordinance should provide potential remedies for individuals who violate county ordinances and provide, via supplemental documentation, a comprehensive review of the legal impacts [potentially] associated with the adoption of such an ordinance.		

COUNCIL INQUIRY:

Why was the distance of 50 miles chosen? Can the provision be modified to reflect the owner living within the County? Does it require those who live outside of the 50 mile radius to find/hire someone to register on their behalf?

What is the logic associated with the recommendation?

Would it be considered an undue burden to require the designation of an authorized agent?

Reply:

The distance of 50 miles was chosen as some federal agencies use this distance to distinguish between “local” and “extraterritorial” activities. There is neither an identified industry standard nor a uniform distance standard among local governments.

Yes; the distance provision can be modified to reflect the owner living within the County.

The distance provision can require an owner living outside of the distance parameters to hire someone to act as a local agent for the owner.

Absentee landlord ordinances and similar regulations have been in widespread use for at least the past 30 years, and the concept of requiring a local agent is common among many regulatory bodies. The logic associated with the recommendation is to ensure that parties and individuals who reside outside of a county, state, or country can be served summons and citations and be held accountable for their actions or inactions, associated with meeting governing standards of property upkeep and maintenance.

COUNCIL INQUIRY:

Is an apartment complex considered one unit or is each apartment considered a separate unit? As a tenant within the complex, is s/he absolved from the responsibilities outlined within the ordinance?

Reply:

An apartment complex is not one dwelling unit; it is a series of dwelling units attached to one another.

There are many categories of leases: commercial, residential, industrial, professional office, agricultural, hunting, vacant land, etc., and each will be structured according to a unique set of circumstances. As such, any property code enforcement ordinance must include the tenant, the property manager, and the property owner in the enforcement process – because, sometimes, the tenant is responsible for mowing the lawn and taking out the garbage; other times, it is the property management firm; and yet, sometimes, it is the property owner. The same applies to other potential violations. The party responsible for the violation is the party that has to be held accountable – there is no discretion in that regard.

COUNCIL INQUIRY:

Is there an "order of operations" for who is held responsible for an item or is each individual held responsible simultaneously? Does the person serving the citation have a great deal of the latitude to determine to who is cited based on the law in some areas and judgment in others?

Reply:

The code enforcement individual will most likely start with the party that appears to be responsible for the violation. For example, if the violation is a car parked on the front lawn of a detached house, they would start with the tenant or car owner. If the violation is a dead tree at an apartment complex, they would start with the property manager or property owner. If the violation was a pollution discharge at an industrial property, they would start with the business owner/operator. There is no set order of operations that applies to every instance as it depends on the situation and the violation.

COUNCIL INQUIRY:

What is the cost associated with the creation of the database?

Reply:

The database will use existing software owned by the County and will be populated by the property owners or property management firms. The only cost to the County will be the initial set-up of the database, which will be done in-house and probably involve 20-30 hours of staff time.

COUNCIL INQUIRY:

Are penalties both civil and/or criminal (referred to the mention of a misdemeanor)? Does the County have opportunities for redress in terms of recouping the County's costs for maintaining overgrown properties?

Reply:

The County does not have a civil code enforcement system, so all enforcement would be through the County's typical citation process.

The County can attempt to recuperate costs spent mitigating nuisances and violations through a lien on property, but the lien would not be collected until the property sells per state law. Municipalities in

South Carolina have the authority to have their liens satisfied the next time property taxes are assessed and collected.

As mentioned during previous committee meetings, County Administration is promoting a bill to give counties the same lien collection ability as municipalities, and it may be in the County's interest to discuss the benefits of a civil code enforcement process.

COUNCIL INQUIRY:

Councilmembers requested more information regarding the potential profitability of the program.

Reply:

As a general rule, government doesn't make a "profit" in the same sense as businesses in the private sector because government is a simply a steward of the public good. However, whenever a government agency improves its processes and accomplishes more with less resources, the community "benefits" from it. There is no intent or proposal to charge a fee to implement this program.

COUNCIL INQUIRY:

Does the ordinance apply only to absentee landlords or are all landlords required to obtain a business license?

Reply:

As drafted, the proposed ordinance provisions regarding code enforcement would apply only to situations where the property owner does not reside at the property (the definition of an "absentee landlord"). The proposed business licensing provisions (which are located in a different section of code) would apply uniformly throughout the unincorporated County to all property owners.

COUNCIL INQUIRY:

Why is the ordinance only for persons who own more than one unit? A landlord is a landlord and anyone who owns a unit for business purposes should have to follow the rules that everyone else does. Following that question [Councilmember Malinowski] stated that persons could use the more than one as a loophole and place individual units in other family members' names, thereby actually owning more than one unit in reality but only one on paper.

Reply:

The County's existing business license ordinance requires that an owner of 3 or more residential units for lease obtain a business license, which is a common practice in other jurisdictions. This standard is predicated on the argument that owning and leasing 1 or 2 properties does not rise to the level of being a commercial business, and, therefore, should not require a business license. The Council may establish any threshold it deems appropriate. The proposal at this time is to reduce the current threshold from 3 units to 2 units.

COUNCIL INQUIRY:

How will we educate landlords about the process?

Reply:

The proposed ordinance provisions are long standing practices in many jurisdictions; large property management firms and property owners with units in multiple jurisdictions may already be familiar with its provisions.

Staff recommends that any education effort should focus on small firms and individuals who only own one or two properties. The quickest and most effective way is direct notification to all landlords using the business license database. The next most effective activity is to provide education/information to the local realtor and property management member organizations for circulation through their networks. While less effective, media releases may still reach some persons who do not have business licenses or participate in a professional organization.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. ____-22HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 16, LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS; BY THE ADDITION OF ARTICLE VII, RESIDENTIAL RENTAL PROPERTY REGISTRATION AND REGULATIONS.

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 16, Licenses and Miscellaneous Business Regulations; is hereby amended by the addition of Article VII, Residential Rental Property Registration and Regulations, to read as follows:

ARTICLE VII. RESIDENTIAL RENTAL PROPERTY REGISTRATION AND REGULATIONS

Sec. 16-71. Purpose.

The general purpose of this article is to safeguard all neighborhoods within the unincorporated areas of Richland County from blight and unsafe living conditions by requiring the owners, tenants, property management companies, and property managers to share equally in the burden and liability of the compliance with all county property and building related ordinances and regulations.

Sec. 16-72. Registration; business license.

- a) The owner of any non-owner occupied and habitable residential property or unit shall register such property or unit with the county's online database within thirty (30) days of such property or unit becoming non-owner occupied and habitable. For the purpose of this article only, habitable shall mean capable of being lived in as evidenced by a certificate of occupancy and/or a legal electric supply and running water. Registration shall include:
 1. Owner's mailing address
 2. Owner's phone number
 3. Owner's email address, if any
 4. If the owner shall not reside within fifty (50) miles of the registered address or within Richland County, then all of the above information is also required of an authorized agent residing within the fifty (50) mile radius or Richland County.
- b) Any person or entity owning more than one (1) non-owner occupied residential property or unit within unincorporated Richland County that is leased or available for lease must obtain a business license; provided, however, that those persons or entities contracting with a properly licensed property manager or property management company for management of such properties or units shall be exempt from such requirement. If at any time such property manager or company shall fail to properly obtain or maintain a business license within Richland County, it shall be the responsibility of the owner to obtain such license on its own behalf.

Sec. 16-73. Enforcement and penalties.

It shall be the responsibility of the owner, property manager, property management company, and tenant, each individually and collectively, to comply with all Richland County ordinances related to property maintenance, weeds and

rank vegetation, zoning, building regulations, and building safety, and each person or entity may be cited for a violation of such county ordinance; provided, however, a tenant may only be cited for a violation of zoning or building regulations if there is affirmative evidence that the tenant actively constructed any structure or created a use in violation of such ordinances.

In addition to appropriate civil and/or equitable remedies for enforcement of this article, any person convicted of violating this section shall be guilty of a misdemeanor and shall be punished in accordance with the provisions of section 1-8 of this Code of Ordinances.

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

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

SECTION IV. Effective Date. This ordinance shall be effective from and after _____, 2022.

RICHLAND COUNTY COUNCIL

BY: _____
Overture Walker, Chair

ATTEST THIS THE _____ DAY

OF _____, 2022

Anette Kirylo
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 for Action

Subject:

Information Technology - Cybersecurity Modernization

Notes:

November 17, 2022 – The A&F Committee recommended Council approve the expenditure of \$4,190,000 in American Rescue Plan (ARPA) funding to increase cybersecurity protection at all Richland County facilities.



Agenda Briefing

Prepared by:	Dan Cole	Title:	Project Manager
Department:	Information Technology	Division:	Network and Infrastructure
Date Prepared:	October 15, 2022	Meeting Date:	November 17, 2022
Legal Review	Patrick Wright via email	Date:	October 27, 2022
Budget Review	Abhijit Deshpande via email	Date:	October 28, 2022
Finance Review	Stacey Hamm via email	Date:	October 27, 2022
Approved for consideration:	County Administrator	Leonardo Brown, MBA, CPM	
Meeting/Committee	Administration & Finance		
Subject	(American Rescue Plan Act) - Cybersecurity Modernization		

RECOMMENDED/REQUESTED ACTION:

Staff recommends approval to spend \$4,190,000 in American Rescue Plan (ARPA) funding to proceed with the following items to increase cyber-security protection at all Richland County facilities.

Existing South Carolina State Procurement Contracts will be utilized to purchase \$3,840,000 for the projects outlined below. The remaining \$350,000 allocated for the Richland County website redesign will go through the County RFP process to select the best vendor for this project. Council has previously approved the funding of these projects to facilitate enhanced security across Richland County’s Information Technology infrastructure.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

There would be no fiscal impact to the County budget until July 2026.

Applicable department/grant key and object codes: 11001870000/5426 - \$238,000 annually
1100187000/5471 - \$124,000 annually

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

None applicable.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

None applicable

MOTION OF ORIGIN:

“...the committee recommended allocating the American Rescue Plan funding as follows:

- Public Health -- \$15,000,000 (27.21%)
- Public Safety -- \$10,448,013 (18.95%)
- Community Investment -- \$19,000,000 (34.46%)
- Cybersecurity/Technology -- \$10,686,000 (19.38%)”

Council Member	Coronavirus Ad Hoc Committee Recommendation
Meeting	Regular Session
Date	June 7, 2022

STRATEGIC & GENERATIVE DISCUSSION:

One critical purpose of the American Rescue Fund resources is cybersecurity modernization to strengthen programs and build resiliency. Specifically, recipients can use the funds “to support government service.” Staff believes it is especially critical to put in place measures to be as effective in this process as possible in all areas of the County network. This has become even more critical as hackers, criminals, and foreign governments continue to attempt to breach computer systems across all levels of government agencies in recent months.

As such, staff has evaluated the County’s infrastructure and processes and recommend the following equipment enhancements as they align directly with Richland County Strategic goals 4 and 6.

Strategic goal 4 –Plan for Growth through Inclusive and Equitable Infrastructure.

- 4.1 – Establish plans and success metrics that enable smart growth.
 - Prioritize improvements to County infrastructure based on County priorities as established in strategic plan, budget and capital improvement plan and community priorities.

Strategic goal 6 – Establish Operation Excellence

- 6.3 - Modernize technology
 - Perform a technology assessment to prioritize and assess County operational needs.
 - Further develop a cybersecurity program in Richland County Departments
- 6.7 - Address current and future resource needs

Recommendation	ARP Funding	Recurring Cost	Goal
RCSD server hardware, software and switching equipment.	\$410,000 Purchase And Maintenance (5 years) Utilizing South Carolina State Contracts 4400027254 & 4400026926 with the company AHEAD	\$32,500 /year Added to budget in FY 2026	By implementing new email server hardware and software and new switching equipment RCSD will be addressing existing security vulnerabilities in their systems.
Replacement of older unsupported desktop phones	\$550,000 Utilizing South Carolina State Contract 4400030155 with the company NWN Carousel For 1420 new VOIP phones	N/A	Existing desktop phones are unsupported and present a security risk on the County network.
County wide replacement of unsupported and unsecure data switches and routers	\$1.1 Million Utilizing South Carolina State Contracts 4400030155 & 4400027869 with the companies CDWG and NWN Carousel	\$206,000/year Added to budget in FY 2026	A large number of data switches and routers County wide are obsolete and present a cyber-security vulnerability and must be replaced. These switches and routers provide the connections between all County computers and telephones in all County buildings.
Mobile wireless microphone and speaker system for the capability to host remote hybrid meetings during times of restricted travel or quarantine.	\$15,000 Working with PIO staff to determine ideal make and model of various equipment for this solution using South Carolina State Contract 4400026098 with the company Solutionz	N/A	This mobile wireless microphone and PA system would allow large groups like county council to effectively communicate in a collaborative manner safely and remotely.
Mobile multi camera conference system for the capability to host remote hybrid meetings during times of restricted travel or quarantine.	\$15,000 Working with PIO staff to determine ideal make and model of various equipment for this solution using South Carolina State Contract 4400026098 With the company Soutionz	N/A	This mobile multiple camera conference system would leverage the mobile wireless microphone system to add video collaboration for larger groups to effectively collaborate and communicate safely and remotely.

<p>Secondary web application firewall, WAF, appliance to alleviate external access to County hosted websites</p>	<p>\$90,000 Hardware and software support for 5 years Utilizing South Carolina State Contract 4400027095 With the company Data Network Solutions</p>	<p>\$8000 /year Added to the budget in FY 2028</p>	<p>County websites are protected from denial of service attacks and other advanced malicious attacks by a single web application firewall. Installing a second unit to provide fail over fault tolerance would remedy this single point of failure.</p>
<p>Internet load balancing appliance to provide seamless failover for County websites and remote VPN connection for remote workers</p>	<p>\$30,000 hardware and support for 3 years Utilizing South Carolina State Contract 4400026444 with the company SHI International</p>	<p>\$5000/year Added to the budget in FY 2026</p>	<p>The County uses two Internet Service Providers. One for citizens to access external County websites and for remote County users to gain secure access into the County network for work. The second Internet connection is for County employees to gain access to external Internet resources. There is currently no way to share or fail resources over between these two connections. A load balancer would provide failover between these two connections.</p>
<p>Increase computing power and storage of the County's hyper converged server infrastructure to accommodate new applications and improve the effectiveness of County staff and citizens</p>	<p>\$330,000 hardware and support for 5 years Utilizing South Carolina State Contracts 4400027254 & 4400026926 with the company AHEAD</p>	<p>\$60,000 /year Added to the budget in FY 2028</p>	<p>The County currently uses two hyper converged server clusters to host application servers, database servers and file servers. Increasing the processing power and availability of these clusters would directly impact the speed, efficiency and fault tolerance of all of the County's computer applications.</p>

<p>New database server software for the County financial system to address security and encryption issues due to aging equipment</p>	<p>\$100,000 software and support for 5 years Utilizing South Carolina State Contract 4400017751 with the company SHI International</p>	<p>N/A</p>	<p>The current County financial system is using application and database software that is scheduled for end of support in October 2023. The current database software does not support encryption of critical and sensitive financial and personal data. This new database software would allow real time encryption of all data stored in the County financial system.</p>
<p>New fault tolerant virtual private network, VPN appliances to allow secure connectivity for remote County employees.</p>	<p>\$120,000 hardware and software support for 3 years Utilizing South Carolina State Contract 4400027869 with the company CDWG</p>	<p>\$36,000 /year Added to budget in FY 2026</p>	<p>The County current uses a single Cisco VPN appliance to allow remote County staff to securely connect to all County resources and complete their jobs over a standard Internet connection from afar. By implementing a fault tolerate pair of VPN devices the County would ensure continuous remote access connectivity for these staff members in the event of a software or hardware failure on the primary unit.</p>
<p>Upgrade virtualization hardware and software in detention center and public works locations to enhance security and performance</p>	<p>\$130,000 hardware and software support 5 years Utilizing South Carolina State Contract 4400011358 With the company Dell Marketing</p>	<p>N/A</p>	<p>The virtualize hardware and software used in detention center and public works locations to host database servers, email servers, application and file services has been in place over 5 years. New hardware would provide enhanced security and resiliency at this locations.</p>

<p>Replace storage area network, SAN, equipment that was installed in 2014 and has reached the end of software and hardware support. Security updates are no longer being released for this obsolete equipment</p>	<p>\$800,000 hardware and software support 7 years Utilizing South Carolina State Contracts 4400027254 & 4400026926 with the company AHEAD</p>	<p>N/A</p>	<p>The County database servers, application servers, and file servers that provide County departments and staff storage access to critical files and information rely on SAN equipment that is vulnerable to security exploits and attacks. This equipment also presents a performance bottle neck when newer equipment accesses this network storage. The new equipment would provide faster, more secure storage of all County information stored there. This new equipment would also provide offsite replication of data and real-time failover in a disaster recover situation.</p>
<p>County website redesign and enhancement to allow citizens to securely access more County services remotely.</p>	<p>\$350,000 design, implementation and licensing</p>	<p>\$15,000/ year Added to FY 2026 for continued licensing and support</p>	<p>The website redesign and enhancement would allow for increased citizen interaction and collaboration with County staff. Efficiency of staff communication with citizens would also be improved as well as security. This project was originally budgeted and funded as a CIP project for FY 2021-2022 before funding was withdrawn.</p>

The total amount of this request is \$4,190,000. Staff recommends proceeding with the expenditure of the previously approved ARPA funding to move forward with these projects for the cybersecurity modernization of critical County network resources.

ADDITIONAL COMMENTS FOR CONSIDERATION:

There are currently long ordering lead times and supply chain delays in all the equipment required for the projects listed. Any quotes from vendors have extremely short time frames because of these supply issues. Any quotes that could be included would be expired by the time the approval process completed through committee(s) and full Council readings. IT requests permission to purchase all of these items off of existing South Carolina State Contracts not to exceed the total requested amount of \$3,840,000.

<https://procurement.sc.gov/contracts>

The remaining \$350,000 allocated for the Richland County website redesign will go through the County RFP process to select the best vendor for this single project.

ATTACHMENTS:

1. Regular Session Minutes from June7, 2022

- b. **Mitigation Bank Credit Transaction – SCDOT US 76 Bridge Replacement and I-26 Improvements** – Ms. Mackey stated the committee recommended Council approve the two (2) request from the South Carolina Department of Transportation to purchase a combined total of 41.16 excess wetland and 2,962.40 excess stream credits, at a rate of \$12,500 and \$125 per credit respectively.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey and English

Opposed: Newton

The vote was in favor.

- c. **Penny Program Administrative Fund Deprogramming** – Ms. Mackey stated the committee recommended Council approve the request to move the remaining balance of \$31,130,528.15 from the Administrative/Debt Service costs and to transfer the General Fund proceeds to the Program Reserve Fund to be used as County Council approves for referendum projects.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English and Newton

The vote in favor was unanimous.

It was moved by Mr. J. Walker and seconded by Mr. Livingston, to reconsider Items 19(a) – (c).

Opposed: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English and Newton

The motion for reconsideration failed.

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

- a. **County Administrator’s American Rescue Plan Act Funding** – Ms. Barron noted the committee recommended allocating the American Rescue Plan funding as follows:

- Public Health -- \$15,000,000 (27.21%)
- Public Safety -- \$10,448,013 (18.95%)
- Community Investment -- \$19,000,000 (34.46%)
- Cybersecurity/Technology -- \$10,686,000 (19.38%)

In addition, the committee recommends approving the Administrator’s recommendation, with the following modifications: (1) Change Funding for Home Repairs to Funding for Senior Assistance; (2) Funding for Recreation/Youth Services in the amount of \$1,000,000; (3) Funding for Affordable Housing in the amount of \$4,000,000; and (4) Language clarifying that all ARPA funding allocated in this list of recommendations is approved as “up to”.

Ms. Terracio inquired if the remaining \$5.8M will go toward millage agency projects.

Ms. Barron responded it will be up to the committee to determine how the funding will be allocated.

Mr. Brown noted, of the \$5.8M, you will need to subtract the \$3M in Public Safety contingency funding and \$1.5M in other non-profit funding approved during the budget process.

Ms. Barron noted, it was her understanding, the Lump Sum appropriations would come out of the established pots of money.

Ms. Terracio inquired how we can assist the Library with these funds.

Ms. Barron responded the application process is still to be determined.

Ms. McBride and Ms. Mackey both stated these are broad categories and it will ultimately be up to Council to approve the specific funding.

Mr. Brown noted the funds need to be allocated by 2024 and expended by 2026.

Mr. Malinowski inquired if there are any specifics on the items listed on pp. 651-652 in the agenda packet.

Mr. Brown responded the details were provided in several Coronavirus Ad Hoc Committee meetings.

Ms. Barron noted the committee requested the Administrator to look at areas in the County that needed to be specifically addressed. Some of the items have needs assessments dating back to 2008.

Ms. Newton noted, for the record, in addition to the supplemental information, we will still be following the Richland County Procurement Code.

Ms. Terracio requested a definition of what fits into each category.

In Favor: Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English and Newton

Opposed: Malinowski

The vote was in favor.

POINT OF PERSONAL PRIVILEGE – Ms. Barron stated she hopes we can put processes in place to make sure the funds get in the appropriate hands. She noted we did not set up an Affordable Housing Trust Fund, but we are addressing affordable housing.

It was moved by Ms. Mackey and seconded by Mr. J. Walker, to reconsider this item.

In Favor: Malinowski

Opposed: Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English and Newton

The motion for reconsideration failed.

21. **REPORT OF THE EMPLOYEE EVALUATION AND OVERSIGHT AD HOC COMMITTEE**

- a. **2022 County Administrator Evaluation Process** – This item was taken up in Executive Session.
- b. **County Attorney and Clerk to Council Performance Evaluation Process** – This item was taken up in Executive Session.

22. **EXECUTIVE SESSION**

It was moved by Ms. Barron moved and seconded by Ms. English, to enter into Executive Session.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, Barron, O. Walker, Mackey, English and Newton

The vote in favor was unanimous.

***Council went into Executive Session at approximately 8:00 PM
and came out at approximately 8:07 PM***

Mr. J. Walker moved, seconded by Ms. Newton, to come out of Executive Session.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, J. Walker, O. Walker, Mackey, English and Newton

**Regular Session
June 7, 2022**

-15-

90 of 409

Richland County Council Request for Action

Subject:

Utilities Department - Shady Grove Pump Station Project Bid Award

Notes:

November 17, 2022 – The A&F Committee recommended Council to award the Shady Grove Pump Station Project to Republic Contracting.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

Prepared by:	Bill Davis	Title:	Director
Department:	Utilities	Division:	
Date Prepared:	October 25, 2022	Meeting Date:	November 17, 2022
Legal Review	Elizabeth McLean via email	Date:	November 8, 2022
Budget Review	Abhijit Deshpande via email	Date:	November 1, 2022
Finance Review	Stacey Hamm via email	Date:	October 27, 2022
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Administration & Finance		
Subject	Shady Grove Pump Station Project Bid Award		

RECOMMENDED/REQUESTED ACTION:

Staff recommends that County Council approve awarding Republic Contracting the Shady Grove Pump Station Project.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

The total bid for the project came in at \$800,000. Richland County was awarded a \$500,000 grant from the South Carolina Rural Infrastructure Authority (SC RIA) for the Shady Grove Pump Station Project. The Utilities Department's budget will fund the difference (\$300,000) of the project's cost and a 10% contingency (\$80,000). Funds are encumbered on requisition R2301153

Applicable department/grant key and object codes: 1200992030/4812400.532200- \$500,000
2110367000/4812401.538200- \$380,000

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Request for Bids RC-535-B-23 was issued on September 2, 2022. The bid closed on October 4, 2022, and there was one submittal from Republic Contracting Corporation. The bid was found to be responsive and responsible, and was approximately 17% less than the engineer's estimate of \$941,000. Staff’s recommendation is to award to the contract to Republic Contracting Corporation.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

None.

REGULATORY COMPLIANCE:

This project will reduce the risk of sanitary sewer overflows by increasing reliability at the pump station by eliminating the flow restrictions and reducing blockages through the installation of 24" gravity sewer and addition of a new macerator.

MOTION OF ORIGIN:

“...approve staff’s [pursuit] of various projects where a grant may cover all, or a portion, of the project cost over the next few years. The projects include, but are not limited to, the following: (1) Shady Grove Pump Station (PS) Rehabilitation; (2) 24” Forcemain (FM) Gadsden Elementary to Eastover Wastewater Treatment Plant (WWTP); (3) Eastover WWTP Upgrade; (4) 10” FM from Rabbit Run to Garners Ferry Road; and (5) Stoney Point/Cedar Cove Sewer Rehabilitation Project.”

Council Member	Sewer Ad Hoc Committee Recommendation
Meeting	Regular Session
Date	March 15, 2022

STRATEGIC & GENERATIVE DISCUSSION:

The Utilities Department requests approval from County Council to award the Shady Grove Pump Station project to Republic Contracting. Ardurra (Constantine) recommends awarding Republic Contracting the project. Their bid was less than the engineer's estimate.

The Shady Grove pump station is one of four major pump stations Richland County Utilities owns, operates, and maintains. This pump station receives wastewater flows from 4470 customers which is about 33% of our current customer base.

A 24” gravity sewer line collects and delivers flow into a manhole on-site, where it flows into a single 16” line that splits flow into two separate 16” lines. These lines have failing butterfly valves near the entrance to two separate pump station wetwells. As a result, debris often blocks the free flow of wastewater into the pump station. When the flow backs up, debris collects in the pipe system. When the flow breaks free, the debris causes clogging and mechanical failure of the pumps. The collection system and pump station are adjacent to Hollingshed Creek. When these issues occur, the level of the wastewater within the collection system can back up and has caused sanitary sewer overflows in the past resulting in environmental contamination of the creek and endangering the public health, welfare, and safety of citizens at the Hollingshed Creek drainage basin. Additionally, when the pumps are clogged with debris, they can run continuously, wasting energy and requiring staff to be frequently deployed to the site, and as a result, increasing the overall carbon footprint of the station.

The Shady Grove Pump Station project aligns directly with the following Richland County Strategic goals:

- Goal 3 – Commit to Fiscal Responsible
 - Objective 3.1 – Align budget to priorities and see alternative revenue sources.
- Goal 6 – Establish Operational Excellence
 - Objective 6.7 – Address current and future resources needs.

ADDITIONAL COMMENTS FOR CONSIDERATION:

As part of the project, the County will install new 24" piping, a macerator, which will be routed to the existing pump station wetwell. The two existing 16" pipes and butterfly valves will be abandoned in place. See Attachment 1 - Project Site Plan.

ATTACHMENTS:

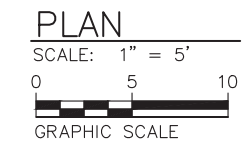
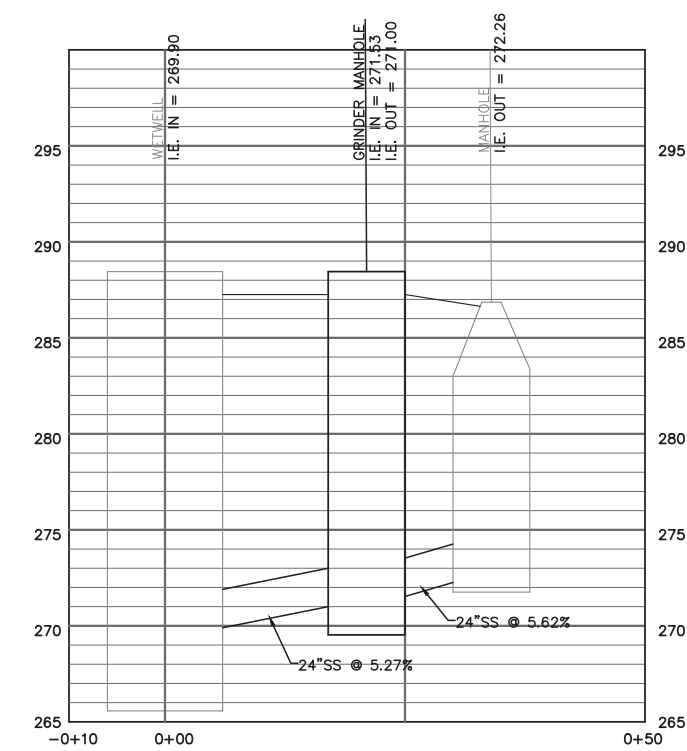
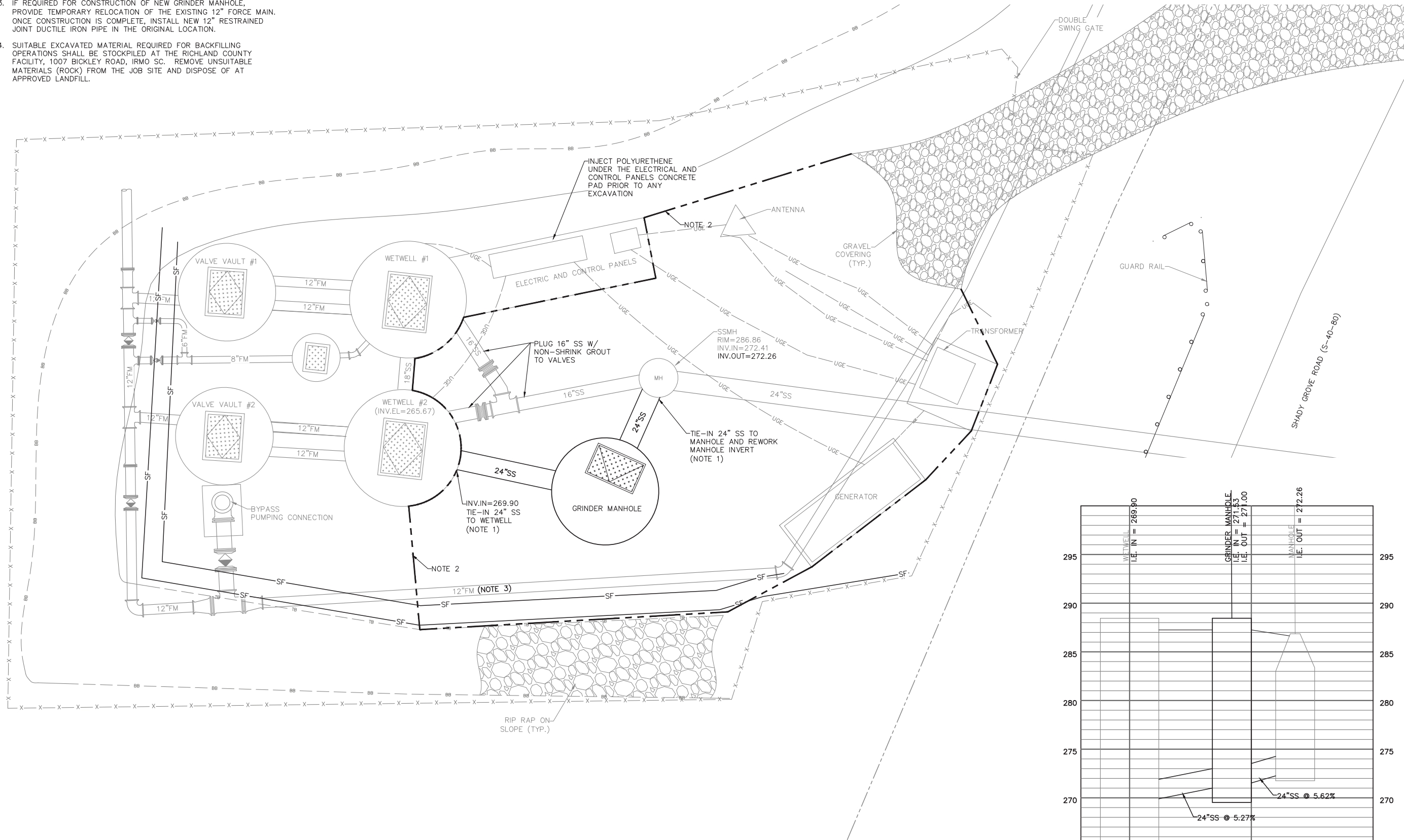
1. Project Site Plan
2. Bid Tabulation
3. Draft Contract

H:\PROJECT FILES\100342.04 RC SHADY GROVE PUMP STATION\300 DESIGN\355 SG PRELIMINARY DRAWINGS\01 CIVIL & DEMO\SHADY GROVE_PS.DWG
 REUSE OF DOCUMENTS: THIS DOCUMENT AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF CONSTANTINE ENGINEERING. HOWEVER, THIS SHALL NOT PROHIBIT THE REUSE OF THIS DOCUMENT BY THE CLIENT AS PROVIDED FOR BY THE CONTRACT.
 7/20/2022 2:00 PM

NOTES:

- CORE EXISTING WETWELL/MANHOLE. INSTALL 24" SS AND LINK SEAL.
- REGRADE AND INSTALL NEW 6" #57 STONE DRIVEWAY WITHIN LIMITS SHOWN.
- IF REQUIRED FOR CONSTRUCTION OF NEW GRINDER MANHOLE, PROVIDE TEMPORARY RELOCATION OF THE EXISTING 12" FORCE MAIN. ONCE CONSTRUCTION IS COMPLETE, INSTALL NEW 12" RESTRAINED JOINT DUCTILE IRON PIPE IN THE ORIGINAL LOCATION.
- SUITABLE EXCAVATED MATERIAL REQUIRED FOR BACKFILLING OPERATIONS SHALL BE STOCKPILED AT THE RICHLAND COUNTY FACILITY, 1007 BICKLEY ROAD, IRMO SC. REMOVE UNSUITABLE MATERIALS (ROCK) FROM THE JOB SITE AND DISPOSE OF AT APPROVED LANDFILL.

Attachment 1



PROFILE: 24"SS
 SCALE: HOR.: 1"=10
 VERT.: 1"=5



NO.	DATE	DESIGNED BY:	XX
REVISION	DRAWN BY:	SB	CHECKED BY:
			DH
			APPROVED BY:
			APVD

IMPROVEMENTS
SITE PLAN
SHADY GROVE PUMP STATION
IMPROVEMENTS



4000 FABER PLACE DRIVE, SUITE 330
 NORTH CHARLESTON, SC 29405
 PH. 843-628-3352

FILE	SEE LEFT
	VERIFY SCALE
	BAR IS ONE INCH ON ORIGINAL DRAWING
DATE	JULY 2022
PROJ.	100342.04
DWG.	C1.2

RC-535-B-23 Shady Grove Pump Station Improvements
 Due: October 4, 2022 @ 2:00PM

Total Cost

Republic Contracting Corporation

\$ 1,197,000.0

0

\$ 0

#	Locked	Items	Selected	Lowest	Quantity	Unit of Measure	Unit Price	Total Cost
1		Base Bid (10)						
Base Bid Total								\$800,000.00
2		Alternate 1 (8)						
Alternate 1 Total								\$397,000.00

**CONTRACT AGREEMENT
RC-535-B-23_**

THIS CONTRACT AGREEMENT is dated as of the ____ day of _____ in the year 201_ by and between **RICHLAND COUNTY, SOUTH CAROLINA**, (hereinafter called “Owner” or “County”) and **Republic Contracting Corporation** (hereinafter called “Contractor”) for all work necessary to complete that project as described in the Richland County, South Carolina Office of Procurement’s Invitation to Bid No. RC-535-B-23_ (hereinafter called the “Project”), for which the Work under the Contract Documents may be the whole or only a part.

WITNESSETH:

WHEREAS, the County has sought to contract with an independent contractor for the furnishing of all labor, supervision, materials and equipment required to perform and complete the Project as detailed in the Contract Documents; and

WHEREAS, the County solicited bids for the aforesaid Project that is needed; and

WHEREAS, the Contractor has represented to the County that its staff is qualified to provide the Project work required in this Contract in a professional and timely manner; and

WHEREAS, the County has relied upon the above representations by the Contractor; and

~~**WHEREAS**, the County's Transportation Director has recommended that a Contract for aforesaid Project be entered into with the Contractor; and~~

WHEREAS, the Contractor desires to provide the aforesaid Project work pursuant to the terms and conditions contained below;

NOW, THEREFORE, in consideration of these promises and of the mutual covenants herein set forth, it is agreed by and between the Parties hereto as follows:

I. Definitions

Unless the context clearly requires otherwise, all capitalized terms used in this Contract shall have the meanings set forth in this Section One or elsewhere in the body of this Contract Form.

A. “Change Directive” means a written method for directing the Contractor to perform additional Work to the Contract when time and/or cost of the Work is not in agreement between the Owner and Contractor performing the Work.

B. “Change Order” means a mutually agreed upon written change in the Contract Time or Contract Scope of Work between the Contractor and the County which is presumed to include all time and compensation to which the Contractor may be entitled for any change in the Work.

- C. "Claim" is defined in Section VIII of this Contract Document.
- D. "Commencement Date" means the date specified in the Notice to Proceed as the date on which the Contractor shall begin providing the Work.
- E. "Contract" or "Agreement" are used interchangeably and each mean this Contract and include all Contract Documents.
- F. "Contract Documents" means all exhibits, attachments, specifications, and any addenda to this Contract that are incorporated by reference into this Contract and which are referenced at Exhibit A, the County's "Invitation for Bids," and all other exhibits listed in Section XIII of this Contract Form.
- G. "Contract Form" shall mean this written agreement document executed by the County and by the Contractor and shall not include exhibits and other Contract Documents.
- H. "Contract Price" means the price listed in the Contract for service to be received in return.
- I. "Contract Time" means the time for the Contractor to achieve Final Completion as provided in the Schedule.
- J. "Contractor" has the meaning assigned above to that term, and includes that company's agents, Employees and representatives.
- K. "Contract Quantities" means the estimated quantities listed on the bid form.
- L. "County" means County of Richland, a public body politic and corporate and political subdivision of the State of South Carolina.
- M. "Day" means "calendar day." The term "calendar day" shall mean every day shown on the calendar. Calendar days will be consecutively counted regardless of weather, weekends, holidays, suspensions of Contractor's operations, delays or other events as described herein.
- N. The "Engineer" Ardurra.
- O. "Final Completion" is the date when the Project is fully completed, including all punch-list items, and the Engineer certifies that the Contractor has earned Final Payment. Final Completion may be used interchangeably with "Full Contract Term."
- P. "Final Payment" means the last payment from the County to the Contractor of the entire unpaid balance of the Contract sum as adjusted by any approved Change Orders or Change Directives.
- Q. "Notice to Proceed" means the written notice to be given by the County to the Contractor to commence Work under this Contract.

