

**RICHLAND COUNTY**  
**COUNTY COUNCIL AGENDA**



**Tuesday, NOVEMBER 17, 2020**

**6:00 PM**

**ZOOM MEETING**

# RICHLAND COUNTY COUNCIL 2020



Bill Malinowski  
District 1  
2018-2022



Joyce Dickerson  
District 2  
2016-2020



Yvonne McBride  
District 3  
2016-2020



Paul Livingston  
District 4  
2018-2022



Allison Terracio  
District 5  
2018-2022



Joe Walker, III  
District 6  
2018-2022



Gwendolyn Kennedy  
District 7  
2016-2020



Jim Manning  
District 8  
2016-2020



Calvin "Chip" Jackson  
District 9  
2016-2020



Dalhi Myers  
District 10  
2016-2020



Chakisse Newton  
District 11  
2018-2022





Richland County Council

Regular Session  
November 17, 2020 - 6:00 PM  
Zoom Meeting  
2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER**

The Honorable Paul Livigston,  
Chair Richland County Council

a. ROLL CALL

2. **INVOCATION**

The Honorable Dalhi Myers

3. **PLEDGE OF ALLEGIANCE**

The Honorable Dalhi Myers

4. **PRESENTATION**

5. **APPROVAL OF MINUTES**

The Honorable Paul Livingston

a. Special Called Meeting: November 10, 2020 [UNDER  
SEPARATE COVER]

6. **ADOPTION OF AGENDA**

The Honorable Paul Livingston

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

Larry Smith,  
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 notice meeting.

a. Receipt of Legal Advice: Potential resolution/settlement of contractual/personnel matter involving former Administrator Gerald Seals

**8. CITIZEN'S INPUT**

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

**9. CITIZEN'S INPUT**

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

**10. REPORT OF THE COUNTY ADMINISTRATOR**

Leonardo Brown,  
County Administrator

- a. Coronavirus Update [PAGES 8-40]

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

Michelle Onley, Interim  
Clerk to Council

**12. REPORT OF THE CHAIR**

The Honorable Paul Livingston

**13. APPROVAL OF CONSENT ITEMS**

The Honorable Paul Livingston

- a. 20-021MA  
Erica Serbin  
RM-MD to MH (2.34 Acres)  
8534 Old Percival Road  
TMS # R22602-02-07 [THIRD READING] [PAGES 41-42]

- b. 20-029MA  
Dave R. Brock  
M-1/RM-MD to LI (2 Acres)  
1804 Shop Road  
TMS # 13604-01-01 [THIRD READING] [PAGES 43-44]

**14. SECOND READING ITEMS**

The Honorable Paul Livingston

- 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 Offer to provide for payment of a fee-in-lieu of taxes; and other related matters [PAGES 45-76]
- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and infrastructure credit agreement by and between Richland County, South Carolina and Project Yeti to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [PAGES 77-110]

- 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 an infrastructure credit agreement to provide for infrastructure credits to Gable Oaks Housing Associates LP; and other related matters [PAGES 111-131]
- d. Approving the transfer of certain real property located in Richland County, the granting of certain options and other matters related thereto [PAGES 132-150]

**15. REPORT OF ECONOMIC DEVELOPMENT COMMITTEE**

The Honorable Paul Livingston

- a. Committing to negotiate a fee-in-lieu of ad valorem taxes agreement between Richland County and Project Cross; identifying the project; and other matters related thereto [PAGES 151-152]
- 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 Project Cross to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters [FIRST READING] [PAGES 153-190]

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

- a. NOTIFICATION OF APPOINTMENTS
- b. Airport Commission - 2
  - 1. Andrew R. (Andy) Tolleson [PAGES 191-192]
  - 2. Patrick B. O'Keefe [PAGES 193-194]
  - 3. Prentiss McLaurin [PAGES 195-196]
  - 4. John Parrish [PAGES 197-198]

**17. REPORT OF THE RENAISSANCE AD HOC COMMITTEE**

- a. I move to direct staff, by way of the County Administrator, to continue in its development of a proposal for the beautification of the Old Antique Mall site as an expansion of the Broad River Road Corridor Façade Grant Program. This beautification effort is intended to be an intermediary improvement until such a time that the highest and best use for the site is

determined via community engagement as part of the Richland Renaissance Initiative. Staff should also work in concert with Richland County Sheriff's Department and the County Magistrate's Office to provide a comprehensive proposal for Council consideration.  
[DICKERSON] [PAGES 199-205]

- b. I move that Richland County build a new County Courthouse [MANNING]
- c. I move that Richland County provide a facility for the Richland County DSS [MANNING]

**18. OTHER ITEMS**

- a. Alvin S. Glenn Detention Center - Detainee Telephone Service [PAGES 206-218]

**19. EXECUTIVE SESSION**

- a. 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 notice meeting.

**20. MOTION PERIOD**

**21. ADJOURNMENT**



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



## Report of the County Administrator

Regular Session - November 17, 2020

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### CORONAVIRUS UPDATE:

#### 1. COVID 19 Statistical Data

The information in the corresponding attachments is specific to Richland County and provides an overview of the prevalence of COVID 19 in Richland County. The source of this information is the South Carolina Department of Health and Environmental Control (SCDHEC).

#### 2. Mask Giveaway Events

There have been multiple mask giveaway events held in Richland County. Councilmembers have routinely distributed masks in one of the following ways: via county hosted event, partnering with other local agencies to give away masks during community outreach events, or supplying masks for community agencies to distribute to their members. Recent scheduled events were held in Districts 8,10, and 11. This does not include mask drop offs done individually by Councilmembers.

There are mask giveaways currently scheduled for:

- District 10
  - Temple of Faith Bible Way Church, on November 20<sup>th</sup> from 10:00am – 11:30am
  - Mt. Moriah Baptist Church, on December 4<sup>th</sup> from 10:00am – 11:30am
- District 11
  - Richland County Sheriff's Region 1 Substation, on December 11<sup>th</sup> from 10:00am-11:30am

#### 3. Preparation and Consideration for Limited In-Person Services

There have been multiple modifications made by Richland County in response to COVID 19. Safety protocols, Cleaning Protocols, Building Access Protocols, Workplace protocols, etc. I anticipate that we will need to continuously update protocols as necessary to comply with public health and safety recommendations from the CDC and SCDHEC. Currently, we are using the CDC's Resuming Business Toolkit to assess our readiness to offer limited in-person services.

A few of the steps we have already taken include acquiring an appointment software tool, contract cleaning services, face masks, face shields, hand held infrared thermometers, self-check temperature screening devices, placed COVID 19 safety messaging inside and outside of our facilities, provided supervisor training specific to COVID 19, and offered mental wellness sessions for our employees, to name some of the steps we have taken.

My goal is to begin offering limited in-person services in early 2021. Due to the recent spike in COVID 19 cases in SC and the U.S. and with the Thanksgiving, Christmas, and New Year holidays



rapidly approaching, I expect families and friends will be gathering for these events. I think it will be prudent to delay any increased opening to the public until after the holidays, in order to mitigate the spread of COVID 19. Our ability to reopen and remain open for some level of in person services will largely depend on everyone's compliance with COVID 19 protocols.

**ADDITIONAL UPDATES FOR CONSIDERATION:**

1. Continued Partnership with PRISMA Health: Using Sears facility to administer COVID 19 testing.
2. Working with Voter Registration and Elections during the recent election cycle.

**ATTACHMENTS:**

1. SCDHEC COVID-19 Statistical Data
2. CDC – Resuming Business Toolkit
3. CDC – Thanksgiving Gathering Guidance



Number of Tests | Richland

206,847

Select Date Range  
to Filter Page Values

2/10/2020

11/11/2020

Percent Positive | Richland

17.1%

Rate of COVID-19 Tests Performed

County Displayed: Richland | Dates Displayed: 2/26/2020 to 11/11/2020



Type of COVID-19 Tests Being Performed

County Displayed: Richland | Dates Displayed: 2/26/2020 to 11/11/2020

|                            | Positive | Negative | Grand Total |
|----------------------------|----------|----------|-------------|
| <b>Viral (Molecular)</b>   | 24,078   | 164,591  | 188,669     |
| <b>Antigen</b>             | 2,328    | 8,711    | 11,039      |
| <b>Antibody (Serology)</b> | 892      | 5,799    | 6,691       |
| <b>Unknown</b>             | 19       | 429      | 448         |
| <b>Grand Total</b>         | 27,317   | 179,530  | 206,847     |

23.7% of all COVID-19 diagnostic testing has occurred at the Public Health Laboratory

Note: This table represents volume of tests received and not distinct individuals tested. Individuals may have multiple tests.