- R. "Parties" shall mean Contractor and Owner.
- S. "Plans and Specifications" shall together mean the plans, drawings, and specifications for the Work found in Exhibit A. "Plans" shall mean the plans for the Work found in Exhibit A. "Specifications" shall mean the specifications for the Work found in Exhibit A. "Drawings" shall mean the drawings for the Work found in Exhibit A.
- T. "Procurement Manager" means the Procurement & Contracting contact for the solicitation at Richland County.
- U. "Procurement Director" means the Director for Richland County Procurement Office.
- V. "Project" means the project for which the Contractor has agreed to perform the "Work."
- W. "Project Manager" shall be the representative designated by the Transportation department at the County to serve as Project Manager for the Work.
- X. "Project Site" means the site or sites where the Work is performed. This term is used interchangeably with "Work Site."
- Y. "SCDOT" or "the Department" shall mean the South Carolina Department of Transportation.
- Z. "Schedule" means the time for the Contractor to achieve Final Completion as provided in the schedule agreed to between the Parties as provided in Section VI.A.
- AA. "Standard Specifications" shall mean the latest edition of the SCDOT Standard Specifications for Road and Highway Construction published as of the Effective Date of this Agreement, including any additions, addendums, and County supplemental specifications.
- BB. "Substantial Completion" or "Substantially Complete" shall mean that date when the Engineer certifies that the Work is substantially complete as defined in the Contract Documents.
- CC. "Unit Price Work" is work performed or to be performed by the Contractor based initially on estimated quantities listed by item (or Construction Item) in the Contract Documents.
- DD. "Work" or "Scope of Work" means the work specified and described in Exhibit A, the County's Invitation for Bids on this Project and includes, but is not limited to, materials, workmanship, manufacture and fabrication of components, all labor, supervision, materials, equipment, tools, machinery, transportation, and supplies necessary for the completion of the work as described in the Plans and Specifications for the Project and required under this Agreement to complete the Project.

EE. “Work Site” means the “Project Site” and is used interchangeably with that term.

II. The Project

A. Scope of the Work

1. The Contractor agrees to perform the Work required under this Agreement to complete the Project.

2. The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the County. The County assumes no responsibility for any understandings or representations concerning conditions or anything related to this Contract, made by any of its officers or agents prior to the execution of this Contract, unless such understandings or representations by the County are expressly stated in this Contract.

3. The Contractor has visited and inspected the Work Site and accepts the conditions at the Work Site as they eventually may be found to exist and warrants and represents that this Contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Contractor's own cost and expense, anything in this Contract to the contrary notwithstanding.

4. The Contractor shall and will, in good workmanlike manner, do and perform all Work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the Plans and Plan Drawings covered by the Contract and any and all supplemental Plans and Drawings, and in accordance with the directions of the Engineer as given from time to time during the progress of the Work. It shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract Documents, and shall do, carry on, and complete the entire Work to the satisfaction of the Engineer and the County.

5. Work shall begin as indicated in the Notice to Proceed and be completed as indicated in Section III after the issuance of the Notice to Proceed, absent any extensions as allowed under this Agreement.

B. Contractor's Relationship with County.

1. The Contractor shall perform the Work in a competent and timely manner, and with respect to each type of work performed by Contractor as part of the Work, the Contractor shall use the highest degree of reasonable care and skill ordinarily exercised by other similar contractors performing services and obligations of a similar nature, and in accord with all applicable laws, rules, and regulations.

2. The Contractor in its performance of the Work is an independent contractor and shall not be deemed an employee of the County for any purpose whatsoever. The Contractor shall not hold itself or any of its subcontractors out as an employee of the County and shall have no power or authority to bind or obligate the County. The Contractor shall obtain and maintain all licenses and permits required by law for performance of this Agreement by it or its employees, agents, and servants and shall be responsible for the Contractor's subcontractors doing the same. The Contractor shall be liable for and pay all taxes required by local, State, or Federal governments, including but not limited to Social Security, workers' compensation, Employment Security, and any other taxes and licenses or insurance premiums required by law. No employee benefits of any kind shall be paid by the County to or for the benefit of the Contractor or its employees, agents, or servants by reason of this Agreement.

C. Engineer's Authority.

1. The Engineer shall give all orders and directions contemplated under the Contract Documents relative to the execution of the Work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any questions shall arise between the parties hereto relative to said Contract Documents, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or for Work under this Agreement affected in any manner or to any extent by such question.

2. The Engineer shall decide the meaning and intent of any portion of the Specifications and any Plan or Drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to the Work which may arise between the Contractor under this Contract and other contractors performing work for the County shall be adjusted and determined by the Engineer.

3. Inspectors, employed by the Engineer or by the County, shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or part of the Work and to the preparation or manufacture of the materials to be used. An inspector or inspectors will be stationed on site and will report to the Engineer as to the progress of the Work and the manner in which it is being performed; also to report whenever it appears that the materials furnished and Work performed by the Contractor fail to fulfill the requirements of the

Specifications and Contract Documents; and to call to the attention of the Contractor any such failure and other default; but no inspection nor any failure to inspect, at any time or place, however, shall relieve the Contractor from any obligation to perform all of the Work strictly in accordance with the requirements of the Contract Documents. In case of dispute arising between the Contractor and any inspector as to the materials furnished or the manner of performing the Work, the inspector shall have the authority to reject materials or suspend the Work until the question at issue can be referred to and decided by the Engineer.

4. The inspectors shall perform such other duties as are assigned to them. They shall not be authorized to revoke, alter, enlarge, or release any requirements of these Specifications, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Plans and Specifications. Inspectors shall in no case act as foremen to perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any instructions which the inspectors may give the Contractor shall in no way be construed as binding the Engineer or the County in any way, nor releasing the Contractor from fulfillment of the terms of the Agreement.

5. The County at any time and in its sole discretion may name a different Engineer than the one stated herein by providing notice of same in writing to the Contractor.

III. Term

- A. The Contractor shall not commence Work prior to the issuance of a Notice to Proceed, nor later than ten (10) Days after issuance of the Notice to Proceed.
- B. The Contractor shall achieve Substantial Completion of the Project by December 1, 2023, absent any extensions as provided for herein (“the Substantial Completion).
- C. The Contractor shall achieve Final Completion of the Project within thirty (30) Days after the Work is Substantially Complete.

IV. Contract Price

A. Contract Price.

1. The Contractor shall perform the Work, beginning on the Commencement Date, and shall be paid for Work performed, including all labor and items necessary to accomplish and complete the Work, in accordance with all terms and conditions as stated in the Contract Documents, for the total all inclusive price of eight hundred thousand dollars and no cents (\$800,000.00) (“the Contract Price.”) Actual payments will be based on verified quantities actually incorporated in the Work as priced in Contractor’s Bid or as lump sum items.

2. The amount as specified may be increased or decreased by the County through the issuance of a Change Order, Change Directive, or Additional Work. Any prices specified in Contractor's Bid or any such Change Order will remain firm for the term of this Contract and any Amendment thereto.

B. Payments.

1. Invoicing.

a) The Contractor shall submit its monthly invoices itemizing all labor and materials for which payment is requested such that they are received by the Project Manager for the County no later than 5:00 PM on the last business day of each month. Assuming the Project Manager and the County accept an invoice and the invoice does not require correction, the invoice shall be paid no later than thirty (30) Days after its approval by the County.

b) The County shall retain ten (10%) percent from each payment as retainage. Such retainage is due and payable to the Contractor upon Final Completion and Acceptance of the Project by the County. When the Work reaches fifty (50%) percent complete, the Contractor may request, in writing, that no further retainage be withheld on future payments from the County for the remainder of the Project, provided that the Contractor is on schedule and there are no known unpaid bills for Work incorporated into the Project. The County in its sole discretion may determine whether or not to freeze or otherwise reduce retainage if so requested by the Contractor.

c) An invoice improperly not paid by the County shall earn interest at the rate of one (1%) percent per annum from the due date of the invoice.

d) The Contractor shall submit invoices in original form complete with all supporting documentation, as necessary, summarized in a format directed by the County, and shall reference the Project number.

e) The Contractor's invoices shall be clearly marked with Project number.

f) The Contractor's invoices shall indicate the time period during which the Work was performed for which the invoice is submitted.

g) The Contractor shall sign each invoice summary certifying that all Work covered by the invoice is complete and that the invoice is correct and authentic.

h) The Contractor shall prepare all invoices in a form satisfactory to and approved by the County.

i) At the County's request, the Contractor shall furnish evidence that all labor and materials furnished and equipment used during the period covered by any invoice have been paid for in full and that the Work is not subject to liens or claims on account thereof.

2. County Right to Decline Invoice Approval.

a) The County may decline to approve the Contractor's invoices, in whole or in part, to the extent necessary to protect the County from loss because of:

b) defective Work not remedied,

c) third party claims filed or reasonable evidence indicating probable filing of such claims (including claims of lien),

d) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment,

e) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price,

f) damage to the County, or another contractor performing work for the County,

g) failure to carry out the Work in accordance with the Contract Documents,

h) the withdrawal or suspension, or threatened withdrawal or suspension of governmental permits or approvals due to the negligent actions or default of the Contractor,

i) failure to comply with the Contract Documents, or

j) any breach by Contractor of the terms and conditions of the Agreement.

3. Payment Deductions and Withholding.

a) When any payment is withheld pursuant to this Section, the grounds for such withholding shall be provided to the Contractor. When the grounds for nonpayment are removed, payment shall be made for amounts withheld because of them, within thirty (30) Days after the last ground for nonpayment is removed, provided all other conditions precedent to payment have been satisfied.

b) The County shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment pursuant to any provision of the Contract Documents.

C. Final Payment

1. Application for Payment:

a) After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections and Punch List Items identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents, Contractor may make application for Final Payment following the procedure for progress payments.

b) This "Final Application for Payment" shall be accompanied (except as previously delivered) by:

- (1) all documentation called for in the Contract Documents;
- (2) consent of Contractor's surety to Final Payment;
- (3) a list of all Claims that Contractor believes are unsettled; and
- (4) complete and legally effective releases or waivers (satisfactory to the County) of all claims of Contractor's subcontractors and others in the chain of privity below Contractor (a "Subcontractor") noticed or filed in connection with the Work.

c) In lieu of the releases or waivers of Subcontractor's claims and if allowed and approved by the County, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a lien or claim by a Subcontractor could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which County might in any way be responsible, or which might in any way result in liens or other burdens on County's property, have been paid or otherwise satisfied. If any Subcontractor or supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to County to indemnify County against any damages or claim against the County arising out of the Work of the Contractor's Subcontractors.

2. Engineer's Review of Application and Acceptance:

a) If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the Final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten (10) Days after receipt of the Final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Final Application for Payment to County for payment. At the same time Engineer will also give written notice to County and Contractor that the Work is acceptable. Otherwise, Engineer will return the Final Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend Final Payment, in which case Contractor shall make the necessary corrections and resubmit the Final Application for Payment.

3. Payment Becomes Due:

a) Thirty (30) Days after the presentation to County of the Final Application for Payment and accompanying documentation, the amount recommended by Engineer, including retainage held back by the County, but less any sum County is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by County to Contractor.

b) Contractor's acceptance of Final Payment under this Contract from the County is a waiver by Contractor of any and all Claims against the County.

D. Estimated Quantities.

1. The County has endeavored to estimate the proposed quantities as accurately as possible using the latest information available for the Project. Within Fifteen (15) Days after the issuance of the Notice to Proceed, the Contractor shall provide written verification of the quantities. Failure to do so shall mean the Contractor's acceptance of the quantities.

2. In addition, it will be the Contractor's responsibility to inform the Engineer/Inspector in writing when any Unit Price Work item (excluding lump sum items) is within ninety (90%) percent of the proposed quantity.

3. To affect the increase, deletion, and/or substitution, a "no cost" or "cost" Change Order signed by the Contractor must be submitted to the Procurement Director by the Engineer. No work shall be performed prior to approval of such Change Order.

E. Contingent Items.

1. "Construction Item(s)" in the Invitation to Bid that may be identified as being contingent on the "Summary of Quantities" sheets in the Plans, in the column headed "Contingent" and/or listed herein are provided in the Contract for use as directed by the Engineer and are included as part of Contractor's Bid unless otherwise specified. The quantities for these Contingent Items may be increased or decreased by the County without any adjustment to the Contract unit price bid or the Contingent Items may be deleted entirely from the Contract by the County through the Engineer at the County's sole discretion and at any time. The Contractor shall not submit a Claim against the County for any adjustment to the Contract unit price bid should the Contingent Items be increased, decreased or eliminated entirely.

2. Payment for any Contingent Items used will be made on the basis of the quantities as actually measured as specified in the Specifications, Supplement to the Specifications, Interim Specifications or Addenda, Plans or Special Provisions that are part of the Invitation to Bid.

F. Adjustment of Quantities.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

2. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer.

3. Each unit price for a Unit Price Item will be deemed to include not only all direct labor and material cost for such item, but also an amount considered by Contractor to be adequate to cover all of Contractor's other direct and indirect costs, including but not limited to overhead and profit for each separately identified item.

4. With regard to Unit Price Work items in the Contract Price, the County reserves the right, at any time, to make increases or decreases in quantities and alterations to the Plans or character of the Work, including, but not limited to, alterations in the grade or alignment of the roadway or structure(s) or both, as may be found necessary or desirable by the County. Such alterations are neither a waiver of any conditions of the Contract, nor a release of the Surety. The Contractor shall treat altered Work as if it were part of the original Contract Documents.

5. The County has the unilateral right to increase or decrease the quantity of any contract item. If the quantity increase or decrease with respect to a Unit Price Item is less than twenty-five (25%) percent of the original quantity estimated for such item by the County in Exhibit A, there will be no change in the item's unit price stated by the Contractor in Exhibit B. If the quantity of a unit increases twenty-five (25%) percent or more from the estimated amount for that item in Exhibit A, then the County shall determine if there should be a unit price adjustment because of the increases or decreases, provided that the Contractor makes a proper Claim.

6. If the altered or added Unit Price Work is of sufficient magnitude as to require additional time in which to complete the Project, the Contractor shall make a Claim for such additional time, and such time adjustment will be made at the determination of the County, if demonstrated by the Contractor that an extension in Contract Time is appropriate as provided for such a Claim.

7. An increase or decrease in the quantities of Unit Price Work in no way invalidates the Contractor's unit bid price in Exhibit B or Contract Price except as stated in this Section IV, Subsection F. The Contractor shall make no Claim for any loss of anticipated profits or for any other type of damages because of any such alteration or because of any variation between the approximate quantities in Exhibit A and the actual quantities of Work performed. Contractor's sole remedy for an increase in quantities is provided in this Section IV, Subsection F.

8. Contractor may make a Claim for an adjustment in the Contract Price associated with a change in quantities only if:

a) the quantity of any item (including sub-items of a respective item) of Unit Price Work actually performed by Contractor is more than twenty-five (25%) percent higher from the estimated quantity of such item (including its respective sub-items) indicated in Exhibit A; and

b) there is no corresponding adjustment with respect to any other item of Work that would offset the monetary amount of such increase; and

c) Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense and the Parties are unable to agree as to the amount of any such increase; and

d) Contractor timely makes a Claim for such adjustment and documents the same in accordance with the provisions for making a Claim in this Agreement.

9. County may seek an adjustment in the Contract Price for any unit item if:

a) the quantity of any item (including sub-items) of Unit Price Work actually performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

b) County believes that it is entitled to an increase or decrease in Contract Price as a result of the changed quantities and the Parties are unable to agree as to the amount of any such increase or decrease.

10. The County incorporates herein by reference thereto SCDOT Standard Specification 104.2 only to the extent Contractor's entitlement to compensation for any change in quantity of Unit Price Work, any alteration of Plans, or changes in the character of the Work is not expressly stated in this Contract Form.

G. Out of Scope "Additional" Work.

1. At the request of County, Contractor shall provide other work related to the Project that is not within the scope of the Work provided for in this Agreement ("Additional Work"). No existing Unit Price Work item may be considered to be Additional Work.

2. Scope, costs and fees for Additional Work shall be determined prior to the Contractor starting such Additional Work by either: (1) mutually agreed to in writing as an Addendum or Change Order to this Agreement; (2) or by Change Directive by the County using the formula for compensation allowed for a Claim by the Contractor.

3. The County also may order Additional Work from the Contractor that is not directly specified within the scope of this Agreement or any Exhibit thereto.

4. The County agrees to pay the Contractor for the performance of the Additional Work pursuant to this Agreement in accordance with all terms and conditions as stated herein. If the compensation for the Additional Work is not agreed to by the County and the Contractor, compensation for the Additional Work shall be determined as would be compensation for a Claim by the Contractor as defined in this Agreement.

5. All Additional Work shall be documented by Contractor in a form with sufficient information suitable to the County. The Contractor should be prepared to provide evidence of all charges for Additional Work commensurate with the standard American Institute of Architects Cost-Plus Contract forms.

6. If the Additional Work is not calculated as a Claim at the County's option, invoices for Rate Schedule Work shall be prepared and submitted as follows: Invoices for labor shall indicate the employee's name, classification, and straight time and approved overtime hours.

7. Compensation for Additional Work that is established as an "hourly" "not-to-exceed" amount will be paid at the billed or "not-to-exceed" amount, whichever is less. If fees and costs do not reach the limit of the "not-to-exceed" amount, the Contractor will not be entitled to receive the remainder of the "not-to-exceed" amount except as otherwise stated herein.

8. The Contractor shall be limited to the lesser of compensation as an Additional Work or compensation as a Claim in the event of a dispute between the Contractor and the County as to the amount of compensation due for any Work performed by the Contractor under this Agreement, and as to the amount of compensation due to Contractor for any work, labor, or equipment provided by the Contractor that conferred a benefit to the County in some way outside of any provision of this Agreement.

V. Inspection and Acceptance

A. All Work (which term includes, but is not restricted to materials, workmanship, manufacture and fabrication of components) shall be subject to inspection and test by the County and/or the SCDOT at all reasonable times and places prior to acceptance. Any such inspection and test is for the sole benefit of the County and/or the SCDOT and shall not relieve the Contractor of the responsibility of providing quality supplies to comply with the Contract requirements. No inspection or test by the County and/or the SCDOT shall be construed as constituting or implying acceptance of Work. Inspection or test shall not relieve the Contractor of the responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights (including warranty rights) of the County and/or the SCDOT after acceptance of the completed Work. The Contractor shall be responsible for his own Quality Control of the Work. The County will be responsible for payment of Independent Testing Laboratories Quality Control required in the Scope of Work.

B. No review by the County shall be construed as constituting or implying acceptance. Such review shall not relieve the Contractor of the responsibility to correctly perform the Work, nor shall it in any way affect the continuing rights (including warranty rights) of the County after acceptance of the completed Work.

C. The Contractor shall, without charge, correct or re-perform any Work found by the County not to conform to this Agreement's requirements, unless the County consents in writing to accept such Work with an appropriate adjustment in the Contract Price. The Contractor shall promptly remove rejected material from the Work Site.

D. If the Contractor fails to correct or re-perform any Work not found to conform to the Contract requirements within a reasonable period of time after written notice to the Contractor, the County shall have the right to self-perform that Work and charge back the cost to correct or re-perform that Work to the Contractor.

E. Final acceptance of the completed Project will be upon Final Payment to the Contractor and final written acceptance by the County. The workmanship and material warranty period will begin upon this final written acceptance.

VI. Contract Schedule and Time

A. Time for Completion.

1. Time is of the essence for the Contractor's performance of the Work.
2. It is hereby understood and mutually agreed, by and between the Contractor and County, that the date of beginning and the time for completion as specified in the Contract of work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed and shall proceed based on the Schedule assigned to the Work in the Contract Documents.
3. The proposed Schedule shall be provided by the Contractor at the Pre-Construction Meeting, or at such earlier time as requested by the County or Engineer, and the County and the Contractor shall agree upon the Schedule. Upon the agreement by the County and the Contractor on the Schedule, the County and the Contractor shall each through their designated representatives sign a printed version of the Schedule and that Schedule shall be considered to be a part of the Contract Documents at Exhibit E. Any change to the Schedule thereafter that affects the Date of Substantial Completion and/or date of Final Completion shall be made by a Change Order and a written copy of the amended Schedule shall be attached to the fully executed Change Order.
4. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climate range and usual industrial conditions prevailing in this locality.
5. The Contractor agrees to punctually and diligently perform all parts of the Work at the time scheduled by the Contractor which shall be subject to change by the County as deemed necessary or convenient to the overall progress of the Project. In furtherance of the Schedule, the Contractor agrees that the Contractor will keep itself continually informed of the progress of the job and will, upon its own initiative, confer with the County and the Project Manager so as to plan its Work in coordinated sequence with the Work of the County and of others and so as to be able to expeditiously undertake and perform the Work at the time most beneficial to the entire Project.
6. The Contractor will be liable for any loss, costs, or damages sustained by the County for delays in performing the Work hereunder, other than delays for which the Contractor may be granted an extension of time pursuant to the provisions of the Agreement.

7. If, in the reasonable opinion of the County, the Contractor is not complying with the Schedule or will not meet the date of Final Completion, the County may require the Contractor to provide additional manpower, or work overtime, or expedite materials, and the Contractor shall take the necessary steps to comply, all without increase in Contract Price.

B. Liquidated Damages.

1. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the County, then the Contractor does hereby agree, as part consideration for the awarding of this Contract, to pay the County the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every Day that Contractor shall be in default after the time stipulated in the Contract for completing the Work.

2. The said amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and said amount is agreed to be the amount of damages which the County would sustain and said amount shall be retained from time to time by the County from payments of Contractor's invoices.

3. Any adjustment of the Contract time for completion of the Work granted in accordance with the provisions of this Contract will be considered in the assessment of liquidated damages.

4. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the County of any of its rights under this Contract.

5. County and Contractor agree to liquidated damages for each Day of delay (but not as a penalty) beyond the Substantial Completion Date in accordance with the Schedule of Liquidated Damages found in Section 108.9 of the most current SCDOT Special Provisions as of the effective date of this contract.

Additional provisions concerning the Contractor's liability in certain specific events or circumstances are set forth throughout the Scope of Work. By signing this Contract, the Contractor expressly agrees to the terms thereof.

6. Final Completion Liquidated Damages. After the Contractor has achieved Substantial Completion, the Contractor shall achieve Final Completion in the time stated in the Contract Documents for Final Completion after Substantial Completion. Should the Contractor fail to achieve Final Completion within the time stated in the Contract Documents for Final Completion after Substantial

Completion, the County shall be entitled to liquidated damages for every Day of delay after Contractor's failure to achieve Final Completion. The amount of liquidated damages for each Day after the period by which the Contract Documents require Final Completion to occur after Substantial Completion is ten (10%) percent of the daily liquidated damages amounts provided for in the above mentioned Schedule of Liquidated Damages for each Day of overrun in Substantial Completion, but shall in no case be less than One Hundred (\$100.00) Dollars and no/cents per Day.

C. Substantial Completion. When Contractor considers the entire Work ready for its intended use Contractor shall notify County and Engineer in writing that the entire Work is Substantially Complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

1. Substantial Completion shall be no sooner than:
 - a) All construction activities for the Project are complete;
 - b) No Unit Price Work items that would require a lane closure are unfinished; and
 - c) All safety features are installed, function and are maintained properly; or
 - d) The date as determined by the Engineer using the criteria in the Standard Specifications, whichever is more onerous on the Contractor in the sole opinion of the Engineer.
2. The Contractor shall provide the Engineer and Project Manager with written notice at least seven (7) Days prior to reaching Substantial Completion that the Contractor expects to be Substantially Complete in seven (7) Days.
3. Promptly after Contractor's notification, County, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
4. If Engineer considers the Work Substantially Complete, Engineer will deliver to County a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of punch-list items (the "Punch List Items") to be completed or corrected before Final Completion. County shall have seven (7) Days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list of Punch List Items. If, after considering such objections, Engineer concludes that the Work is not Substantially Complete, Engineer will, within seven (7) Days after submission of the tentative certificate to County, notify Contractor in writing, stating the reasons therefor. If, after consideration of County's objections, Engineer considers the

Work Substantially Complete, Engineer will, within said seven (7) Days, execute and deliver to County and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of Punch List Items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from County.

5. After receipt of the Punch List Items, the Contractor shall have thirty (30) Days to complete the Punch List Items and achieve Final Completion.

6. Upon Contractor's completion of the Punch List Items and the Engineer's approval of such Work, the Engineer shall certify Final Completion.

D. Claims for Additional Time and Related Compensation by Contractor.

1. The Contractor may make a Claim for extensions of time and compensation for the Work only under the following circumstances: if the progress of the Contractor's Work in the critical path of the Schedule is delayed at any time in the commencement or progress of the Work by any event constituting an intentional act or neglect of the County; or by other causes that the County and Contractor may subsequently agree in writing may justify delay ("Excused Delay"), then the Contractor shall be entitled to additional compensation for its actual costs incurred as provided in this Agreement because of the Excused Delay, provided that the Contractor provided written notice of such Excused Delay and the circumstances surrounding it within seven (7) Days after Contractor knows or should know that any event or condition will adversely impact its Work in the critical path, as a condition precedent for any such event being an Excused Delay. The Contractor shall follow the procedures in this Agreement for making a Claim.

2. Weather Delays. "Weather Delays" are generally referred to as "rain days," and shall apply to Days when the Work cannot be undertaken due to adverse weather conditions. Time for hot, cold, and/or windy conditions have been allowed for in the allocated date of Substantial Completion. An average number of rain days are included in the Substantial Completion date determination. This was determined by the following method: Using the National Oceanic and Atmospheric Administration (NOAA) monthly reports, all days in each month in which rainfall in any part of the day exceeded .10 inch has been calculated and averaged. These averages are as follows: January 8; February 6; March 7; April 5; May 6; June 7, July 8, August 7, September 5, October 4, November 4, December 6. Rain delays, therefore, will only be considered when the number of days in any month in which rainfall, as recorded by the weather bureau as .10 inch or greater, exceeds the number of days shown. Notwithstanding the days shown on the monthly report, time extensions for rain days will only be considered based upon actual conditions at the Project Site. If, in the opinion of the Contractor, adverse weather causes unsuitable conditions that prevent the Contractor from proceeding with the Work at any time during the term of this Contract, the Contractor shall submit written notification to the

County within twenty-four (24) hours of the onset of said conditions. Notwithstanding the requirements of Section VIII, the Contractor shall make a Claim for time extension due to rain delays within seven (7) Days of issuance of the NOAA monthly report for the month in which the delay is claimed.

3. Force Majeure. It is further understood that the Contractor shall not be entitled to any damages or compensation from the County or be reimbursed for any losses on account of any delays resulting from any of the foregoing reasons or, without limitation, any reason for delay not under the direct or indirect control of the County, unless agreed to in writing by the County.

a) If the Contractor is delayed at any time in the progress of the Work by causes beyond the control and without the fault or negligence of the Contractor, the Contractor will bear its own additional costs and seek no additional compensation from the County for the Work. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the governmental entities other than the County, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) Weather Delays (any of which are a "Force Majeure Event").

b) Therefore, extensions of time shall be the Contractor's sole remedy for any and all Force Majeure Events. No payment or compensation of any kind shall be made to the Contractor for damages because of a Force Majeure Event, whether such Force Majeure Event be avoidable or unavoidable. The Contractor expressly agrees not to make, and hereby waives any Claim for damages on account of any Force Majeure Event for any cause whatsoever, including but not limited to the aforesaid causes and agrees that the Contractor's sole right and remedy in the case of any delay, obstruction, or hindrance, shall be an extension of the time fixed for completion of the Contract.

c) Without limitation, the County's exercise of its rights under the Section VII, regardless of the extent or number of such changes, shall not under any circumstances be construed as compensable, other than through an extension of time, it being acknowledged that the Contract amount includes and anticipates any and all delays, hindrances, or obstructions whatsoever from any cause, whether such be avoidable or unavoidable.

4. If Contractor fails to comply with this Section, Contractor shall be deemed to have waived any Claim arising out of or resulting from any such delay, without relieving Contractor of its obligations hereunder.

5. In the event of any Force Majeure Event, the Contractor and the County shall coordinate and cooperate to exchange any information and/or documentation related to any such Force Majeure Event in a manner that minimizes any adverse effect on the Work.

E. “No Excuse Incentive” Completion Date and Waiver of Contractor Claims.

1. This Section VI, Subsection E “No Excuse Incentive” Clause Does Does Not apply to this Agreement. (Check and Initial Applicable Box.)

2. The County will pay the Contractor a “No Excuse Incentive” if the Work in the Contract is Substantially Complete prior to the “No Excuse Incentive Completion Date,” which is the last Day of the Full Contract Term as defined in Section III, and in compliance with the conditions set forth below.

3. As a condition precedent to the Contractor’s right to request the No Excuse Incentive, the Contractor may not have made a Claim for an extension of the Schedule or requested an extension of the Schedule for any reason after the Schedule has become part of the Contract Documents.

4. The below paragraphs in this “No Excuse Incentive” Section of this Agreement apply only to the Contractor’s eligibility for the No Excuse Incentive and DO NOT APPLY TO ANY OTHER SECTION OF THIS AGREEMENT REGARDING TIME EXTENSIONS, DELAYS, CHANGE ORDERS, OR CLAIMS.

5. When work is deemed Substantially Complete by the Engineer, the Contractor will be paid an incentive based on the values shown in the table below, provided that the Contractor meets the criteria for the incentive:

No Excuse Daily Incentive	Maximum payout of:
\$1,500.00 for each Day Substantial Completion achieved prior to Full Contract Term	\$45,000.00

6. The incentive will be accounted for as a lump sum addition on the Final Payment.

7. The County’s intent in including this incentive is to ensure Substantial Completion of the Project by the “No Excuse Incentive Completion Date.”

8. The Parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, Work performed, Work deleted, Change Orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the Project to make it functional, weather, weekends, holidays, suspensions of Contractor’s operations, or other such events, forces or factors sometimes experienced in highway construction work. SUCH DELAYS OR EVENTS AND

THEIR POTENTIAL IMPACTS ON PERFORMANCE BY THE CONTRACTOR ARE SPECIFICALLY CONTEMPLATED AND ACKNOWLEDGED BY THE PARTIES IN ENTERING INTO THIS CONTRACT, AND SHALL NOT EXTEND THE “NO EXCUSE INCENTIVE” COMPLETION DATE SET FORTH ABOVE. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor’s Work to overcome or absorb such delays or events in an effort to complete the Contract by the “No Excuse Incentive” Completion Date, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance and no Claims can be filed by the Contractor for such costs or impacts if the Contractor intends to request payment of the incentive.

9. In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Contractor’s operations on the Contract, the Contractor and the County shall agree as to the number of Days to extend the “No Excuse Incentive” Completion Date.

10. In the event the Contractor and County are unable to agree to the number of Days to extend the “No Excuse Incentive” Completion Date, the County shall unilaterally determine the number of Days to extend the “No Excuse Incentive” Completion Date reasonably necessary and due solely to such catastrophic event and the Contractor shall have no right whatsoever to contest such determination.

11. The Contractor shall have no rights under the Contract to make any Claim arising out of this “No Excuse Incentive” provision except as is expressly set forth in this Section.

12. As conditions precedent to the Contractor’s entitlement to any “No Excuse Incentive” the Contractor must:

a) Obtain Substantial Completion acceptance by the County, as determined by the Engineer on or before the “No Excuse Incentive” Completion Date.

b) Notify the County in writing, within thirty (30) Days of the final acceptance of the Work by the County, that the Contractor elects to be paid the “No Excuse Incentive” which the Contractor is eligible to be paid based on the actual final acceptance date. SUCH WRITTEN NOTICE SHALL CONSTITUTE A FULL AND COMPLETE WAIVER, RELEASE AND ACKNOWLEDGMENT OF SATISFACTION BY THE CONTRACTOR OF ANY AND ALL CLAIMS, CAUSES OF ACTION, ISSUES, DEMANDS, DISPUTES, MATTERS OR CONTROVERSIES, OF ANY NATURE OR KIND WHATSOEVER, KNOWN OR UNKNOWN, AGAINST THE COUNTY, ITS EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, CONSULTANTS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS AND REPRESENTATIVES, THE CONTRACTOR HAS OR MAY HAVE AS

TO WORK PERFORMED, WORK DELETED, CHANGE ORDERS, SUPPLEMENTAL AGREEMENTS, DELAYS, DISRUPTIONS, DIFFERING SITE CONDITIONS, UTILITY CONFLICTS, DESIGN CHANGES OR DEFECTS, TIME EXTENSIONS, EXTRA WORK, RIGHT OF WAY ISSUES, PERMITTING ISSUES, ACTIONS OF SUPPLIERS OR SUBCONTRACTORS OR OTHER CONTRACTORS, ACTIONS BY THIRD PARTIES, SHOP DRAWING APPROVAL PROCESS DELAYS, EXPANSION OF THE PHYSICAL LIMITS OF THE PROJECT TO MAKE IT FUNCTIONAL, WEATHER, WEEKENDS, HOLIDAYS, SUSPENSIONS OF CONTRACTOR'S OPERATIONS, EXTENDED OR UNABSORBED HOME OFFICE OR JOB SITE OVERHEAD, LUMP SUM MAINTENANCE OF TRAFFIC ADJUSTMENTS, LOST PROFITS, PRIME MARK-UP ON SUBCONTRACTOR WORK, ACCELERATION COSTS, ANY AND ALL DIRECT AND INDIRECT COSTS, ANY OTHER ADVERSE IMPACTS, EVENTS, CONDITIONS, CIRCUMSTANCES OR POTENTIAL DAMAGES, ON OR PERTAINING TO, OR AS TO OR ARISING OUT OF THE CONTRACT. THIS WAIVER, RELEASE AND ACKNOWLEDGMENT OF SATISFACTION SHALL BE ALL-INCLUSIVE AND ABSOLUTE, SAVE AND EXCEPT ANY ROUTINE COUNTY FINAL ESTIMATING QUANTITY ADJUSTMENTS.

13. Should the Contractor fail to actually complete the Contract and obtain Substantial Completion by the County as determined by the Engineer on or before the "No Excuse Incentive" Completion Date, or should the Contractor, having done so, fail to timely request the "No Excuse Incentive" for any reason, including but not limited to the Contractor choosing not to fully waive, release and acknowledge satisfaction as set forth in the immediately preceding paragraph, the Contractor shall have no right to any payment whatsoever under this Section.

VII. Changes

A. Change Orders.

1. A Change Order is a written order to the Contractor signed by the County, issued after execution of the Contract, authorizing a change in the Work or an adjustment to the compensation or Schedule for the Work. The Contract Price and the Schedule (or Contract Time) may be changed only by an executed Change Order. A Change Order signed by the Contractor conclusively indicates its agreement herewith, including that the adjustment in the compensation or the Schedule contained in the Change Order is sufficient to compensate the Contractor for all Claims that Contractor may have outstanding at the time the Change Order is signed by the Contractor.

2. Change Orders shall be submitted on the forms and pursuant to the procedures of the County and as approved by the Project Manager.

3. The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the County, the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the County that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

B. Use of Change Order. The County, without invalidating the Agreement, may order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, including the addition or deletion of the Work or parts thereof. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

C. Change Directive. The County has the right to modify this Contract when the modification is in the best interest of the County. If the County and the Contractor cannot agree on the Change Order, the County shall issue a Change Directive directing the Contractor to either not perform Work or to perform Additional Work. In the event of no agreement on the cost of the Change Directive, the Contractor shall be compensated for such Additional Work as provided in the Contract Documents for a Claim.

D. Cost of Change. The cost or credit to the County resulting from a change in the Work or a Claim shall be determined in one or more of the following ways:

1. By mutual acceptance of a negotiated lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

2. By cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee (as provided in the Contract Documents, if applicable);

3. By Unit Price Work item if specified in the Contract Documents; or

4. If there is no agreement between the County and the Contractor as the method to select to determine the cost of additional compensation to the Contractor for subsections D.1 and D.2, by the method provided to calculate a Claim.

E. Disputed Change or Claim. If none of the methods set forth in Section D. 1 or 2 above are agreed upon for Additional Work, the Contractor, provided it receives a written order signed by the County as a Change Directive, shall promptly proceed with the Additional Work involved. The cost of such Additional Work shall then be determined as provided in Sections D, F, G, H, and I. The cost of a Change Order or Change Directive shall include all costs directly related to the change, and the Contractor shall itemize these

costs and provide appropriate supporting data as may be necessary to establish correctness as provided for in the Contract Documents.

F. Restrictions on Recoverable Damages. Only the following items may be recovered by the Contractor with respect to Excused Delay Claims or other Claims. These costs are the exclusive remedy for the Contractor for a Claim. The County has no liability for damages beyond the following items:

1. Additional job site labor expenses.
2. Documented additional costs for materials.
3. Equipment costs, as determined in accordance with this subsection.
4. Documented costs of extended job site overhead.
5. An additional ten (10%) percent of the total of sub-items 1, 2, 3, and 4 above, for home office overhead and profit; however, this amount will not exceed the anticipated margin for home office overhead and profit provided for in the Contractor's original bid. Additionally, home office overhead margins paid to the Contractor included in Change Orders are considered as partial or final compensation for these costs.
6. Bond costs.
7. Subcontractor costs determined by and limited to those items identified as payable under sub-items 1, 2, 3, 4, 5, and 6 above.

G. Non-Recoverable Damages. The parties agree that, in any Claim for damages by the Contractor, the County has no liability for the following items of damages or expense:

1. Profit in excess of that provided in sub-item 5 of Section F above.
2. Loss of profit.
3. Labor inefficiencies.
4. Home office overhead in excess of that provided in sub-item 5 of Section F above.
5. Consequential damages including, but not limited to, loss of bonding capacity, loss of bidding opportunities, and insolvency.
6. Interest and any other indirect costs or expenses of any nature other than those allowable under sub-item 4 of Section F above.
7. Attorneys' fees, claims preparation expenses, or costs of litigation.