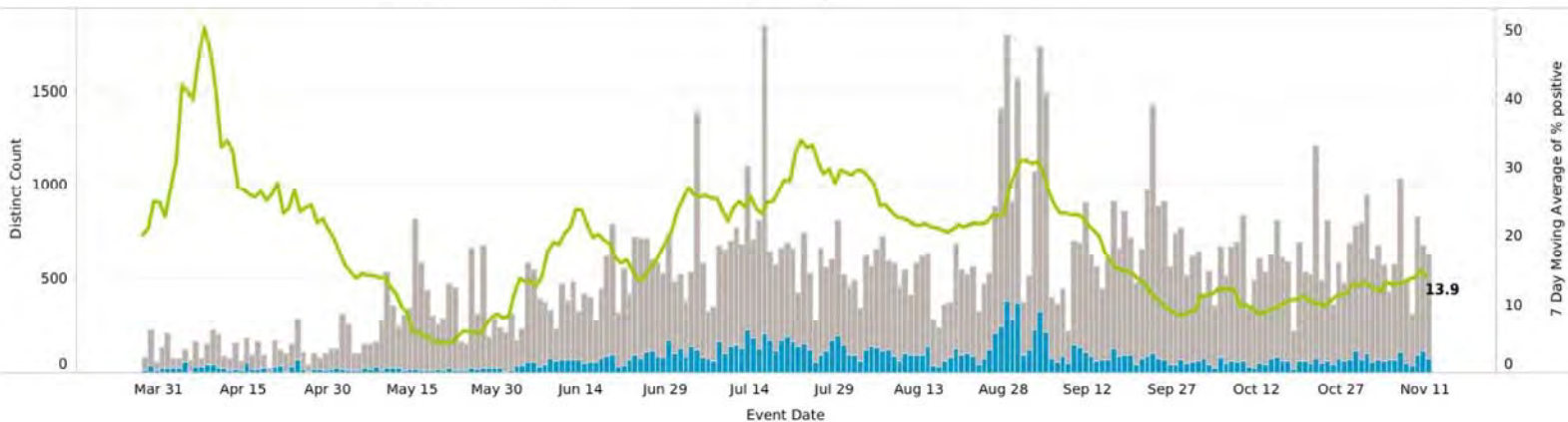
\*Unknown Test Types refer to tests with an unrecognized test type. As we continue to investigate unknown test types they will be reassigned as more information becomes available.

Moving 7 Day Average Percent Positive of COVID-19 Tests

County Displayed: Richland | Dates Displayed: 2/26/2020 to 11/11/2020

Note: Tooltips Display Percent Positive for the current day and moving 7 day average.

- Number of individuals tested with a Viral Test
- Number of Confirmed Cases
- 7 Day Moving Average Percent Positive





# COVID-19 in South Carolina

As of 11:59 PM on 11/11/2020



Number of Tests | Richland

## 5,768

Select Date Range  
to Filter Page Values

11/5/2020

11/11/2020



Percent Positive | Richland

## 13.7%

### Rate of COVID-19 Tests Performed

County Displayed: Richland | Dates Displayed: 11/5/2020 to 11/11/2020



### Type of COVID-19 Tests Being Performed

County Displayed: Richland | Dates Displayed: 11/5/2020 to 11/11/2020

|                            | Positive | Negative | Grand Total |
|----------------------------|----------|----------|-------------|
| <b>Viral (Molecular)</b>   | 640      | 3,849    | 4,489       |
| <b>Antigen</b>             | 185      | 746      | 931         |
| <b>Antibody (Serology)</b> | 64       | 198      | 262         |
| <b>Unknown</b>             |          | 86       | 86          |
| <b>Grand Total</b>         | 889      | 4,879    | 5,768       |

Rate of Testing

6.05 24.87

Legend: Green=Tested, Blue=Positive

8.4% of all COVID-19 diagnostic testing has occurred at the Public Health Laboratory

Note: This table represents volume of tests received and not distinct individuals tested. Individuals may have multiple tests.

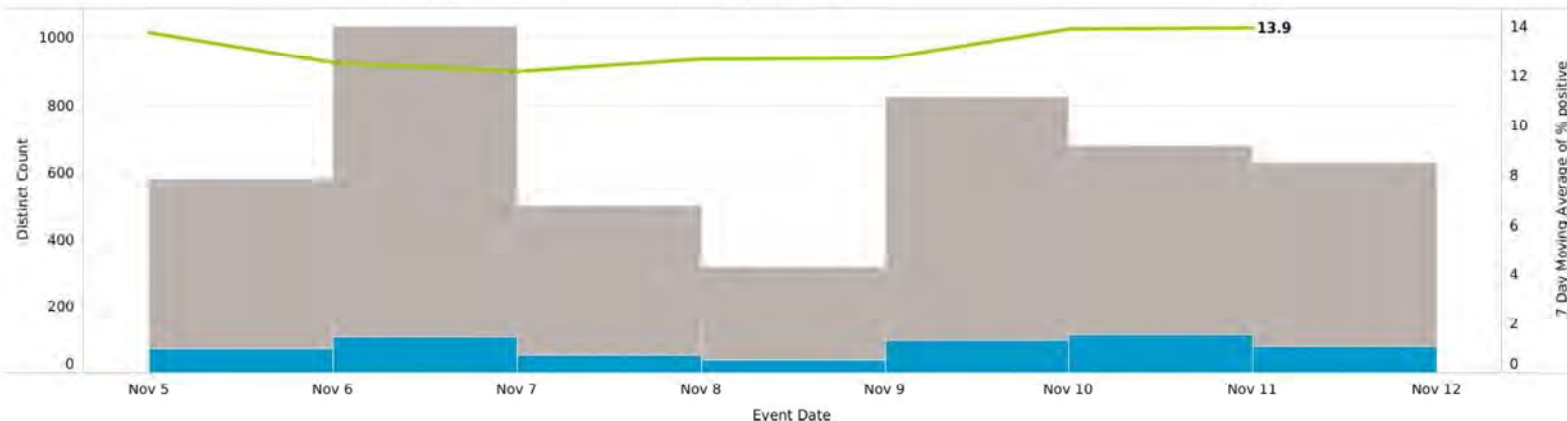
\*Unknown Test Types refer to tests with an unrecognized test type. As we continue to investigate unknown test types they will be reassigned as more information becomes available.

### Moving 7 Day Average Percent Positive of COVID-19 Tests

County Displayed: Richland | Dates Displayed: 11/5/2020 to 11/11/2020

Note: Tooltips Display Percent Positive for the current day and moving 7 day average.

- Number of individuals tested with a Viral Test
- Number of Confirmed Cases
- 7 Day Moving Average Percent Positive





Cases | Richland

## 18,582

Select Date Range  
to Filter Page Values

3/4/20  11/11/20

Past 2 weeks | Richland

## 1,289

Case rates per 100,000 of COVID-19 Reported Cases, by County

County Displayed: Richland | Dates Displayed: 3/16/20 to 11/11/20

Select a county to display county-specific information

Click the county again to return to the full state map



Number of Reported COVID-19 Cases, by ZIP Code

County Displayed: All | Dates Displayed: 3/4/20 to 11/11/20

Search by ZIP code  
(All)

Finding your ZIP? Select a county then use the dropdown above. Clear your selection before exploring another county.