8. Prejudgment interest on any amounts the Contractor may be found to be entitled for any Claim.

H. Computation of Extra Equipment Costs. For purposes of computing extra equipment costs for any Claim by the Contractor, rates used are based on the Contractor's actual costs for each piece of equipment. These rates must be supported by equipment cost records furnished by the Contractor. Equipment rates will not be allowed in excess eighty (80%) percent of those in the *Rental Rate Blue Book* with the appropriate adjustments noted herein. The stand-by rate is twenty-five (25%) percent of the operating rate.

I. Labor Rates. Labor rates for any Change Order or Claim not otherwise agreed to by the parties shall be computed in accordance with the most recent United States Government's General Decision as of the effective date of this contract.

J. No Course of Dealing. No agreement by County to a particular Change Order submitted by Contractor shall be construed to establish a course of dealing between County and Contractor regarding labor or equipment rates, or any other costs. The failure of County to insist that Contractor satisfy any requirements for Change Order requests, including but not limited to the written notice requirements, shall in no way constitute a waiver of the County to insist that Contractor later satisfy such requirements or satisfy such requirements for subsequent Change Order requests.

VIII. Claims

A. Claim.

1. A "Claim" is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of the Contract Documents, Agreement terms, the payment of money, time or other relief or resolution of issues with respect to the Contract or Contract Documents. The term "Claim" also includes any other disputes or matters in question between County and Contractor arising out of or relating to the Agreement, the relationship of the County and the Contractor arising out of the Agreement, and including any Claim the Contractor may make related in any way to any act or omission of a third party. If the Contractor suffers injury or damage to person or property because of an act or omission of the County, the Project Manager, the Engineer, or any of their respective employees or agents, or of others for whose acts such Party is legally liable, the Contractor must make a Claim for such injury and/or damages as provided in this Section.

2. Claims by the Contractor must be initiated by written notice or they are waived.

B. Notice of Claim. The Contractor acknowledges the prejudice to the County as a result of any attempted assertion by the Contractor of Claims except as specifically permitted herein in the precise manner and strictly within the time limits established herein. Claims by the Contractor must be initiated in writing (the "Initial Notice") within seven (7) Days after the occurrence of the event giving rise to such Claim or the claim is

waived. Claims must be initiated by written notice as provided in this Section to the County detailing the anticipated type and amount of impact in time and/or money of the event or condition. Within seven (7) Days after the conclusion of the event giving rise to such Claim, the Contractor shall give the County a “Final Notice” of the alleged impact on the Contractor in time and money. No additional Claim by a Contractor for the same subject matter may be made after the Final Notice for the Claim has been submitted or after the time for submission of the Final Notice has expired. The notice requirement in this Section shall be an express condition precedent to the Contractor’s right to recover under any Claim.

1. Claims by the Contractor must be made in writing. The Final Notice of any Claim must contain at least all of the following:

- (a) a narrative statement referencing and attaching the supporting documentation and specifically describing the legal, factual and architectural or engineering basis of the Claim;
- (b) if the Claim alleges delay to the critical path, the Claim must include the precise number of Days of delay claimed and all alleged impacts on the Work; and, after giving the County notice of intention to file a Claim for delay damages, the Contractor shall keep separate daily records of all labor, material, and equipment costs incurred for operations affected by the delay. The daily records must identify each operation affected by the delay. On a monthly basis after giving notice of intention to file a Claim for delay, the Contractor shall prepare and submit to the County's representative, written reports providing the following information: (i) Potential effect to the Schedule caused by the delay, (ii) Identification of all operations that the Contractor claims have been delayed, or will be delayed, (iii) Explanation of how the County's act or omission delayed each operation and an estimation of how much time is required to complete the project, and (iv) Itemization of all extra costs incurred, including: (1) An explanation as to how these extra costs relate to the delay and complete details of the Contractor's method of measurements, calculations, and resultant quantifications; (2) Identification of all project employees for whom the Contractor seeks additional compensation, and (3) Identification by make, model, and manufacturer's number of all items of equipment for which the Contractor seeks additional compensation.
- (c) if the Claim alleges acceleration or constructive acceleration of the Work, the Claim must demonstrate the benefits that have been achieved by the acceleration. No Claims for acceleration for Work that is not on the critical path shall be permitted. Claims for additional compensation or time for alleged acceleration shall be limited as provided in the Contract Documents; and

- (d) if the Claim is for additional compensation, the Claim must include a detailed calculation of the precise amount claimed with all supporting documentation.

2. Within seven (7) Days after the Initial Notice, or after the conclusion of the event giving rise to the Claim, whichever is later, the Contractor shall provide the Final Notice to the County. The Contractor's failure to provide the Final Notice within seven (7) Days after the Initial Notice or after the conclusion of the event giving rise to the Claim shall constitute a waiver of the Claim against the County. Any waiver by the County of the notice requirements for the Initial Notice or the Final Notice for a Claim, event, or occurrence shall not constitute a waiver of these notice requirements for any other Claim, event, or occurrence. All information required in the Final Notice must be submitted within the time limits established herein.

C. Continued Work. Pending final resolution of a Claim, except as otherwise agreed in writing or in the Contract Documents, Contractor shall proceed diligently with performance of the Work and County shall continue to make undisputed payments in accordance with the Contract Documents. The making of any payment by County shall not constitute a waiver of any Claims by County or an acknowledgement by County that Contractor is entitled to additional time or money. The failure of Contractor to continue to proceed with the Work during the pendency of the Claim shall be a material breach of this Agreement.

D. Audit of Claims. The County may perform an audit of the Contractor's records when the Contractor makes a Claim under the same manner and terms as provided for in SCDOT Standard Specification 105.16.9.

IX. Termination and Suspension

A. Termination for Cause

1. The County may cancel the Agreement in whole or in part for cause in the case of the Contractor's material breach of this Agreement, default of its obligations under this Agreement, negligence or other basis for termination for cause as may be stated in the Agreement.

2. In the event of a default under this Section, the County shall have the right to terminate forthwith this Contract by written notice to the Contractor. In the event of such default, the advance notice period for termination is waived and the Contractor shall not be entitled to any costs or damages resulting from a termination under this section.

3. If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the United States Bankruptcy Code or any similar or applicable federal or state laws; or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) Days from the date of said filing; or if the Contractor admits in writing its inability to pay its debts generally as they become due; or if it takes a general assignment for the benefit of his creditors; or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if it repeatedly fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper material for the Work; or if it submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if it fails without justification to make Prompt Payment to subcontractors or for material or labor or otherwise breaches its obligations under any subcontract with a subcontractor; or if a mechanic's or materialman's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded or insured over by the Contractor in a manner satisfactory to the County; or if the Contractor repeatedly disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental or private jurisdiction of the Work or the site of the Project; or if it otherwise is guilty of a material breach of any provision of the Contract Documents without prejudice to any right or remedy available to the County under the Contract Documents or at law or in equity, may terminate this Agreement with cause. If requested by the County, the Contractor shall remove any part or all of its equipment, machinery and supplies for the site of any Project within seven (7) Days from the date of such request, and in the event of the Contractor's failure to do so, the County shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense.

4. Whether or not the Contractor's right to proceed with the Work is terminated, it and its sureties shall be liable for any damage to the County resulting from Contractor's default. Any wrongful termination for default shall be deemed by the Parties a termination for convenience.

5. The rights and remedies of the County in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

B. Termination Without Cause (for Convenience).

1. The County at its sole option and discretion shall have the right to terminate this Agreement in whole or in part for its convenience at any time during the course of performance by giving written notice to the Contractor.

a) If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually accomplished up to the date of termination.

b) Upon receipt of a termination for convenience notice, Contractor shall immediately discontinue Work on the date and to the extent specified in said notice.

c) There will be no additional costs to the County from the Contractor or any other party upon the County's termination for convenience, other than for Work already performed satisfactorily before the date of termination of this Agreement and accepted by the County. The Contractor will not be entitled to recover any other damages in connection with a termination for convenience, including but not limited to consequential, incidental, exemplary, special, punitive, statutory, direct, indirect, or lost profits.

2. The County, by written notice, may terminate this Contract in whole or in part in the event that sufficient appropriation of funds from any source (whether a federal, state, County or other source) are not made or sufficient funds are otherwise unavailable, in either case, to pay the charges under this Contract. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually provided to the date of such termination. The Contractor will not be compensated for any other costs in connection with a termination for non-appropriation. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits.

C. Effect of Termination.

1. If this Agreement is terminated or terminates for any reason, re-producible copies of all finished or unfinished work related to any Work, including without limitation, documents, data, analysis, calculations, studies, maps, photographs, reports, produced or prepared by Contractor, or in Contractor's possession shall be supplied to County and shall become the property of County.

2. If this Agreement is terminated or terminates for any reason, all subcontracts of the Contractor for Work rendered or to be rendered pursuant to this Agreement are deemed assigned to the County or the County's designee, except that the County or the County's designee may determine in their sole discretion not to accept assignment of any subcontract.

D. Suspension of the Work. The County may order, in writing, a suspension of the Work ("Suspension of the Work") in whole or in part for such time as it deems necessary. The County may order the Contractor to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the County. The County may suspend performance of its obligations under this Contract

in good faith for the convenience of the County or to investigate matters arising in the Work.

1. In the event of an unexcused failure of the Contractor to comply with any of the requirements of this Agreement, the Agreement's completion date shall not be extended on account of any such Suspension of the Work and the Contractor shall not be entitled to any compensation or time extension for any delay while the Contractor is attempting to cure any failure to comply with the Agreement.

2. When the County orders any Suspension of the Work under the paragraph above, the Contractor shall not be entitled to any payment for Work with respect to the period during which such Work is suspended and shall not be entitled to any costs or damages resulting from such suspension.

3. The rights and remedies of the County provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

X. Insurance Requirements

A. Unless the County otherwise directs at any time during the Project, the Contractor shall be responsible for the insurance coverages below and make provisions to have similar insurance in its subcontracts.

B. Within five (5) business days of receipt of Notice to Proceed, Contractor shall provide the County a Certificate of Insurance with all insurance required by the State of South Carolina and minimally the below insurance with companies having an A.M. Best Rating of A-, VII or higher.

1. Each certificate shall state it applies to work by or on behalf of the insured. Contractor and its insurers shall provide County thirty (30) Days written notice of any cancellation, non-renewal or reduction in coverage.

C. Contractor must have comparable insurance requirements for any of its subcontractors or insure them under Contractor's policies, unless waived in writing by the County.

D. A breach of any insurance requirement shall be material.

E. All such insurance shall be at Contractor's expense and be maintained throughout the term of this Agreement. Contractor shall provide County certificates throughout the term of this Agreement. The Contractor shall procure insurance policies for the requirements herein. The policies shall name the County as an additional insured under the Commercial General Liability and Business Auto Liability policies. Any Umbrella/Excess Liability policy provided to meet the required general liability and auto liability limits must follow form with all primary policy coverages.

F. Commercial General Liability Insurance

1. Commercial General Liability policy on an occurrence basis with limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury, property damage and personal injury and \$2,000,000 products & completed operations aggregate. The policy shall also include:
2. Contractual liability for the tort liability of another party assumed in an “insured contract”.
3. Waiver of subrogation against the County, its officials, agents, employees, leased and temporary employees and volunteers.
4. The County, its official, agents, employees, temporary and leased workers as additional insureds by the unmodified latest ISO endorsement CG 20 10.
5. A provision that it is primary coverage over all other insurance or self-insurance even if the policy asserts it is excess, secondary or contingent.
6. Severability of interest.
7. An electronic liability endorsement (CG 04 37 or similar as approved by the County).
8. Products-completed operations liability coverage extending at least two years beyond completion of each separate Project.
9. Include coverage for explosion, collapse and underground hazards.
10. Completed operations coverage extending at least two years beyond the completion date of the Work.

G. Business Auto Coverage. Business Auto Coverage Form with a combined single limit for bodily injury and property damage of \$1,000,000 per accident. Physical damage coverage is at the option of the Contractor. The policy shall also include:

1. Contractual liability;
2. The County, its officials, agents, employees, temporary and leased workers, and volunteers are included as additional insureds.
3. A provision the policy is primary and non-contributory to all other insurance or self- insurance maintained by any additional insured.
4. A waiver of subrogation against the County, its officials, employees, leased and temporary employees, and volunteers.

H. The Contractor shall require its employees and anyone working on its behalf to provide evidence acceptable to the County of auto liability coverage. The policy shall cover owned, hired and non-owned vehicles.

I. Worker's Compensation and Employer's Liability Insurance. The Contractor shall provide worker's compensation and employer's liability in accordance with the laws of the State of South Carolina (other state's coverage is not sufficient.) Employer's liability limits shall not be less than \$500,000/\$500,000/\$500,000. The policy shall contain a waiver of subrogation against the County, its officials, employees, temporary and leased workers, and volunteers.

J. Certificate of Liability Coverage. The certificate of liability coverage shall verify compliance with the preceding requirements.

K. Cancellation, Non-renewal, Material Change or Reduction in Coverage. The Contractor shall provide the County with a minimum of thirty (30) Days prior written notice, except ten (10) Days for non-payment of premium, of any cancellation, non-renewal, reduction in coverage or any other material change in the required policies. Each certificate must state that the insurance applies to work performed by or on behalf of the Contractor.

XI. Cleanup Work

A. During progress of Work, Contractor will keep the Work Site and affected adjacent areas cleaned up. The Contractor will remove all rubbish, surplus materials, surplus excavated materials, and unneeded construction equipment so that the Work Site will be inconvenienced as little as possible.

B. Where materials or debris have washed or flowed into or have been placed in existing watercourses, ditches, gutters, drains, pipes, or structures by Work done under this Contract, the Contractor will remove and dispose of such material or debris during the progress of the Work.

C. Upon completion of Work, the Contractor will leave all ditches, channels, drains, pipes, structures and work, etc. in a clean and neat condition.

D. The Contractor will remove all debris from any grounds that have been occupied by the Contractor and leave the roads and all parts of the Work Site and adjacent sites affected by the Contractor's operations in a neat and satisfactory condition.

E. The Contractor will restore or replace any public or private property damaged by the Contractor's Work, equipment or employees to a condition at least equal to that existing immediately prior to the beginning of the operations.

XII. General Provisions.

A. Indemnification.

1. The Contractor, as part of its duty of indemnification, shall defend and hold harmless the County, its agents, and representatives, including but not limited to its Project Manager and its Engineer, from any costs arising out of the prosecution or defense of any action arising out of the Contractor's performance

under this Agreement, to the extent the claim was due to the negligent acts, omissions, or wrongdoing of the Contractor in administering or performing this Agreement. The Contractor shall indemnify, save harmless, and defend the County, its officers, agents, and employees against all liability, claims, fines, penalties, and costs of whatsoever kind and nature for any losses, injury, or death to any person or persons or from loss or damage to any property occurring in connection with or in any way incident to or arising out of or in any way connected with the Work and/or performance pursuant to this Agreement, to the extent resulting in whole or in part from the negligent acts or omissions of the Contractor, its officers, agents, employees, or other representatives, with respect to the administration of this Agreement.

2. The Contractor agrees to notify the County of any claims asserted or brought against the Contractor arising from this Agreement which may potentially expose the County to liability and to coordinate with the County on any issues of governmental or public interest or concern.

3. The Contractor shall notify the County and the Project Manager of the filing of any litigation or arbitration arising from this Agreement. In the event of participation by the County in the defense of any claim, which shall be solely at the discretion of the County, the County shall be responsible for its own attorney's fees, costs, and other expenses. The Contractor will not settle any claims arising hereunder without the express written prior permission of the County.

4. The Contractor may control the defense of any litigation arising under this paragraph and all related settlement negotiations, unless the County is a party.

5. The Contractor further agrees that in the event it is requested to produce in any litigation any confidential document or information referring or relating to the County, it shall not, where possible, produce the requested material before it has notified the County and the Project Manager and provided the County a reasonable opportunity to appear and object to the production of the County's confidential material.

6. Where applicable, all requirements of the Contractor regarding indemnification set forth in this section shall be imposed on all subcontractors, requiring the subcontractors to defend and indemnify the County in like fashion.

7. The limits of insurance required in this Contract shall not limit the Contractor's obligations under this Section. The terms and conditions contained in this Section shall survive the termination of the Contract or the suspension of the Work hereunder. The obligations herein shall also extend to any actions by the County to enforce this indemnity obligation. The recovery of costs and fees all extend to those incurred in the enforcement of this indemnity.

B. Applicable Laws.

1. By signing a bid, the Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of South Carolina Code of Laws (1976, as amended), and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to the Contractor and its subcontractors or sub-subcontractors; or (b) that the Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

a) Pursuant to Section 8-14-60, “A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the Court or imprisoned for not more than five years, or both.”

b) The Contractor agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in its contracts with its sub-contractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

2. The Contractor and its subcontractors will comply with all applicable federal, state, and local laws and regulations, including but not limited to:

a) Americans with Disabilities Act (ADA);

b) Anti-Kickback Act of 1986;

c) Contract Work Hours and Safety Standards Act;

d) Department of Health and Environmental Control (DHEC);

e) The South Carolina Drug-free Workplace Act, Section 44-107-10 et seq., S.C. Code of Laws (1976, as amended). The County requires all Contractors executing contracts to sign a Drug-free Workplace Certification form prior to the issuance of the Notice to Proceed;

f) Eligibility for employment under United States immigration laws;

g) Employment Eligibility Verification: prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service’s employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees;

h) Employment of Workers with Disabilities;

i) Equal Employment Opportunity;

- j) Environmental Protection Agency (EPA) regulations;
- k) Fair Labor Standards Act (FLSA);
- l) Governmental price regulations/orders (as required by law, the Contractor will deliver proof that materials sold or installed and services rendered comply with price regulations) if a federal grant project;
- m) Maximum hours and minimum wages;
- n) Nondiscrimination because of age;
- o) Occupational Safety and Health Administration (OSHA) (e.g., all materials and services furnished meet or exceed OSHA safety standards);
- p) Statutes regarding qualification to do business;
- q) Statutes prohibiting employment discrimination;
- r) Walsh-Healey Public Contracts Act; and
- s) The “Prompt Payment Requirements” of the Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing.
- t) Contractor further represents and warrants that it will comply with the County’s Commercial Nondiscrimination Ordinance, as described under Section 2-647 of the Richland County Code of Ordinances.

(1) As part of such compliance, the Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination.

(2) The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County’s relevant marketplace.

(3) Moreover, the Contractor affirms that it will cooperate fully with any County inquiries regarding the Contractor’s compliance with the Commercial Nondiscrimination Ordinance.

(4) The Contractor understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Contractor from participating in County contracts, or other sanctions.

(5) This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The Contractor shall include this clause in any subcontracts which it may enter in the performance of this Agreement.

The Contractor shall be responsible for compliance with any such above-stated law, ordinance, rule or regulation, and shall hold the County harmless and indemnify same in the event of non-compliance as set forth in the Contract.

C. Governing Law/Disputes.

1. Notwithstanding any other provision of this Agreement, all disputes, claims, or controversies where the County is a party arising out of or relating to this Agreement shall be resolved only in the Court of Common Pleas for Richland County, South Carolina, to the exclusion of all other courts.

2. This provision applies to the Contractor and to any dispute, claim or controversy any person or entity in the chain of privity with the Contractor for the execution of the Work.

3. The Contractor agrees that any act by the County regarding the Agreement is not a waiver of the County's right to sovereign immunity under state law, to the extent any such immunity exists.

4. The Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any dispute, claim, or controversy relating to this Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on the Contractor by certified mail (return receipt requested) addressed to the Contractor at the address provided as the notice address in this Agreement or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given on the date shown on the return receipt.

5. The Agreement shall be construed under the laws of the State of South Carolina.

D. Permits and Licenses.

1. The Contractor shall, without additional expense to the County, be responsible for obtaining and maintaining in force at all times any necessary licenses and permits required and issued by a municipality or the County for conducting business. The Contractor is responsible at all times for obtaining

applicable work permits and licenses from the County's Building Inspection and Business License Departments. Contractor's license number, person's name, and business name must all be shown on all required licenses.

2. Prior to execution of a contract, the Contractor may be required to provide a copy of its current applicable Contractor's License issued by the State of South Carolina and the County. Any subcontractor must comply with the regulations promulgated in the South Carolina Contractor's Licensing Board as enforced by the South Carolina Licensing Board for Contractors. Contractor's (and or any subcontractor's) License Number, Person's Name and Business Name must all be shown on all required licenses.

E. Safety, Health, and Security Precautions. The following provisions are in addition to those pertinent sections contained in the Standard Specifications.

1. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

a) Employees on the Work Site and other persons who may be affected thereby; and

b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and

c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

3. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting and maintaining danger signs and other warnings against hazards as long as such hazards exist. The Contractor shall also promulgate safety regulations and notify owners and users of adjacent sites and utilities of all construction and related activities.

4. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

5. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract

Documents) to property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except damage or loss attributable to acts or omissions of the County or anyone directly or indirectly employed by it, or by anyone for whose acts the County may be liable. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 24, Indemnification, herein.

6. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the County.

7. The Contractor shall not load or permit any part of the construction or Work Site to be loaded so as to endanger its safety.

8. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's best discretion, to prevent threatened damage, injury or loss.

F. Contractor's Record Keeping Duties and FOIA.

1. The Contractor shall maintain copies of all of contracts, drawings, specifications, addenda, Change Orders and other modifications arising out of the Work, in good order and marked currently to record all field changes made during construction, and, in addition, approved shop drawings, product data, samples, and other similar required submittals must be maintained at the job site. These shall be available to the County.

2. Contractor shall keep full and detailed accounts and records and exercise such controls as may be necessary for proper financial and record management under this Agreement, and the accounting and control systems shall be satisfactory to County. County and County's accountants, lawyers and consultants shall be afforded access to and shall be permitted to audit and copy Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and Contractor shall preserve these for a period of three years after Final Payment, or for such longer period as may be required by law. County shall have the right to access all such records at any time after seven (7) Days written notice.

3. All financial records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by Contractor shall have the same obligations to retain records and permit audits as required of Contractor.

4. If any inspection by County, or its representatives, of Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and any other data relating to the Contract Documents reveals an overcharge, County may deduct said overcharge from any payments due Contractor, or, if no funds remain due to Contractor, Contractor shall, within seven (7) calendar Days of receipt of such written demand for repayment, tender the amount of such overpayment to County or otherwise resolve the demand for repayment to County's satisfaction.

5. Contractor shall maintain an accurate record of all aspects of the Work, including all costs and expenses related to the Work. County may, at its sole discretion, from time to time (whether before or after Final Completion of the Work or termination of this Agreement) elect to have an inspection or audit conducted to verify compliance with the Agreement or to verify the cost of the Work through the date of the last Application for Payment. Any such inspection and/or audit shall be at least as comprehensive as would be allowed under the South Carolina Rules of Civil Procedure. If County so elects, it shall give notice to Contractor and such inspection or audit shall be conducted as soon as is reasonably feasible thereafter so as not to unreasonably delay further progress payments to Contractor as permitted by the Contract Documents, but in no event no later than seven (7) Days from the date of the notice. Such inspection or audit shall be conducted by the County, or by an accountant, lawyer, auditor, or other reviewer or consultant selected by the County, or any number of them in any combination, and County shall, except as hereinafter provided, pay the cost of such audit. Contractor agrees to cooperate with County, and/or its accountant, lawyer, auditor, or other reviewer or consultant, and make available for examination at its home and/or Project office all of its books, records, correspondence, and other documents deemed necessary by such accountant, lawyer, auditor, or other reviewer or consultant to conduct such review.

6. In addition to any duties of Contractor as stated herein, the Contractor agrees to maintain for three (3) years from the date of Final Payment for all Work under this Agreement, or until all other pending matters are closed under this Agreement, whichever is later, all books, documents, papers, and records, digital or otherwise, pertinent to this Agreement. The Contractor agrees to provide to the County, any federal grantor agency, the Comptroller General of the United States, any state grantor agency, any assignee, or any of their duly authorized representative(s) reasonable access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them. The Contractor further agrees to include these provisions in any subcontracts issued by it in connection with this Agreement. The Contractor shall provide a copy of all digital records within sixty (60) Days after Final Payment. The Contractor must provide for a secure back up of digital records during the course of this Agreement.

7. During the retention period, County shall be granted access to those documents upon reasonable notice. At any time during the period, County shall have the option of taking custody of the documents. Contractor shall consult with

County before disposing of any documents maintained pursuant to this Section, including but not limited to documents as to which the three-year retention period has expired. In the event of termination of this Agreement for any reason, all documents required to be maintained pursuant to this Section shall be turned over to County within six months of such termination.

8. Freedom of Information Act.

a) In the event of any Freedom of Information Act (“FOIA”) requests for documents or other information in Contractor's possession, Contractor shall make such documents or information available as directed by County. If the requested documents or information originated from Contractor or its subcontractors or consultants, Contractor shall advise County whether Contractor believes any such documents should be exempt from disclosure. However, subject to the provisions below, the County shall have the right to determine if any documents must be disclosed under the FOIA.

b) The County recognizes that the Contractor may consider certain documents as confidential and proprietary and not subject to FOIA. If the Contractor refuses to disclose any documents related to Contractor’s Work pursuant to a FOIA request and as requested by the County, the Contractor shall defend, hold harmless and indemnify the County from and for any legal proceeding brought against the County alleging any breach of the FOIA because of any documents the Contractor does not agree should be produced by the County pursuant to the FOIA.

G. No Gratuities or Kickbacks.

1. Contractor understands and accepts that the County prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Contractor, its employees, officers, subcontractors, and consultants shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the County.

2. Violation of this Subsection is reason for immediate termination for cause by the County as provided for herein.

H. Subcontractors.

1. The Contractor shall not contract with a proposed person or entity to whom the County has made reasonable and timely objections. Notwithstanding this, the Contractor shall not be required by the County to contract with anyone to whom the Contractor has made reasonable and timely objection.

2. The Contractor shall provide the County a list of its subcontractors and their respective anticipated portions of subcontracted Work with subcontract amounts. Should the subcontractors change, the Contractor shall provide an updated list to the County.

3. The Contractor shall enforce strict discipline and good order among its employees and other persons carrying out the performance of the Agreement. The Contractor shall employ and maintain only competent, qualified supervisory personnel for the performance of this Agreement.

4. Key supervisory personnel assigned by the Contractor to the Work are as follows:

a)

5. So long as the individual named above remains actively employed or retained by the Contractor or its subcontractors or subconsultants, they shall perform the functions indicated next to their names unless the County otherwise agrees in writing.

6. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Section as though such individuals had been listed above.

7. Notices given to the persons listed above, or their successors, will constitute sufficient notice to bind the Contractor.

8. If at any time the County reasonably determines that any employee of the Contractor is not properly performing the Work in the best interest of the Project, is hindering the progress of the Work, or is otherwise objectionable, the County shall so notify the Contractor, which shall replace the employee as soon as possible at no increased cost to the County.

I. Successors and Assigns.

1. This Agreement shall be for the benefit of, and be binding upon, the respective successors and assigns, if any, of the County and the Contractor, except that unless expressly stated in this paragraph, nothing contained herein shall be construed to permit any attempted assignment or unauthorized assignment without the express written permission of the Parties.

2. Except as expressly may otherwise be stated, this Agreement or its provisions may not be assigned, sublet, or transferred without the written consent of the Parties.

3. The Contractor shall provide written notification to the County of any contemplated sale, transfer, or any other action that would result in a transfer of

this Agreement in whole or in part to another company or entity, or that could eventually result in the transfer of any duties or requirements of this Agreement to another company or entity. This notification shall be received by the County not less than forty-five (45) Days prior to any action which would result in said transfer and shall describe, in detail, the actions contemplated by the Contractor.

4. In such case, the County reserves the right to enter into direct negotiations with the party to whom Contractor's ownership interest is being transferred for purposes of clarification or renegotiation of the terms and conditions of this Agreement.

J. Notices. The primary point of contact for the County shall be the Director of Transportation. All notices pertaining to this Agreement shall be in writing and shall be sufficient when sent registered or certified mail (or email if agreed to by the Parties) and addressed as follows:

For the County:

Richland County
Attention: Procurement Manager
2020 Hampton St., Suite 3064
Columbia, SC 29204

~~Copy to: Transportation Director~~

For the Contractor:

Republic Contracting Corporation
PO Box 9167
Columbia, SC 29290

K. Severance/Survival. Should any part of this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or against public policy, said offending section shall be void and of no effect and shall not render any other section herein, nor this Agreement as a whole, invalid, provided the general purposes and intent of this Agreement are not materially affected. Any terms which, by their nature, should survive the suspension, termination, or expiration hereof shall be deemed to so survive.

L. Entire Agreement/Construction. This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes all prior and contemporaneous written and oral agreements between the Parties and their predecessors in interest regarding the subject matter of this Agreement. This Agreement may not be changed, altered, amended, modified, or terminated orally, and any such change, alteration, amendment, or modification must be in writing and executed by the Parties hereto. The Parties acknowledge that each has participated fully in negotiations regarding the terms and conditions of this Agreement. Therefore, should any ambiguities or

differences over interpretation arise, neither Party will be deemed to be the drafting party against which any such ambiguity or difference should be construed.

M. Non-Waiver. Any waiver of any default by either party to this Agreement shall not constitute waiver of any subsequent default, nor shall it operate to require either party to waive, or entitle either party to a waiver of, any subsequent default hereunder.

N. Ownership.

1. All materials of the County, including but not limited to the County's proprietary software and materials, the proprietary system software, all original data, spatial data, spatial data plans, drawings, images, material, documentation (including electronic files or documents), and application software generated and prepared by or exclusively for the County pursuant to this Agreement shall belong to the County. The Contractor shall not sell, give, loan, or in any other way provide such to another person or organization, or otherwise utilize any commercially valuable data, images, or developments created specifically by or for the County under this Agreement, without the written consent of the Contracting Officer identified in the RFP, or the Richland County Director of Transportation.

2. Any external requests to procure these data or materials must be forwarded to the County.

O. Obligations Under Other Agreements.

1. The County shall have the right to perform or have performed similar or such other work as it may desire while the Contractor is performing Work required by this Agreement. The Contractor shall perform the Work in a manner that enables completion of other work performed by the County or on the County's behalf without hindrance or interference (or shall properly connect and coordinate the Work with the work of others when required).

2. Should the Contractor believe that its performance of the Work was interfered with, stopped, or otherwise disrupted by the acts or omissions of such other contractors, the Contractor shall notify the County immediately, and if the Contractor asserts that it has been harmed by such acts of another contractor, Contractor shall make a Claim as provided in this Agreement.

P. Warranty.

1. The Contractor represents that its staff is knowledgeable about and experienced in performing the Work required in this Contract and warrants that it will use its best skill and attention to provide the above described Work in a professional, timely manner.

2. Contractor warrants and represents that it shall be responsible for all subcontractors working directly for it, as well as for their Work product, as though Contractor had performed the Work itself.

3. All equipment, materials and articles incorporated in the Work covered by the Contract and supplied by the Contractor are to meet the Standard Specifications, unless otherwise stated herein. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall not be construed as limiting competition. When requested, the Contractor shall furnish to the Project Manager for approval, the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating in the Work. When required by this Contract or when called for by the County and/or Project Manager, the Contractor shall provide full information concerning the material or articles which he contemplates incorporating in the Work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without the required prior approval of the Project Manager shall be at the risk of subsequent rejection by the County.

4. Any and all manufacturers' warranties on any equipment or materials will be passed on to the County and copies of said warranties will be furnished by the Contractor to the County upon completion and final acceptance of the Work.

5. The County may, in writing, require the Contractor to remove from the Work Site any employee the County deems incompetent, careless or otherwise objectionable.

6. In addition to any manufacturer's warranties, all workmanship and materials are warranted to be free from defects for a period of twelve (12) months after the date of Final Payment by the County.

Q. State and Local Taxes.

1. Except if otherwise provided, Agreement prices shall include all applicable state and local taxes. If applicable, two percent (2%) income tax withholding shall be withheld from each and every payment pursuant to S.C. Code Ann. §§ 12-8-540 and -550 for certain out-of-state contractors, and such sums will be paid over to the South Carolina Department of Revenue (the "SCDOR"). When and if the County receives an executed SCDOR Form 1-312, Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, such withholding shall cease. The Contractor shall calculate that portion of the contract which is subject to the six percent (6.0%) South Carolina sales and/or use tax plus applicable County local sales tax, which amounts shall be itemized and shown on all invoices, and shall be paid to the SCDOR by the Contractor.

2. Contractor shall indemnify and hold harmless the County for any loss, cost, or expense incurred by, levied upon, or billed to the County as a result of the Contractor's failure to pay any tax of any type due in connection with this Agreement by Contractor.

3. The Contractor shall ensure that the above sections are included in all subcontracts and sub-subcontracts and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

R. Governmental Entity Bonding Requirements

1. The Contractor shall provide and maintain, until the expiration of all warranty periods provided herein, payment and performance bonds in one hundred percent (100%) of the Contract Price, inclusive of Change Orders.

2. The Contractor's surety by issuing payment and performance bond pursuant to this Agreement agrees to the amendment of this Agreement to include other such Work, Additional Work, Change Orders, and Claims and waive prior notice of same.

3. Should at any time the State of South Carolina or the federal government require a higher or greater amount for a bond than 100% of the Contract Price before the Effective Date of this Agreement, the Contractor shall procure such bonds as required by law.

4. The surety issuing the bonds for the Contractor is subject to the approval of the County, but the County does not undertake to assume any obligation with regard to the choice of Contractor's surety.

XIII. The Contract Documents.

A. Exhibit Numbers. The Parties agree that the Agreement shall include the following exhibits, which are incorporated herein by reference:

1. **Exhibit A** The County's Invitation for Bids: Bid No. RC-535-B-23 (Not attached but incorporated herein by reference thereto.) This Invitation for Bids No. RC-535-B-23 is called in this Agreement "the Invitation for Bids."

2. **Exhibit B** Contractor's Response to Bid No. RC-535-B-23 including its Bid Bond (Not attached but incorporated herein by reference thereto.)

3. ~~**Exhibit C** SCDOT Standard Specifications for Highway Construction, 2007 Edition, including the all SCDOT Supplements to the Standard Specifications issued up to the date of this Agreement, and County's standard supplements to the Standard Specifications issued up to the date of this Agreement (not attached but incorporated herein by reference thereto).~~

4. **Exhibit D** The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto:

- a) Notice to Proceed;
- b) Performance Bond;
- c) Payment Bond;
- d) Written Amendments;
- e) Work Change Directive(s);
- f) Change Order(s); and
- g) the Schedule.

B. Order of Precedence. This Agreement, including the Exhibits listed above, are collectively called in this Agreement “the Contract Documents” and form the entire Agreement between the Parties, superseding all prior negotiations, representations, or agreements, whether written or oral. The Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. The Contract Documents are intended to be complementary, and a requirement in one document shall be deemed a requirement in all documents. If, however, any provision of the Agreement conflicts with another provision of the Agreement, or if there is a discrepancy or inconsistency among any of the Contract Documents, the following rules of interpretation shall control:

- 1. As between the Contract Form and any of the other Contract Documents (including the Invitation For Bids and the contract terms and conditions included therein), the Contract Form shall govern.
- 2. As between the Invitation For Bids and the Standards Specifications, the Invitation For Bids shall govern, including all Supplemental Specifications and Addenda issued by the County as part of the Invitation For Bids.
- 3. In the event of any conflict, discrepancy, or inconsistency among any of the other Contract Documents, the Contractor shall notify the County immediately upon discovery of same, and the County will notify the Contractor of the resolution.

C. Ambiguity Savings Clause. Absent a clear conflict, discrepancy, or inconsistency in the Contract Documents not governed by the Order of Precedence language above, which results in an ambiguity in the Contract Documents, in the event of a conflict, discrepancy, or inconsistency among the Contract Documents, the more onerous of such provisions to perform by the Contractor shall be deemed controlling unless the County in its sole discretion determines otherwise.

D. Degree of Application: County. Although the Standards Specifications are part of the Contract Documents, the County does not undertake any obligation of the SCDOT as stated in the Standard Specifications for any action unless the County expressly agrees to do so in writing in another Contract Document.

E. Degree of Application: Contractor. Should there be a conflict between any provision of any Contract Document that is not determined by the Order of Precedence at Section B above, the Contractor will be assumed to have agreed to the more onerous obligation or duty between or among the conflicting terms.

SIGNATURES NEXT PAGE

NOW, THEREFORE, in consideration of the foregoing, the sufficiency of which is hereby acknowledged by the parties, this Agreement is entered into Under Seal as of the Effective Date of _____, 2022.

WITNESS:

RICHLAND COUNTY, SOUTH CAROLINA

By: _____ (L.S.)

Its: _____

Date: _____

Contractor:

WITNESS:

By: _____ (L.S.)

Its: _____

Date: _____

Richland County Council Request for Action

Subject:

Finance Department - Travel Policy Updates

Notes:

November 17, 2022 – The A&F Committee recommended Council to approve updating the Travel and Expense Reimbursement guidelines to a financial policy and applicable procedures and financial amounts.



Agenda Briefing

Prepared by:	Stacey D Hamm	Title:	Director
Department:	Finance	Division:	Click or tap here to enter text.
Date Prepared:	October 31, 2022	Meeting Date:	November 17, 2022
Legal Review	Patrick Wright via email	Date:	November 8, 2022
Budget Review	Abhijit Deshpande via email	Date:	November 1, 2022
Approved for consideration:	County Administrator	Leonardo Brown, MBA, CPM	
Meeting/Committee	Administration & Finance		
Subject	Travel and Expense Reimbursement Policy		

RECOMMENDED/REQUESTED ACTION:

Staff recommends updating the Travel and Expense Reimbursement guideline to a financial policy and updating applicable procedures and financial amounts.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

The new policy may increase departments’ incurred employee training expenses; however, the policy will more reasonably accommodate an employee's ability to cover actual incurred meal costs in light of current costs.