- 1-50 Cases
- 100-249 Cases
- 250-500 Cases
- >500 Cases



COVID-19 among Healthcare Workers

Note: Data is suppressed for fewer than 5 cases

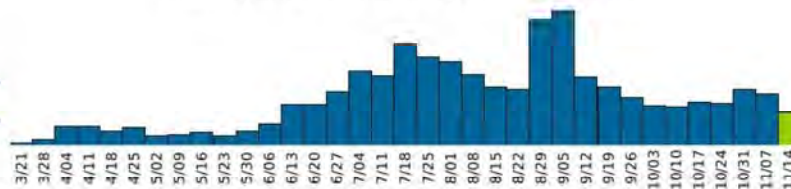
## 901

County Displayed: Richland | Dates Displayed: 3/16/20 to 11/11/20

Note: Data is suppressed for fewer than 5 cases

Reported COVID-19 Cases, by Week of Report

County Displayed: Richland | Dates Displayed: 3/16/20 to 11/11/20

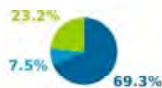


Reported COVID-19 Cases, by Race  
Richland



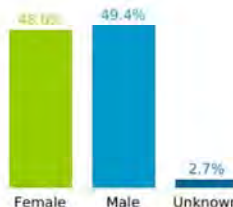
Black | White | Other  
Unknown | Under Investigation

Reported COVID-19 Cases, by Ethnicity  
Richland



Hispanic or Latino  
Not Hispanic or Latino  
Unknown

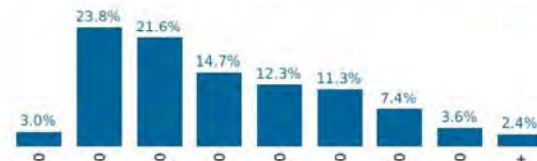
Reported COVID-19 Cases, by Sex  
Richland



Reported COVID-19 Cases, by Age Group & Age Related Information

County Displayed: Richland | Dates Displayed: 3/16/20 to 11/11/20

Note: Data is suppressed for fewer than 5 cases



Avg. age **36 years**

Max. age **109 years**

Median age **32 years**

Min. age **0 years**

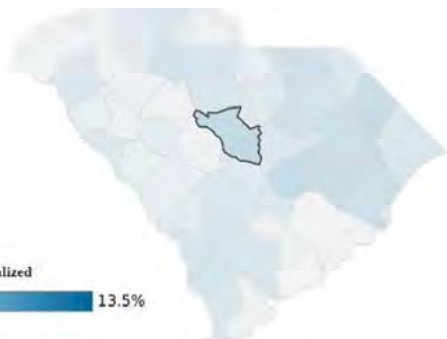


## Percent of COVID-19 Cases Who Were Hospitalized At Time of Illness

County Displayed: Richland

Select a county to display county-specific information

Click the county again to return to the full state map



Percent of Cases Hospitalized



© Esri, DeLorme, Garmin, AAA

County Displayed: Richland

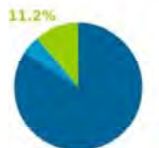
Note: Data is suppressed for fewer than 5 cases

### Hospitalized COVID-19 Cases, by Race



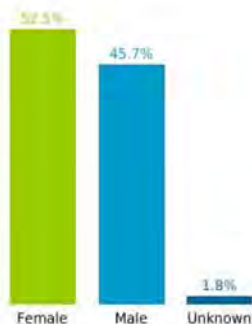
Black | White | Other  
Unknown | Under Investigation

### Hospitalized COVID-19 Cases, by Ethnicity



Hispanic or Latino  
Not Hispanic or Latino  
Unknown

### Hospitalized COVID-19 Cases, by Sex



## COVID-19 Hospitalizations

# 834

### Hospitalization Reported at Time of Illness

County Displayed: Richland

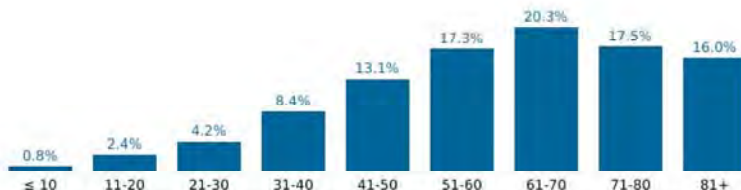
Hospitalized?



### Hospitalized COVID-19 Cases, by Age Group & Age Related Information

County Displayed: Richland

Note: Data is suppressed for fewer than 5 cases



Avg. age

**61 years**

Max. age

**101 years**

Median age

**62 years**

Min. age

**0 years**



## Deaths | Richland

# 282

## Percent of Deaths with Comorbid Conditions | State

# 78%

[Go to Comorbidity Details](#)

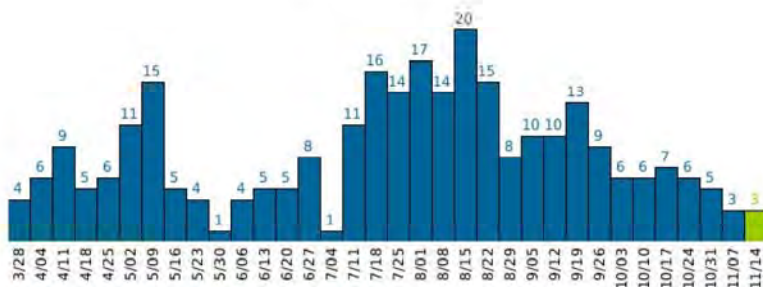
Reported Deaths due to COVID-19, by County  
County Displayed: Richland

Select a county to display county-specific information  
Click the county again to return to the full state map



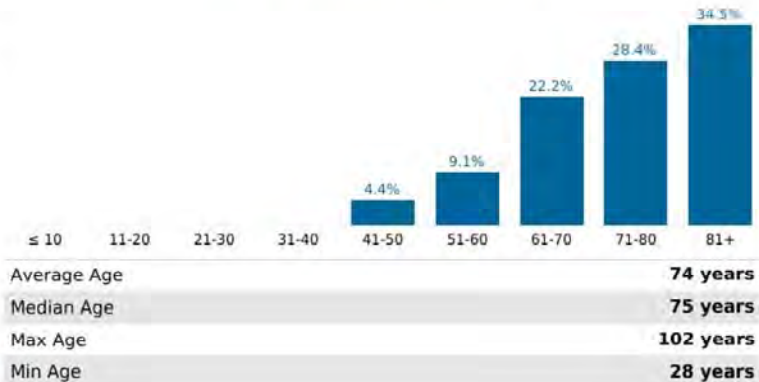
© OpenStreetMap

Reported COVID-19 Deaths, by Week of Report  
County Displayed: Richland

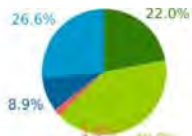


Reported COVID-19 Deaths, by Age Group & Age Related Information  
County Displayed: Richland

*Note: Data is suppressed for fewer than 5 cases*

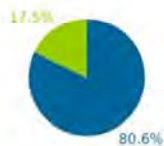


Reported COVID-19 Deaths, by Reported Race



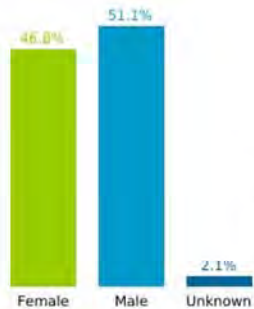
Black | White | Other  
Unknown | Under Investigation

County Displayed: Richland  
Reported COVID-19 Deaths, by Reported Ethnicity



Hispanic or Latino  
Not Hispanic or Latino  
Unknown

Reported COVID-19 Deaths, by Reported Sex



# COVID-19 in South Carolina

As of 11:59 PM on 11/11/2020

Number of Tests | Richland

**206,847**

[Go to Testing](#)

Cases | Richland

**18,582**

[Go to Cases](#)

Hospitalizations | Richland

**834**

[Go to Hospitalizations](#)

Deaths | Richland

**282**

[Go to Deaths](#)

## Two Week Cumulative Incidence Rate

The Two-Week Cumulative Incidence Rate includes new (confirmed) cases reported in the past two weeks (October 29, 2020 - November 11, 2020) per 100,000 people. The rate describes recent incidence of COVID-19 infection to capture the potential burden of currently ill people who may be infectious and/or accessing healthcare.

Select a county to display county-specific information

Click the county again to return to the full state map



© OpenStreetMap

Low Incidence; 0-50

Moderate Incidence; 51-200

High Incidence; >200

## State Recovery Estimate

**91.5%**

As of November 11, 2020, of the total positive cases of COVID-19 in South Carolina (190,490), we have symptom onset data (meaning, the date when a person first showed signs of illness) for 111,397 of those individuals. Of those individuals, 1,798 have unfortunately died. Our recovery rate data is based on symptom onset information, so the percentages below are based on the number of individuals we have symptom onset data for, NOT the total number of cases in the state.

As of November 11, 2020, 91.5% of those 108,599 individuals for which we have symptom onset data are estimated to have recovered from COVID-19, and 8.5% are estimated to remain ill.

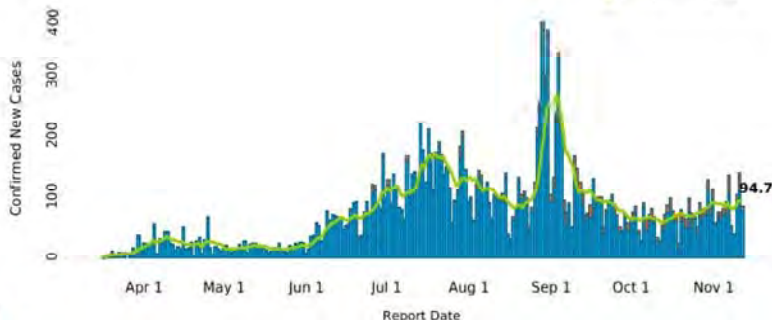
*Note: These data are provisional. The estimated percent of those who may have recovered from COVID-19 is based upon the following parameters:*

1. Those who reported being hospitalized were deemed as "recovered" based upon having no reported adverse outcome reported as of >32 days since their illness onset.
2. Those who reported not being hospitalized were deemed as "recovered" based upon having no reported adverse outcome reported as of >14 days since their illness onset.
3. Those where hospitalization status was unknown were deemed as "recovered" based upon having no reported adverse outcome reported as of >32 days since their illness onset.

## COVID-19 Cases per Day

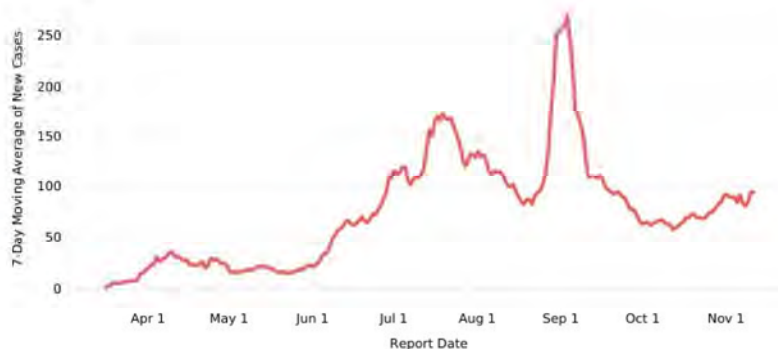
County Displayed: Richland

■ Probable  
■ Number of Confirmed.  
■ 7-day moving avg.



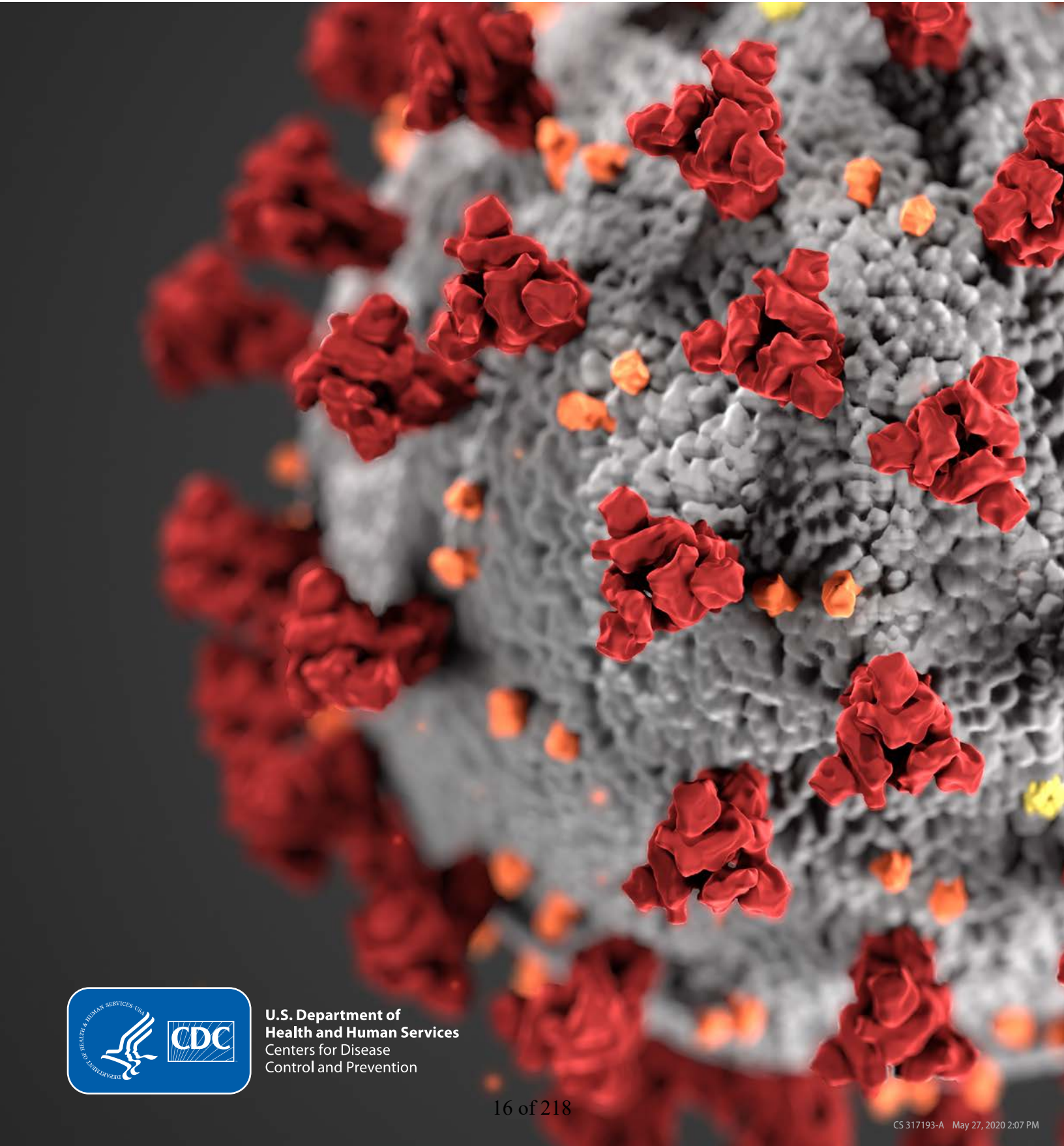
## 7-Day Moving Average of COVID-19 Cases, by Public Health Region

■ Midlands



# Resuming Business TOOLKIT

## Coronavirus Disease 2019 (COVID-19)

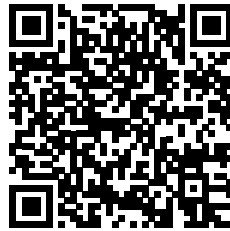


**U.S. Department of Health and Human Services**  
Centers for Disease Control and Prevention





SCAN HERE FOR MORE  
INFORMATION



# Contents

- Employer Sheet . . . . . 5
- Restart Readiness Checklist . . . . . 6
  - Prevent and reduce transmission among employees . . . . . 6
  - Maintain healthy business operations . . . . . 9
  - Maintain a healthy work environment . . . . .12
- Worker Protection Tool . . . . .15
  - Worker Protections. . . . .15
- Keep yourself and others safe from COVID-19 when returning to work . . . . .17
- Resources referred to throughout the Toolkit . . . . .18
- Additional Resources . . . . .21

The **Resuming Business Toolkit** is designed to assist employers in slowing the spread of COVID-19 [1] and lowering the impact in their workplace when reintegrating employees into non-healthcare business settings. Not sure whether you're ready to resume business? Use CDC's decision tools [2-3] as a start.

## This toolkit includes the following materials:



**Employer Sheet** to introduce employers to the contents of the toolkit and how to use the materials in non-healthcare workplaces



**Restart Readiness Checklist** to help make returning to work and resuming business operations as safe and healthy as possible for employers, employees, and the public



**Worker Protection Tool** for employers to identify protective measures for workers when interacting with each other and the public



**Returning to Work Infographic** to remind employees how to protect themselves and others from COVID-19 and address their potential concerns about returning to the workplace



**Resources** to easily access additional information using hyperlinks, URLs, and QR codes



## Employer Sheet

### Resuming Business Toolkit for Coronavirus Disease

The information in this toolkit is based on [CDC's Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#) [4]. Be sure to thoroughly review this guidance for complete information.

Before resuming your non-healthcare business operations, it is important to consider how much the disease is spreading in your community and the readiness of workplace management to protect the safety and health of employees and the public. CDC's decision tools [2-3] can help with determine if it is time.

For information about conditions in your community, contact your local health department [5].