Applicable department/grant key and object codes:

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

None applicable.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	Click or tap here to enter text.
Meeting	Choose an item.
Date	Click or tap to enter a date.

STRATEGIC & GENERATIVE DISCUSSION:

The current Travel and Expense Reimbursement policy is a Human Resource guideline for Richland County. Since the guideline addresses reimbursing applicable expenses to employees, it is better suited as a Financial Policy rather than as a guideline. The guidelines were last revised with minor changes in December of 2016.

The County’s mileage reimbursement rate mirrors the per mile rate of the US federal government, so it remains current; however, the per-diem rate remains at the 2001 rate. Staff proposes that the County use a rate closely tied to the US General Services Administration (GSA) rate for South Carolina. The recommendation is \$60 in-state and \$75 out-of-state and for resort areas. The breakdown is provided below. The proposed rate will also better reflect current restaurant meal prices. Additionally, staff requests that Greenville be designated as a “resort area” given the similarity of their restaurant costs to those of other areas within the State that are considered “resort areas.”

Meal	Breakfast	Lunch	Dinner
In-state	\$14.00	\$16.00	\$30.00
Out-of-state	\$18.00	\$21.00	\$36.00

Another recommended update is that reimbursement be provided after returning from a trip that is 175 miles or less round-trip. As before, only half of the per-diem is paid in advance if the trip’s duration is less than one week. The policy also clarifies that a copy of the meeting schedule/agenda is required for per-diem advances or reimbursements to ensure that meals covered within the cost of conference/training registration are not reimbursed.

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS:

1. Travel and Expense Reimbursement Policy 2022
2. Redline Travel and Expense Guideline 2016

RICHLAND COUNTY FINANCE DEPARTMENT POLICY	
TITLE: Travel and Expense Reimbursement	Number: 4.12
EFFECTIVE DATE: 10/1/2022	Page: 1 of 5
REVISION DATE: 10/1/2022	REVISION #: 1
PREPARED BY: Finance Department	AUTHORIZED BY: County Administration

PURPOSE:

All employees of the County will be reimbursed for approved and eligible travel and expenses incurred in the course of their employment. The County strives to reimburse employees in an orderly, consistent and systematic manner for business expenses.

PROCEDURE:

1. The County pays mileage at the same rate as the U.S. Federal reimbursement rate per mile, if employees use private vehicles for approved County business. Odometer readings must be recorded and submitted for reimbursement. Generally, for reoccurring operational trips, reimbursement will be limited to the shortest established route.
 - 1.1. Mileage will only be paid for travel authorized for official County business.
 - 1.2. No employee will be paid mileage for travel to or from his/her home to his/her worksite.
 - 1.3. No employee who has been furnished a County vehicle will be paid mileage while traveling in such a vehicle.
2. All travel vouchers must be signed by the individual claiming mileage reimbursement and his/her Department Head.
3. When two (2) or more employees travel in the same personal automobile, only the individual who owns the automobile being used can submit a voucher for mileage.
4. All trips (conventions, seminars, etc.) must be for approved valid business reasons; that is, some benefit must accrue to the County as a result of the trip.
5. All trips are to be approved in advance by the Department Head for whom the employee works. It is the responsibility of the Department Head to monitor all charges submitted by his/her employees in order to determine that such charges are reasonable, and beneficial to the County (taking into consideration location, purpose of travel, and other extenuating circumstances).
6. The County Administrator will have oversight of all single trips out of the County, with the exception of those trips made by elected officials and their employees.
7. All training and convention travel must be pre-approved to be eligible for reimbursement. Travel vouchers will be furnished by the Finance Department. These vouchers must be used to make reimbursement claims. Required receipts, if applicable, must accompany vouchers, and vouchers must be signed by individual employees, validated by Department Heads, and returned to the Finance Department after the completion of each trip. Receipts are required for all lodging costs (hotel and motel accommodations), any registration fees not paid in advance

RICHLAND COUNTY FINANCE DEPARTMENT POLICY

TITLE: Travel and Expense Reimbursement	Number: 4.12
EFFECTIVE DATE: 10/1/2022	Page: 2 of 5
REVISION DATE: 10/1/2022	REVISION #: 1
PREPARED BY: Finance Department	AUTHORIZED BY: County Administration

by the Finance Department; commercial travel costs not arranged by the Finance Department, and required parking fees.

8. All operational travel must be properly approved for reimbursement. Travel vouchers for daily recurring travel must be submitted as a group by each Department Head by the fifth working day of each month for the preceding month. Daily recurring travel will be paid once per month. If not submitted by the fifth working day of each month, the employee/Department Head may not be reimbursed.
9. To be eligible for reimbursement, expenses must be properly approved and incurred in accordance with the following:
 - 9.1. Meals and lodging will be reimbursed once returned from all authorized business related trips according to the subsistence reimbursement schedule in these guidelines.
 - 9.2. Mileage will be reimbursed once returned from all authorized business related trips and will be paid for the shortest usually traveled route from your County worksite unless another route is approved for County business purposes.
10. Employees will depart as soon as practical after the conclusion of their business, except that no employees will be expected to depart between the hours of 10:00 p.m. and 8:00 a.m. On the initial day of travel, breakfast will be reimbursed if departure is required prior to 9:00 a.m. Dinner may be reimbursed if return trip extends beyond 6:00 p.m.
11. Subsistence will not be paid to any employee for any time after she/he could have reasonably returned to the County as outlined above, unless it is more cost effective to delay return.
12. Personnel traveling away from the County on official business, where accommodations at a governmental institution or school are received at less than commercial rates, will be reimbursed only for the cost of actual expenses.
13. Any third party payment, such as federal matching funds, will be applied to the County's pro rata share of such trip.
14. Expense money will be dispensed in the following manner for single trips:
 - 14.1. Personal mileage may be paid in advance based upon distances exceeding a 175 miles round-trip given on an official South Carolina Department of Highways and Public Transportation map or Map Quest. If the round-trip is less than 175 miles, the employee/Department Head will be reimbursed upon return. Travel Reimbursement must be submitted within 30 business days.
 - 14.2. All anticipated lodging costs may be paid in advance based on data from source of such accommodations.
 - 14.3. A meal allowance of thirty dollars (\$30.00) per day may be paid in advance. If an employee will be out of town for one week or longer, an advance may be obtained at the maximum meal rate allowed per day.

RICHLAND COUNTY FINANCE DEPARTMENT POLICY	
TITLE: Travel and Expense Reimbursement	Number: 4.12
EFFECTIVE DATE: 10/1/2022	Page: 3 of 5
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PREPARED BY: Finance Department	AUTHORIZED BY: County Administration

15. Employees must report meals included in registration costs for conferences, workshops, etc. which will reduce that day's meal allowance by the amount allowed for the meal provided, as outlined in the per diem breakdown.
16. The Finance Director may, from time to time, issue guidelines for the regulation and administration of travel and conference expenses.
17. No employee will receive reimbursement for activities within ten (10) miles of his/her official headquarters except when she/he is required to attend statewide, regional, or district meetings within that area. Also, no reimbursement for overnight accommodations will be permitted within fifty (50) miles of the traveler's headquarters or residence.
18. Airplane Travel
- 18.1. Coach fare (round trip). The County pays the total cost of the ticket for approved travel.
- 18.2. First class. The County pays the cost of the ticket at the coach fare rate; the individual must pay the remainder. In the event coach fare is not available, the County may pay the entire cost but this must be preapproved by the County Administrator.
19. Automobile Travel
- 19.1. Individual's personal automobile: The County pays mileage at the same rate as is paid for U.S. Federal reimbursement per mile for the round trip for approved travel.
- 19.2. County automobile: The County pays for gasoline, oil and insurance. No reimbursement for mileage.
- 19.3. Parking, storage and tolls: The County will pay all tolls, business related parking and storage expenses while on the trip for approved travel provided that receipts are submitted.
20. Bus Travel
- 20.1. The County pays the total cost of the round trip ticket for approved travel.
21. Train Travel
- 21.1. The County pays for a round trip ticket at the most economical rate for approved travel.
22. Registration
22. 1. The County pays the registration cost of authorized and approved conventions, conferences and seminars for approved travel.

RICHLAND COUNTY FINANCE DEPARTMENT POLICY	
TITLE: Travel and Expense Reimbursement	Number: 4.12
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PREPARED BY: Finance Department	AUTHORIZED BY: County Administration

23. Subsistence for Out-of-County Travel

23.1. An authorized employee traveling out of the County will be paid as follows:

23.2. Lodging expenses will be paid unless the lodging costs are associated with a conference or workshop.

23.3. For lodging costs associated with a conference/workshop reimbursement will be based on the cost of the hosting facility. If any employee desires to make accommodations at a hotel or motel which costs exceed the host facility or site of the conference or workshop, reimbursement/advance will be based on the lower rate. If no specific lodging is indicated for a conference or workshop that provides discounted accommodations costs, every effort should be made to secure accommodations through lodging facilities reflected in the "South Carolina Directory of Hotel/Motel Discounts for Government Employees." If such facilities are not available, every effort should be made to secure the accommodations at the current GSA rate (US General Services Administration). Any rate above such must be approved prior by the department director.

23.4. A daily per-diem meal allowance of sixty dollars (\$60.00) per day will be paid for trips taken in-state, unless the travel is to a resort area, in which case the out-of-state allowance will apply. A meal allowance of seventy-five dollars (\$75.00) per day will be paid for trips taken out-of-state. Daily meal expense maximums are as follows:

<i>Meal</i>	<i>Breakfast</i>	<i>Lunch</i>	<i>Dinner</i>
In-state	\$14.00	\$16.00	\$30.00
Out-of-state/Resort Area	\$18.00	\$21.00	\$36.00

23.5. Resort areas include: Myrtle Beach, North Myrtle Beach, Surfside Beach, Little River, Atlantic Beach, Garden City Beach, Murrells Inlet, Litchfield Beach, Pawley's Island, Hilton Head, Charleston and Greenville.

24. Receipts for lodging and other expenses must be presented in order for reimbursement to be made. Receipts for meals are not required but a copy of the schedule/agenda from any training, workshops or conferences are required. If a schedule/agenda is not available prior to your event, there will be no prepayments for meals. All meals will be reimbursed per County Policy once a schedule/agenda is provided. The employee will only be reimbursed for expenses for those meals when a conference meal is not provided

25. The County Administrator and Department Heads may be reimbursed actual amounts for ordinary, necessary business expenses, to include travel and meeting costs, subject to all limitations set forth herein, provided receipts are submitted and request for such payment is made.

26. Extradition travel expenses will be reimbursed at actual costs subject to all limitations set forth herein.

RICHLAND COUNTY FINANCE DEPARTMENT POLICY	
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PREPARED BY: Finance Department	AUTHORIZED BY: County Administration

27. Any travel requests which would involve public funds for a trip outside the County where such funds have been budgeted, shall be approved by the Department Head before any registration or advanced fees are issued. The County Administrator shall have oversight of all travel requests, if necessary. In the event that funds have not been budgeted, the travel request shall first receive approval from the County Administrator and final authorization from the County Council; provided, however, if such request is made during a period of greater than that of bi-monthly regularly scheduled Council meetings,, the County Administrator shall have the authority to grant such travel requests.
28. For in-county travel for conventions, the County will pay only approved "out-of-pocket" expenses for subsistence for conventions. Receipts are required for all actual expenses.

RESPONSIBILITIES:

1. Employee

- 1.1. Request travel and expense approval by Supervisor and Department Head before incurred.
- 1.2. Complete and submit expense report accurately upon return and within thirty (30) business days for all business travel. If not submitted within thirty (30) business days from returning from all business travel/ work-related travel, the employee/Department Head will not be reimbursed.

2. Supervisor / Department Head

- 2.1. Monitor and review for approval expenses.
- 2.2. Submit reoccurring travel vouchers by the 5th working day of the month for the preceding month. If not submitted by the 5th working day, the employee/Department Head will not be reimbursed.

3. Finance Department

- 3.1. Review and reimburse/advance expenses as applicable with County guidelines.

RICHLAND COUNTY FINANCE DEPARTMENT <u>POLICY</u>	
TITLE: Travel and Expense Reimbursement	Number: 4.12
EFFECTIVE DATE: <u>10/7/1/2022</u>	Page: <u>4</u> of 5
REVISION DATE: <u>10/7/1/2022</u>	REVISION #: 1
PREPARED BY: Finance Department	AUTHORIZED BY: County Administration

PURPOSE:

All employees of the County will be reimbursed for approved and eligible travel and expenses incurred in the course of their employment. The County strives to reimburse employees in an orderly, consistent and systematic manner for business expenses.

PROCEDURE:

1. The County pays mileage at the same rate as the U.S. Federal reimbursement rate per mile, if employees use private vehicles for approved County business. Odometer readings must be recorded and submitted for reimbursement. Generally, for reoccurring operational trips, reimbursement will be limited to the shortest established route.
 - 1.1. Mileage will only be paid for travel authorized for official County business.
 - 1.2. No employee will be paid mileage for travel to or from his/her home to his/her worksite.
 - 1.3. No employee who has been furnished a County vehicle will be paid mileage while traveling in such a vehicle.
2. All travel vouchers must be signed by the individual claiming mileage reimbursement and his/her Department Head.
3. When two (2) or more employees travel in the same personal automobile, only the individual who owns the automobile being used can submit a voucher for mileage.
4. All trips (conventions, seminars, etc.) must be for approved valid business reasons; that is, some benefit must accrue to the County as a result of the trip.
5. All trips are to be approved in advance by the Department Head for whom the employee works. It is the responsibility of the Department Head to monitor all charges submitted by his/her employees in order to determine that such charges are reasonable, and beneficial to the County (taking into consideration location, purpose of travel, and other extenuating circumstances).
6. The County Administrator will have oversight of all single trips out of the County, with the exception of those trips made by elected officials and their employees.
7. All training and convention travel must be pre-approved to be eligible for reimbursement. Travel vouchers will be furnished by the Finance Department. These vouchers must be used to make reimbursement claims. Required receipts, if applicable, must accompany vouchers, and vouchers must be signed by individual employees, validated by Department Heads, and returned to the Finance Department after the completion of each trip. Receipts are required for all lodging costs (hotel and motel accommodations), any registration fees not paid in advance

**RICHLAND COUNTY FINANCE DEPARTMENT
POLICY/RICHLAND COUNTY HUMAN RESOURCES
GUIDELINES**

TITLE: Travel and Expense Reimbursement	Number: 4.12
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REVISION DATE: <u>10/12/19/2016</u> 7/1/2022	REVISION #:1
PREPARED BY: <u>Human Resources-</u> <u>Department/Finance Department</u>	AUTHORIZED BY: County Administration

by the Finance Department; commercial travel costs not arranged by the Finance Department, and required parking fees.

8. All operational travel must be properly approved for reimbursement. Travel vouchers for daily recurring travel must be submitted as a group by each Department Head by the ~~fifth~~ third working day of each month for the preceding month. Daily recurring travel will be paid once per month. If not submitted by the fifth working day of each month, the employee/Department Head may not be reimbursed.
9. To be eligible for reimbursement, expenses must be properly approved and incurred in accordance with the following:
 - 9.1. Meals and lodging will be reimbursed once returned from all authorized business related trips according to the subsistence reimbursement schedule in these guidelines.
 - 9.2. Mileage will be reimbursed once returned ~~to~~ from all authorized business related trips and will be paid for the shortest usually traveled route from your County worksite unless another route is approved for County business purposes.
10. Employees will depart as soon as practical after the conclusion of their business, except that no employees will be expected to depart between the hours of 10:00 p.m. and 8:00 a.m. On the initial day of travel, breakfast will be reimbursed if departure is required prior to ~~8~~ 9:00 a.m. Dinner may be reimbursed if return trip extends beyond ~~5~~ 6:00 p.m.
11. Subsistence will not be paid to any employee for any time after she/he could have reasonably returned to the County as outlined above, unless it is more cost effective to delay return.
12. Personnel traveling away from the County on official business, where accommodations at a governmental institution or school are received at less than commercial rates, will be reimbursed only for the cost of actual expenses.
13. Any third party payment, such as federal matching funds, will be applied to the County's pro rata share of such trip.
14. Expense money will be dispensed in the following manner for single trips:
 - 14.1. Personal mileage may be paid in advance based upon distances exceeding a 175 miles round-trip given on an official South Carolina Department of Highways and Public Transportation map or Map Quest. If the round-trip is less than 175 miles, the employee/Department Head will be reimbursed upon return. Travel Reimbursement must be submitted within ~~five (5)~~ 30 business days.
 - 14.2. All anticipated lodging costs may be paid in advance based on data from source of such accommodations.
 - 14.3. A meal allowance of ~~thirty-two~~ thirty dollars (~~\$320.00~~ \$30.00) per day may be paid in advance. ~~If~~

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If an employee will be out of town for one week or longer, ~~an~~ advance may be obtained at the maximum meal rate allowed per day.

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RICHLAND COUNTY FINANCE DEPARTMENT RICHLAND COUNTY HUMAN RESOURCES GUIDELINES POLICY	
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EFFECTIVE DATE: 10/8/1/2009 7/1/2022	Page: 3 of 5
REVISION DATE: 10/12/19/2016 7/1/2022	REVISION #: 1
PREPARED BY: Human Resources Department Finance Department	AUTHORIZED BY: County Administration

15. Employees must report meals included in registration costs for conferences, workshops, etc. which will reduce that day's meal allowance by the amount allowed for the meal provided, as outlined in the per diem breakdown.

16. The Finance Director may, from time to time, issue guidelines for the regulation and administration of travel and conference expenses.

17. No employee will receive reimbursement for activities within ten (100) miles of his/her official headquarters except when she/he is required to attend statewide, regional, or district meetings within that area. Also, no reimbursement for overnight accommodations will be permitted within fifty (50) miles of the traveler's headquarters or residence.

18. Airplane Travel

18.1. Coach fare (round trip). The County pays the total cost of the ticket for approved travel.

18.2. First class. The County pays the cost of the ticket at the coach fare rate; the individual must pay the remainder. In the event coach fare is not available, the County may pay the entire cost but this must be preapproved by the County Administrator.

19. Automobile Travel

19.1. Individual's personal automobile: The County pays mileage at the same rate as is paid for U.S. Federal reimbursement per mile for the round trip for approved travel.

19.2. County automobile: The County pays for gasoline, oil and insurance. No reimbursement for mileage.

19.3. Parking, storage and tolls: The County will pay all tolls, business related parking and storage expenses while on the trip for approved travel provided that receipts are submitted.

20. Bus Travel

20.1. The County pays the total cost of the round trip ticket for approved travel.

21. Train Travel

21.1. The County pays for a round trip ticket at the most economical rate for approved travel.

22. Registration

22.1. The County pays the registration cost of authorized and approved conventions, conferences and seminars for approved travel.

RICHLAND COUNTY FINANCE DEPARTMENT
POLICY/RICHLAND COUNTY HUMAN RESOURCES
GUIDELINES

TITLE: Travel and Expense Reimbursement	Number: 4.12
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REVISION DATE: 10/12/19/2016 <u>7/1/2022</u>	REVISION #: 1
PREPARED BY: Human Resources- Department Finance Department	AUTHORIZED BY: County Administration

23. Subsistence for Out-of-County Travel

23.1. An authorized employee traveling out of the County will be paid as follows:

23.2. Lodging expenses will be paid unless the lodging costs are associated with a conference or workshop.

23.3. For lodging costs associated with a conference/workshop reimbursement will be based on the cost of the hosting facility. If any employee desires to make accommodations at a hotel or motel which costs exceed the host facility or site of the conference or workshop, reimbursement/advance will be based on the lower rate. ~~If no specific lodging is indicated for a conference or workshop that provides discounted accommodations costs, every effort should be made to secure accommodations through lodging facilities reflected in the "South Carolina Directory of Hotel/Motel Discounts for Government Employees." If such facilities are not available, every effort should be made to secure the most economical accommodations practical for the specific locale.~~ accommodations at the current GSA rate (US General Services Administration). Any rate above such must be approved prior by the department director.

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23.4. A daily per-diem meal allowance of ~~twenty-eight~~sixty dollars (\$~~60~~28.00) per day will be paid for trips taken in-state, unless the travel is to a resort area, in which case the out-of-state allowance ~~will apply.~~ -A meal allowance of ~~thirty~~seventy-five dollars (\$~~75~~35.00) per day will be ~~paid for trips taken out-of-state.~~ Daily meal expense maximums are as follows:

<i>Meal</i>	<i>Breakfast</i>	<i>Lunch</i>	<i>Dinner</i>
In-state	\$ 14 <u>5</u> .00	\$ 16 <u>8</u> .00	\$ 30 <u>15</u> .00
Out-of-state/ Resort Area	\$ 5 <u>18</u> .00	\$ 21 <u>10</u> .00	\$ 36 <u>20</u> .00

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23.5. Resort areas include: Myrtle Beach, North Myrtle Beach, Surfside Beach, Little River, Atlantic Beach, Garden City Beach, Murrells Inlet, Litchfield Beach, Pawley's Island, Hilton Head, ~~and~~ Charleston and Greenville.

24. Receipts for lodging and other expenses must be presented in order for reimbursement to be made. Receipts for meals are not required but a copy of the schedule/agenda from any training, workshops or conferences are required. If a schedule/agenda is not available prior to your event, there will be no prepayments for meals. All meals will be reimbursed per County Policy once a schedule/agenda is provided. The employee will only be reimbursed for expenses for those meals when a conference meal is not provided. ~~All expenses for those agencies for which the County Administrator is responsible must be approved by him/her.~~

25. The County Administrator and Department Heads may be reimbursed actual amounts for ordinary, necessary business expenses, to include travel and meeting costs, subject to all limitations set forth herein, provided receipts are submitted and request for such payment is made.

26. Extradition travel expenses will be reimbursed at actual costs subject to all limitations set forth herein.

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RICHLAND COUNTY FINANCE DEPARTMENT
POLICY/RICHLAND COUNTY HUMAN RESOURCES
GUIDELINES

TITLE: Travel and Expense Reimbursement	Number: 4.12
EFFECTIVE DATE: <u>10/8/1/2009</u> 7/1/2022	Page: 5 of 5
REVISION DATE: <u>10/2/19/2016</u> 7/1/2022	REVISION #: 1
PREPARED BY: <u>Human Resources</u> <u>Department/Finance Department</u>	AUTHORIZED BY: County Administration

27. Any travel requests which would involve public funds for a trip outside the County where such funds have been budgeted, shall be approved -by the Department -Head -before any registration or advanced -fees are issued. The County Administrator -shall have oversight of all travel requests, if necessary. In the event that funds have not been budgeted, the travel -request shall first receive approval from the County Administrator and final authorization from the County Council; provided, however, if such request is made during a period of greater than that of bi-monthly regularly scheduled Council meetings, ~~recess of Council~~, the County Administrator shall have the authority to grant such travel requests.
28. For in-county travel for conventions, the County will pay only approved "out-of-pocket" expenses for subsistence for conventions. Receipts are -required for all actual expenses.

RESPONSIBILITIES:

1. Employee

- 1.1. Request travel and expense approval -by Supervisor and Department Head- before incurred.
- 1.2. Complete and submit expense report accurately upon return and within thirty (30) business days for all business travel. If not submitted within thirty (30) business days from returning from all business travel/ work-related travel, the employee/Department Head will not be reimbursed.

2. Supervisor / Department Head

- 2.1. Monitor and review for approval expenses.
- 2.2. Submit reoccurring travel vouchers by the 5th~~3rd~~ working day of the month for the preceding month. If not submitted by the 5th working day, the employee/Department Head will not be reimbursed.

3. Finance Department

- 3.1. Review and reimburse/~~properly reimbursed or~~ advance expenses as applicable with County guidelines.

Richland County Council Request for Action

Subject:

Richland County Sheriff's Department - Accreditation Manger

Notes:

November 17, 2022 – The A&F Committee recommended Council approve the Richland County Sheriff's Department Accreditation grant.



Agenda Briefing

Prepared by:	Harry J. Polis, Jr.	Title:	Deputy Chief
Department:	Sheriff's Department	Division:	
Date Prepared:	October 25, 2022	Meeting Date:	November 15, 2022
Legal Review	Patrick Wright via email	Date:	October 31, 2022
Budget Review	Abhijit Deshpande via email	Date:	November 1, 2022
Finance Review	Stacey Hamm via email	Date:	October 31, 2022
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Administration & Finance		
Subject	Sheriff's Department Accreditation Grant		

RECOMMENDED/REQUESTED ACTION:

The Sheriff's Department recommends that Council approve the Richland County Sheriff's Department Accreditation grant. This grant will provide salary and fringe benefits for an Accreditation Manager. This person will initiate and oversee the law enforcement agency accreditation process for the Richland County Sheriff's Department. Funds will also be provided for the initial and continuing accreditation fees for the South Carolina Law Enforcement Accreditation agency.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department's current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

This project is 100% funded. No match is required. This grant opportunity was not available when the Grant Budget Request for FY23 was prepared and was therefore not included. This grant will last for a 24 month period, ending September 2024. The position will need to be a permanent FTE, as accreditation is an ongoing process that will need monitoring on a long term basis. The ongoing personnel cost of this program is \$94,000 for salary and fringe benefits. The Sheriff's Department will seek funding from County Council to add the position at the conclusion of the grant period.

Applicable department/grant key and object codes:

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

None applicable.

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

All law enforcement agencies in South Carolina have to be state or nationally accredited or go through a modified accreditation process with the South Carolina Criminal Justice Academy beginning January 1, 2023. SC Code Section 23-23-100 states that failure to meet the minimum standards and accreditation approval by the South Carolina Criminal Justice Academy can result in a civil penalty not to exceed one thousand dollars per violation per day the agency is not in compliance or is found in violation.

Further, continued noncompliance with meeting the minimum accreditation standards may result in the Law Enforcement Training Council holding in abeyance the law enforcement certification of every law enforcement officer employed or appointed by the noncompliant law enforcement agency until such time as the council deems the agency to be in compliance with the minimum standards or a motion for injunctive relief is settled. Thus no Sheriff's Deputy would be authorized to enforce the laws or ordinances of this State or any political subdivision thereof.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

In October 2022, the Richland County Sheriff's Department was awarded \$200,000 to implement a project under the Department of Justice Community Oriented Policing (COPS) program to support law enforcement agencies seeking accreditation. The Richland County Sheriff's Department recognizes that citizens should be provided with the best practices and procedures available. It is imperative that the Sheriff's Department uses a measured, systematic approach to adopting these best practices. By seeking state accreditation, Richland County will become compliant with current and future requirements that will allow for continued federal and state law enforcement funding. Many other law enforcement agencies, including the Columbia Police Department and Lexington County Sheriff's Office are either already accredited or are actively seeking the status.

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS:

Richland County Council Request for Action

Subject:

Gateway to the Army Association Centennial Park Project

Notes:

November 17, 2022 – The A&F Committee recommended Council approve the Gateway to the Army Association’s request to serve as the primary applicant and fiscal agent for its \$650,000 grant request to the SC Department of Veterans Affairs to complete the Centennial Park Project located at Fort Jackson and to request a MOU/IGA.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

Prepared by:	Mary Louise Resch	Title:	President/CEO
Department/Entity:	Athena Grants Consulting, LLC	Division:	
Date Prepared:	October 31, 2022	Meeting Date:	November 15, 2022
Legal Review	Patrick Wright via email	Date:	November 8, 2022
Budget Review	Abhijit Deshpande via email	Date:	November 7, 2022
Finance Review	Stacey Hamm via email	Date:	November 7, 2022
Approved for consideration:	County Administrator	Leonardo Brown, MBA, CPM	
Meeting/Committee	Administration & Finance		
Subject	County Partnership with Gateway to the Army Association Centennial Park Project		

RECOMMENDED/REQUESTED ACTION:

The Gateway to the Army Association requests approval for Richland County to serve as the primary applicant and fiscal agent for its \$650,000 grant request to the SC Department of Veterans Affairs to complete the Centennial Park Project located at Fort Jackson (within Richland County).

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

Richland County will be paid at the standard indirect rate of 10% de minimis through the grant or other funding for serving as primary applicant/fiscal agent. The total cost of the project is \$2.1 - \$2.2 million dollars, of which approximately \$1.5 million dollars has been raised to date.

Applicable department/grant key and object codes:

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

None applicable.

UPDATED COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

Legal has reviewed and commented on the proposed agreement; however, we have not seen nor reviewed any grant applications or proposed grant agreements, so we cannot comment on any other legal concerns at this time.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	Click or tap here to enter text.
Meeting	Choose an item.
Date	Click or tap to enter a date.

STRATEGIC & GENERATIVE DISCUSSION:

The Gateway to the Army Association has been in negotiations with the SC Department of Veterans Affairs to receive funding for the completion of Centennial Park located on Fort Jackson. Veterans Affairs has recommended that the Association partner with Richland County to serve as the primary applicant since the enabling statute for the funding requires that the applicant must be a municipality or county where the military installation is located. This application is due in April of 2023, so the Association is working with County Administration to lay the groundwork for the application. The offices of Senators Graham and Scott as well as Congressman Wilson support this request for funding.

Fort Jackson contributes approximately \$4.2 billion dollars annually to the Midlands economy, including visitors who come to Columbia for Basic Combat and Advanced Individual Training graduations. Centennial Park provides a place for these families to gather to celebrate and enjoy the community. These families also support Richland County through Hospitality and Accommodation Tax dollars as these families often make their stays multi-day events.

The Gateway to the Army has done most of the necessary legwork to prepare for this application by meeting with SC Veterans Affairs, other local counties and municipalities, and the area's Congressional Delegation. All are in support of this application.

Key steps of this process are as follows:

1. Present agenda item to County Council (November 2022) (Richland County).
2. Approve agenda item to present to full Council in February 2023 (Richland County).
3. Full Council Approval in February 2023 (Richland County).
4. Draft SC Department of Veterans Affairs Grant Proposal (Gateway - Lead/County Grants Office-Secondary).
5. Request letters of support for grant from local and federal government (Gateway to the Army)
6. Submit proposal to SC Veterans Affairs by NLT 15 April 2023 (Richland County with Assistance from Gateway to the Army).
7. Upon grant award:
 - a. Richland County administers funding and has oversight of Gateway to the Army Assn. for completion of the project.
 - b. Gateway to the Army Association solicits bids and manages on-site construction.
 - c. Reports are completed jointly by Richland County and Gateway to the Army Assn.

This initiative provides a great opportunity for Richland County to work with the Gateway to the Army Association and jointly market all of the great recreational opportunities that lie both on and off of Fort

Jackson. Families who visit the installation often spend significant periods of time in the Midlands while visiting their military graduate. Ft. Jackson also provides housing to soldiers who take advantage of local recreational opportunities in Richland County each and every day. We believe this is a wonderful chance to further market these hidden treasures and to make sure that Fort Jackson and Richland County support each other, both now and in the future.

This initiative supports Richland County's Objective 4.4. (Community Development and Placemaking), and in particular, 4.4.3 (Highlight Richland County's quality-of-place assets). Fort Jackson, by nature of it being located within Richland County draws a great deal of interest, not just from visitors, but also major military contractors who pump millions of dollars into the local economy. Centennial Park is just one more example of a recreational area that serves not only the installation, but visitors from throughout the US.

The Gateway to the Army Association has conducted fundraising events, received various grants from counties and cities in the Midlands, and has been the recipient of a variety of corporate grants and other contributions. To date, the project has raised \$1.6 million dollars of \$2.1 million needed to complete this project. Failure to partner with Gateway to the Army Association will further delay the construction of Centennial Park. Completion has already been delayed two years because of COVID-19, and our concern is that the current economy will cause corporate and individual support to decrease even further than it already has. This application is a way to expedite completion of the project, as the SC Department of Veterans Affairs is aware of this upcoming application and predicts a good chance of its approval, based on the benefits that it has to the Midlands military community.

ADDITIONAL COMMENTS FOR CONSIDERATION:

During the advent of the project (2016-2017), Richland County provided approximately \$300,000 in initial funding for this project. The Gateway to the Army Association currently has a \$150,000 request pending for ARPA funding. Total cost of the project is \$2.1 - \$2.2 million dollars, of which approximately \$1.5 million dollars has been raised to date.

ATTACHMENTS:

1. SC Department of Veterans Affairs Military Enhancement Plan Grant Proposal Format
2. Applicable County Council Minutes from the 2016 calendar year
3. Proposed Memorandum of Agreement

The South Carolina Department of Veterans' Affairs (SCDVA) administers the Military Enhancement Plan Fund as directed in Fiscal Year 21-22 Budget Proviso 101.4 which states, "Funds appropriated to the department for the Military Enhancement Plan may be allocated to items including, but not limited to, land acquisition, recreational purposes, educational purposes, and facilities for military personnel. Eligible recipients are counties and municipalities with federal military installations."

Federal military installations, as defined in South Carolina Code 6-29-1625 (A), include Fort Jackson, Shaw Air Force Base, McEntire Joint National Guard Base, Joint Base Charleston, Marine Corps Air Station Beaufort, Beaufort Naval Hospital, Marine Corps Recruit Depot Parris Island, and Charleston Naval Weapons Station. For the purposes of this program, US Coast Guard installations in South Carolina are also considered federal military installations, as are any subordinate federal installations of those named above.

Proposals will be reviewed twice a year. Deadlines for proposals to be accepted for review are 1 April and 1 October.

Section One Eligibility Criteria

To be considered for a grant under this program, your proposal must meet all of the following minimum requirements. Any submission which does not meet any of the requirements below will not be considered.

A. You must be one of the following counties or municipal government agents/agencies with a federal military installation, as defined above, within or adjacent to your jurisdictional boundaries:

Richland, Sumter, Charleston, Berkeley, Dorchester, Beaufort, or Orangeburg

B. Your proposal must clearly demonstrate how it will enhance military value, military installation resilience, or military family quality of life at the supported military installation(s). Your proposal may include, but is not limited to, land acquisition, recreational purposes, education purposes, and facilities for military personnel.

C. Your proposal must include an endorsed letter of support by the local installation commander(s) representing the installation(s) or military community(ies) that will benefit from the proposal.

D. Your proposal must include the following items:

1. A cover letter on the letterhead of your county or municipal government agency, briefly describing the scope of the proposal and identifying the military installation(s) it will benefit.
2. A detailed written explanation of the proposal, to include the following:
 - a. A detailed explanation of how the proposal will enhance military value, military installation resilience, or military family quality of life at the supported military installation(s);
 - b. A timeline for completing the project(s) associated with the proposal, to include start dates, milestones, and completion dates;
 - c. A detailed explanation of how the grant funds will be spent;
 - d. A detailed account of any other funding source(s) you intend to apply in conjunction with this grant, to include source and dollar amount (if, for example, your grant proposal covers only a sub-project as part of a larger project);

- e. A list of the specific objectives or goals the grant will be used to accomplish or achieve; and
 - f. Specific metrics that will be used to determine the degree to which each objective or goal is achieved.
 - g. Email and phone contact information for the primary and alternate personnel overseeing the project.
3. A copy of the anti-discrimination policy of your organization.
 4. A copy of the organizational budget of your organization for the current fiscal year.
 5. The most recent operating financial statement of your organization.
 6. An independent, third-party estimate of the cost of the proposal, prepared by a qualified entity, and when applicable a fair market appraisal of any real property to be transferred as part of the proposal.
 7. This form, with the acknowledgement signed and dated.

Section Two Evaluation Criteria

When eligible grant proposals exceed the funds available in the Base Protection Plan fund, the South Carolina Department of Veterans' Affairs will evaluate each proposal based on 1) its effect on mission readiness; 2) its effect on military quality of life, 3) its effect on the surrounding community; 4) its timeliness; and 5) the degree to which the costs of the project(s) are shared with other funding sources. The score sheet used for evaluating proposals is attached for your reference. The Department will award grants at the funding level stated in the proposal. When available Base Protection Plan funds are inadequate to fund a qualified proposal fully, the proposal will be disapproved. Partial grants will not be awarded. Final decision authority for awarding grants under this program rests with the Secretary of Veterans' Affairs.

Section Three Agreement Statement

If awarded a grant, I agree to provide to the South Carolina Department of Veterans' Affairs an annual report, delivered no later than 30 June of each year, including a detailed accounting of all grant funds spent to date and detailing progress on achieving the goals as measured by the metrics defined in the grant proposal. I am aware the information provided in my report will be reviewed by the Senate Finance Committee and the House Ways and Means Committee, and is subject to audit by the State Auditor. Additionally, I agree to provide the South Carolina Department of Veterans' Affairs additional reports and supporting documents as may be required by the South Carolina Department of Veterans' Affairs.

Signature

Date

Name, Title

Section Four Administrative Instructions

Send completed proposals to Sandy Claypoole (sandy.claypoole@scdva.sc.gov) and Ed Bell (edward.bell@scdva.sc.gov) no later than the application closing date. If you have not received a confirmation of receipt of your application within 3 business days, contact Sandy at 803-683-1361 or Ed at 803-728-5202.

RICHLAND COUNTY COUNCIL

SOUTH CAROLINA

REGULAR SESSION MEETING

February 16, 2016
6:00 PM
County Council Chambers

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

CALL TO ORDER

Mr. Rush called the meeting to order at approximately 6:00 PM

INVOCATION

The Invocation was led by the Honorable Bill Malinowski

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Honorable Bill Malinowski

POINT OF PERSONAL PRIVILEGE – Mr. Pearce recognized former Council member Kit Smith was in the audience.

PRESENTATIONS

- a. **Historic Columbia: Dawn Mills Campbell, County Council's Liaison** – Ms. Campbell thanked Council for their support of the Woodrow Wilson Family Home Rehabilitation Project. In addition, she presented the 2016 Preserving Our Places in History Project Award from the South Carolina African American Heritage Commission to Council.
- b. **Celebrate Freedom Foundation: Daniel Hennigan, Board Member** – Command Sergeant Major Marty Wells (Retired), Board Chair gave an overview of the Gateway to the Army Association's intent to recognize the 100th Anniversary of Fort Jackson. The Gateway to the Army Association requested Richland County to contribute \$500,000 for 2 to 3 years toward the proposed project.