This toolkit provides a **checklist** to prepare the workplace for operations and a **tool** to navigate protective options for workers. Revisit materials regularly as the COVID-19 situation can change in your community.

- 1. Get started with the Restart Readiness Checklist**, working with others in management to identify which checklist items apply to your business. Revisit the list as you make progress on items and as conditions in your area change.
- 2. Select protective measures in the Worker Protection Tool**, based on the nature of your employees' interactions with other workers and/or the public. Consider whether multiple categories apply to your business, then work through those items.
- 3. Share the Returning to Work Infographic with employees.** Depending on your business, consider the following ways of incorporating the infographic into the workplace:
  - ✓ Print and post in common areas such as break rooms, hallways, elevators, or bathrooms.
  - ✓ Email to employees, encouraging them to print a copy and place it where they will see it often in their office or workspace.
  - ✓ Read content during team meetings, reminding employees to reach out with any questions.



# Restart Readiness Checklist

## For Coronavirus Disease 2019 (COVID-19)

Use this checklist (for non-healthcare employers) as a guide to resuming business operations as safely and healthy as possible for you, your employees, and the public. Some items may need to be ongoing, so regularly revisit the checklist while COVID-19 cases exist. Only complete those items that apply to your business. See the Resources section for links and QR codes to web resources.

### 1. Prevent and reduce transmission among employees

#### *Monitor federal, state, and local public health communications about COVID-19.*

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Ensure workers have access to current information.  |           |         |             |                |
| Check local public health information [5] and the CDC COVID-19 website [1] daily, or as needed depending on local conditions. |           |         |             |                |

#### *Reinforce how employees can protect themselves and others from COVID-19 by communicating the following:*

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| If you have symptoms [6], notify your supervisor and stay home.   |           |         |             |                |
| If you are sick, follow CDC-recommended steps [7], and do not return to work until you meet criteria to discontinue home isolation [8].                 |           |         |             |                |
| If you are well, but have someone in your household who has COVID-19, notify your supervisor and follow CDC recommended precautions [9].                |           |         |             |                |
| Wash hands [10] often with soap and water for at least 20 seconds, or use hand sanitizer with at least 60% alcohol if soap and water are not available. |           |         |             |                |
| Avoid touching eyes, nose, and mouth.   |           |         |             |                |
| Cover mouth and nose with a tissue or inside of the elbow when coughing or sneezing, immediately throw tissue in trash, then wash hands.                |           |         |             |                |

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Develop a cleaning and disinfecting plan [11]  |           |         |             |                |
| Clean and disinfect [12] frequently touched objects and surfaces at the beginning and end of each shift.   |           |         |             |                |
| Avoid using other employees' phones, desks, offices, or other work tools and equipment. Clean and disinfect between employees if sharing occurs. |           |         |             |                |
| Avoid large gatherings, [13] and stay at least 6 feet from others when possible.   |           |         |             |                |
| Use cloth face coverings (if appropriate) [14] when social distancing is not possible, and especially in areas of with high levels of cases.     |           |         |             |                |

***Plan for conducting daily in-person or virtual health checks [15] (e.g., symptom and/or temperature screening) before employees enter the facility:***

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Use social distancing (about 6 feet distance), barriers or partitions, and/or personal protective equipment (PPE) to protect screeners.             |           |         |             |                |
| If taking temperatures, use touchless thermometers.   |           |         |             |                |
| Consider providing multiple screening entries.  |           |         |             |                |
| Consider designating doorways as "entry only" or "exit only."   |           |         |             |                |
| Make employee health screenings as private as possible.   |           |         |             |                |
| Do not determine risk based on race or country of origin; be sure to maintain confidentiality of each individual's medical status and history [16]. |           |         |             |                |

### Conduct a hazard assessment of the workplace.

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Identify potential hazards that might expose workers to COVID-19.   |           |         |             |                |
| Use the Worker Protection Tool to identify appropriate engineering, administrative, and personal protective equipment (PPE) options for your workplace. |           |         |             |                |

### Plan for what to do if an employee is sick at work.

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Immediately separate employees who appear to have symptoms [6] from others in the workplace. |           |         |             |                |
| Have a procedure for safe transport of a sick employee to home or a healthcare facility.     |           |         |             |                |

### Develop an action plan for suspected/confirmed cases.

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| <b>If it has been fewer than 7 days</b> since the sick employee has been in the facility:   |           |         |             |                |
| Close off areas that have been used by the sick person for long periods of time (e.g., their desk or workstation).  |           |         |             |                |
| Wait 24 hours (or as long as possible), then clean and disinfect [12] the area.   |           |         |             |                |
| Open outside doors and windows to increase air circulation during the waiting period.   |           |         |             |                |
| <b>If it has been 7 days or more</b> since the sick employee used the facility, additional cleaning and disinfection beyond routine efforts is not necessary. |           |         |             |                |

Continued

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Determine which employees may have been exposed to the virus and may need to take additional precautions.    |           |         |             |                |
| Inform employees of their possible exposure to COVID-19 in the workplace, but maintain confidentiality [17]. |           |         |             |                |
| Most workplaces can follow the Public Health Recommendations for Community-Related Exposure [18].            |           |         |             |                |
| Critical infrastructure [19] workplaces can follow appropriate safety practices [20].                        |           |         |             |                |

## 2. Maintain healthy business operations

### *Establish a COVID-19 coordinator.*

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Identify a coordinator who will be responsible for COVID-19 issues and their impact at the workplace. |           |         |             |                |
| Inform employees who this person is and how to communicate with that person.                          |           |         |             |                |

### *Implement sick leave policies and practices that are flexible and supportive.*

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Ensure sick leave policies and practices are consistent with public health guidance, follow state and federal workplace laws and policies, and are shared with employees. |           |         |             |                |
| Allow employees to stay home, without penalty, to care for a sick family member or take care of children due to closures.   |           |         |             |                |
| If you do not offer sick leave, consider implementing non-punishing "emergency sick leave" policies.  |           |         |             |                |
| Do not require a COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or to return to work. |           |         |             |                |



### ***Protect higher risk employees [21].***

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Support and encourage telework, if available.   |           |         |             |                |
| Consider offering vulnerable workers [22] duties that minimize their contact with customers and other employees (e.g., restocking shelves). |           |         |             |                |

### ***Communicate supportive workplace policies. You may need to communicate with non-English speakers in their preferred languages.***

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Train workers on how new policies to reduce the spread of COVID-19 may affect existing health and safety practices.   |           |         |             |                |
| Communicate to contractors or on-site visitors about changes to help control the spread of COVID-19.  |           |         |             |                |
| Create and test communication systems that employees can use to self-report if they are sick that you can also use to notify employees of exposures and closures. |           |         |             |                |

### ***Assess essential functions and the reliance that others have on your services or products.***

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Prepare to change your business practices, if needed, to maintain critical operations.  |           |         |             |                |
| Identify alternate supply chains for critical goods/services.   |           |         |             |                |
| When resuming onsite business operations, prioritize job functions for continuous operations. Resume business operations in phases. |           |         |             |                |

### *Plan for employee absenteeism spikes.*

| Item  | Completed | Ongoing | Not Started | Not Applicable |
|---|-----------|---------|-------------|----------------|
| Monitor absenteeism at work.                              |           |         |             |                |
| Implement plans to continue essential business functions. |           |         |             |                |
| Cross-train employees to perform essential functions.     |           |         |             |                |

### *Establish social distancing [23] policies and practices.*

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Implement flexible worksites, work hours, and meeting and travel options.  |           |         |             |                |
| Modify the workplace to increase physical space between employees, and between employees and customers, to 6 feet or more, where feasible. |           |         |             |                |
| Use signs, tape marks, or other visual cues to indicate where to stand when physical barriers are not possible.                            |           |         |             |                |
| Have employees and customers wear cloth face coverings (if appropriate) [14] when physical barriers or social distancing is not possible.  |           |         |             |                |
| Discourage handshaking or other close contact.   |           |         |             |                |
| Deliver services remotely.   |           |         |             |                |
| Move the electronic payment terminal/credit card reader farther away from the cashier, if possible.  |           |         |             |                |
| Shift primary stocking activities to off-peak or after hours, when possible.   |           |         |             |                |

### *Delegate authority to local managers of your business locations.*

| Item | Completed | Ongoing | Not Started | Not Applicable |
|------|-----------|---------|-------------|----------------|
|------|-----------|---------|-------------|----------------|

Take appropriate actions outlined in their COVID-19 response plans based on their local conditions.

---

## **3. Maintain a healthy work environment**

### *Implement controls according to the hierarchy of controls [24] to protect employees and the public.*

| Item | Completed | Ongoing | Not Started | Not Applicable |
|------|-----------|---------|-------------|----------------|
|------|-----------|---------|-------------|----------------|

Use the Worker Protection Tool to identify appropriate engineering, administrative, and personal protective equipment (PPE) options for your workplace.

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### *Modify ventilation systems [25]*

| Item | Completed | Ongoing | Not Started | Not Applicable |
|------|-----------|---------|-------------|----------------|
|------|-----------|---------|-------------|----------------|

Work with building maintenance staff to determine if the ventilation system can be modified to increase ventilation rates or the percentage of outdoor air that circulates into the system.

---

Ensure ventilation systems operate properly and provide acceptable indoor air quality.

---

Disable demand-controlled ventilation (DCV).

---

Further open minimum outdoor air dampers (as high as 100%) to reduce or eliminate recirculation.

---

Improve central air filtration to MERV-13, or the highest compatible with the filter rack, and seal edges of the filter to limit bypass.

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### *Ensure the safety of the water system of your building after a prolonged shutdown.*

| Item | Completed | Ongoing | Not Started | Not Applicable |
|------|-----------|---------|-------------|----------------|
|------|-----------|---------|-------------|----------------|

Follow the CDC Guidance for Building Water Systems [26].

---

***Supply employees, customers, and visitors with what they need to clean hands and cover coughs and sneezes.***

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Provide tissues, no-touch trash cans, and touchless hand sanitizer stations.   |           |         |             |                |
| Provide soap and water. If soap and water are not readily available, provide alcohol-based hand sanitizer that is at least 60% alcohol.  |           |         |             |                |
| Direct employees to visit CDC’s coughing and sneezing etiquette [27] and clean hands webpage [28].   |           |         |             |                |
| Place posters that encourage cough/sneeze etiquette and hand hygiene [29-30] at the entrance to and throughout your workplace (e.g., bathrooms and kitchens). Include signs for non-English speakers, as needed. |           |         |             |                |

***Perform routine cleaning and disinfecting.***

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Follow CDC’s Guidance for Cleaning and Disinfecting [11] to develop, implement, and maintain a plan.     |           |         |             |                |
| Clean all frequently touched surfaces at the beginning and end of each shift, at minimum.                |           |         |             |                |
| Clean dirty surfaces using a detergent or soap and water before you disinfect them.                      |           |         |             |                |
| Disinfect using EPA-registered disinfectant that is effective against SARS-CoV-2 [31].                   |           |         |             |                |
| Provide disposable disinfecting wipes so employees can wipe down commonly used surfaces before each use. |           |         |             |                |
| Store and use disinfectants in a responsible and appropriate manner according to the label.              |           |         |             |                |
| Do not mix cleaning and disinfection products together.  |           |         |             |                |
| Advise employees to always wear gloves and other PPE appropriate for the chemicals being used.           |           |         |             |                |

*Limit travel and advise employees who must travel to take additional precautions and preparations.*

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Minimize non-essential travel.   |           |         |             |                |
| Check the CDC’s Traveler’s Health Notices [32].  |           |         |             |                |
| Advise employees to check for symptoms of COVID-19 [6] before travel.                        |           |         |             |                |
| Ensure employees who become sick while traveling or on temporary assignment know what to do. |           |         |             |                |
| Call a healthcare provider for advice, if needed.  |           |         |             |                |
| Notify their supervisor.   |           |         |             |                |
| Follow company policy for obtaining medical care when traveling outside the United States    |           |         |             |                |

*Plan meetings and gatherings [13] to lower risk.*

| Item   | Completed | Ongoing | Not Started | Not Applicable |
|--|-----------|---------|-------------|----------------|
| Use videoconferencing or teleconferencing, when possible.              |           |         |             |                |
| Cancel, adjust, or postpone large work-related meetings or gatherings. |           |         |             |                |
| If videoconferencing or teleconferencing is not possible:              |           |         |             |                |
| Hold meetings in open, well-ventilated spaces.                         |           |         |             |                |
| Continue to maintain 6 feet between people.                            |           |         |             |                |
| Wear cloth face coverings (if appropriate) [14].                       |           |         |             |                |



# Worker Protection Tool

## For Coronavirus Disease 2019 (COVID-19)

Consider the exposure that your workers will have to potential sources of COVID-19 when you resume business operations. Use this tool to identify protective measures for interactions between workers and/or the public; revisit the tool on an ongoing basis while COVID-19 cases exist. Only complete items that apply to your business. See appendix for web resources.

### Worker Protections

#### Engineering

| Facilities and Equipment   | Completed | N/A |
|--|-----------|-----|
| Assess job hazards for potential benefit of engineering protections.           |           |     |
| Ensure ventilation and water systems operate properly.                         |           |     |
| Alter the workspace to maintain social distancing [23]. Examples include:      |           |     |
| Arrange partitions as a barrier shield.  |           |     |
| Move electronic payment reader away from cashier.                              |           |     |
| Use verbal announcements, signs, and visual cues to promote social distancing. |           |     |
| Remove/rearrange furniture.  |           |     |
| Provide remote shopping alternatives (e.g., delivery, pick-up).                |           |     |

#### Administrative—three categories

| Management and Communications   | Completed | N/A |
|---|-----------|-----|
| Monitor state and local public health communications about COVID-19.  |           |     |
| Encourage sick workers to report symptoms, stay home, and follow CDC guidance.  |           |     |
| Consider conducting daily in-person or virtual health checks [15] (e.g., symptom and/or temperature screening) before employees enter the facility: |           |     |
| Develop strategies to communicate with workers and manage concerns.   |           |     |
| Remind workers of available support services.   |           |     |
| Communicate to partners, suppliers, and contractors on policies and practices.  |           |     |
| Encourage social distancing and use of cloth face coverings (if appropriate) [14] for both employees and customers.                                 |           |     |
| Use technology to promote social distancing (e.g., telework, virtual meetings).   |           |     |
| Cancel group events.  |           |     |

|                                      |                  |            |
|--------------------------------------|------------------|------------|
| <b>Management and Communications</b> | <b>Completed</b> | <b>N/A</b> |
|--------------------------------------|------------------|------------|

- Close/limit use of shared spaces.
- Ask sick customers to stay home; post signs asking them not to enter if they are sick.
- Consider policies that encourage flexible sick leave and alternative work schedules.
- Schedule stocking during off-peak hours.

|                                  |                  |            |
|----------------------------------|------------------|------------|
| <b>Cleaning and Disinfection</b> | <b>Completed</b> | <b>N/A</b> |
|----------------------------------|------------------|------------|

- Develop a plan for cleaning and disinfecting [11].
- Clean and disinfect frequently touched surfaces (e.g., counters, shelving, displays).
- Provide employees with disposable disinfectant wipes, cleaner, or sprays that are effective against the virus that causes COVID-19.

|                 |                  |            |
|-----------------|------------------|------------|
| <b>Training</b> | <b>Completed</b> | <b>N/A</b> |
|-----------------|------------------|------------|

- Provide training on:
  - Policies to reduce the spread of COVID-19
  - General hygiene
  - Symptoms, what to do if sick
  - Cleaning and disinfection
  - Cloth face covers
  - Social distancing
  - Use of PPE
  - Safe work practices
  - Stress management

### ***Personal Protective Equipment (PPE)***

|            |                  |            |
|------------|------------------|------------|
| <b>PPE</b> | <b>Completed</b> | <b>N/A</b> |
|------------|------------------|------------|

- Conduct a workplace hazard assessment.
- Determine needed PPE for workers' job duties based on hazards and existing protections.
- Select and provide appropriate PPE to workers at no cost.



# Keep yourself and others safe from COVID-19 when returning to work

## Clean your hands often



- ✓ **Wash your hands** often with soap and water for at least 20 seconds especially after you have been in a public place, after blowing your nose, coughing, or sneezing, and after using others' or shared equipment.
- ✓ If soap and water are not readily available, **use a hand sanitizer that contains at least 60% alcohol.**
- ✓ **Avoid touching your eyes, nose, and mouth** with unwashed hands.