PRESENTATION OF RESOLUTION

- a. **Resolution recognizing February as Teen Domestic Violence Awareness Month in Richland County [DIXON]** – Ms. Dixon presented a resolution recognizing National Teen Date and Violence Awareness and Prevention Month to Ms. Nicole Walker and students from Ridgeview High School.



Committee Members Present

Torrey Rush, Chair
Greg Pearce, Vice Chair
Joyce Dickerson
Julie-Ann Dixon
Norman Jackson
Damon Jeter
Paul Livingston
Bill Malinowski
Jim Manning
Seth Rose
Kelvin E. Washington, Sr.

Others Present:

Tony McDonald
Warren Harley
Monique McDaniels
Kimberly Roberts
Geo Price
Roxanne Ancheta
Daniel Driggers
Kevin Bronson
Larry Smith
Beverly Harris
Brandon Madden
Rob Perry
Quinton Epps
Rudy Curtis
Brad Farrar
Dwight Hanna
Valeria Jackson
Ismail Ozbek
Donny Phipps
Wanda Kelly
Chad Fosnight
Tracy Hegler
Jeff Ruble

**Richland County Council
Regular Session Meeting
Tuesday, December 13, 2016
Page Four**

The vote in favor was unanimous.

An Ordinance Amending the Fiscal Year 2016-2017 Hospitality Tax Fund Annual Budget to appropriate \$1.00 of Hospitality Fund Balance to provide seed funding for commemorating Fort Jackson's 100th Birthday – Ms. Dixon moved, seconded by Mr. Manning, to approve this item.

Ms. Dixon inquired how the citizens will be able to access the park since you need a sponsor to get on the Fort Jackson campus.

Mr. Seals stated the access will be granted similar to the way it is for the waterpark.

Mr. Mark Wells, President of Gateway to the Army Association, stated citizens will be able to go to the front gate and state they want to go to the waterpark or Centennial Park. There will be a brief background check run on the citizen each time they request admittance to the park. Once the citizen passes the background check, the citizen will be allowed access to the fort. Those with felony convictions will not be allowed on the fort's campus.

Mr. Malinowski commented that even though that person pays Richland County taxes that have been used for the project they can't go on base to see how those taxes were used.

Ms. Dixon inquired about how the residents at Fort Jackson have responded to the proposed park.

Mr. Wells stated they have not addressed any residential groups regarding the proposed park.

Mr. Pearce inquired if the project had been approved by the government.

Mr. Wells stated it has not been officially approved.

Ms. Dickerson and Mr. Malinowski requested a copy of the budget for this project.

Mr. Pearce made a substitute motion, seconded by Mr. Jeter, to approve \$300,000 for this item.

Mr. Livingston requested a friendly amendment to fund the project at \$100,000 for three years, the funds are not to be released until a comprehensive budget is received and there is clear approval from the Army.

Mr. Pearce accepted the amendment to the substitute motion.

FOR

Rose

Dixon

Pearce

Rush

Livingston

Dickerson

Myers

Jeter

AGAINST

Malinowski

Jackson

Manning

The vote was in favor.

REPORT OF THE ECONOMIC DEVELOPMENT COMMITTEE

Authorizing the provision of water and sewer infrastructure to the Pineview Industrial Park and the execution of certain agreements related thereto; authorizing an amendment to the master agreement governing the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County ("Park") to amend the internal distribution to Richland County for property located in the Pineview Industrial Park area of the park; and other related matters [FIRST READING] – Mr.

Livingston stated the committee recommended approval of this item. The vote in favor was unanimous.

REPORT OF RULES AND APPOINTMENTS COMMITTEE

I. NOTIFICATION OF VACANCIES

- a. **Accommodations Tax – 3 – Three (3) Vacancies (One applicant must have a background in the Cultural Industry; other Two applicants must have a background in the Lodging Industry)** – Mr. Malinowski stated the committee recommended advertising for the vacancies. The vote in favor was unanimous.
- b. **Community Relations Council – Three (3) Vacancies (Applicants will have fundraising responsibilities)** – Mr. Malinowski stated the committee recommended advertising for the vacancies. The vote in favor was unanimous.
- c. **Hospitality Tax – Two (2) Vacancies (Applicants must be from Restaurant Industry)** – Mr. Malinowski stated the committee recommended advertising for the vacancies. The vote in favor was unanimous.
- d. **Internal Audit Committee – One (1) Vacancy (Applicant must be a CPA)** – Mr. Malinowski stated the committee recommended advertising for the vacancy. The vote in favor was unanimous.
- e. **Business Service Center Appeals Board – One (1) Vacancy (Applicants must be in Business Industry)** – Mr. Malinowski stated the committee recommended advertising for the vacancy. The vote in favor was unanimous.
- f. **Board of Assessment Appeals – One (1) Vacancy** – Mr. Malinowski stated the committee recommended advertising for the vacancy. The vote in favor was unanimous.
- g. **Planning Commission – One (1) Vacancy** – Mr. Malinowski stated the committee recommended advertising for the vacancy. The vote in favor was unanimous.
- h. **Central Midlands Council of Governments (CMCOG) – One (1) Vacancy** – Mr. Malinowski stated the committee recommended advertising for the vacancy. The vote in favor was unanimous.
- i. **Building Codes Board of Appeals – One (1) Vacancy (Applicant must be from Architecture Industry)** – Mr. Malinowski stated the committee recommended advertising for the vacancy. The vote in favor was unanimous.

Memorandum of Agreement

This Memorandum of Agreement is made on February 15, 2023 by and between Richland County, South Carolina, 2020 Hampton Street, Columbia, South Carolina, 29204, hereinafter "Richland County" and Gateway to the Army Association, 4611 Hardscrabble Road, Suite 169/Box 172, Columbia, South Carolina, 29229, hereinafter "Gateway to the Army".

The parties hereby bind themselves to undertake a Memorandum of Agreement ("Agreement") under the following terms and conditions:

TERM. The term of this Agreement shall be 18 months (includes grant preparation, administration, and closeout) unless terminated sooner in accordance with the terms of this Agreement (the "Term").

GOALS AND OBJECTIVES. The Gateway to the Army is collaborating with Richland County to apply for SC Department of Veterans Affairs Military Enhancement Grant's April 2023 grant cycle. The Parties to this Agreement shall abide by the terms of this Agreement to achieve the following goals and objectives:

The goal of this collaboration is to receive \$600,000 in grant funding to complete Centennial Park at Fort Jackson, South Carolina. Grants require that the applicant must be a county or municipality that has federal military installations. Richland County meets that requirement, whereas Gateway to the Army has the capacity to assist with grant preparation, construction oversight, and assist Richland County with project transparency and accountability. Working together, this project will bring more visitors to Richland County via Fort Jackson.

OBLIGATIONS OF THE PARTIES.

Richland County shall perform the following obligations:

1. Serve as primary applicant for the grant proposal to SC Department of Veterans Affairs.
2. Serve as fiscal agent for the grant.
3. Collaborate with Gateway to the Army Association staff/volunteers in completion of the grant application.
4. Review and approve grant expenditures and bid products.
5. Complete, in cooperation with The Gateway to the Army Association, all grant reports as required by the SC Department of Veterans Affairs.

Gateway to the Army shall perform the following obligations:

1. Provide Richland County with detailed descriptions of projects to be completed through this grant.
2. Provide bids, invoices and receipts to Richland County Finance personnel for fiscal accountability and transparency, as well as reporting requirements.
3. Provide the services of Gateway to the Army Association grants consultant to assist Richland County grants personnel in completion of the proposal.
4. Serve as Richland County's on-site Contracting Officer's Technical Representative (COTR) for the project.

5. Maintain data files on the project to be used for grants and other donor reporting.

CONFIDENTIALITY. Subject to sub-clause (2) below, each party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement. Upon request by an owner, all documents relating to the confidential information will be returned to such owner.

Each party may disclose information which would otherwise be confidential if and to the extent:

- (i) required by the law of any relevant jurisdiction, specifically including the South Carolina Freedom of Information Act;
- (ii) the information has come into the public domain through no fault of that party; or
- (iii) the other party has given prior written approval to the disclosure, provided that any such information disclosed shall be disclosed only after consultation with and notice to the other party.

RELATION OF THE PARTIES. The nature of relationship between Richland County and Gateway to the Army is that of Grants Flow-Through Agency. No employer/employee relationship, nor third party benefits, are created by this Agreement.

CONSIDERATION. This Agreement is being made in consideration of the following:
Upon award of the grant, Gateway to the Army Association agrees to provide 10% of the award to Richland County for completing all previously stated obligations under this agreement.

REPRESENTATIONS AND WARRANTIES. Each party to this Agreement represents and warrants to the other party that he/she/it:-

- (a) has full power, authority and legal right to execute and perform this Agreement;
- (b) has taken all necessary legal and corporate action to authorize the execution and performance of this Agreement;
- (c) this Agreement constitutes the legal, valid and binding obligations of such party in accordance with its terms; and
- (d) shall act in good faith to give effect to the intent of this Agreement and to take such other action as may be necessary or convenient to consummate the purpose and subject matter of this Agreement.

TERMINATION. Either party may terminate its performance of related obligations under this Agreement if the other party fails to rectify a material breach under a portion of this Agreement within thirty (30) days of receipt by the breaching party of written notice of such breach from the non-breaching party. In such case, the non-breaching Party shall be entitled, without further notice, to cancel that Party's involvement pursuant to the agreement, without prejudice to any claim for damages, breach of contract or otherwise. The parties agree that the failure or termination of any portion or relevant provision of this Agreement will not be a basis for terminating other severable obligations or provisions of this Agreement, unless the failure or breach is such that the entire Agreement loses substantially all of its value to the non-breaching party.

Any termination of this Agreement shall not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein.

REMEDIES ON DEFAULT. In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

FORCE MAJEURE. If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

INDEMNIFICATION. Gateway to the Army shall hold harmless and shall fully and completely indemnify Richland County from any and all claims, demands or actions brought against Richland County by any person, natural or corporate, or government agency, arising from any act or omission of the part of Gateway to the Army, its employees, agents, contractors, invitees, or anyone under its control or supervision, during the course of or related to the duties contemplated by this Agreement.

NOTICE. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.

SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER OF CONTRACTUAL RIGHTS. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of South Carolina.

SIGNATORIES. This Agreement shall be signed on behalf of Richland County Government by Leonardo Brown, County Administrator and on behalf of Gateway to the Army Association by Martin Wells, Board Chair, Gateway to the Army Association and effective as of the date first written above.

Richland County Government:

By: _____ Date: _____
By: Leonardo Brown, its County Administrator

Gateway to the Army Association:

By: _____ Date: _____
By: Martin Wells, its Board Chair, Gateway to the Army Association

Richland County Council Request for Action

Subject:

Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina, the Ritedose Corporation and TRC Propco, Inc. to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

Notes:

First Reading: November 1, 2022

Second Reading: November 15, 2022

Third Reading: December 6, 2022 {Tentative}

Public Hearing: December 6, 2022

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF AD VALOREM TAXES AND INCENTIVE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA, THE RITEDOSE CORPORATION AND TRC PROPCO, INC. TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; AND OTHER RELATED MATTERS.

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, The Ritedose Corporation and TRC Propco, Inc., previously known as Project Wellness (collectively, the “Sponsor”), desires to expand its manufacturing facilities in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$81,000,000 and the creation of 94 new, full-time jobs; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, as sponsor, and Sponsor Propco, as sponsor affiliate, the final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (i) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; (ii) locating the Project in the Park; and (iii) providing Infrastructure Credits and other incentives, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure.

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

Section 1. Statutory Findings. Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created and retained, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

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

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

Section 4. *Grant Acceptance and Administration.* To the extent the County receives any third- party grant funds related to the Project, the County agrees to accept and administer those funds for the Project’s benefit according to any documents governing the receipt and expenditure of the grant funds.

Section 5. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, or the Director of Economic Development, as appropriate, to take whatever further action and for the Chair, the County Administrator, and the Director of Economic Development to negotiate, execute and deliver whatever further documents, and for the Clerk to County Council to attest the same, as may be appropriate to effect this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

Section 6. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 7. *General Repealer.* Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: November 1, 2022
Second Reading: November 15, 2022
Public Hearing: December 6, 2022
Third Reading: December 6, 2022

EXHIBIT A
FORM OF FEE AGREEMENT

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

BETWEEN

THE RITEDOSE CORPORATION

AND

TRC PROPCO, INC.

AND

RICHLAND COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF DECEMBER 6, 2022

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- Exhibit D – Description of Infrastructure Credit
- Exhibit E – Description of Claw Back

**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name	The Ritedose Corporation and TRC Propco, Inc.	Recitals
Project Location	Richland County	Recitals
Tax Map No.	R17200-02-20 and R14500-02-24	Section 1.1; Exhibit A
FILOT		
• Phase Exemption Period	30 Years	Section 1.1
• Contract Minimum Investment Requirement	\$81,000,000	Section 1.1
• Contract Minimum Jobs Requirement	94	Section 1.1
• Investment Period	5 years	Section 1.1
• Assessment Ratio	6%	Section 4.1
• Millage Rate	475.1	Section 4.1
• Fixed or Five-Year Adjustable Millage	Fixed	Section 4.1
• Claw Back Information	Statutory	Section 6.1
Multicounty Park	Richland – Fairfield	Section 1.1
Infrastructure Credit		
• Brief Description	Special Source Revenue Credit	Section 5.1; Exhibit E
• Credit Term	50% years 1-5; 40% years 6-10	Section 5.1; Exhibit E
• Claw Back Information	See Exhibit E	Section 5.1; Exhibit E
Other Information		

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of December 6, 2022, between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County, The Ritedose Corporation, a corporation organized and existing under the laws of the State of South Carolina (“*Sponsor*”), and TRC Propco, Inc. a corporation organized and existing under the laws of the State of Delaware (“*Sponsor Affiliate Propco*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits (“*Infrastructure Credit*”) against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(c) The Sponsor has committed to expand a manufacturing facility (“*Facility*”) in the County, consisting of taxable investment in real and personal property of not less than \$81,000,000 and the creation of 94 new, full-time jobs;

(d) By an ordinance enacted on December 6, 2022, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to expand its Facility in the County.

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

ARTICLE I DEFINITIONS

Section 1.1. Terms. The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Act*” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

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

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments,

Infrastructure Credits or other incentives provided by this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“**Code**” means the Code of Laws of South Carolina, 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which the initial Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2022.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$81,000,000.

“**Contract Minimum Jobs Requirement**” means not less than 94 full-time, jobs created by the Sponsor in the County in connection with the Project over the Sponsor’s existing employment base as of December 31, 2021, which is 416 jobs.

“**County**” means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“**County Council**” means the Richland County Council, the governing body of the County.

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

“**Department**” means the South Carolina Department of Revenue.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“**Event of Default**” means any event of default specified in Section 7.1 of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement, as may be supplemented or amended.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1 of this Fee Agreement.

“**Final Phase**” means the Economic Development Property placed in service during the last year of the Investment Period.

“**Final Termination Date**” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2056, the Final Termination Date is expected to be January 15, 2058, which is the due date of the last FILOT Payment with respect to the Final Phase.

“**Improvements**” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“**Infrastructure**” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“**Infrastructure Credit**” means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act or Section 4-1-175 of the MCIP Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“**Investment Period**” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five (5) years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2027.

“**MCIP Act**” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“**Multicounty Park**” means the multicounty industrial or business park governed by the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of September 1, 2018 (as amended from time to time), between the County and Fairfield County, South Carolina, as may be amended.

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

“**Phase**” means the Economic Development Property placed in service during a particular year of the Investment Period.

“**Phase Exemption Period**” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

“Phase Termination Date” means, with respect to each Phase, the last day of the property tax year which is the 29th year following the first property tax year in which the Phase is placed in service.

“Project” means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“Real Property” means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“Removed Components” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“Sponsor” means The Ritedose Corporation and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

“Sponsor Affiliate” means an entity that participates in the investment or job creation at the Project and, following receipt of the County’s approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

“State” means the State of South Carolina.

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

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the County. The County represents and warrants as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other

documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on November 1, 2022, by adopting an Inducement Resolution, as defined in the Act on November 1, 2022.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

Section 2.2. Representations and Warranties of the Sponsor. The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

ARTICLE III THE PROJECT

Section 3.1. *The Project.* The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2022. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

Section 3.2 *Leased Property.* To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

Section 3.3. *Filings and Reports.*

(a) On or before January 31 of each year during the term of this Fee Agreement, commencing in the calendar year following the January 31, 2023, the Sponsor shall deliver to the Economic Development Director of the County with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

**ARTICLE IV
FILOT PAYMENTS**

Section 4.1. *FILOT Payments.*

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property and Improvements portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period), multiplied by
- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 0.4751, which the parties believe is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2022.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7 of this Fee Agreement.

Section 4.2. FILOT Payments on Replacement Property. If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1 of this Fee Agreement, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Section 4.3. Removal of Components of the Project. Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.4. Damage or Destruction of Economic Development Property.

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements

made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

Section 4.5. Condemnation.

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

Section 4.6. Calculating FILOT Payments on Diminution in Value. If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

Section 4.7. Payment of Ad Valorem Taxes. If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

Section 4.8. Place of FILOT Payments. All FILOT Payments shall be made directly to the County in accordance with applicable law.

**ARTICLE V
ADDITIONAL INCENTIVES**

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

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

**ARTICLE VI
CLAW BACK**

Section 6.1. Claw Back. If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit E, then the Sponsor is subject to the claw backs as described in Exhibit E. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section and Exhibit E survives termination of this Fee Agreement.

**ARTICLE VII
DEFAULT**

Section 7.1. Events of Default. The following are "Events of Default" under this Fee Agreement:

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

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

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

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

(e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

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

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 7.2. Remedies on Default.

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 7.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.4. Remedies Not Exclusive. Except for the remedy described on Exhibit E, no remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

**ARTICLE VIII
PARTICULAR RIGHTS AND COVENANTS**

Section 8.1. Right to Inspect. The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

Section 8.2. Confidentiality. The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“*Confidential*

Information”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “*Confidential Information*.” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

Section 8.3. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “*Indemnified Party*”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any such documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement.

Section 8.4. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 8.5. Limitation of Liability. The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

Section 8.6. Assignment. The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

Section 8.7. No Double Payment; Future Changes in Legislation. Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

Section 8.8. Administration Expenses. The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$5,000. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

ARTICLE IX SPONSOR AFFILIATES

Section 9.1. Sponsor Affiliates. The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County

Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County. Sponsor Affiliate Propco is hereby approved as a Sponsor Affiliate.

Section 9.2. Primary Responsibility. Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

**ARTICLE X
MISCELLANEOUS**

Section 10.1. Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE SPONSOR OR SPONSOR AFFILIATE PROPCO:

The Ritedose Corporation
Attn: Paula Larkins
1 Technology Circle
Columbia, SC 29203

WITH A COPY TO (does not constitute notice):

Nelson Mullins Riley & Scarborough, LLP
Attn: Edward G. Kluiters
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

IF TO THE COUNTY:

Richland County, South Carolina
Attn: Richland County Economic Development Director
2020 Hampton Street
Columbia, South Carolina 29204

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor. Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

Section 10.3. Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 10.4. Governing Law. South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

Section 10.5. Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

Section 10.6. Amendments. This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

Section 10.7. Agreement to Sign Other Documents. From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 10.8. Interpretation; Invalidity; Change in Laws.

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

Section 10.9. Force Majeure. The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

Section 10.10. Termination; Termination by Sponsor.

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, including specifically the obligations arising under Section 8.3 of this Fee Agreement, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

Section 10.11. Entire Agreement. This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

Section 10.12. Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 10.13. Business Day. If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

Section 10.14. Agreement's Construction. Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

[Signature pages follow]

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

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
County Council Chair
Richland County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Richland County, South Carolina

[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]

THE RITEDOSE CORPORATION

By: _____
Its: _____

TRC PROPCO, INC.

By: _____
Its: _____

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

EXHIBIT A
PROPERTY DESCRIPTION

1 Technology Circle, Columbia, South Carolina 29203. Tax Map No. R17200-02-20.



1135 Performance Parkway, Columbia, South Carolina 29203. Tax Map No. R14500-02-24.



**EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT**

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective [DATE] (“Fee Agreement”), between Richland County, South Carolina (“County”) and [COMPANY] (“Sponsor”).

1. Joinder to Fee Agreement.

[_____], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: _____]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

Name of Entity
By: _____
Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Its: _____

EXHIBIT C (see Section 3.3)
RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:



Clerk to County Council

EXHIBIT D (see Section 5.1)
DESCRIPTION OF INFRASTRUCTURE CREDIT

The Company is entitled to claim an Infrastructure Credit against its FILOT Payments for a period of 10 years, commencing with the first FILOT Payment due with respect to the Project. The Infrastructure Credit is equal to 50% of the FILOT Payment in years 1-5 of the Credit Term and 40% of the FILOT Payment in years 6-10 of the Credit Term.

EXHIBIT E (see Section 6.1)
DESCRIPTION OF CLAW BACK

If the Sponsor fails to achieve the Contract Minimum Investment Requirement or at least 90% of the Contract Minimum Jobs Requirement, a claw back shall be used as follows:

$$\text{Repayment Amount} = \text{Total Received} \times \text{Claw Back Percentage}$$

$$\text{Claw Back Percentage} = 100\% - \text{Overall Achievement Percentage}$$

$$\text{Overall Achievement Percentage} = (\text{Investment Achievement Percentage} + \text{Jobs Achievement Percentage}) / 2$$

$$\text{Investment Achievement Percentage} = \text{Actual Investment Achieved} / \text{Contract Minimum Investment Requirement} \text{ [may not exceed 100\%]}$$

$$\text{Jobs Achievement Percentage} = \text{Actual New, Full-Time Jobs Created} / \text{Contract Minimum Jobs Requirement} \text{ [may not exceed 100\%]}$$

In calculating each achievement percentage, only the investment made or new jobs achieved up to the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement will be counted.

For example, and by way of example only, if the County granted \$100,000 in Infrastructure Credits, and \$72,900,000 had been invested at the Project and 68 jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:

$$\text{Jobs Achievement Percentage} = 68/85 = 80\%$$

$$\text{Investment Achievement Percentage} = \$72,900,000/\$81,000,000 = 90\%$$

$$\text{Overall Achievement Percentage} = (80\% + 90\%)/2 = 85\%$$

$$\text{Claw Back Percentage} = 100\% - 85\% = 15\%$$

$$\text{Repayment Amount} = \$100,000 \times 15\% = \$15,000$$

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

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND EPOCH PROPERTIES, LLC, A COMPANY FORMERLY KNOWN TO THE COUNTY AS PROJECT COYOTE, TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; AND OTHER RELATED MATTERS.

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County, more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, Epoch Properties, LLC, a South Carolina limited liability company which was formerly known to the County as Project Coyote (“Sponsor”) desires to establish a manufacturing and warehouse operation in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$5,000,000 and the creation of 20 new, full-time jobs; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, as sponsor, the final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (i) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; (ii) locating the Project in the Park; and (iii) providing Infrastructure Credits, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure.

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

Section 1. Statutory Findings. Based on information supplied to the County by the Company, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish,

the anticipated dollar amount and nature of the investment, employment to be created, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

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

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

Section 4. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator or the Director of Economic Development as appropriate, to take whatever further action and for the Chair, the County Administrator or the Director of Economic Development to negotiate, execute and deliver whatever further documents, and for the Clerk to County Council to attest the same, as may be appropriate to effect this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

Section 5. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 6. *General Repealer.* Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: May 4, 2021
Second Reading: May 18, 2021
Public Hearing: December 6, 2022
Third Reading: December 6, 2022

EXHIBIT A
FORM OF FEE AGREEMENT

EXECUTION VERSION

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

BETWEEN

EPOCH PROPERTIES, LLC

AND

RICHLAND COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF DECEMBER 6, 2022

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**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name	Epoch Properties, LLC	
Project Location	Corner of Farrow Road & Highway I-20 in Columbia, South Carolina	Exhibit A
Tax Map No.	TMS Numbers R14300-01-17 and R14300-01-10	Exhibit A
FILOT		
<ul style="list-style-type: none"> Phase Exemption Period 	30 years	Section 1.1, Terms (Phase Termination Date)
<ul style="list-style-type: none"> Contract Minimum Investment Requirement 	\$5,000,000	Section 1.1, Terms (Contract Minimum Investment Requirement)
<ul style="list-style-type: none"> Contract Minimum Jobs Requirement 	20	Section 1.1, Terms (Contract Minimum Jobs Requirement)
<ul style="list-style-type: none"> Investment Period 	5 years	Section 4.1
<ul style="list-style-type: none"> Assessment Ratio 	6%	Section 4.1
<ul style="list-style-type: none"> Millage Rate 	0.5805	Section 4.1
<ul style="list-style-type: none"> Fixed or Five-Year Adjustable Millage 	Fixed	Section 4.1
<ul style="list-style-type: none"> Claw Back Information 	So long as the company meets the Act Minimum Investment Requirement, there will be no retroactive claw back on FILOT Payments and the FILOT will remain in effect for the remainder of the Fee Term.	Exhibit E
Multicounty Park	Yes - I-77 Corridor Regional Industrial Park (Fairfield County)	Section 1.1, Terms (Multicounty Park)
Infrastructure Credit		
<ul style="list-style-type: none"> Brief Description 	40% credit for 9 years	Exhibit D
<ul style="list-style-type: none"> Credit Term 	9 years	Exhibit D
<ul style="list-style-type: none"> Claw Back Information 	Company will be responsible for repayment of a percentage of infrastructure credits awarded, based upon an equal average of the Jobs Achievement Percentage and Investment Achievement Percentage.	Exhibit E
Other Information		

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of December 6, 2022, between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County and Epoch Properties, LLC, a limited liability company organized and existing under the laws of the State of South Carolina (“*Sponsor*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits (“*Infrastructure Credit*”) against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(c) The Sponsor has committed to establish a manufacturing facility (“*Facility*”) in the County, consisting of taxable investment in real and personal property of not less than \$5,000,000 and the creation of 20 new, full-time jobs;

(d) By an ordinance enacted on December 6, 2022, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to locate its Facility in the County.

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

ARTICLE I DEFINITIONS

Section 1.1. Terms. The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Act*” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

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

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments, Infrastructure Credits or other incentives provided by this Fee Agreement brought by third parties or the

Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“**Code**” means the Code of Laws of South Carolina, 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2022.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$5,000,000.

“**Contract Minimum Jobs Requirement**” means not less than 20 full-time, jobs created by the Sponsor in the County in connection with the Project.

“**County**” means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“**County Council**” means the Richland County Council, the governing body of the County.

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

“**Department**” means the South Carolina Department of Revenue.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“**Event of Default**” means any event of default specified in Section 7.1 of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1.

“**Final Phase**” means the Economic Development Property placed in service during the last year of the Investment Period.

“**Final Termination Date**” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2056, the Final Termination Date is expected to be January 15, 2058, which is the due date of the last FILOT Payment with respect to the Final Phase.

“**Improvements**” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“**Infrastructure**” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“**Infrastructure Credit**” means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“**Investment Period**” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2027.

“**MCIP Act**” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“**Multicounty Park**” means the multicounty industrial or business park governed by the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of September 1, 2018, between the County and Fairfield County, South Carolina, as may be amended.

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

“**Phase**” means the Economic Development Property placed in service during a particular year of the Investment Period.

“**Phase Exemption Period**” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

“**Phase Termination Date**” means, with respect to each Phase, the last day of the property tax year which is the 29th year following the first property tax year in which the Phase is placed in service.

“**Project**” means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“**Real Property**” means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“**Removed Components**” means Economic Development Property which the Sponsor, in its sole discretion, following the expiration of the Investment Period, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service following the expiration of the Investment Period as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**Sponsor**” means **Epoch Properties, LLC** and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

“**Sponsor Affiliate**” means Palmetto Millworks of the Carolinas, LLC, CS Exteriors, Inc., and Palmetto Distributors LLC as well as an entity that participates in the investment or job creation at the Project and, following receipt of the County’s approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

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

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

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the County. The County represents and warrants as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on May 4, 2021, by adopting an Inducement Resolution, as defined in the Act on May 4, 2021.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

Section 2.2. Representations and Warranties of the Sponsor. The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a manufacturing and warehouse facility and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

ARTICLE III THE PROJECT

Section 3.1. The Project. The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in

service during the calendar year ending December 31, 2022. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

Section 3.2 Leased Property. To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

Section 3.3. Filings and Reports.

(a) On or before January 31 of each year during the term of this Fee Agreement, commencing on January 31, 2023 the Sponsor shall deliver to the Economic Development Director of the County with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

**ARTICLE IV
FILOT PAYMENTS**

Section 4.1. FILOT Payments.

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act for the Real Property portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period multiplied by
- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 0.5805, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2020.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the

Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7.

Section 4.2. FILOT Payments on Replacement Property. If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Section 4.3. Removal of Components of the Project. Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.4. Damage or Destruction of Economic Development Property.

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. If such property is restored and replaced following the expiration of the Investment Period, all restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and

elects not to restore or replace pursuant to subsection (b), and if the Investment Period has expired, then the damaged portions of the Economic Development Property are deemed Removed Components.

Section 4.5. Condemnation.

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

Section 4.6. Calculating FILOT Payments on Diminution in Value. If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

Section 4.7. Payment of Ad Valorem Taxes. If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

Section 4.8. Place of FILOT Payments. All FILOT Payments shall be made directly to the County in accordance with applicable law.

**ARTICLE V
ADDITIONAL INCENTIVES**

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

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

**ARTICLE VI
CLAW BACK**

Section 6.1. *Claw Back.* If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit E, then the Sponsor is subject to the claw backs as described in Exhibit E. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section and Exhibit E survives termination of this Fee Agreement.

**ARTICLE VII
DEFAULT**

Section 7.1. *Events of Default.* The following are "Events of Default" under this Fee Agreement:

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

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

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

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

(e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

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

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 7.2. Remedies on Default.

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 7.3. Remedies Not Exclusive. No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

ARTICLE VIII PARTICULAR RIGHTS AND COVENANTS

Section 8.1. Right to Inspect. The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

Section 8.2. Confidentiality. The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“**Confidential Information**”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “**Confidential Information.**” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to

making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

Section 8.3. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “**Indemnified Party**”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement.

Section 8.4. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 8.5. *Limitation of Liability.* The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

Section 8.6. *Assignment.* The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

Section 8.7. *No Double Payment; Future Changes in Legislation.* Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

Section 8.8. *Administration Expenses.* The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount not to exceed \$3,000.00. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

ARTICLE IX SPONSOR AFFILIATES

Section 9.1. *Sponsor Affiliates.* The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County. Palmetto Millworks of the Carolinas, LLC, CS Exteriors, Inc., and Palmetto Distributors LLC are deemed Sponsor Affiliates upon execution and return of the Joinder Agreement to the County Administrator.

ARTICLE X MISCELLANEOUS

Section 10.1. Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE SPONSOR:

Epoch Properties, LLC
Attn: Rich McKendrick
120 Corporate Park Boulevard
Columbia, South Carolina 29223

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Sam Moses
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

IF TO THE COUNTY:

Richland County, South Carolina
Attn: Richland County Economic Development Director
2020 Hampton Street
Columbia, South Carolina 29204

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor. Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

Section 10.3. Counterparts; Electronic Signatures. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument. This Agreement may be circulated for signature through electronic transmission, including, without limitation, facsimile and email, and all signatures so obtained and transmitted shall be deemed for all purposes under this Agreement to be original signatures and may conclusively be relied upon by any Party to this Agreement.

Section 10.4. Governing Law. South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

Section 10.5. Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

Section 10.6. Amendments. This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

Section 10.7. Agreement to Sign Other Documents. From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 10.8. Interpretation; Invalidity; Change in Laws.

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor [(in addition to the Infrastructure Credit explicitly provided for above)] to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

Section 10.9. Force Majeure. The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God including but not limited to issues of public health or government-mandated or recommended lockdowns, economic downturns affecting the U.S. construction industry, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

Section 10.10. Termination; Termination by Sponsor.

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination, including specifically the obligations arising under Section 8.3 of this Fee Agreement.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

Section 10.11. *Entire Agreement.* This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

Section 10.12. *Waiver.* Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 10.13. *Business Day.* If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

Section 10.14. *Agreement's Construction.* Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

Signature pages follow

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

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
County Council Chair
Richland County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Richland County, South Carolina

Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement

EPOCH PROPERTIES, LLC

By: _____
Its: _____

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

EXHIBIT A
PROPERTY DESCRIPTION

ALL that certain piece, parcel or tract of land situate, lying and being near the City of Columbia, in Richland County, South Carolina, located near Interstate I-20, containing 113.1 acres, also being shown and designated with Tax Map Identifiers of R14300-01-10, R14300-01-13, R14300-01-14, and R14300-01-17.

EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective December 6, 2022 (“Fee Agreement”), between Richland County, South Carolina (“County”) and Epoch Properties, LLC (“Sponsor”).

1. Joinder to Fee Agreement.

[_____], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: _____]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

Epoch Properties, LLC
By: _____
Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Its: _____

EXHIBIT C (see Section 3.3)
RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 ("Prior Resolution"), which requires companies receiving economic development incentives from Richland County, South Carolina ("County") to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County's requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.


RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA



Chair, Richland County Council

(SEAL)
ATTEST:



Clerk to County Council

EXHIBIT D (see Section 5.1)
DESCRIPTION OF INFRASTRUCTURE CREDIT

**AS INDUCEMENT FOR THE INVESTMENT AND IN ACCORDANCE WITH SECTION 12-44-70 OF THE ACT,
THE COUNTY GRANTS TO THE SPONSOR, INFRASTRUCTURE CREDIT BENEFITS EQUAL TO THE
FOLLOWING:**

**FORTY PERCENT (40%) OF THE VALUE OF THE ANNUAL FILOT PAYMENT DUE FOR TAX YEARS ONE (1)
THROUGH NINE (9), BEGINNING WITH THE FIRST YEAR FOR WHICH A FILOT PAYMENT BECOMES DUE.**

EXHIBIT E (see Section 6.1)
DESCRIPTION OF CLAW BACK

FILOT Payments

So long as the Sponsor, along with any Sponsor Affiliates, meets the Act Minimum Investment Requirement, there will be no retroactive claw back on any FILOT Payments and the FILOT will remain in effect for the remainder of the Fee Term.

Special Source Revenue Credits

Repayment Amount = Total Received x Claw Back Percentage

Claw Back Percentage = 100% - Overall Achievement Percentage

Overall Achievement Percentage = (Investment Achievement Percentage + Jobs Achievement Percentage) / 2

Investment Achievement Percentage = Actual Investment Achieved / Contract Minimum Investment Requirement [may not exceed 100%]

Jobs Achievement Percentage = Actual New, Full-Time Jobs Created / Contract Minimum Jobs Requirement [may not exceed 100%]

In calculating the each achievement percentage, only the investment made or new jobs achieved up to the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement will be counted.

For example, and by way of example only, if the County granted \$1,000 in Infrastructure Credits, and \$3,000,000 had been invested at the Project and 25 jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:

Jobs Achievement Percentage = 25/20 = 125% but may not exceed 100% in the calculation below

Investment Achievement Percentage = \$3,000,000/\$5,000,000 = 60%

Overall Achievement Percentage = (100% + 60%)/2 = 80%

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

Repayment Amount = \$1000 x 20% = \$200

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

EXHIBIT E (see Section 6.1)
DESCRIPTION OF CLAW BACK

FILOT Payments

So long as the Sponsor, along with any Sponsor Affiliates, meets the Act Minimum Investment Requirement, there will be no retroactive claw back on any FILOT Payments and the FILOT will remain in effect for the remainder of the Fee Term.

Special Source Revenue Credits

Repayment Amount = Total Received x Claw Back Percentage

Claw Back Percentage = 100% - Overall Achievement Percentage

Overall Achievement Percentage = (Investment Achievement Percentage + Jobs Achievement Percentage) / 2

Investment Achievement Percentage = Actual Investment Achieved / Contract Minimum Investment Requirement [may not exceed 100%]

Jobs Achievement Percentage = Actual New, Full-Time Jobs Created / Contract Minimum Jobs Requirement [may not exceed 100%]

In calculating the each achievement percentage, only the investment made or new jobs achieved up to the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement will be counted.

For example, and by way of example only, if the County granted \$1,000 in Infrastructure Credits, and \$3,000,000 had been invested at the Project and 25 jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:

Jobs Achievement Percentage = 25/20 = 125% but may not exceed 100% in the calculation below

Investment Achievement Percentage = \$3,000,000/\$5,000,000 = 60%

Overall Achievement Percentage = (100% + 60%)/2 = 80%

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

Repayment Amount = \$1000 x 20% = \$200

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

Richland County Council Request for Action

Subject:

Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina and Project Academy to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

Notes:

First Reading: November 15, 2022

Second Reading:

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU
OF *AD VALOREM* TAXES AGREEMENT BY AND BETWEEN
RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT ACADEMY
TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES;
AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; AND
OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, PROJECT ACADEMY (collectively, “Sponsor”), desires to invest capital in the County in order to establish a research and development test center and expand a distribution facility in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$13,000,000 and the creation/ of one new, full-time job; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, as sponsor, the final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (i) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; (ii) locating the Project in the Park; and (iii) providing Infrastructure Credits, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure.

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

Section 1. Statutory Findings. Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

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

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

Section 4. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, or the Director of Economic Development, as appropriate, to take whatever further action and for the Chair, the County Administrator, and the Director of Economic Development to negotiate, execute and deliver whatever further documents, and for the Clerk to County Council to attest the same, as may be appropriate to effect this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

Section 5. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 6. *General Repealer.* Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: November 15, 2022
Second Reading: December 6, 2022
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF FEE AGREEMENT

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

BETWEEN

PROJECT ACADEMY

AND

RICHLAND COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF DECEMBER [], 2022

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**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name		1.1
Project Location	Richland County	Exhibit A
Tax Map No.		Exhibit A
FILOT		
• Phase Exemption Period	20 years	1.1
• Contract Minimum Investment Requirement	13,000,000	1.1
• Investment Period	Standard (5 years)	1.1
• Assessment Ratio	6%	4.1(a)
• Millage Rate		4.1(a)
• Fixed or Five-Year Adjustable Millage	fixed	4.1(a)
• Claw Back Information	Pro-rata	Exhibit E
Multicounty Park	I-77 Corridor Regional Industrial Park	1.1
Infrastructure Credit		
• Brief Description	50%	Exhibit C
• Credit Term	10 years	Exhibit C

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of December 13, 2022, between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County and Project Academy (“*Sponsor*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits (“*Infrastructure Credit*”) against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(c) The Sponsor has committed to establish a research and development test center and expand a distribution facility in the County (collectively, the “*Facility*”) in the County, consisting of taxable investment in real and personal property of not less than \$[13,000,000] and the creation of one, new full-time job;

(d) By an ordinance enacted on December 13, 2022, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to develop its Facility in the County.