## Avoid close contact



- ✓ Put **distance (at least 6 feet)** between yourself and other people.
- ✓ Wear **cloth face coverings** (if appropriate) when social distancing is difficult to maintain.
- ✓ Avoid using other employees' phones, desks, offices, or other **work tools and equipment**, when possible. **Clean and disinfect** between employees if sharing occurs.
- ✓ Remember that some **people without symptoms** may be able to spread virus.

## If you are at increased risk for severe illness...



- ✓ Contact management to **request special accommodations** that will allow you to perform your job duties safely.



Protect yourself and others from COVID-19 by taking everyday preventive actions.



[cdc.gov/coronavirus](https://cdc.gov/coronavirus)

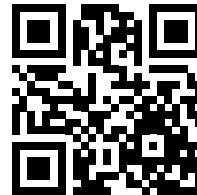




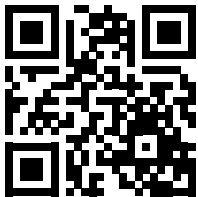
## Resources referred to throughout the Toolkit



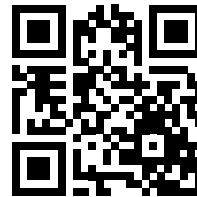
1. [Coronavirus \(COVID-19\)](https://go.usa.gov/xvHEE)  
go.usa.gov/xvHEE



6. [Symptoms of Coronavirus](https://go.usa.gov/xvHmR)  
go.usa.gov/xvHmR



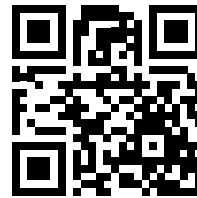
2. [Workplaces During the COVID-19 Pandemic](https://go.usa.gov/xvucp)  
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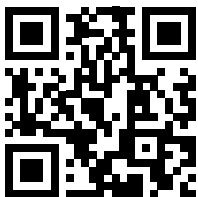
7. [What to Do If You Are Sick](https://go.usa.gov/xvHsF)  
go.usa.gov/xvHsF



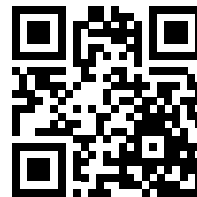
3. [Restaurants and Bars During the COVID-19 Pandemic](https://go.usa.gov/xvuc7)  
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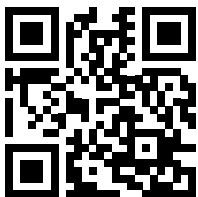
8. [Discontinuation of Isolation for Persons with COVID -19 Not in Healthcare Settings](https://go.usa.gov/xvHem)  
go.usa.gov/xvHem



4. [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](https://go.usa.gov/xvHma)  
go.usa.gov/xvHma



9. [Caring for Someone Sick at Home](https://go.usa.gov/xvHew)  
go.usa.gov/xvHew



5. [Directory of local health departments](https://bit.ly/LHDDirectory)  
bit.ly/LHDDirectory



10. [When and How to Wash Your Hands](https://go.usa.gov/xvz7T)  
go.usa.gov/xvz7T



11. [Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-reopening-guidance)  
[go.usa.gov/xvz7R](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-reopening-guidance)



17. [Americans with Disabilities Act](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-americans-with-disabilities-act)  
[go.usa.gov/xvHtF](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-americans-with-disabilities-act)



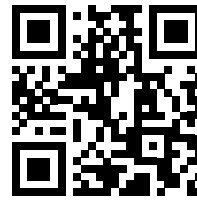
12. [Cleaning and Disinfecting Your Facility](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-cleaning-and-disinfecting-your-facility)  
[go.usa.gov/xvzH2](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-cleaning-and-disinfecting-your-facility)



18. [Public Health Recommendations for Community-Related Exposure](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-public-health-recommendations-for-community-related-exposure)  
[go.usa.gov/xvHz3](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-public-health-recommendations-for-community-related-exposure)



13. [Gatherings and Community Events](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-gatherings-and-community-events)  
[go.usa.gov/xvHeJ](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-gatherings-and-community-events)



19. [CISA's Guidance on the Essential Critical Infrastructure Workforce](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-cisa-guidance-on-the-essential-critical-infrastructure-workforce)  
[go.usa.gov/xvHuV](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-cisa-guidance-on-the-essential-critical-infrastructure-workforce)



14. [Use of Cloth Face Coverings to Help Slow the Spread of COVID-19](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-use-of-cloth-face-coverings-to-help-slow-the-spread-of-covid-19)  
[go.usa.gov/xvzH8](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-use-of-cloth-face-coverings-to-help-slow-the-spread-of-covid-19)



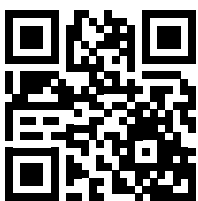
20. [Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-implementing-safety-practices-for-critical-infrastructure-workers-who-may-have-had-exposure-to-a-person-with-suspected-or-confirmed-covid-19)  
[go.usa.gov/xvHus](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-implementing-safety-practices-for-critical-infrastructure-workers-who-may-have-had-exposure-to-a-person-with-suspected-or-confirmed-covid-19)



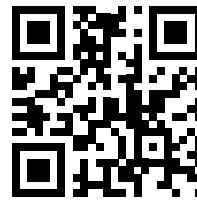
15. [General Business Frequently Asked Questions](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-general-business-frequently-asked-questions)  
[go.usa.gov/xvHtY](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-general-business-frequently-asked-questions)



21. [People Who Are at Higher Risk for Severe Illness](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-people-who-are-at-higher-risk-for-severe-illness)  
[go.usa.gov/xvHJ8](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-people-who-are-at-higher-risk-for-severe-illness)



16. [EEOC's What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-eeoc-what-you-should-know-about-the-ada-the-rehabilitation-act-and-the-coronavirus)  
[go.usa.gov/xvHt5](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-eeoc-what-you-should-know-about-the-ada-the-rehabilitation-act-and-the-coronavirus)



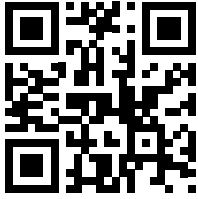
22. [People Who Need to Take Extra Precautions](https://www.eeoc.gov/washington/press/recordings/2020/04/20200421-people-who-need-to-take-extra-precautions)  
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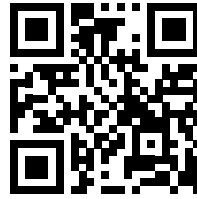
23. [Social Distancing](https://www.go.usa.gov/xvHhV)  
go.usa.gov/xvHhV



29. [Print Resources](https://www.go.usa.gov/xv6qa)  
go.usa.gov/xv6qa



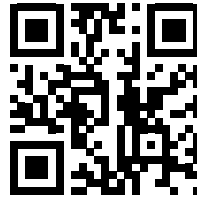
24. [Hierarchy of Controls](https://www.go.usa.gov/xvHhM)  
go.usa.gov/xvHhM



30. [Health Promotion Materials](https://www.go.usa.gov/xv6q4)  
go.usa.gov/xv6q4



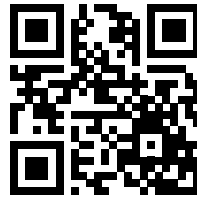
25. [ASHRAE's Guidance for Building Operations During the COVID-19 Pandemic](https://bit.ly/ASHRAECOVID19)  
bit.ly/ASHRAECOVID19



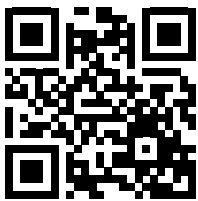
31. [List N: Disinfectants for Use Against SARS-CoV-2](https://www.go.usa.gov/xv635)  
go.usa.gov/xv635



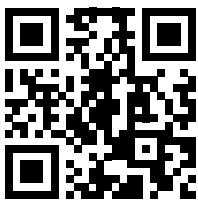
26. [Guidance for Reopening Buildings After Prolonged Shutdown or Reduced Operation](https://www.go.usa.gov/xvHhh)  
go.usa.gov/xvHhh



32. [CDC's Travel Health Notices](https://www.go.usa.gov/xv63R)  
go.usa.gov/xv63R



27. [Coughing and Sneezing](https://www.go.usa.gov/xv6qN)  
go.usa.gov/xv6qN

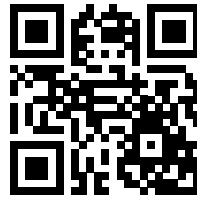


28. [Handwashing: Clean Hands Save Lives](https://www.go.usa.gov/xv6qJ)  
go.usa.gov/xv6qJ