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

ARTICLE I DEFINITIONS

Section 1.1. Terms. The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Act*” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

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

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments, Infrastructure Credits or other incentives provided by this Fee Agreement brought by third parties or the

Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“**Code**” means the Code of Laws of South Carolina, 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which the initial Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2022.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$[13,000,000].

“**County**” means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“**County Council**” means the Richland County Council, the governing body of the County.

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

“**Department**” means the South Carolina Department of Revenue.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“**Event of Default**” means any event of default specified in Section 7.1 of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement, as may be supplemented or amended.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1 of this Fee Agreement.

“Final Phase” means the Economic Development Property placed in service during the last year of the Investment Period.

“Final Termination Date” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2057, the Final Termination Date is expected to be January 15, 2059, which is the due date of the last FILOT Payment with respect to the Final Phase.

“Improvements” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“Infrastructure” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“Infrastructure Credit” means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“Investment Period” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2028.

“MCIP Act” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“Multicounty Park” means the multicounty industrial or business park governed by the Amended and Restated Master Agreement Governing The I-77 Corridor Regional Industrial Park, dated as of September 1, 2018, between the County and Fairfield County, South Carolina, as may be amended.

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

“Phase” means the Economic Development Property placed in service during a particular year of the Investment Period.

“Phase Exemption Period” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

“Phase Termination Date” means, with respect to each Phase, the last day of the property tax year which is the 29th year following the first property tax year in which the Phase is placed in service.

“Project” means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“**Real Property**” means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“**Removed Components**” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**Sponsor**” means Project Academy and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

“**Sponsor Affiliate**” means an entity that participates in the investment at the Project and, following receipt of the County’s approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

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

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

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the County. The County represents and warrants as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general

public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on November 15, 2022 by adopting an Inducement Resolution, as defined in the Act on November 15, 2022.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

Section 2.2. Representations and Warranties of the Sponsor. The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a research and development test center and a distribution facility and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

ARTICLE III THE PROJECT

Section 3.1. The Project. The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2022. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the

Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

Section 3.2 *Leased Property.* To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

Section 3.3. *Filings and Reports.*

(a) On or before January 31 of each year during the term of this Fee Agreement, commencing in January 31, 2023, the Sponsor shall deliver to the Economic Development Director of the County with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

**ARTICLE IV
FILOT PAYMENTS**

Section 4.1. *FILOT Payments.*

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property and Improvements portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period multiplied by
- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 0.5843, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2022.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure

by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7 of this Fee Agreement.

Section 4.2. FILOT Payments on Replacement Property. If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1 of this Fee Agreement, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Section 4.3. Removal of Components of the Project. Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.4. Damage or Destruction of Economic Development Property.

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

Section 4.5. Condemnation.

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

Section 4.6. Calculating FILOT Payments on Diminution in Value. If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

Section 4.7. Payment of Ad Valorem Taxes. If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

Section 4.8. Place of FILOT Payments. All FILOT Payments shall be made directly to the County in accordance with applicable law.

**ARTICLE V
ADDITIONAL INCENTIVES**

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

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

**ARTICLE VI
CLAW BACK**

Section 6.1. Claw Back. If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit E, then the Sponsor is subject to the claw backs as described in Exhibit E. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section and Exhibit E survives termination of this Fee Agreement.

ARTICLE VII DEFAULT

Section 7.1. Events of Default. The following are “Events of Default” under this Fee Agreement:

- (a) Failure to make FILOT Payments, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;
- (b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement;
- (c) A Cessation of Operations. For purposes of this Fee Agreement, a “*Cessation of Operations*” means a publicly announced closure of the Facility, a layoff of a majority of the employees working at the Facility, or a substantial reduction in production that continues for a period of twelve (12) months;
- (d) A representation or warranty made by the Sponsor which is deemed materially incorrect when deemed made;
- (e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;
- (f) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or
- (g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 7.2. Remedies on Default.

- (a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:
 - (i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 7.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.4. Remedies Not Exclusive. No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

ARTICLE VIII PARTICULAR RIGHTS AND COVENANTS

Section 8.1. Right to Inspect. The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

Section 8.2. Confidentiality. The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“**Confidential Information**”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “**Confidential Information.**” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

Section 8.3. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “**Indemnified Party**”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties

pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any such documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor's expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement.

Section 8.4. *No Liability of County Personnel.* All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 8.5. *Limitation of Liability.* The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

Section 8.6. *Assignment.* The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done

by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

Section 8.7. No Double Payment; Future Changes in Legislation. Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

Section 8.8. Administration Expenses. The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$10,000. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

ARTICLE IX SPONSOR AFFILIATES

Section 9.1. Sponsor Affiliates. The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

Section 9.2. Primary Responsibility. Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

ARTICLE X MISCELLANEOUS

Section 10.1. Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed

as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE SPONSOR:

WITH A COPY TO (does not constitute notice):

IF TO THE COUNTY:

Richland County, South Carolina
Attn: Richland County Economic Development Director
2020 Hampton Street
Columbia, South Carolina 29204

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor. Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

Section 10.3. Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 10.4. Governing Law. South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

Section 10.5. Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

Section 10.6. Amendments. This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

Section 10.7. Agreement to Sign Other Documents. From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 10.8. Interpretation; Invalidity; Change in Laws.

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor (in addition to the Infrastructure Credit provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

Section 10.9. Force Majeure. The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

Section 10.10. Termination; Termination by Sponsor.

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, including specifically the obligations arising under Section 8.3 of this Fee Agreement, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

Section 10.11. Entire Agreement. This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

Section 10.12. Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 10.13. Business Day. If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

Section 10.14. Agreement's Construction. Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

[Signature pages follow]

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

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
County Council Chair
Richland County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Richland County, South Carolina

[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]

Project Academy

By: _____
Its: _____

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

Project Academy

By: _____
Its: _____

[Signature Page 3 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective December 13, 2022 (“Fee Agreement”), between Richland County, South Carolina (“County”) and Project Academy (“Sponsor”).

1. Joinder to Fee Agreement.

[_____], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: _____]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

Name of Entity

By: _____

Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

RICHLAND COUNTY, SOUTH CAROLINA

By: _____

Its: _____

EXHIBIT C (see Section 3.3)
RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:



Clerk to County Council

EXHIBIT D (see Section 5.1)
DESCRIPTION OF INFRASTRUCTURE CREDIT

All qualifying investment of the Sponsor during the Investment Period shall qualify for a 10-year, 50% Infrastructure Credit. Beginning with the first annual FILOT Payment and continuing for the next nine annual FILOT Payments, the Sponsor will receive an annual Infrastructure Credit in an amount equal to 50% of the annual FILOT Payment with respect to the Project.

EXHIBIT E (see Section 6.1)
DESCRIPTION OF CLAW BACK

If the Sponsor fails to achieve the Contract Minimum Investment Requirement by the end of Investment Period, then the Sponsor shall be required to repay a portion of the Infrastructure Credits received as calculated below and any Infrastructure Credits for which the Company is eligible shall be reduced on a go-forward basis by the Claw Back Percentage calculated below

Repayment Amount = Total Received x Claw Back Percentage

Claw Back Percentage = 100% - Investment Achievement Percentage

Investment Achievement Percentage = Actual Investment Achieved / Contract Minimum Investment Requirement *[may not exceed 100%]*

In calculating the Investment Achievement Percentage, only the investment made up to the Contract Minimum Investment Requirement.

For example, and by way of example only, if the County granted \$50,000 in Infrastructure Credits, and \$6,500,000 had been invested at the Project by the end of the Investment Period, the Repayment Amount would be calculated as follows:

Investment Achievement Percentage = \$6,500,000/\$11,700,000 = 55.56%

Claw Back Percentage = 100% - 55.56% = 44.44%

Repayment Amount = \$50,000 x 44.44% = \$22,220

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

Richland County Council Request for Action

Subject:

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; authorizing the execution and delivery of an infrastructure credit agreement by and among Richland County, South Carolina and Project Cheers to provide for certain infrastructure credits; and other related matters

Notes:

First Reading: November 15, 2022

Second Reading:

Third Reading:

Public Hearing: December 13, 2022

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A PUBLIC INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR PUBLIC INFRASTRUCTURE CREDITS TO PROJECT CHEERS; AND OTHER RELATED MATTERS.

WHEREAS, Richland County (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop a multicounty park with counties having contiguous borders with the County; and (ii) include property in the multicounty park which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding infrastructure serving the County (collectively, “Public Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina (“Fairfield”), the I-77 Corridor Regional Industrial Park (“Park”) and executed the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, Project Cheers (“Company”) desires to develop a multi-use commercial, recreational, and entertainment venue within the County (“Project”), consisting of taxable investments in real and personal property of not less than \$30,000,000 and the creation of approximately 100 new, full-time equivalent jobs;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and amend the Park Agreement to include the real and personal property relating to the Project (“Property”) in the Park; and

WHEREAS, the County further desires to enter into a Public Infrastructure Credit Agreement between the County and the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Public Infrastructure Credits against certain of the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure.

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

Section 1. Statutory Findings. Based on representations made by the Company to the County, the County finds that the Project and the Public Infrastructure will enhance the economic development of the County and promote the welfare of its citizens.

Section 2. *Expansion of the Park Boundaries, Inclusion of Property.* The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is authorized. The Chair of County Council (“Chair”), is authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries and the amendment to the Park Agreement. Pursuant to the terms of the Park Agreement, the expansion of the Park’s boundaries to include the Property is complete on the adoption of this Ordinance by County Council and delivery of written notice to Fairfield of the inclusion of the Property, which written notice shall include a copy of this Ordinance and identification of the Property.

Section 3. *Approval of Public Infrastructure Credit; Authorization to Execute and Deliver Agreement.* The Public Infrastructure Credits, as more particularly set forth in the Agreement, against the Company’s Fee Payments with respect to the Project are approved. The form, terms and provisions of the Agreement that is before this meeting are approved and all of the Agreement’s terms are incorporated in this Ordinance by reference as if the Agreement was set out in this Ordinance in its entirety. The Chair is authorized and directed to execute the Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Agreement and to deliver the Agreement to the Company.

Section 4. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Company under this Ordinance and the Agreement.

Section 5. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 6. *General Repealer.* Any prior ordinance, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: November 15, 2022
Second Reading: December 6, 2022
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF AGREEMENT

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

by and between

RICHLAND COUNTY, SOUTH CAROLINA

and

PROJECT CHEERS

Effective as of: _____, 2022

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

This PUBLIC INFRASTRUCTURE CREDIT AGREEMENT, effective as of _____, 2022 (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and PROJECT CHEERS (“Company” together with the County, “Parties,” each, a “Party”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop multicounty parks with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding public infrastructure serving the County (collectively, “Public Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the “Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, the Company has committed to establish a multi-use commercial, recreational, and entertainment venue in the County (“Project”) on property more particularly identified by Exhibit A (“Land”), consisting of taxable investment in real and personal property of not less than \$30,000,000;

WHEREAS, by an ordinance enacted on _____, 2022 (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property relating to the Project (“Property”) in the Park; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested by the Company at or in connection with the Project, subject to the terms and conditions below.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I REPRESENTATIONS

Section 1.1. *Representations by the County.* The County represents to the Company as follows:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into and carry out its obligations under this Agreement;
- (c) The County has duly authorized and approved the execution and delivery of this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state law;
- (d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Agreement;
- (e) The County has approved the inclusion of the Property in the Park; and
- (f) Based on representations made by the Company to the County, the County has determined the Project and the Public Infrastructure will enhance the economic development of the County and promote the welfare of its citizens. Therefore, the County is entering into this Agreement for the purpose of promoting the economic development of the County and the welfare of its citizens.

Section 1.2. *Representations and Covenants by the Company.* The Company represents to the County as follows:

- (a) The Company is in good standing under the laws of the State of South Carolina, has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve the Investment Commitment, each as defined below, at the Project;
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound; and
- (d) The Company covenants to complete the Public Infrastructure in a workmanlike manner and in accordance with all applicable codes and regulations.

ARTICLE II PUBLIC INFRASTRUCTURE CREDITS

Section 2.1. *Investment Commitment.* The Company shall invest not less than \$30,000,000 in taxable property at the Project ("Investment Commitment") by the Certification Date, as defined below. The Company shall certify to the County achievement of the Investment Commitment by no later than December 31, 2027 ("Certification Date"), by providing documentation to the County sufficient to reflect achievement of the Investment Commitment, in form and substance reasonably acceptable to the County. If the Company fails to achieve and certify the Investment Commitment by the Certification Date, the County may terminate this Agreement and, on termination, the Company is no longer entitled to any further

benefits under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Certification Date shall not be later than, and may not be extended past, the last day of the year which is five years after the effective date of this Agreement.

Section 2.2. Public Infrastructure Commitment.

(a) Prior to receiving the Public Infrastructure Credits under this Agreement, the Company shall make an investment in Public Infrastructure in the County which may be comprised of the following improvements and facilities benefitting the public or dedicated to public use: water sewer, or stormwater improvements, greenspaces, recreation or community facilities, pedestrian or transportation facilities, parking facilities, facade redevelopment, roadway improvements, and energy production or communications technology infrastructure. Public Infrastructure may also include expenditures on the eradication of blight.

(b) The Company has committed to invest in the Public Infrastructure as described on Exhibit B. The Company shall certify its actual investment in the Public Infrastructure to the County by the Certification Date, by providing documentation, in form and substance reasonably acceptable to the County, to the County's Economic Development Department sufficient to reflect the amount invested in the Public Infrastructure. If the Company fails to complete the Public Infrastructure by the Certification Date, then the Company may not be entitled to the full value of the Public Infrastructure Credits as provided by this Agreement.

(c) Following the Certification Date, the County's Economic Development Department shall have 30 days ("Verification Date") to verify the Company's investment in the Public Infrastructure. The County has the right to exclude from the investment in Public Infrastructure certified by the Company any costs the County determines, in its sole discretion, to be ineligible costs. The County may also reject any Public Infrastructure investment as ineligible if the County determines, in its sole discretion, that it has not been completed in a workmanlike manner or in accordance with applicable codes or regulations. The County's Economic Development Department shall, on a date no later than the Verification Date, provide to the Company, by written notice, the County's determination of the verified amount of investment made by the Company in Public Infrastructure. Failure to provide a written verification by the Verification Date shall be deemed to be a determination by the County that all costs certified by the Company are verified as eligible costs.

Section 2.3. Public Infrastructure Credits.

(a) To assist in paying for costs of Public Infrastructure, the County shall provide a Public Infrastructure Credit against certain of the Company's Fee Payments due with respect to the Project, commencing with the first Fee Payment following the Verification Date. The term, amount and calculation of the Public Infrastructure Credit is described in Exhibit B.

(b) For each property tax year in which the Company is entitled to a Public Infrastructure Credit ("Credit Term"), the County shall prepare and issue the Company's annual Fee Payment bill with respect to the Project net of the Public Infrastructure Credit set forth in Section 2.3 (a) ("Net Fee Payment"). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE PUBLIC INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE PUBLIC INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND

THE PARK AGREEMENT. THE PUBLIC INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE PUBLIC INFRASTRUCTURE CREDITS.

(d) The County makes no representation or warranty with respect to the Public Infrastructure. The execution and delivery of this Agreement and the extension of the Public Infrastructure Credit do not constitute a commitment by the County to maintain the Public Infrastructure.

Section 2.4. Clawback. If the Company fails to meet the Investment Commitment by the Certification Date, the Company shall repay a portion of the Public Infrastructure Credits received. The portion of the Infrastructure Credit to be repaid is based on the amount by which the Company failed to achieve the Investment Commitment and is calculated as follows:

Repayment Amount = Total Received x Clawback Percentage

Clawback Percentage = 100% - Investment Achievement Percentage

Investment Achievement Percentage = Actual Investment Achieved / Investment Commitment

For example, and by way of example only, if the Company had received \$100,000 in Infrastructure Credits, had an Investment Commitment of \$30,000,000, and had only invested \$22,500,000 by the Certification Date, the Repayment Amount would be calculated as follows:

Investment Achievement Percentage = \$22,500,000/\$30,000,000 = 75%

Clawback Percentage = 100% - 75% = 25%

Repayment Amount = \$100,000 x 25% = \$25,000

The Company shall pay the portion of the Public Infrastructure Credit to be repaid pursuant to this Section 2.4 within 30 days of receipt of a written statement setting forth the Repayment Amount. If not timely paid, the Repayment Amount is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section survives termination of the Agreement.

Section 2.5. Filings. To assist the County in administering the Public Infrastructure Credits, the Company shall, for the Credit Term, prepare and file with the County such separate schedules or information with respect to the Property as may be necessary to distinguish the Property from any other property of the Company. Additionally, the Company shall, on or before January 31 of each year during the Credit Term, commencing in January 31, 2023, deliver to the Economic Development Director of the County the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution, with respect to the Company.

Section 2.6. Cumulative Public Infrastructure Credit. The cumulative dollar amount of the Public Infrastructure Credit shall not exceed the amount invested by the Company in Public Infrastructure, as verified, or deemed verified, by the County as of the Verification Date. The County Economic Development

Department shall provide the verified investment amount to the County Auditor for purposes of applying the Public Infrastructure Credit in accordance with Section 2.3 of this Agreement.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1. *Events of Default.* The following are “Events of Default” under this Fee Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; For purposes of this Agreement, “abandonment or closure of the Project” means cessation of operations for a continuous period of six months or longer other than as a result of a casualty event or in connection with a renovation or rehabilitation project;

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

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in Sections 2.1 and 2.2 and under (a) above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

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

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 3.2. *Remedies on Default.*

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate the Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate the Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 3.3. *Reimbursement of Legal Fees and Other Expenses.* On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 3.4. *Remedies Not Exclusive.* No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

Section 3.5. *Nonwaiver.* A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

Section 4.1. *Examination of Records; Confidentiality.*

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; (iii) verifying the investment in Public Infrastructure; and (iv) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

(b) The County acknowledges that the Company may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Company. The Company may clearly label any Confidential Information delivered to the County pursuant to this Agreement as "Confidential Information." Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Company acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Company with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.2. *Assignment.* The Company may assign or otherwise transfer any of its rights and interest in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably withheld.

Section 4.3. Provisions of Agreement for Sole Benefit of County and Company. Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied confers on any person or entity other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

Section 4.4. Severability. If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Agreement are unimpaired, and the Parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Agreement.

Section 4.5. Limitation of Liability.

(a) The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement.

(b) All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of County Council or any elected official, officer, agent, servant or employee of the County except solely in their official capacity.

(c) The County is not responsible for the Public Infrastructure and disclaims all liability with respect to the Public Infrastructure.

Section 4.6. Indemnification Covenant.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a) above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company’s expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

request no later than 60 days following receipt of the written request from the County. For purposes of this Section, “Administration Expenses” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys’ fees. Administration Expenses do not include any costs, expenses, including attorneys’ fees, incurred by the County (i) in defending challenges to the Fee Payments or Public Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County’s Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County’s choice.

Section 4.9. Entire Agreement. This Agreement expresses the entire understanding and all agreements of the Parties with each other, and neither Party is bound by any agreement or any representation to the other Party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

Section 4.10 Agreement to Sign Other Documents. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Agreement to effectuate the purposes of this Agreement.

Section 4.11. Agreement’s Construction. Each Party and its counsel have reviewed this Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

Section 4.12. Applicable Law. South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction, governs this Agreement and all documents executed in connection with this Agreement.

Section 4.13. Counterparts. This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 4.14. Amendments. This Agreement may be amended only by written agreement of the Parties.

Section 4.15. Waiver. Either Party may waive compliance by the other Party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving Party.

Section 4.16. Termination. Unless first terminated under any other provision of this Agreement, this Agreement terminates on the expiration of the Credit Term and payment by the Company of any outstanding Net Fee Payment due on the Project pursuant to the terms of this Agreement.

Section 4.17. Business Day. If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

[TWO SIGNATURE PAGES FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Council, Richland County Council

[SIGNATURE PAGE 1 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

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

PROJECT CHEERS

By: _____

Name: _____

Its: _____

[SIGNATURE PAGE 2 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

EXHIBIT A

LAND DESCRIPTION

The legal description includes parcels bearing Richland County tax map numbers: _____ . It being understood that such parcels may be further subdivided or combined or may be enlarged by the closure of adjoining public roadways or public rights-of-way in accordance with applicable law.

EXHIBIT B (See Section 2.2)

DESCRIPTION OF PUBLIC INFRASTRUCTURE

Public infrastructure improvements include improvements to the intersection located at N. Main Street and Cook Street and the intersection located at Cook Street and Phillips Street to accommodate additional vehicular traffic and traffic safety. Improvement costs are anticipated to be approximately \$750,000.

EXHIBIT C (See Section 2.3)

DESCRIPTION OF PUBLIC INFRASTRUCTURE CREDIT

Beginning with the first property tax year for which Fee Payments are due under this Agreement, the Company is entitled to claim an Infrastructure Credit against the Fee Payments on the Project in an amount equal to 100% of such Fee Payments for each property tax year until the total amount of the Infrastructure Credit equals the total expenditures the Company has made relating to road and intersection improvements located at (1) _____, (2) the _____, not to exceed \$750,000. The Infrastructure Credit will be applied to the Fee Payments due after the application of any incentives for rehabilitation of historic properties provided in accordance with Section 4-9-195 of the Code of Laws of South Carolina, 1976, as amended, resulting in the Net Fee Payment, as defined in Section 2.2(b) of the Agreement.

EXHIBIT D (See Section 2.5)

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:


Clerk to County Council

Richland County Council Request for Action

Subject:

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Green Arrow; and other related matters

Notes:

First Reading: November 15, 2022

Second Reading:

Third Reading:

Public Hearing:

**STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____**

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A PUBLIC INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR PUBLIC INFRASTRUCTURE CREDITS TO A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT GREEN ARROW; AND OTHER RELATED MATTERS.

WHEREAS, Richland County (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop a multicounty park with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding infrastructure serving the County (collectively, “Public Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina (“Fairfield”), the I-77 Corridor Regional Industrial Park (“Park”) and executed the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, a company identified for the time being as Project Green Arrow (the “Company”) has, as part of a commercial development to be located in the County, committed to establish market rate housing in the County (“Project”) including, and to be located on, land more particularly identified in the Agreement (as hereinafter defined) (“Land”), and anticipates that, should its plans proceed as presently contemplated, the Project will generate a minimum of \$35,000,000 of new aggregate, taxable investment in the County, which investment shall include, but not be limited to, investment in certain Public Infrastructure made, or caused to be made, by the Company;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and to amend the Park Agreement to include the Land and other real and personal property comprising the Project (collectively, the “Property”) in the Park; and

WHEREAS, the County further desires to enter into a Public Infrastructure Credit Agreement with the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested, or caused to be invested, by the Company at, in, or in connection with, the Project, subject to the terms and conditions set forth in the Agreement.

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

Section 1. *Statutory Findings.* Based on representations made by the Company to the County, the County finds that the Project and the Public Infrastructure will enhance the economic development of the County and promote the welfare of its citizens.

Section 2. *Expansion of the Park Boundaries; Inclusion of Property.* The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is authorized. The Chair of County Council (“Chair”) is authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries and the amendment to the Park Agreement. Pursuant to the terms of the Park Agreement, the expansion of the Park’s boundaries to include the Property is complete on the adoption of this Ordinance by County Council and delivery of written notice to Fairfield of the inclusion of the Property in the Park, which written notice shall include a copy of this Ordinance and identification of the Property.

Section 3. *Approval of Public Infrastructure Credit; Authorization to Execute and Deliver Agreement.* The Public Infrastructure Credits, as more particularly set forth in the Agreement, against the Company’s Fee Payments with respect to the Project are approved. The form, terms and provisions of the Agreement that is before this meeting are approved and all of the Agreement’s terms are incorporated in this Ordinance by reference as if the Agreement was set out in this Ordinance in its entirety. The Chair is authorized and directed to execute the Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Agreement and to deliver the Agreement to the Company.

Section 4. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Company under this Ordinance and the Agreement.

Section 5. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 6. *General Repealer.* Any prior ordinance, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

[End of Ordinance]

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: November 15, 2022
Second Reading: December 6, 2022
Public Hearing: _____, 2022
Third Reading: _____, 2022

EXHIBIT A
FORM OF AGREEMENT

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

by and between

RICHLAND COUNTY, SOUTH CAROLINA

and

PROJECT GREEN ARROW

Effective as of: [_____, 20__]

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

This PUBLIC INFRASTRUCTURE CREDIT AGREEMENT, effective as of [_____, 20__] (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and a company identified for the time being as PROJECT GREEN ARROW (as hereinafter defined “Company” together with the County, “Parties,” each, a “Party”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop multicounty parks with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding public infrastructure serving the County (collectively, “Public Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the “Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, as part of a commercial development to be located in the County, the Company has committed to establish market rate housing in the County (“Project”) including, and to be located on, land more particularly identified on Exhibit A hereto (“Land”), and anticipates that, should its plans proceed as presently contemplated, the Project will generate a minimum of \$35,000,000 of new aggregate, taxable investment in the County, which investment shall include, but not be limited to, investment in certain Public Infrastructure made, or caused to be made, by the Company, all as further described herein;

WHEREAS, by an ordinance enacted on [_____, 20__] (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property comprising the Project (“Property”) in the Park; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested, or caused to be invested, by the Company at, in, or in connection with, the Project, subject to the terms and conditions below.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I REPRESENTATIONS

Section 1.1. *Representations by the County.* The County represents to the Company as follows:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into and carry out its obligations under this Agreement;
- (c) The County has duly authorized and approved the execution and delivery of this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state law;
- (d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Agreement;
- (e) The County has approved the inclusion of the Property in the Park; and
- (f) Based on representations made by the Company to the County, the County has determined the Project and the Public Infrastructure, including, but not limited to, the Project Public Infrastructure, as defined below, will enhance the economic development of the County and promote the welfare of its citizens. Therefore, the County is entering into this Agreement for the purpose of promoting the economic development of the County and the welfare of its citizens.

Section 1.2. *Representations and Covenants by the Company.* The Company represents to the County as follows:

- (a) The Company is in good standing under the laws of [_____], has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve, or cause to be achieved by a company identified for the time being as Project Green Arrow Master Developer (“Master Developer”), the Investment Commitment, as defined below, at the Project;
- (c) The Company’s execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound; and
- (d) The Company covenants to complete, or cause to be completed by the Master Developer, any and all Project Public Infrastructure in a workmanlike manner and in accordance with all applicable codes and regulations.

ARTICLE II PUBLIC INFRASTRUCTURE CREDITS

Section 2.1. *Investment Commitment.* The Company shall invest, or cause to be invested by the Master Developer, not less than \$35,000,000 in taxable property in the Project (“Investment Commitment”) by [_____, 20__] (“Certification Deadline”). The Company shall certify to the County achievement of the Investment Commitment on a date no later than the Certification Deadline (“Certification Date”), by

providing documentation, which documentation may include, without limitation, with respect to the Company or the Master Developer, pay applications, invoices, and accounting logs, and, only with respect to the personal property portion of the Project, any SCDOR PT-100 filed by the Company with respect to the Project, to the County's Economic Development Department sufficient to reflect achievement of the Investment Commitment, in form and substance reasonably acceptable to the County. Notwithstanding anything in this Agreement to the contrary, the Certification Date shall not be later than, and may not be extended past, the Certification Deadline. If the Company fails to achieve, or cause to be achieved by the Master Developer, and so certify the Investment Commitment by the Certification Deadline, the County may terminate this Agreement and, upon any such termination, the Company shall no longer be entitled to any further benefits under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Certification Deadline shall not be later than, and may not be extended past, the last day of the year which is five years after the effective date of this Agreement.

Section 2.2. Public Infrastructure Commitment.

(a) Prior to receiving the Public Infrastructure Credits under this Agreement, the Company shall make, or cause to be made by the Master Developer, an investment in Public Infrastructure in the County which may be comprised of any or all of the following improvements and facilities benefitting the public or dedicated to public use: water, sewer, or stormwater improvements, greenspaces, recreation or community facilities, pedestrian or transportation facilities, parking facilities, facade redevelopment, roadway improvements, and energy production or communications technology infrastructure. Public Infrastructure may also include expenditures on the eradication of blight.

(b) In connection with the Project, the Company has committed with commercially reasonable efforts to invest in, or cause investment by the Master Developer in, the Public Infrastructure as described on Exhibit B hereto ("Project Public Infrastructure"). The Company shall certify actual investment in the Project Public Infrastructure to the County on the Certification Date by providing documentation, which documentation may include, without limitation, with respect to the Company or the Master Developer, pay applications, invoices, and accounting logs, to the County's Economic Development Department sufficient to reflect investment in the Project Public Infrastructure, in form and substance reasonably acceptable to the County. In addition to the foregoing, the Company shall represent, in writing, to the County on the Certification Date that, to the best knowledge of the Company, Public Infrastructure Credits have not been claimed previously by any other person or entity with respect to all or any portion of the investment in the Project Public Infrastructure reflected by such certification. If the Company fails to substantially complete, or cause to be completed by the Master Developer, the Project Public Infrastructure by the Certification Deadline in the cumulative total investment amount set forth on Exhibit B hereto, then the Company may not be entitled to the full value of the Public Infrastructure Credit as provided by this Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties hereby acknowledge and agree that (i) to the maximum extent permitted by law, aggregate expenditures made by the Master Developer in the Project Public Infrastructure shall be allocated to the Company for the purposes of receiving the Public Infrastructure Credits, and (ii) no person or entity other than the Company shall be entitled to Public Infrastructure Credits with respect to any expenditures in the Project Public Infrastructure.

(c) Following the Certification Date, the County's Economic Development Department shall have 30 days ("Verification Deadline") to verify the investment in the Project Public Infrastructure certified by the Company in accordance with **Section 2.2(b)** of this Agreement. The County has the right to exclude from the investment in Project Public Infrastructure certified by the Company any costs the County determines, in its sole discretion, to be ineligible costs. The County may also reject any Project Public Infrastructure investment as ineligible if the County determines, in its sole discretion, that it has not been completed in a workmanlike manner or in accordance with applicable codes or regulations. The County's Economic Development Department shall, on a date no later than the Verification Deadline (the

“Verification Date”), provide to the Company, by written notice, the County’s determination of the verified amount of Project Public Infrastructure investment. Failure to provide such a written determination by the Verification Deadline shall be deemed to be a determination by the County that all Project Public Infrastructure investment certified by the Company is verified as eligible costs, and, in such event, the Verification Date shall be deemed to be the Verification Deadline.

Section 2.3. Public Infrastructure Credit.

(a) To assist in paying the costs of the Project Public Infrastructure invested, or caused to be invested by the Master Developer, by the Company, the County shall provide a Public Infrastructure Credit against each of the Company’s Fee Payments due with respect to the Project, commencing with the first Fee Payment following the Verification Date. The term, amount and calculation of the Public Infrastructure Credit is described on Exhibit C hereto.

(b) For each tax year for which the Company is entitled to a Public Infrastructure Credit, the County shall prepare and issue the Company’s annual Fee Payment bill with respect to the Project net of the Public Infrastructure Credit set forth in **Section 2.3(a)** of this Agreement (“Net Fee Payment”). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE PUBLIC INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE PUBLIC INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND THE PARK AGREEMENT. THE PUBLIC INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE PUBLIC INFRASTRUCTURE CREDITS.

(d) The County makes no representation or warranty with respect to the Project Public Infrastructure. The execution and delivery of this Agreement and the extension of the Public Infrastructure Credit do not constitute a commitment by the County to maintain the Project Public Infrastructure.

Section 2.4. Filings; Administration. To assist the County in administering the Public Infrastructure Credit, with respect to the Company’s Fee Payments due with respect to the personal property portion of the Project, the Company shall, for each tax year corresponding to the Credit Term, as defined on Exhibit C hereto, prepare and file a separate schedule to the SCDOR PT-100 with respect to the personal property portion of the Project. Additionally, the Company shall, on or before January 31 of each year following the commencement of the Credit Term, deliver to the Economic Development Director of the County the information required by the terms of the County’s Resolution dated December 12, 2017, which is attached hereto as Exhibit D, as may be amended by subsequent resolution, with respect to the Company.

Section 2.5 Cumulative Public Infrastructure Credit. The cumulative dollar amount of the Public Infrastructure Credit shall not exceed the amount invested, or caused to be invested by the Master Developer, by the Company in Project Public Infrastructure, as verified, or deemed verified, by the County on or before the Verification Deadline. The County Economic Development Department shall provide the

verified investment amount to the County Auditor for purposes of applying the Public Infrastructure Credit in accordance with **Section 2.3** of this Agreement.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1. *Events of Default.* The following are “Events of Default” under this Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; for purposes of this Agreement, “abandonment or closure of the Project” means failure to place all or a portion of the Project in service by **[December 31, 20__]**;

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

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in **Sections 2.1** and **2.2** of this Agreement and under **(a)** above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

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

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 3.2. *Remedies on Default.*

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 3.3. *Reimbursement of Legal Fees and Other Expenses.* On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 3.4. *Remedies Not Exclusive.* No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

Section 3.5. *Nonwaiver.* A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

Section 4.1. *Examination of Records; Confidentiality.*

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; (iii) verifying the investment in the Project Public Infrastructure; and (iv) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

(b) The County acknowledges that the Company may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Company. The Company may clearly label any Confidential Information delivered to the County pursuant to this Agreement as "Confidential Information." Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Company acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Company with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.2. *Assignment.* The Company may assign or otherwise transfer any of its rights and interests in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, any assignment of this Agreement, in whole or in part, to an affiliated entity of the Company is hereby

approved without any further action of the County Council. The County's Director of Economic Development must receive notice of any assignment to an affiliated entity of the Company. For purposes of this Agreement, "affiliated entity" shall mean any corporation, limited liability company, partnership or other person or entity which now or hereafter owns all or part of the Company or which is now or hereafter owned in whole or in part by the Company, or by any partner, shareholder or owner of the Company, and shall also include any subsidiary, affiliate or other person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

Section 4.3. Provisions of Agreement for Sole Benefit of County and Company. Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied confers on any person or entity other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

Section 4.4. Severability. If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Agreement are unimpaired, and the Parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Agreement.

Section 4.5. Limitation of Liability.

(a) The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement.

(b) All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of County Council or any elected official, officer, agent, servant or employee of the County except solely in their official capacity.

(c) The County is not responsible for the Project Public Infrastructure and disclaims all liability with respect to the Project Public Infrastructure.

Section 4.6. Indemnification Covenant.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all liability or claims arising from the County's execution of this Agreement, performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a) above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company's expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

Section 4.7. Notices. All notices, certificates, requests, or other communications under this Agreement are sufficiently given and are deemed given, unless otherwise required by this Agreement, when (i) delivered and confirmed by United States first-class, registered mail, postage prepaid or (ii) sent by facsimile, and addressed as follows:

if to the County:	Richland County, South Carolina Attn: Director of Economic Development 2020 Hampton Street Columbia, South Carolina 29204 Phone: 803.576.2043 Fax: 803.576.2137
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with a copy to (does not constitute notice):	Parker Poe Adams & Bernstein LLP Attn: Ray E. Jones 1221 Main Street, Suite 1100 (29201) Post Office Box 1509 Columbia, South Carolina 29202 Phone: 803.255.8000 Fax: 803.255.8017
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if to the Company:	Project Green Arrow Attn: [_____] [_____] [_____] Phone: [_____] Fax: [_____]
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with a copy to	Tushar V. Chikhliker, Esq. Nexsen Pruet, LLC
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1230 Main Street, Suite 700 (29201)
Post Office Box 2426
Columbia, South Carolina (29202)
Phone: 803.540.2188
Fax: 803.727.1469

The County and the Company may, by notice given under this Section, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 4.8. *Administrative Fees.* The Company will reimburse, or cause reimbursement to, the County for the Administration Expenses in an amount not exceeding **[\$5,000]**. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expenses as set forth in the written request no later than 60 days following receipt of the written request from the County. For purposes of this Section, "Administration Expenses" means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys' fees. Administration Expenses do not include any costs, expenses, including attorneys' fees, incurred by the County (i) in defending challenges to the Fee Payments or Public Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

Section 4.9. *Entire Agreement.* This Agreement expresses the entire understanding and all agreements of the Parties with each other, and neither Party is bound by any agreement or any representation to the other Party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

Section 4.10. *Agreement to Sign Other Documents.* From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Agreement to effectuate the purposes of this Agreement.

Section 4.11. *Agreement's Construction.* Each Party and its counsel have reviewed this Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

Section 4.12. *Applicable Law.* South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction, governs this Agreement and all documents executed in connection with this Agreement.

Section 4.13. *Counterparts.* This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 4.14. *Amendments.* This Agreement may be amended only by written agreement of the Parties.

Section 4.15. Waiver. Either Party may waive compliance by the other Party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving Party.

Section 4.16. Termination. Unless first terminated under any other provision of this Agreement, this Agreement terminates on the expiration of the Credit Term and payment by the Company of any outstanding Net Fee Payment due on the Project pursuant to the terms of this Agreement.

Section 4.17. Business Day. If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

[TWO SIGNATURE PAGES FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Council, Richland County Council

[SIGNATURE PAGE 1 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

IN WITNESS WHEREOF, a company identified for the time being as Project Green Arrow has caused this Agreement to be executed by its authorized officer, effective the day and year first above written.

PROJECT GREEN ARROW

By: _____

Name: _____

Its: _____

[SIGNATURE PAGE 2 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

EXHIBIT A

LAND DESCRIPTION

[To be inserted.]

EXHIBIT B (See Section 2.2)

DESCRIPTION OF PROJECT PUBLIC INFRASTRUCTURE

The Project Public Infrastructure includes the construction of extensive water, sewer, stormwater, and roadway improvements. In addition to the foregoing, the Project Public Infrastructure will consist of general infrastructure benefiting the public, including, without limitation, enhanced streetscaping and landscaping, including surface parking spaces for public use, and expanded and relocated retention and detention ponds. The anticipated total cost of the Project Public Infrastructure is approximately \$7,500,000, and is further detailed below:

Project Public Infrastructure Budget Estimate	
Description	Budget
Streetscaping/Landscaping (<i>*including public surface parking</i>)	\$1,000,000
Water/Sewer/Stormwater Improvements	\$3,500,000
Water/Sewer/Stormwater Improvements Impact Fees	\$700,000
Retention and Detention Pond (<i>*expansion and relocation</i>)	\$1,300,000
General Conditions	\$1,000,000
Total Projected Project Public Infrastructure Costs	\$7,500,000

Notwithstanding anything above or in this Agreement to the contrary, the Company and the County acknowledge and agree that: (i) the Project Public Infrastructure shall, subject to the provisions of **Section 2.2(c)** of this Agreement, include, in addition to that described and delineated above, any Public Infrastructure invested in by the Company or the Master Developer in connection with the Project and consisting of improvements or infrastructure included within the description of Public Infrastructure set forth in **Section 2.2** of this Agreement; and, (ii) the specific line item budget amounts listed above are current estimates and the actual expenditures with respect to each such line item may fluctuate as the Project develops.

EXHIBIT C (See Section 2.3)

DESCRIPTION OF PUBLIC INFRASTRUCTURE CREDIT

The County shall provide a 50% Public Infrastructure Credit against the Fee Payments due and owing from the Company to the County with respect to the Project as provided in this Agreement, provided, the cumulative total amount of the Public Infrastructure Credit shall not exceed aggregate investment in the Project Public Infrastructure by the Company and/or the Master Developer.

The Company is eligible to receive the Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project for a period of 10 consecutive years, beginning with the first such Fee Payment due with respect to the Project following the Verification Date and ending on the earlier of the 10th year or the year in which the cumulative total amount of the Public Infrastructure Credit equals aggregate investment in the Project Public Infrastructure by the Company and/or the Master Developer ("Credit Term").

EXHIBIT D (See Section 2.4)

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

See attached.

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12, 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:


Clerk to County Council

Richland County Council Request for Action

Subject:

Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes agreement by and between Richland County, South Carolina and Project Golden Eagle to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

Notes:

First Reading: November 15, 2022

Second Reading:

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT GOLDEN EAGLE TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; AND OTHER RELATED MATTERS.

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County more particularly known as I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, Project Golden Eagle, (“Sponsor”), desires to establish a manufacturing facility in the County (“Project”) consisting of taxable investment in real and personal property of approximately \$970,000,000.00 but not less than \$400,000,000 and the creation of approximately 1,839 new, full-time jobs; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to (i) enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, as sponsor, the final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (a) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; (b) locating the Project in the Park; and (c) providing Infrastructure Credits and other incentives, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure; and (ii) option and transfer certain real property to the Sponsor.

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

Section 1. Statutory Findings. Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to

accomplish, the anticipated dollar amount and nature of the investment, employment to be created, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

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

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Approval of Land Transfer.* The County is authorized to option and transfer up to approximately 330 acres of real property (“Property”) located in the County to the Sponsor as more particularly identified in the Fee Agreement. The Chair, the County Administrator and the Director of Economic Development are each authorized and directed to negotiate the form, terms and provisions of an option or purchase agreement (collectively, “Purchase Agreement”) on behalf of and in the name of the County. The Chair, the County Administrator or the Director of Economic Development, on receipt of advice from counsel to the County, are each authorized and directed, in the name of and on behalf of the County, to execute and deliver the Purchase Agreement.

The Chair, the County Administrator and the Director of Economic Development are each authorized and directed, in the name of and on behalf of the County, to take such further actions as may be necessary, including the approval of a survey establishing the boundaries of the Property and the execution of a limited warranty deed and other closing documents, to accomplish the transfer of the Property.

Section 4. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

Section 5. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, or the Director of Economic Development, as appropriate, to take whatever further action and for the Chair, the County Administrator, and the Director of Economic Development to negotiate, execute and deliver whatever further documents, and for the Clerk to County Council to attest the same, as may be appropriate to effect this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

Section 6. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 7. *General Repealer.* Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

[*Signature Page follows*]

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

First Reading: November 15, 2022
Second Reading: December 6, 2022
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF FEE AGREEMENT

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

BETWEEN

PROJECT GOLDEN EAGLE

AND

RICHLAND COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF [DECEMBER ___, 2022]

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**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name	Project Golden Eagle	
Project Location	PARCEL 1 TRACT 1 #SU #PR RB2441-3930 RB1537-2769	--
Tax Map No.	Parcel R15006-01-01	
FILOT		
• Phase Exemption Period	40 years	
• Contract Minimum Investment Requirement	\$400,000,000.00	
• Contract Minimum Jobs Requirement	1,800	
• Investment Period	10 years	
• Assessment Ratio	4%	
• Millage Rate	0.5769	
• Fixed or Five-Year Adjustable Millage	Fixed	
• Claw Back Information	Statutory Minimum	
Multicounty Park Infrastructure Credit		
• Brief Description	Special Source Revenue Credit: 70% in years 1—10; 50% in years 11--40	
• Credit Term	40 years	
• Claw Back Information	See <u>Exhibit E</u>	
Other Information		

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of [DATE], between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County, and PROJECT GOLDEN EAGLE, an [entity] organized and existing under the laws of the State of Delaware (the same together with its wholly owned subsidiaries and affiliates, collectively, “*Sponsor*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits (“*Infrastructure Credit*”) against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(c) The Sponsor has committed to establish a manufacturing facility (“*Facility*”) in the County, consisting of taxable investment in real and personal property of approximately \$800,000,000 but not less than \$400,000,000 and the creation of 1,800 new, full-time jobs;

(d) By an ordinance enacted on [ORDINANCE DATE], County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to locate its Facility in the County.

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

ARTICLE I. DEFINITIONS

Section 1.01 Terms. The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Act*” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

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

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including

reasonable attorney's and consultant's fees. Administration Expenses does not include any costs, expenses, including attorney's fees, incurred by the County (i) in defending challenges to the FILOT Payments, Infrastructure Credits or other incentives provided by this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

"Cessation of Operations" means a publicly announced closure of the Facility, a layoff of a majority of the employees working at the Facility, or a substantial reduction in production that continues for a period of twelve (12) months.

"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 initial Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be [December 31, 2023].

"Contract Minimum Investment Requirement" means a taxable investment in real and personal property at the Project of not less than [Four Hundred Million and no/100 Dollars (\$400,000,000.00)].

"Contract Minimum Jobs Requirement" means not less than One Thousand Eight Hundred (1,800) full-time, jobs created by the Sponsor in the County in connection with the Project.

"County" means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

"County Council" means the Richland County Council, the governing body of the County.

"Credit Term" means the years during the Fee Term in which the Infrastructure Credit is applicable, as described in Exhibit D.

"Department" means the South Carolina Department of Revenue.

"Diminution in Value" means a reduction in the fair market value of Economic Development Property, as determined in **Error! Reference source not found.**(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.03 of this Fee Agreement; (ii) a casualty as described in Section 4.04 of this Fee Agreement; or (iii) a condemnation as described in Section 4.05 of this Fee Agreement.

"Economic Development Property" means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

"Equipment" means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

"Event of Default" means any event of default specified in Section 7.01 of this Fee Agreement.

“Fee Agreement” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement, as may be supplemented or amended.

“Fee Term” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“FILOT Payments” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.01 of this Fee Agreement.

“Final Phase” means the Economic Development Property placed in service during the last year of the Investment Period.

“Final Termination Date” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is [December 31, 2072], the Final Termination Date is expected to be [December 31, 2073], which is the due date of the last FILOT Payment with respect to the Final Phase.

“Improvements” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“Infrastructure” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“Infrastructure Credit” means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act or Section 4-1-175 of the MCIP Act and Section 5.01 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“Investment Period” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending ten years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2033.

“MCIP Act” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“Multicounty Park” means the multicounty industrial or business park governed by the [Amended and Restated Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of [September 1, 2018], between the County and [Fairfield County], South Carolina, as may be amended.

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

“Phase” means the Economic Development Property placed in service during a particular year of the Investment Period.

“**Phase Exemption Period**” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

“**Phase Termination Date**” means, with respect to each Phase, the last day of the property tax year which is the 39th year following the first property tax year in which the Phase is placed in service.

“**Project**” means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“**Real Property**” means real property that the Sponsor uses or will use in the County for the purposes that **Error! Reference source not found.** describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“**Removed Components**” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.03 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to **Error! Reference source not found.** or **Error! Reference source not found.**(iii) of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**Sponsor**” means [Project Golden Eagle] and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

“**Sponsor Affiliate**” means an entity that participates in the investment or job creation at the Project and, following receipt of the County’s approval pursuant to Section 9.01 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

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

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

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.01 *Representations and Warranties of the County.* The County represents and warrants as follows:

The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

The County identified the Project, as a "project" on November 15, 2022 by adopting an Inducement Resolution, as defined in the Act on even date.

The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

The County has located the Project in the Multicounty Park.

Section 2.02 *Representations and Warranties of the Sponsor.* The Sponsor represents and warrants as follows:

The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

The Sponsor intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Sponsor may deem appropriate.

The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement.

The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

**ARTICLE III.
THE PROJECT**

Section 3.01 *The Project.* The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 20[23]. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

Section 3.02 *Leased Property.* To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

Section 3.03 *Filings and Reports.*

On or before January 31 of each year during the term of this Fee Agreement, commencing in January 31, [2024], the Sponsor shall deliver to the Economic Development Director of the County with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

Upon the reasonable request of the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

**ARTICLE IV.
FILOT PAYMENTS**

Section 4.01 *FILOT Payments.*

The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property and Improvements portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period), multiplied by
- (ii) An assessment ratio of four percent (4%), multiplied by

- (iii) A fixed millage rate equal to .5769, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2021.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.07 of this Fee Agreement, as such *ad valorem* taxes shall be adjusted in accordance with Section 10.08 of this Fee Agreement.

Section 4.02 *FILOT Payments on Replacement Property.* If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

FILOT Payments, calculated in accordance with Section 4.01 of this Fee Agreement, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Section 4.03 *Removal of Components of the Project.* Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.04 *Damage or Destruction of Economic Development Property.*

If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this Paragraph Error! Reference source not found. are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to Paragraph Error! Reference source not found. of this Section 4.04 and elects not to restore or replace pursuant to Paragraph Error! Reference source not found. of this Section 4.04, then the damaged portions of the Economic Development Property are deemed Removed Components.

Section 4.05 *Condemnation.*

If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

Section 4.06 *Calculating FILOT Payments on Diminution in Value.* If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Error! Reference source not found.(i) of this Fee Agreement.

Section 4.07 *Payment of Ad Valorem Taxes.* If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

Section 4.08 *Place of FILOT Payments.* All FILOT Payments shall be made directly to the County in accordance with applicable law.

ARTICLE V. ADDITIONAL INCENTIVES

Section 5.01 *Infrastructure Credits.* To assist in paying for costs of Infrastructure, the Sponsor is entitled to claim an Infrastructure Credit to reduce certain FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Infrastructure

Credit is described in Exhibit D. In no event may the Sponsor's aggregate Infrastructure Credit claimed pursuant to this Section exceed the aggregate expenditures by the Sponsor on Infrastructure.

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

Section 5.02 *Additional Incentives.* The County shall transfer the Real Property to the Sponsor at no cost.

ARTICLE VI. CLAW BACK

Section 6.01 *Claw Back.* If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit E, then the Sponsor is subject to the claw backs as described in Exhibit E. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 90 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section and Exhibit E survives termination of this Fee Agreement.

ARTICLE VII. DEFAULT

Section 7.01 *Events of Default.* The following are "Events of Default" under this Fee Agreement:

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

Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement within 90 days of becoming due;

A Cessation of Operations;

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

Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under Paragraph **Error! Reference source not found.** of this Section 7.01), which failure has not been cured within 90 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 90-day period and is diligently pursuing corrective action until the default is corrected, in which case the 90-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 90 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted

corrective action within the 90-day period and is diligently pursuing corrective action until the default is corrected, in which case the 90-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 7.02 Remedies on Default.

If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

- (i) terminate this Fee Agreement; or
- (ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

- (i) bring an action for specific enforcement;
- (ii) terminate this Fee Agreement; or
- (iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 7.03 Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.04 Remedies Not Exclusive. No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

**ARTICLE VIII.
PARTICULAR RIGHTS AND COVENANTS**

Section 8.01 Right to Inspect. The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

Section 8.02 Confidentiality. The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“*Confidential Information*”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “*Confidential Information*.” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required

to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

Section 8.03 *Indemnification Covenants.*

Except as provided in Paragraph **Error! Reference source not found.** of this Section 8.03, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “**Indemnified Party**”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including reasonable, out-of-pocket attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in Paragraph **Error! Reference source not found.** of this Section 8.03. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within 90 days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any such documentation which may be privileged or confidential to evidence the costs.

The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party, which consent shall not be unreasonably, withheld conditioned, or delayed. Such consent shall be deemed as a release of the subject claim.

Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, but in no event to exceed 60 days, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

The obligations under this Section 8.03 shall survive termination of this Fee Agreement.

Section 8.04 *No Liability of County Personnel.* All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 8.05 *Limitation of Liability.* The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general financial obligation of the County.

Section 8.06 *Assignment.* The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold, condition, or delay. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 90 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

Section 8.07 *No Double Payment; Future Changes in Legislation.* Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

Section 8.08 *Administration Expenses.* The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$[*FLAT FEE*]. The Sponsor will reimburse the County for such Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of such Administration Expense. The Sponsor shall pay such Administration Expense as set forth in the written request no later than 90 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

ARTICLE IX. SPONSOR AFFILIATES

Section 9.01 *Sponsor Affiliates.* The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

Section 9.02 *Primary Responsibility.* Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment

or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

**ARTICLE X.
MISCELLANEOUS**

Section 10.01 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE SPONSOR:

□

WITH A COPY TO (does not constitute notice):

ADAMS AND REESE LLP
Attn: Anthony M. Quattrone
1221 Main Street, Suite 1200
Columbia, South Carolina 20210
Anthony.Quattrone@arlaw.com

IF TO THE COUNTY:

Richland County, South Carolina
Attn: Richland County Economic Development Director
2020 Hampton Street
Columbia, South Carolina 29204

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

Section 10.02 Provisions of Agreement for Sole Benefit of County and Sponsor. Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

Section 10.03 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 10.04 *Governing Law.* South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

Section 10.05 *Headings.* The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

Section 10.06 *Amendments.* This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

Section 10.07 *Agreement to Sign Other Documents.* From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 10.08 *Interpretation; Invalidity; Change in Laws.*

If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to provide a special source revenue or Infrastructure Credit to the Sponsor (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all of the loss of the economic benefit resulting from such invalidity.

Section 10.09 *Force Majeure.* The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

Section 10.10 *Termination; Termination by Sponsor.*

Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, including specifically the obligations arising under Section 8.03 of this Fee Agreement, survive such termination.

In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

Section 10.11 *Entire Agreement.* This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

Section 10.12 *Waiver.* Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 10.13 *Business Day.* If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

Section 10.14 *Agreement's Construction.* Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

[Signature pages follow]

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

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
County Council Chair
Richland County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Richland County, South Carolina

[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes [and Incentive] Agreement]

PROJECT GOLDEN EAGLE

By: _____
Its: _____

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

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective [DATE] (“Fee Agreement”), between Richland County, South Carolina (“County”) and [COMPANY] (“Sponsor”).

1. Joinder to Fee Agreement.

[_____], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: _____]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

Name of Entity
By: _____
Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Its: _____

EXHIBIT C (see Section 3.3)
RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY

(ATTACHED)

A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 ("Prior Resolution"), which requires companies receiving economic development incentives from Richland County, South Carolina ("County") to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County's requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

EXHIBIT D (see Section 5.1)
DESCRIPTION OF INFRASTRUCTURE CREDIT

70% OF THE FILOT PAYMENTS IN PROPERTY TAX YEARS 1—10 OF THE FEE TERM; AND

50% OF THE FILOT PAYMENTS IN PROPERTY TAX YEARS 11—40 OF THE FEE TERM.

EXHIBIT E (see Section 6.1)
DESCRIPTION OF CLAW BACK

[Repayment Amount = Total Received x Claw Back Percentage

Claw Back Percentage = 100% - Overall Achievement Percentage

Overall Achievement Percentage = (Investment Achievement Percentage + Jobs Achievement Percentage) / 2

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

Jobs Achievement Percentage = Actual New, Full-Time Jobs Created / Contract Minimum Jobs Requirement

For example, and by way of example only, if the County granted \$[I] in Infrastructure Credits, and \$[D] had been invested at the Project and [A] jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:

Jobs Achievement Percentage = [A]/[Contract Minimum Jobs Requirement] = [C]%

Investment Achievement Percentage = \$[D]/\$[Contract Minimum Investment Requirement] = [F]%

Overall Achievement Percentage = ([C]% + [F]%) / 2 = [G]%

Claw Back Percentage = 100% - G% = H% (if H% is in excess of 100%, no Claw Back shall occur)

Repayment Amount = \$[I] x [H]% = \$[J]

The Sponsor shall pay any amounts described in or calculated pursuant to this Exhibit E within 90 days of receipt of a written statement from the County. If not timely paid by the Sponsor, the amount due is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation described in this Exhibit E survives termination of this Fee Agreement.]

Richland County Council Request for Action

Subject:

An Ordinance authorizing the option and acquisition of certain property located in Richland County; and other matters related hereto

Notes:

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

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN
PROPERTY LOCATED IN RICHLAND COUNTY; AND OTHER MATTERS
RELATED HERETO.**

WHEREAS, pursuant to Title 4, Chapter 9 of the Code of Laws of South Carolina, 1976, as amended, Richland County, South Carolina (“County”), acting by and through its County Council, (“County Council”), is authorized to enter into contracts and to acquire real property by purchase;

WHEREAS, to further the economic development of the County, the County has identified and desires to option and acquire certain land and improvements thereon (“Real Property”), if any, in the County as more particularly identified in the Option Agreement attached as Exhibit A (“Agreement”);

WHEREAS, the County desires to enter into the Agreement with the seller of the Real Property, which will set forth the terms and conditions of the option and purchase of the Real Property by the County.

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

Section 1. Findings. County Council determines that the option and purchase of the Real Property is a proper governmental and public purposes and is anticipated to benefit the general public welfare of the County.

Section 2. Approval of Purchase of Real Property. County Council approves the option and purchase of the Real Property by the County and authorizes each of the County Council Chair, the County Administrator, and the Director of Economic Development, as appropriate, to execute and deliver such documents that may be reasonably necessary to accomplish the option and purchase of the Real Property and to undertake such due diligence with respect to the Real Property as the County Council Chair, the County Administrator or the Director of Economic Development may determine is beneficial to the County. Any actions taken in the name of the County prior to the effective date of this Ordinance with respect to the option and purchase of the Real Property are expressly ratified and confirmed.

Section 3. Approval of Closing Documents. County Council approves the negotiation, preparation, execution and delivery of the Agreement, with such modifications as may be appropriate and not materially adverse to the County, as determined in the discretion of any of the County Council Chair, the County Administrator, or the Director of Economic Development following receipt of advice from Council to the County.

Section 4. Further Acts. County Council authorizes the County Council Chair, the County Administrator, or the Director of Economic Development, as appropriate, following receipt of advice from counsel to the County, to take such further acts and negotiate, approve and execute whatever further instruments, including amendments to the Agreement, on behalf of the County as deemed necessary, desirable or appropriate to effect the option and purchase of the Real Property.

Section 5. General Repealer. Any ordinance, resolution, or other order of County Council, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 6. Effectiveness. This Ordinance is effective after third reading and a public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

Chairman of County Council

(SEAL)
ATTEST:

Clerk to County Council

READINGS:

First Reading: December 6, 2022
Second Reading:
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF AGREEMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

OPTION AGREEMENT

THIS OPTION AGREEMENT (the “*Agreement*”) is made and entered into as of the ____ day of _____, 2022 (“*Effective Date*”), by and between PFL HOLDINGS, LLC, a South Carolina limited liability company, and Tracy Muir Healey, as Trustee of the Rachael Rawl Muir Revocable Trust (collectively, the “*Optionor*”) and RICHLAND COUNTY, SOUTH CAROLINA (“*Optionee*”).

WITNESSETH:

1. Option to Purchase. For and in consideration of the Option Consideration (as hereinafter defined) in hand paid by Optionee to Optionor, receipt and legal sufficiency of which is hereby acknowledged by the parties hereto, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor hereby grants to Optionee and its assigns, the irrevocable right and option (“*Option*”) to purchase, at any time through the Option Date (as hereinafter defined), the Property (as hereinafter defined), on the terms and conditions set forth in this Agreement.

2. Property Subject to Option. The following shall be the property subject to this Agreement (the “*Property*”):

All that certain piece, parcel or lot of land with any improvement thereon, situate lying and being in or near the City of Columbia, County of Richland, State of South Carolina, consisting of approximately 1,686 total acres located at or near the intersection of Garners Ferry Road and Old Hopkins Road and further described on the Richland County website as tax map numbers, R18900-02-05 (1,399.70± acres); R19000-04-02 (35± acres); R19013-01-05 (5.00± acres); R19000-04-05 (110.50± acres); and R21700-04-01 (136.38± acres).

3. Option Consideration.

(a) Within five (5) days of the Effective Date (as hereinafter defined), Optionee shall deliver to **Colliers International** (“*Escrow Agent*”), the sum of Ten Thousand and No/100ths (\$10,000.00) Dollars (“*Option Consideration*”). Upon receipt, Escrow Agent shall hold and disburse the Option Consideration in accordance with the terms of this Agreement.

(b) The Option Consideration provided for in subsection (a) above shall be payable to Optionor and shall be non-refundable to Optionee, except in the circumstances in which this Agreement specifically requires the Option Consideration to be returned to Optionee.

(c) All Option Consideration shall be applied to the Purchase Price at Closing if Closing takes place within the terms and conditions as set forth herein.

(d) In the event of a default by either party, the Option Consideration shall be paid in accordance with Section 14 below.

4. Option Term/Closing

(a) The term of the Option shall be until **five (5) years** from the Effective Date (“*Option Date*”), unless terminated earlier at the option of Optionee. At any time on or before the Option Date, Optionee may elect to exercise the Option by providing Optionor written notification of its election

("Exercise"). The date such notification is mailed, or hand delivered to Optionor shall be the "**Notification Date**." In the event Optionee timely elects to exercise the Option granted herein, the Closing (as hereinafter defined) of the Property shall proceed pursuant to the terms and conditions as set forth herein. In the event Optionee terminates this Option or fails to mail or otherwise deliver to Optionor written notification of its exercise or termination of the Option prior to the expiration of the date which is **eighteen (18) months** following the Effective Date (the "**Inspection Period**"), Optionor shall retain the Option Consideration, and this Agreement will become null and void and neither party hereto shall have any further rights or obligation hereunder, except as otherwise specifically set forth herein.

(b) In the event that Optionee elects to exercise this Option, it must be exercised as to all parcels of the Property, and Optionee may not exercise the Option with respect to only a portion of the Property.

(c) Provided that Optionee has timely delivered the Exercise of the Option as set forth in Section 4(a) above, the closing of the purchase and sale of the Property ("**Closing**") will be held at a location to be determined by the Optionee on any date ("**Closing Date**") which is on or before that date which is sixty (60) days following the Notification Date, at Optionee's option. Optionee shall give Optionor written notice of the Closing Date at least five (5) days in advance thereof.

5. Purchase Price: Method of Payment. The purchase price ("**Purchase Price**") shall be as follows:

(a) Year 1. In the event the Option is exercised within Year 1 after the Effective Date, the Purchase Price shall be Thirteen Million and No/100 Dollars (\$13,000,000.00);

(b) Year 2. In the event the Option is exercised within Year 2 after the Effective Date, the Purchase Price shall be Thirteen Million Five Hundred Thousand and No/100 Dollars (\$13,500,000.00);

(c) Year 3. In the event the Option is exercised within Year 3 after the Effective Date, the Purchase Price shall be Fourteen Million Five Hundred Thousand and No/100 Dollars (\$14,500,000.00);

(d) Year 4. In the event the Option is exercised within Year 4 after the Effective Date, the Purchase Price shall be Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00); and

(e) Year 5. In the event the Option is exercised within Year 5 after the Effective Date, the Purchase Price shall be Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00).

6. Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Optionee and Optionor at Closing, with respect to the Purchase Price:

(a) All city, state, and county ad valorem taxes (other than rollback taxes) and similar impositions levied or imposed upon or assessed against the Property, if any, (hereinafter called the "**Impositions**") for the year in which Closing occurs shall be prorated as of the Closing Date. Optionor shall have no obligation to pay any rollback taxes, if any. In the event the Impositions for such year are not determinable at the time of Closing, said Impositions shall be prorated on the basis of the best available information, and the parties shall re-prorate the Impositions for such year promptly upon the receipt of the imposition bills for such year and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount of the Impositions used as a basis for

the proration at Closing and the actual amount of the Impositions for such year. This obligation shall survive Closing and recordation of the Deed. In the event any of the Impositions are due and payable at the time of Closing, the same shall be paid at Closing. If the Impositions are not paid at Closing, Optionee shall be responsible for payment in full of the Impositions within the time fixed for payment thereof and before the same shall become delinquent. Optionor shall deliver to Optionee the bills for the Impositions promptly upon receipt thereof.

(b) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

7. Title.

(a) Optionor covenants to convey to Optionee at Closing fee simple marketable title by way of Limited Warranty Deed in and to the Property, subject only to the following: (i) current city, state and county ad valorem taxes not yet due and payable; and (ii) easements for the installation or maintenance of public utilities serving only the Property (iii) those specific exceptions described by reference to recorded documents as reflected in the title insurance commitment, including but not limited to the Dominion Gas Easement, Time Warner Cable easement and title to the Old Hopkins Road and related right of way (collectively, "***Permitted Exceptions***").

(b) Optionee shall, at Optionee's expense, examine the title to the Property and shall give Optionor written notice, within one hundred eighty (180) days from the Effective Date of any objections which render Optionor's title less than fee simple marketable title (each a "***Title Objection***"). Optionor shall have until thirty (30) days from the date of receipt of such notice in which to satisfy all Title Objections specified in Optionee's initial notice of Title Objections. If Optionor fails to satisfy any Title Objection, then, at the option of Optionee, Optionee may: (i) terminate this Agreement, in which event the Option Consideration shall be refunded to Optionee promptly upon request and thereafter all obligations of the parties under this Agreement shall expire, and except as expressly set forth herein to the contrary, this Agreement shall be of no further force or effect; (ii) extend the period of time in which Optionor has to cure the Title Objections until Optionor has satisfied such Title Objection and Optionor agrees to use its best efforts to satisfy any such Title Objection; (iii) waive the Title Objection; or (iv) pursue any other remedy available to Optionee under the terms of this Agreement. Subsequent to the Notification Date, Optionee may update title to the Property, and if any matters of title have arisen since the date of the Optionee's initial title examination, Optionee shall give written notice to Optionor of the same, and the same provisions shall apply with respect to the obligations of Optionor and Optionee's rights and remedies in the event that Optionor does not cure the Title Objections.

(c) Any mortgage, lien, judgment, or other claim in a liquidated amount which constitutes an exception to the title to the Property (whether or not the same is disclosed by the title examination or listed in any notice of title objection by Optionee) shall not in any event be a Permitted Exception hereunder, but such claim shall be paid, bonded or insured by Optionor to the satisfaction of the Optionee and Optionee's title insurer at Closing.

(d) Except as provided hereinafter, from and after the Effective Date of this Agreement through Closing, Optionor shall not mortgage or otherwise encumber the Property (except with obligations that can be paid at closing), or take any action or permit any happening that would interfere with the transaction contemplated by this Option, including granting or imposing any timber rights or deeds, easements, warranty, conditions or restrictions with respect to the Property without obtaining Optionee's consent, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Optionor shall be permitted to grant hunting rights without the prior written consent of Optionee as long as any such hunting rights are terminable in the sole discretion of

Optionor and can be terminated between the date of Exercise and the date of Closing. In no event will hunting rights, or any other rights prohibited by this Section 7(d) be a "Permitted Exception". Any grant of hunting rights must make such hunting rights subject to the rights of Optionee to enter the Property to exercise its inspection rights under Section 9(a) below, and no hunting activities may be conducted on the Property during the exercise of any such inspection rights. Furthermore, notwithstanding the above Optionor may continue to exercise their normal and customary rights to cut and harvest timber provided however Optionor shall not be allowed to "Clear Cut" any of the Property and all such timber harvesting and restoration or cleanup activities shall be completed not less than thirty (30) days before the Closing Date, and restored to a clean condition, subject to the removal of the timber.

8. Survey.

(a) Optionee shall obtain, at Optionee's expense, a survey of the Property ("**Survey**") prepared by a surveyor registered and licensed in the State of South Carolina. Such survey shall be signed and certified by the surveyor. The legal description of the Property set forth in the limited warranty deed to be delivered by Optionor at Closing shall be based upon and shall conform to the Survey. Such Survey shall be delivered to Optionor's attorney at least fifteen (15) days prior to Closing.

(b) Optionee shall, prior to the end of the Inspection Period, give Optionor written notice pursuant to this Agreement if Optionee objects to a specific matter which affects the fee simple title to the Property shown on the said Survey (each a "**Survey Objection**"), and Optionor shall, within ten (10) days after Optionor has received notice, elect by written notice to Optionee to either (i) at Optionor's sole cost and expense, take such actions as may be necessary to correct such of said objections as Optionee specifies in said notice, or (ii) decline to correct such objections. The failure of Optionor to give Optionee notice of Optionor's selection shall be deemed to be an election of (ii) above. In the event Optionor elects to correct less than all of such objections or elects option (ii) above, Optionee shall have ten (10) days after receipt of Optionor's notice, to elect either to (1) proceed with this Agreement and waive the Survey Objection which Optionor has elected not to correct, or (2) terminate this Agreement and receive a refund of the Option Consideration. The failure by Optionee to give Optionor notice of Optionee's election shall be deemed to be an election of option (1) above.

9. Investigation of the Property.

(a) Between the Effective Date hereof and the end of the Inspection Period, Optionee and Optionee's agents and designees shall have the right to enter the Property, upon provision of not less than twenty-four (24) hours' notice to Optionor, for the purposes of inspecting the Property and making surveys, mechanical and structural engineering studies, and any other investigations and inspections as Optionee may reasonably require to assess the condition of the Property (collectively, the "**Optionee Due Diligence Materials**"); provided, however, that such activities by or on behalf of Optionee shall not damage the Property and shall not materially interfere with Optionor's normal ownership activities conducted on or from the Property. If Optionee is not satisfied with the Property for any reason determined by Optionee, in Optionee's sole discretion, then Optionee may terminate this Agreement by providing written notice (a "**Termination Notice**") to the Optionor and the parties shall have no further obligation to one another except those which expressly survive the termination of this Agreement. Provided, if Optionor shall terminate this Agreement prior to the end of the Inspection Period, Optionee shall be entitled to a refund of the Option Consideration. If Optionee fails to exercise the option, then all Optionee Due Diligence Materials will be delivered to the Optionor, at no expense to Optionor, within thirty (30) days of Optionee's notice not to exercise the option. Notwithstanding the foregoing, in no event shall Optionee perform any inspections more invasive than a Phase I Environmental Site Assessment on the Property without the express written consent of the Optionor, in Optionor's sole discretion. Furthermore if during the Inspection Period Optionor requests of Optionee copies of Due Diligence Materials, Optionee shall share such copies of such materials with Optionor not less frequently than every thirty (30) days.

(b) Optionee hereby agrees to reimburse Optionor for all claims, demands, actions, losses, costs, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees, costs of litigation and the cost and expense of removing or bonding over any liens affecting the Property) actually incurred by Optionor by reason of the Optionee's exercise of the rights, duties and privileges granted to Optionee in this Section 9. The obligations of Optionee contained in the immediately preceding sentence shall expressly survive the Closing or any termination of this Agreement, in each case for a period of six (6) months and shall not be subject to the liquidated damage provisions of Section 14(a) hereof.

(c) Prior to the end of the Inspection Period, Optionee shall in good faith seek to rezone the Property for Optionee's intended use as an industrial property. Optionor shall cooperate in the rezoning process as reasonably required by Optionor, provided such cooperation is at no expense to the Optionor. In all events, Optionee shall submit its application to rezone the Property no later than the date which is one hundred eighty (180) days following the Effective Date.

10. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Optionor shall deliver to Optionee the following documents and instruments, duly executed by or on behalf of Optionor: (i) limited warranty deed, in recordable form, conveying the Property using the legal description derived from the Survey or at Optionor's election using the legal descriptions from their vesting deeds or other instruments or Court Orders accompanied by a Quit-Claim Deed using the legal description derived from the Survey ; (ii) an Owner's Affidavit, in form and substance reasonably acceptable to Optionee's title insurer, with respect to the Property; (iii) a certificate of Optionor stating that Optionor is not a "foreign person" under §1445 of the Internal Revenue Code, as amended, and applicable regulations; (iv) such other documents as may be reasonably required by Optionee's title insurer as a condition to insuring Optionee's title to the Property free of exceptions other than the Permitted Exceptions; (v) any seller's affidavits related to withholding taxes that are required by federal or state law, including without limitation an affidavit confirming that Optionor is not a "Nonresident" of South Carolina and is therefore exempt from the withholding requirements of Section 12-9-310 of the Code of Laws of South Carolina. (If Optionor cannot give such affidavit, then Optionee will withhold the amount required by such statute and remit same to the South Carolina Department of Revenue); (vi) either (1) a certificate of tax compliance from the South Carolina Department of Revenue, or (2) an affidavit in form and content acceptable to Optionee and Optionee's title insurance company that the Property does not constitute a majority of the assets of Optionor; and (vii) evidence in form and substance reasonably satisfactory to Optionee that Optionor has the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property.

(b) Optionee shall deliver to Optionor the following funds, documents and instruments, duly executed on behalf of Optionee: (i) the Purchase Price less the Option Consideration and any other credits or prorations in accordance with the terms this Agreement; (ii) evidence in form and substance reasonably satisfactory to Optionor that Optionee has the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property.

11. Costs of Closing.

(a) Optionor shall pay Optionor's attorneys' fees, the commission of any broker involved in the sale of the Property, the transfer fees associated with the recording of the limited warranty deed, and other fees or charges of any kind or nature customarily paid by sellers in similar transactions in South Carolina.

(b) Optionee shall pay its attorney fees, the costs associated with any financing obtained by Optionee, Optionee's inspection costs, all costs and expenses associated with the preparation of the title commitment and the premium for the owner's policy of title insurance to be issued in favor of Optionee

insuring Optionee's title to the Property pursuant to Section 7(b) hereof, the cost of the Survey, and the recording costs associated with the recording of the Optionor's deed to Optionee. In addition, Optionee shall pay such other fees or charges of any kind or nature customarily paid by buyers in similar transactions in South Carolina.

(c) All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

12. Possession at Closing. In the event Optionee timely delivers its Exercise, Optionor shall surrender possession of the Property to Optionee on the Closing Date.

13. Warranties, Representations, Additional Covenants of Optionor and Optionee.

(a) In order to induce Optionee to enter into this Agreement, Optionor represents and warrants to Optionee as follows:

(i) That, on the Closing Date, Optionor shall have fee simple title to the Property, subject only to the Permitted Exceptions.

(ii) That this Agreement has been duly authorized and executed on behalf of Optionor and constitutes the valid and binding agreement of Optionor, enforceable against Optionor in accordance with its terms.

(iii) There are no actions, suits or proceedings pending or threatened against, by or affecting Optionor which affect title to the Property or which question the validity or enforceability of this Agreement or of any action taken by Optionor under this Agreement, in any court or before any governmental authority, domestic or foreign; and that there are no pending, threatened or contemplated condemnation actions involving all or any portion of the Property.

(iv) That the execution and delivery of the documents and instruments to be executed and delivered by Optionor on the Closing Date, and the performance by Optionor of Optionor's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement, are, to the best of Optionor's knowledge, consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Optionor is a party, or any judicial order or judgment of any nature by which Optionor is bound.

(v) That to the best of Optionor's knowledge, information, and belief, without duty of inquiry, other than any impact from the Dominion Gas Pipeline or other utility lines or structures there are no storage tanks located on the Property, either above or below ground, or any underground pipes or lines on the Property, other than for potable water or sanitary sewer, nor were there any such tanks, pipes, or lines formerly on the Property.

(vi) Optionor has received no notice of the existence of any areas on the Property where hazardous substances or wastes have been generated, disposed of, released, or found, and, to the best of Optionor's knowledge, information and belief, no such areas for the generation, storage, disposal or release of any hazardous substances or wastes exist on the Property. For purposes of this Agreement, the term "hazardous substances or wastes" shall mean petroleum including crude oil or any fraction thereof, and any substance identified in CERCLA, FIFRA, RCRA or any other federal, state, or other governmental legislation or ordinance identified by its terms as pertaining to the management, disposal or release of hazardous substances or wastes. In the event Optionor receives notice of any such violations affecting the Property prior to Closing, Optionor promptly shall notify Optionee thereof.

(vii) That to the best of Optionor's knowledge, information and belief, there is no condition on the property that is in violation of any statute, ordinance, or regulation for the protection of human health or the environment.

(viii) There is no pending litigation or dispute concerning the location of the lines and corners of the Property and such lines and corners are clearly marked.

(ix) Optionor does not have any knowledge of any significant adverse fact or condition relating to the Property, which has not been specifically disclosed in writing by Optionor to Optionee.

(x) Optionor has received no notice that any municipality or any governmental or quasi-governmental authority has determined that there are any violations of zoning, health, environmental or other statutes, ordinances or regulations affecting the Property, and Optionor has no knowledge of any such violations. In the event Optionor receives notice of any such violations affecting the Property prior to Closing, Optionor promptly shall notify Optionee thereof.

(b) Intentionally Deleted.

(c) In the event Optionee timely delivers its Exercise, the obligation of Optionee that arise to purchase the Property at Closing and to perform under this Agreement shall be subject to the representations and warranties made by Optionor in this Agreement being true as of the date of this Agreement and as of the Closing Date, and Optionor having performed all covenants and obligations and complied with all conditions required of it by this Agreement.

14. Remedies

(a) Provided that Optionee has timely delivered its Exercise and further provided that Optionor is not in default under this Option, if the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Optionee under this Agreement and such default is not cured within ten (10) days after written notice by Optionor to Optionee specifying the default, the Option Consideration shall be retained by Optionor as full liquidated damages for such default. The parties acknowledge that Optionor's actual damages in the event of a default by Optionee under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages. The parties expressly acknowledge that the foregoing liquidated damages are not intended as a penalty. Such retention of the Option Consideration shall be the sole and exclusive remedy of Optionor by reason of a default by Optionee under this Agreement, and Optionor hereby waives and releases any right to sue Optionee for specific performance of this Agreement or to prove that Optionor's actual damages for Optionee's failure to purchase the Property exceed the amount which is herein provided to Optionor as full liquidated damages.

(b) Provided that Optionee has timely delivered its Exercise and further provided that Optionee is not in default under this Option, if the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Optionor under this Agreement, then Optionee shall be entitled to either (i) terminate this Agreement by giving written notice of strict termination to Optionor whereupon the Option Consideration shall be returned to Optionee, and Optionee may recover, as its sole recoverable damages (but without limiting its right to receive a refund of the Option Deposit), its direct and actual out-of-pocket expenses and costs (documented by paid invoices to third parties), which damages shall not exceed \$50,000.00, and this Agreement shall be deemed null and void and of no further force or effect, and no party hereto shall have any further rights, obligations or liabilities hereunder, or (ii) seek specific performance of this Agreement; provided, however, that in the event that the court is unable to enforce specific performance

of this Agreement as a result of an intentional act of Optionor or conveyance to a third party in violation of its obligations under this Agreement, Optionee shall be entitled to recover its damages up to a maximum of \$50,000.00 in lieu of specific performance.

15. Condemnation. In the event of the taking of all or any portion of the Property by eminent domain proceedings, or the commencement or bona fide threat of the commencement of any such proceedings, prior to Closing, Optionee shall have the right at Optionee's option, to terminate this Agreement by giving written notice thereof to Optionor prior to Closing, in which event the Option Consideration shall be refunded to Optionee promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. If Optionee does not so terminate this Agreement, Optionor shall either (i) assign to Optionee at Closing all rights of Optionor in and to any awards or other proceeds paid or payable thereafter by reason of any taking, or (ii) if such award or payment is made to Optionor prior to closing, the Purchase Price will be reduce by an amount equal to the award or payment. Optionor shall notify Optionee of eminent domain proceedings within five (5) days after Optionor learns thereof.

16. Assignment. This Agreement may be assigned by Optionee, without requirement of the consent of the Optionor, but with notice in writing to Optionor, *provided that*, (i) Optionee has determined that the assignee has adequate financial position to perform the obligations under this Agreement, and (ii) such assignment occurs only following Exercise of the Option by Optionee.

17. Parties. This Agreement shall be binding upon, enforceable against, and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

18. Brokers. Optionor warrants and represents to the Optionee that Optionor will be responsible for all brokerage commissions fees or other payments due **Colliers International** which are payable in connection with this Agreement or the purchase and sale of the Property, including, without limitation, the fees if any of the Escrow Agent. Except as set forth below Optionor shall and does hereby indemnify, defend and hold harmless Optionee from and against the claims, demands, actions, and judgments of any other brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of its dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property. Likewise Optionee represents no real estate broker has been or will be involved on its behalf and does hereby agree to be responsible for all claims, demands, actions and judgments of any brokers, agents and other intermediaries acting on its behalf as to alleging a commission, fee or other payment to be owing by reason of its dealings, negotiations, or communications in connection with this Agreement or the purchase and sale of the Property.

The indemnity obligations contained in this Section 18 shall expressly survive the Closing or any termination of this Agreement.

19. Survival. All of the representations, covenants and warranties of the parties in this Agreement shall survive the consummation of the purchase and sale of the Property on the Closing Date.

20. Modification. This Agreement supersedes all prior discussions and agreements between Optionee and Optionor with respect to the purchase and sale of the Property and other matters contained herein and contains the sole and entire understanding between Optionee and Optionor with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Optionor and Optionee.

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

22. Time. Time is and shall be of the essence of this Agreement.

23. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way restrict, modify, or amplify the terms of this Agreement.

24. Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

25. Notices. All notices, elections and communications permitted or required hereunder shall be in writing, signed by the party making the same, and shall be delivered personally, sent by reputable overnight delivery service or by registered or certified mail, return receipt requested, at the addresses set forth below. The date of such notice or communication shall be the date of personal delivery, signed receipt for overnight delivery, or mailing as the case may be, unless otherwise specified herein. In the event any date on which any notice or election is required to be made hereunder falls on Saturday, Sunday or federal, state or county holiday, then, the date on which such notice is required to be given or made hereunder shall, for all purposes, be deemed to be the next following business day.

Optionor: PFL Holdings, LLC
5306 Lakeshore Drive
Columbia, South Carolina 29206
Attn: Penelope Rawl
Phone: 803-888-6807

With a copy to: Barnes Alford Stork & Johnson LLP
1613 Main St
Columbia, SC 29201
ATTN: Alan J Reyner
Phone 803-451-4502

Tracy Muir Healey, Trustee
14003 Recuerdo Drive
Del Mar, California 92014
Attn: Tracy Muir Healey
Phone: 858-945-3511

With a copy to: Colliers International
1301 Gervais Street, Suite 600
Columbia, South Carolina 29201
Attn: Tripp Bradley
Phone: 803-606-0998

Optionee: Richland County, South Carolina
2020 Hampton Street
Columbia, South Carolina 29201
Attn: County Administrator
Phone: (803) 576-2050

With a copy to: Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
Attn: Todd Haynie
Phone (803) 255.8915

26. Memorandum. A memorandum of this Agreement shall be executed and duly acknowledged by Optionor and Optionee for the purpose of recording within ten (10) days from the Effective Date hereof.

27. Optionor Right to Sell Property; Optionee Right of First Refusal. Notwithstanding any provision herein to the contrary, if hereof Optionor receives from a third party after the date which is two (2) years following the Effective Date of this Agreement a written expression of interest (e.g. a letter, binding, partially binding or non-binding letter of intent, offer to purchase or draft contract, lease or other agreement) which is in all material respects acceptable to Optionor outlining the primary business terms on which such third party proposes to purchase or otherwise directly or indirectly acquire the Property or any portion thereof (a "**Proposal**"), then Optionor shall first offer in writing to sell the portion of the Property covered by the Proposal to Optionee. Optionor shall promptly notify Optionee in writing of the existence of the relevant Proposal (and of Optionor's willingness to accept same), and such notification from Optionor to Optionee shall also identify all material economic terms and conditions provided for in the Proposal including the identity of the prospective third-party transferee. Optionee shall within forty-five (45) days after such notification is received by Optionee from Optionor to elect (by so notifying Optionor in writing) to purchase the Property encompassed by the relevant Proposal. The purchase price shall be equal to the purchase price set forth in the Proposal. If Optionee fails to notify Optionor in writing of Optionee's acceptance of the offer within the period set forth above, then the offer shall be deemed conclusively rejected by Optionee. If Optionee does not elect to purchase the Property pursuant to a Proposal, Optionor may proceed to sell the Property on the substantially the same terms set forth in the Proposal provided in all events the Purchase Price must be exactly the same, and Optionor agrees to reimburse Optionee for all actual costs incurred by Optionee in connection with its investigation of the Property, including without limitation all costs paid for Optionee Due Diligence Materials and all attorney's fees actually incurred. Optionee shall provide written evidence of the actual costs incurred. The reimbursement obligation of Optionor under this provision shall not exceed Fifty Thousand and 00/100 dollars (\$50,000). For avoidance of doubt, Optionor shall have no right to sell the Property to a third party prior to the date which is two (2) years following the Effective Date of this Agreement.

28. 1031 Exchange. Optionor may structure this transaction as a like kind exchange pursuant to Section 1031 of the Internal Revenue Code. Optionee shall cooperate in effecting Optionor's exchange. Optionor will make all necessary arrangements for the exchange, pay all costs associated with the exchange and bear all other expenses and risks necessary to accomplish the exchange. Optionor's exchange shall be accomplished through a qualified intermediary, exchange agent or similar third party. Optionor's structuring the conveyance of the Property as an exchange shall not extend or delay the Closing of the Property unless agreed to by both parties.

29. Termination. In the event this Agreement is not executed by the Optionee within one hundred five (105) days of the last of the Optionors' execution of this Agreement, then this Agreement shall be null and void and neither party shall have any further responsibility or liability to the other.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Optionee has caused this Agreement to be executed by its duly authorized officer this ____ day of _____ 2022.

WITNESSES:

OPTIONEE:

Richland County, South Carolina

By: _____

Name: _____

Title: _____

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

ACKNOWLEDGMENT

I, _____, Notary Public, certify that _____, **as**
_____ **of Richland County, South Carolina**, personally came before me this day and voluntarily executed the foregoing as his/her act and deed.

Witness my hand and official seal,
this the ____ day of _____, 2022.

Notary Public for South Carolina

My Commission Expires _____

IN WITNESS WHEREOF, the Optionor has caused this Agreement to be executed by its duly authorized officer this 2nd day of November, 2022.

WITNESSES:

[Signature]
[Signature]

OPTIONOR:

PFL HOLDINGS, LLC, a South Carolina limited liability company

By: [Signature]
Name: Penelope Rawl
Title: Manager

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

ACKNOWLEDGMENT

I, Alan J. Reynier, Notary Public, certify that Penelope Rawl, as Manager of **PFL HOLDINGS, LLC**, a South Carolina limited liability company, personally came before me this day and voluntarily executed the foregoing as his/her act and deed.

Witness my hand and official seal, this the 2nd day of November, 2022.

[Signature]
Notary Public for South Carolina

My Commission Expires 03-08-22

IN WITNESS WHEREOF, the Optionor has caused this Agreement to be executed by its duly authorized officer this 2nd day of November, 2022.

WITNESSES:

Geralynn D. Vidmar
[Signature]

OPTIONOR:

Tracy Muir Healey, as Trustee of the Rachael Rawl Muir Revocable Trust

By: Tracy Muir Healey
Title: Trustee Trustee of the Rachael Rawl Muir Revocable Trust

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ACKNOWLEDGMENT

I, Geralynn D. Vidmar Notary Public, certify that Tracy Muir Healey
[Signature], as Trustee of the Rachael Rawl Muir Revocable Trust, personally
came before me this day and voluntarily executed the foregoing as his/her act and deed.

Witness my hand and official seal,
this the 2nd day of November, 2022.

Geralynn D. Vidmar
Notary Public for California

My Commission Expires August 15, 2025



SOUTH CAROLINA)
) **A RESOLUTION**
RICHLAND COUNTY)

A RESOLUTION APPROVING AND CONSENTING TO THE SALE OF PROPERTY BY UNUM GROUP, UNUM LIFE INSURANCE COMPANY OF AMERICA, AND COLONIAL LIFE & ACCIDENT INSURANCE COMPANY (COLLECTIVELY, “ASSIGNORS”) TO TSO 1200 COLONIAL LIFE BLVD RETAIL, LP AND TSO 1200 COLONIAL LIFE BLVD, LP; THE PARTIAL ASSIGNMENT BY ASSIGNORS TO TSO 1200 COLONIAL LIFE BLVD RETAIL, LP AND TSO 1200 COLONIAL LIFE BLVD, LP OF TWO FEE AGREEMENTS BY AND BETWEEN ASSIGNORS AND RICHLAND COUNTY, SOUTH CAROLINA; AND OTHER RELATED MATTERS.

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“Act”) to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax with respect to economic development property, as defined in the Act;

WHEREAS, the County entered into (i) a July 28, 2009 Fee Agreement Effecting a Conversion of That Certain Lease Agreement dated as of December 15, 1996, and (ii) a July 28, 2009 new Fee Agreement (collectively, “Fee Agreements”) with Assignors;

WHEREAS, Assignors plan to sell to and lease back from TSO 1200 Colonial Life Blvd Retail, LP and TSO 1200 Colonial Life Blvd, LP (collectively, “Assignees”) certain real property and sell to Assignees certain personal property (collectively, “Property”) that is subject to the Fee Agreements, and to assign Assignors’ rights, title and interest, in, to, and under the Fee Agreements to Assignees insofar as they relate to the Property, and Assignees plan to accept such assignment and assume the obligations of Assignors under the Fee Agreements insofar as they relate to the Property, using the Partial Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit A (“Assignment”);

WHEREAS, Assignors and Assignees have requested the County to consent to and ratify the terms of the Assignment and to take such action as may be necessary or appropriate in order to effectuate such consent;

WHEREAS, the County desires to consent to the terms of the Assignment; and

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

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

Section 1. The County, pursuant to Section 12-44-120 of the Act, hereby expressly consents and agrees to the transfer and assignment to, and assumption by the Assignees of, Assignors' rights, obligations, title, and interest in, to and under the Fee Agreements, as provided in the Assignment and further ratifies and consents to the terms of the Assignment. Following the execution by Assignors and Assignees of the Assignment, Assignors shall be released and discharged from any and all of its obligations under the Fee Agreements as its obligations relate to the Property except as to those obligations arising directly from the Assignors' actions or inactions which occurred prior to the effective date of the Assignment.

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 Assignment that 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 Assignment was set out in this Resolution in its entirety.

Section 3. The Chair of County Council and the County Administrator, 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 Assignment and the performance of all obligations of the County under and pursuant to the Assignment, said document to be in substantially the form presented to this County Council together with such changes or amendments thereto as may be approved by the County legal counsel, and to effect the performance of all obligations of the County thereunder. The Clerk to County Council is authorized and directed to attest the execution of the Assignment by the Chair of County Council or the County Administrator.

Section 4. This Resolution is effective after its approval by the County Council.

RESOLVED: December 6, 2022

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Richland County Council

Exhibit A

FORM OF ASSIGNMENT

(See attached)

4878-8565-3037 v.5

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made effective as of the ___ day of _____, _____ (the “Effective Date”), by and among Unum Group (“Unum Group”), Unum Life Insurance Company of America (“Unum Life”), Colonial Life & Accident Insurance Company (“Colonial Life” and together with Unum Group and Unum Life, the “Assignors”), TSO 1200 Colonial Life Blvd Retail, LP (“Retail”), and TSO 1200 Colonial Life Blvd, LP (“Office” and together with Retail, the “Assignees”, and collectively with the Assignors, the “Parties”). Further, Richland County, South Carolina (the “County”) has acknowledged and consented to this Assignment as evidenced by its execution below.

WHEREAS, the County and Assignors entered into a July 28, 2009 Fee Agreement Effecting a Conversion of that Certain Lease Agreement dated as of December 15, 1996, as amended by a November 14, 2017 First Amendment (the “2009 Conversion Fee Agreement”), with respect to certain real and personal property comprising a portion of Assignors’ facilities in the County;

WHEREAS, the County and Assignors entered into a July 28, 2009 Fee Agreement, as amended by a November 14, 2017 First Amendment (the “2009 New Fee Agreement” and together with the 2009 Conversion Fee Agreement, the “2009 Fee Agreements”), the Investment Period (as defined therein) for which was extended through December 2019 by a November 7, 2017 Resolution of County Council, with respect to certain real and personal property comprising a portion of Assignors’ facilities in the County (there are also five entities, related to the Assignors, that are listed as “Sponsor Affiliates” to the 2009 New Fee Agreement; however none of the Sponsor Affiliates owns any real or personal property that is subject to the 2009 New Fee Agreement);

WHEREAS, Assignors and Assignees have entered into that certain Agreement for Purchase and Sale of Property dated as of October 4, 2022, as amended, whereby Assignees are purchasing all the real property along with certain personal property from the Assignors’ Richland County facilities, including but not limited to all the real property and certain personal property subject to the 2009 Conversion Fee Agreement and to the 2009 New Fee Agreement (the “Purchased Property”); and

WHEREAS, Assignors, effective as of the Effective Date, desire to hereby assign to Assignees, and Assignees desire to hereby accept and assume, Assignors’ rights, obligations, title, and interest in, to, and under the two 2009 Fee Agreements referenced above, but only insofar as they relate to the Purchased Property and only insofar as such obligations first arise, accrue, or are related to the period on or after the Effective Date (collectively, the “Assigned Rights and Obligations”), and Assignors will retain all of Assignors’ rights, obligations, title, and interest in, to, and under those portions of the 2009 Fee Agreements that are not part of the Assigned Rights and Obligations.

NOW, THEREFORE, in consideration of the reasons recited above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors and Assignees hereby agree as follows:

1. Assignors hereby assign, contribute, grant, convey and transfer to Assignees all of Assignors’ right, title and interest in and to the Assigned Rights and Obligations, to be effective as of the Effective Date. On and after the Effective Date, Assignors shall remain liable under the 2009 Fee Agreements only as to: (1) obligations which arose or were incurred prior to the Effective Date, and (2) those portions of the 2009 Fee Agreements that are not part of the Assigned Rights and Obligations.

2. Assignees hereby accept the foregoing assignment and assume the Assigned Rights and Obligations, to be effective as of the Effective Date, and agree to be bound thereby.
3. The Parties hereto expressly acknowledge and agree that Assignors retain all rights and obligations under the two 2009 Fee Agreements that are not part of the Assigned Rights and Obligations, and that the two 2009 Fee Agreements shall continue with respect thereto.
4. The Parties agree that the address to be utilized with respect to Assignees under Section 12.1 of the 2009 Conversion Fee Agreement and Section 11.1 of the 2009 New Fee Agreement shall be as follows:

TSO 1200 Colonial Life Blvd Retail, LP
TSO 1200 Colonial Life Blvd, LP
1170 Peachtree Street NE
Suite 2000
Atlanta, GA 30309
Email: boyd@simpsonorg.com
Attention: A. Boyd Simpson

With a copy to:

Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309
Email: jason.howard@alston.com
Attention: Jason W. Howard

5. This Assignment will be binding on and inure to the benefit of the Parties hereto and their respective successors-in-interest and assigns.
6. This Assignment may only be amended by a writing signed by Assignors and Assignees.
7. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.
8. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.
9. This Assignment may be executed in multiple counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

(Remainder of page left blank intentionally.)

This Assignment has been executed by the Parties to be effective as of the Effective Date.

UNUM GROUP

By: _____
Name: _____
Its: _____

**COLONIAL LIFE & ACCIDENT INSURANCE
COMPANY**

By: _____
Name: _____
Its: _____

**UNUM LIFE INSURANCE COMPANY OF
AMERICA**

By: _____
Name: _____
Its: _____

**TSO 1200 COLONIAL LIFE BLVD RETAIL,
LP**

By: _____

Name: _____

Its: _____

TSO 1200 COLONIAL LIFE BLVD, LP

By: _____

Name: _____

Its: _____

**BY EXECUTION HEREOF, RICHLAND COUNTY
ACKNOWLEDGES AND CONSENTS TO THIS
PARTIAL ASSIGNMENT AND ASSUMPTION
AGREEMENT**

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Name: _____
Title: _____
Richland County, South Carolina
Date: _____, _____

ATTEST:

Name:
Title: Clerk to County Council
Richland County, South Carolina

Richland County Council Request for Action

Subject:

Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the project, the increase of the phase termination date, and an update to the fee payment schedule and amount and other related matters

Notes:

First Reading:

Second Reading:

Third Reading:

Public Hearing:

**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 EASTOVER SOLAR, LLC., RELATING TO, WITHOUT LIMITATION, THE FURTHER INVESTMENT OF THE PROJECT, THE INCREASE OF THE PHASE TERMINATION DATE, AND AN UPDATE TO THE FEE PAYMENT SCHEDULE AND AMOUNT AND OTHER RELATED MATTERS.

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

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, Eastover Solar, LLC, a South Carolina limited liability company (the "Company"), plans to cause the construction of and operate a solar power generation 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 May 21, 2019 (the "Fee Agreement") by which there was created a fee-in-lieu-of-tax arrangement with respect to certain property leased and owned by the Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$77 million (the "Contract Minimum Investment Requirement" and as defined in the Fee Agreement) at the Project by the end of the Investment Period (as defined in the Fee Agreement); and

WHEREAS, the Company has requested the County to amend the incentive terms in the Fee Agreement to authorize (i) the increase in the Contract Minimum Investment Requirement to \$113 million; (ii) the increase in the Phase Termination Date (as defined in the Fee Agreement) of the Fee Agreement from 30 years to 40 years; and (iii) update of Exhibit D to the Fee Agreement to reflect an updated FILOT payment schedule for the Project (together, the “Revised Incentives Terms”); and

WHEREAS, the County and the Company now desire to amend the Fee Agreement to memorialize such Revised Incentive Terms; 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 Council has caused to be prepared and presented to this meeting the form of First Amendment of Fee Agreement (the “Amendment”) by and between the County and the Company memorializing the Revised Incentives Terms; and

WHEREAS, the County desires to approve and authorize the Revised Incentives Terms, 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. Statutory Findings and Determinations. The County hereby finds and determines that the Revised Incentives Terms would directly and substantially benefit the general public welfare of the County by inducing the Company to make further investment in the County, thereby providing for the increase of the ad valorem tax base of the County, and service, employment or other public benefits not otherwise provided locally; that the Revised Incentives Terms gives rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either; that the purposes to be accomplished by the Revised Incentives Terms, i.e., economic development, 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 Revised Incentives Terms will be greater than the costs; and

Section 2. Update of the Contract Minimum Investment Requirement. The Contract Minimum Investment Requirement in the Project required of the Company under Sections 1.1 of the Fee Agreement shall be increased to \$113 million.

Section 3. Update of the Phase Termination Date. The Phase Termination Date of the Project listed in Sections 1.1 of the Fee Agreement shall be updated to state the following:

“means, with respect to each Phase, the last day of the property tax year which is the 39th year following the first property tax year in which the Phase is in service.”

Section 4. Update to Exhibit D of the Fee Agreement: Exhibit D of the Fee Agreement as described in Section 5.1 of the Fee Agreement shall be updated to reflect the new illustration attached to the Amendment as Exhibit B.

Section 5. 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 first consult counsel to the County (the “County Attorney”) with respect to any changes to the Amendment. The execution of the Amendment by the 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 first 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 6. Execution of Document. The Chairman, the County Administrator, and the Clerk 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 7. 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 8. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 9. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

[signatures on following page]

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Chair, Richland County Council

(SEAL)

Attest this _____ day of _____, 2023

Clerk of Council, Richland County Council

First Reading: December 6, 2022
Second Reading:
Public Hearing:
Third Reading:

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_____, 2023.

Clerk of Council
Richland County, South Carolina

Richland County Council Request for Action

Subject:

Resurfacing Package T

Notes:

November 17, 2022 – The Transportation Ad Hoc Committee recommended Council award the construction contract to the lowest responsive and responsible bidder, Palmetto Corp of Conway, in the amount of \$2,804,188.59 and to include a 7.5% contingency.

**RICHLAND COUNTY
ADMINISTRATION**

2020 Hampton Street, Suite 4069
Columbia, SC 29204
803-576-2050



Agenda Briefing

Prepared by:	Michael J Maloney, PE	Title:	Director
Department:	Transportation	Division:	
Date Prepared:	October 27, 2022	Meeting Date:	November 17, 2022
Legal Review	Patrick Wright via email	Date:	October 31, 2022
Budget Review	Abhijit Deshpande via email	Date:	October 31, 2022
Finance Review	Stacey Hamm via email	Date:	October 28, 2022
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Transportation Ad Hoc		
Subject	Resurfacing Package T - Award of Construction		

RECOMMENDED/REQUESTED ACTION:

Staff recommends awarding the construction contract to the lowest responsive and responsible bidder, Palmetto Corp of Conway, in the amount of \$2,804,188.59, and include a 7.5% contingency for a total amount of \$3,014,502.73.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

The project will be funded using the encumbered funding, \$3,014,502.73.

Applicable department/grant key and object codes: 13320301/532200

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

None applicable.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

Receipt of sealed bids and award of the low responsive, responsible bidder under State and County Law.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

This award commits to action Goal 3 of the Strategic Plan: Commit to Fiscal Responsibility. The project is an example of an initiative that aligns with the available resources. The award amount and the contingency fund will place the program to within \$760,000 of the program cap. The program cap is determined by the referendum amount of \$40M and grant amounts of \$1.4M, for a total program of \$41.4M. The remaining amount of \$760,000 is based on using all of the contingency in the active projects. When the projects are near completion, staff will assess the amount available for a final resurfacing package within the referendum amount.

ADDITIONAL COMMENTS FOR CONSIDERATION:

RESURFACING PACKAGE T

Name	District	Name	District
1. Berry Ridge Cir	8	14. Old Still Rd W	9
2. Brassie Ct	9	15. Mauney Dr	10
3. Briar Ln	6	16. Pisgah Dr	11
4. Brookmist	8	17. Ridge Pond Dr	8
5. Cambride Oaks Ct	8	18. Saxon Shore Rd	11
6. Cambride Oaks Dr	8	19. Shallow Brook Dr	9
7. Chillingham Rd	1	20. Signal Ln	1
8. Cobblestone Ct	1	21. Silver Lake Cir	1
9. Dovecreek	8	22. Walden Oak Ct	9
10. Flowerwood Ct	11	23. Waterton Way	9
11. Harleston Rd	1	24. Woodbranch Rd	8
12. Hunt Cup Ln	9	25. Woodglen Ln	1
13. Jim Koon Rd	2		

ATTACHMENTS:

1. Letter of Recommendation

**RICHLAND COUNTY GOVERNMENT
PROCUREMENT DEPARTMENT**

2020 Hampton Street, Suite 3064, Columbia, SC 29204
T 803-576-2130 | F 803-576-2135
richlandcountysc.gov

Attachment 1



October 7, 2022

To: Mr. Michael Maloney, Interim Director of Transportation

From: Vernon Lee Daniels, Procurement Buyer

CC: Erica Wade, OSBO Manager

Jennifer Wladishkin, Procurement Director

Re: RC-532-B-23-Resurfacing Package T

A bid opening was conducted at 3:00 PM on Thursday, October 6, 2022, via the County's online procurement portal. Procurement has reviewed the three (3) submitted bids for Resurfacing Project Package T which were submitted via Bonfire and found no discrepancies. The bids received were as follows.

Resurfacing Package T- BID RESULTS SUMMARY	
BIDDER	SUBMITTED BID
Palmetto Corp of Conway	\$2,804,188.59
Lynches River Contracting, Inc.	\$3,072,211.51
C.R. Jackson, Inc.	\$3,023,673.23

Further review shows that Palmetto Corp of Conway is duly licensed in South Carolina to perform this work. A copy of their license is attached.

A Non-Mandatory Pre-Bid Conference ZOOM call was held at 10:00 AM on September 13, 2022, during which attendees gained information and bidding directives for the project. A copy of attendance is attached.

Attached is a final bid tab sheet for your reference which indicates Palmetto Corp of Conway's bid is 24% higher than the Engineer's Estimate of \$2,255,874.97 for the project. All bids were compared to each other and the engineer's estimate and the bids are consistent in price. The estimate was completed August 22, 2022. The SLBE goal for this project is 0%.

It is Procurement's recommendation that a contract be awarded to the lowest responsive and responsible bidder Palmetto Corp of Conway to include a 15% construction contingency of **\$420,628.29**.

Hereby Certifies:

PALMETTO CORP OF CONWAY

3873 HWY 701 N
CONWAY SC 29526

Having given satisfactory evidence of the necessary qualifications required by laws of the State of South Carolina and is duly qualified and entitled to practice as a:

GENERAL CONTRACTOR

for the Classification(s) and Group Limitation* shown below:

, Grading-GD5, Water & Sewer Lines-WL5, Asphalt Paving-AP5, Concrete Paving-CP5, Water & Sewer Plants-WP5, Highway-HY5, Building-BD5

LICENSE NUMBER:.....G14514

Expiration Date:10/31/2022

Initial License Date:03/02/1992

* Group Limitations - \$Amount Per Job:

Group #1 - \$50,000	Group #3 - \$500,000
Group #2 - \$200,000	Group #4 - \$1,500,000
Group #5 - \$Unlimited	


Administrator

Qualifying Party(s) (Primary QP displays "PQ"): ANTHONY SHAWN GODWIN (CQG.21027 PQ), KENNETH A ATKINSON JR (CQG.1330 PQ), JOE SCOTT CUNNINGHAM II (CQG.30493 Q)

It is at the discretion of the licensee to designate whomever they elect to pull permits and conduct business for this license.

**RICHLAND COUNTY GOVERNMENT OFFICE OF PROCUREMENT AND CONTRACTING
2020 HAMPTON STREET, SUITE 3064, COLUMBIA, SC 29204-1002**

Project #: RC-532-B-23	Project Name: Resurfacing Project Package T	Date: 26 July 2022
		Time: 10:00AM

COMPANY NAME	REPRESENTATIVE	EMAIL ADDRESS	TELEPHONE/FAX
Richland County- Procurement	Vernon Lee Daniels – Buyer		2134
Richland County - Procurement	Yolanda Davis – Contract Specialist		
Richland County - Transportation	Ali Eliadorani – PM		
C.R. Jackson, Inc.	Austin Sarokas		
Southern Commercial Development	Sherita Evans		

***** PLEASE PRINT CLEARLY! IF THE INFORMATION IS NOT LEGIBLE YOUR ATTENDANCE MAY NOT BE CONSIDERED! *****

RC-532-B-23
DUE DATE

Resurfacing Package T
10/6/2022 3:00 PM

	C.R. Jackson, Inc.	Palmetto Corp of Conway	Lynches River Contracting, Inc.
Total Cost	\$3,023,673.23	\$2,804,188.59	\$3,072,211.51

Richland County Council Request for Action

Subject:

Lake Tide Summit Credit Sales

Notes:

November 17, 2022 – The Transportation Ad Hoc Committee recommended Council approve Lake Tide Summit Development’s request to purchase 3.132 wetland credits at a rate of \$20,000 per credit for a development project in Lexington County, SC.



Agenda Briefing

Prepared by:	Quinton Epps	Title:	Conservation Division Manager
Department:	Community Planning & Development	Division:	Conservation
Date Prepared:	August 19, 2022	Meeting Date:	November 17, 2022
Legal Review	Patrick Wright via email	Date:	November 9, 2022
Budget Review	Abhijit Deshpande via email	Date:	October 31, 2022
Finance Review	Stacey Hamm via email	Date:	October 28, 2022
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Transportation Ad Hoc		
Subject	Mitigation Bank Credit Transaction		

RECOMMENDED/REQUESTED ACTION:

Staff recommends approval of a request to purchase mitigation credits as listed below:

1. Lake Tide Summit Development for a development project in Lexington County, SC for 3.132 wetlands credits at a rate of \$20,000 per credit.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

These mitigation credit sales will generate \$59,064.30 which will be credited to the Transportation Penny Program.

Applicable department/grant key and object codes: Click or tap here to enter text.

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

None applicable.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

In accordance with Strategic Planning Goal 3 – Commit to fiscal responsibility, Object 3.2 – Establish process to prioritize initiatives to align with available resources, this project was developed to provide a resource to the Transportation Penny that has been needed on its projects, while at the same time provide an everlasting resource of protected land for the public. Sales of the excess credits work to return the Penny’s initial investment cost. Staff requests approval for the sale of mitigation bank credits from the Mill Creek Mitigation Bank to the recommended entity and amounts to fulfill their permitting requirements.

The total combined transaction value is \$69,817.50 of which \$59,064.30 will be returned to the Penny Program, and \$10,753.20 will go to the Mill Creek Mitigation Bank owners/investors. The County's current credit ledger balance is as follows:

Credit Type	Released County Credits	County Credits Used or Sold	Available County Credits
Wetland	800.000	205.723	594.277
Stream	30,000.000	11,212.12	18,787.88

Interim Transportation Director Maloney estimates as currently constituted, the remaining projects in the Transportation Penny program will require 100 wetland credits and 3,400 stream credits. Those numbers would increase if the Penny tax is extended and more projects are added. Based on these estimates, the request for 3.132 wetland credits and 0 stream credits will have no impact on the County's ability to implement the Penny Program. As such, they may be considered excess credits at this time.

If the County Council does not approve the requested sales of its surplus mitigation credits, the County portion of the mitigation credit sales will drop from \$59,064.30 to \$13,963.50 for a difference of \$45,100.80 to the Transportation Program.

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS:

1. Mitigation Surplus Credit Sales Agreement Summary

MITIGATION SURPLUS CREDIT SALES AGREEMENT SUMMARY

<u>Project:</u>	Lake Tide Summit Development
<u>Location:</u>	Lexington County, SC
<u>8-Digit HUC Watershed Code</u>	03050109 (Saluda)
<u>Buyer:</u>	JHB Construction, Inc.
<u>Permittee:</u>	JHB Construction, Inc.
<u>Permittee's USACE 404 Permit #:</u>	SAC-2021-01335
<u>Price Per Wetland Credit:</u>	\$20,000.00
<u>Price Per Stream Credit:</u>	N/A
<u>Wetland Credits:</u>	3.132 credits (1.566 restoration/enhancement & 1.566 preservation)
<u>Stream Credits:</u>	0.00 credits
<u>Credit Proceeds:</u>	\$62,640.00
<u>Richland County Credit Share:</u>	\$57,628.80 (92% of \$62,640.00)
<u>MCMH Credit Share:</u>	\$5,011.20 (8% of \$62,640.00)
<u>Fee for Out of Primary Service Area Sale:</u>	\$7,177.50
<u>Richland County Fee Share:</u>	\$1,435.50 (20% of \$7,177.50)
<u>MCMH Fee Share:</u>	\$5,742.00 (80% of \$7,177.50)
<u>Gross Proceeds (Inclusive of Fee for Out of Primary Service Area Sale:</u>	\$69,817.50
<u>Richland County Proceeds Share:</u>	\$59,064.30
<u>MCMH Proceeds Share:</u>	\$10,753.20



REQUEST OF ACTION

Subject: FY23 - District 2 Hospitality Tax Allocations

A. Purpose

County Council is being requested to approve a total allocation of **\$15,000** for District 2.

B. Background / Discussion

For the 2022 - 2023 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

Motion List (3rd reading) for FY17: Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

Motion List (3rd reading) for FY23, Regular Council Meeting – June 7, 2022: Establish Hospitality Tax discretionary accounts for each district in FY23 at the amount of \$82,425. Move that all unallocated district specific H-Tax funding for FY21-22 be carried over and added to any additional funding for FY22-23.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY23 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 2 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$ 82,425
FY2022 Remaining	\$ 5,925
Big Red Barn Retreat	\$ 5,000
Benedict College	\$ 10,000
Total Allocation	\$ 15,000
Remaining FY2023 Balance	\$ 48,350

C. Legislative / Chronological History

- 3rd Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3rd Reading of the Budget FY19- June 21, 2018
- 3rd Reading of the Budget FY20- June 10, 2019
- 3rd Reading of the Budget FY21- June 11, 2020
- 3rd Reading of the Budget FY22- June 10, 2021
- 3rd Reading of the Budget FY23- June 7, 2022

D. Alternatives

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

E. Final Recommendation

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.



REQUEST OF ACTION

Subject: FY23 - District 7 Hospitality Tax Allocations

A. Purpose

County Council is being requested to approve a total allocation of **\$3,000** for District 7.

B. Background / Discussion

For the 2022 - 2023 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

Motion List (3rd reading) for FY17: Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

Motion List (3rd reading) for FY23, Regular Council Meeting – June 7, 2022: Establish Hospitality Tax discretionary accounts for each district in FY23 at the amount of \$82,425. Move that all unallocated district specific H-Tax funding for FY21-22 be carried over and added to any additional funding for FY22-23.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY23 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 7 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$ 82,425
FY2022 Remaining	\$ 60,900
	Westwood High School
	\$ 3,000
Total Allocation	\$ 3,000
Remaining FY2023 Balance	\$105,325

C. Legislative / Chronological History

- 3rd Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3rd Reading of the Budget FY19- June 21, 2018
- 3rd Reading of the Budget FY20- June 10, 2019
- 3rd Reading of the Budget FY21- June 11, 2020
- 3rd Reading of the Budget FY22- June 10, 2021
- 3rd Reading of the Budget FY23- June 7, 2022

D. Alternatives

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

E. Final Recommendation

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.



REQUEST OF ACTION

Subject: FY23 - District 9 Hospitality Tax Allocations

A. Purpose

County Council is being requested to approve a total allocation of **\$10,000** for District 9.

B. Background / Discussion

For the 2022 - 2023 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

Motion List (3rd reading) for FY17: Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

Motion List (3rd reading) for FY23, Regular Council Meeting – June 7, 2022: Establish Hospitality Tax discretionary accounts for each district in FY23 at the amount of \$82,425. Move that all unallocated district specific H-Tax funding for FY21-22 be carried over and added to any additional funding for FY22-23.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY23 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 9 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$ 82,425
FY2022 Remaining	\$175,400
Divine Nine Foundation	\$ 10,000
Total Allocation	\$ 10,000
Remaining FY2023 Balance	\$235,325

C. Legislative / Chronological History

- 3rd Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3rd Reading of the Budget FY19- June 21, 2018
- 3rd Reading of the Budget FY20- June 10, 2019
- 3rd Reading of the Budget FY21- June 11, 2020
- 3rd Reading of the Budget FY22- June 10, 2021
- 3rd Reading of the Budget FY23- June 7, 2022

D. Alternatives

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

E. Final Recommendation

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.