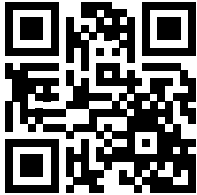
## Additional Resources



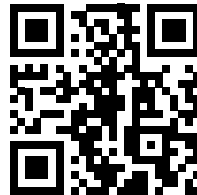
[COVID-19 Factsheets for Businesses and Employers](https://go.usa.gov/xv63M)  
go.usa.gov/xv63M



[Hazard Identification and Assessment](https://go.usa.gov/xv6dT)  
go.usa.gov/xv6dT



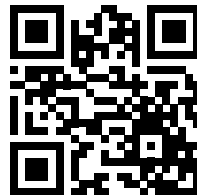
[Personal Protective Equipment](https://go.usa.gov/xv63h)  
go.usa.gov/xv63h



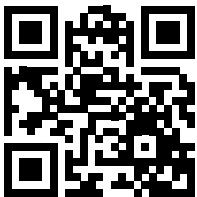
[How to Protect Yourself and Others](https://go.usa.gov/xv6dV)  
go.usa.gov/xv6dV



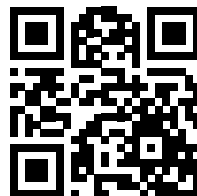
[Occupational Safety and Health Administration \(OSHA\) Standards](https://go.usa.gov/xv6ph)  
go.usa.gov/xv6ph



[OSHA Ten Steps](https://go.usa.gov/xv6dd)  
go.usa.gov/xv6dd



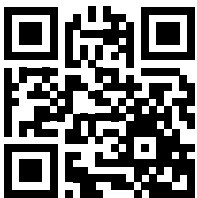
[U.S. Department of Labor](https://go.usa.gov/xv6da)  
go.usa.gov/xv6da



[State & Territorial Health Department Websites](https://go.usa.gov/xv6dG)  
go.usa.gov/xv6dG



[U.S. Equal Employment Opportunity Commission](https://go.usa.gov/xv6dY)  
go.usa.gov/xv6dY



[Coping with Stress](https://go.usa.gov/xv6dg)  
go.usa.gov/xv6dg

[cdc.gov/coronavirus](https://cdc.gov/coronavirus)



**U.S. Department of  
Health and Human Services**  
Centers for Disease  
Control and Prevention

# Celebrating Thanksgiving

Accessible version: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/holidays/thanksgiving.html>



Traditional Thanksgiving gatherings with family and friends are fun but can increase the chances of getting or spreading COVID-19 or the flu. Follow these tips to make your Thanksgiving holiday safer.

The safest way to celebrate Thanksgiving this year is to celebrate with people in your household. If you do plan to spend Thanksgiving with people outside your household, take steps to make your celebration safer.

## Everyone Can Make Thanksgiving Safer

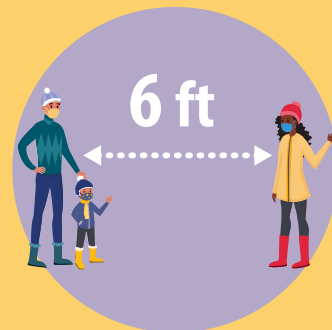
### Wear a mask

- Wear a mask with two or more layers to stop the spread of COVID-19.
- Wear the mask over your nose and mouth and secure it under your chin.
- Make sure the mask fits snugly against the sides of your face.



### Stay at least 6 feet away from others who do not live with you

- Remember that some people without symptoms may be able to spread COVID-19 or flu.
- Keeping 6 feet (about 2 arm lengths) from others is especially important for people who are at higher risk of getting very sick.



### Wash your hands

- Wash hands often with soap and water for at least 20 seconds.
- Keep hand sanitizer with you and use it when you are unable to wash your hands.
- Use hand sanitizer with at least 60% alcohol.



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

## Attending a Gathering

Make your celebration safer. In addition to following the steps that everyone can take to make Thanksgiving safer, take these additional steps while attending a Thanksgiving gathering.

- Bring your own food, drinks, plates, cups, and utensils.
- Wear a mask, and safely store your mask while eating and drinking.
- Avoid going in and out of the areas where food is being prepared or handled, such as in the kitchen.
- Use single-use options, like salad dressing and condiment packets, and disposable items like food containers, plates, and utensils.



## Hosting a Thanksgiving Gathering

If having guests to your home, be sure that people follow the steps that everyone can take to make Thanksgiving safer. Other steps you can take include:

- Have a small outdoor meal with family and friends who live in your community.
- Limit the number of guests.
- Have conversations with guests ahead of time to set expectations for celebrating together.
- Clean and disinfect frequently touched surfaces and items between use.
- If celebrating indoors, make sure to open windows.
- Limit the number of people in food preparation areas.
- Have guests bring their own food and drink.
- If sharing food, have one person serve food and use single-use options, like plastic utensils.



## Thanksgiving Travel

Travel increases your chance of getting and spreading COVID-19. Staying home is the best way to protect yourself and others.

### If you do travel

- Check travel restrictions before you go.
- Get your flu shot before you travel.
- Always wear a mask in public settings and on public transportation.
- Stay at least 6 feet apart from anyone who is not in your household.
- Wash your hands often or use hand sanitizer.
- Avoid touching your mask, eyes, nose, and mouth.
- Bring extra supplies, such as masks and hand sanitizer.



# Celebrating Thanksgiving

Accessible version: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/holidays/thanksgiving.html>



## Consider Other Thanksgiving Activities

### Host a virtual Thanksgiving meal with friends and family who don't live with you

- Schedule a time to share a meal together virtually.
- Have people share recipes and show their turkey, dressing, or other dishes they prepared.

### Watch television and play games with people in your household

- Watch Thanksgiving Day parades, sports, and movies at home.
- Find a fun game to play.

### Shopping

- Shop online sales the day after Thanksgiving and days leading up to the winter holidays.
- Use contactless services for purchased items, like curbside pick-up.
- Shop in open air markets staying 6 feet away from others.

### Other Activities

- Safely prepare traditional dishes and deliver them to family and neighbors in a way that does not involve contact with others (for example, leave them on the porch).
- Participate in a gratitude activity, like writing down things you are grateful for and sharing with your friends and family.



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)



## Richland County Council Request for Action

**Subject:**

20-021MA  
Erica Serbin  
RM-MD to MH (2.34 Acres)  
8534 Old Percival Road  
TMS # R22602-02-07

**Notes:**

First Reading: October 27, 2020  
Second Reading: November 10, 2020  
Third Reading: November 17, 2020 {Tentative}  
Public Hearing: October 27, 2020

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

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # 22602-02-07 FROM RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT (RM-MD) TO MANUFACTURED HOME RESIDENTIAL DISTRICT (MH); 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 # 22602-02-07 from Residential Multi-Family Medium Density District (RM-MD) to Manufactured Home Residential District (MH).

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

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

Section IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2020.

RICHLAND COUNTY COUNCIL

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing:       October 27, 2020  
First Reading:       October 27, 2020  
Second Reading:     November 10, 2020  
Third Reading:       November 17, 2020

# Richland County Council Request for Action

**Subject:**

20-029MA  
Dave R. Brock  
M-1/RM-MD to LI (2 Acres)  
1804 Shop Road  
TMS # 13604-01-01

**Notes:**

First Reading: October 27, 2020  
Second Reading: November 10, 2020  
Third Reading: November 17, 2020 {Tentative}  
Public Hearing: October 27, 2020

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

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # 13604-01-01 FROM LIGHT INDUSTRIAL (M-1) AND RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT (RM-MD) TO LIGHT INDUSTRIAL DISTRICT (LI); 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 # 13604-01-01 from Light Industrial (M-1) and Residential Multi-Family Medium Density District (RM-MD) to Light Industrial District (LI).

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

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

Section IV. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2020.

RICHLAND COUNTY COUNCIL

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing:       October 27, 2020  
First Reading:       October 27, 2020  
Second Reading:     November 10, 2020  
Third Reading:       November 17, 2020

# 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 Offer to provide for payment of a fee-in-lieu of taxes; and other related matters

**Notes:**

First Reading: November 10 2020

Second Reading: November 17, 2020 {Tentative}

Third Reading: December 8, 2020 {Tentative}

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 OFFER TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, Project Offer, (“Sponsor”), desires to expand its distribution facility in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$2,500,000; and

WHEREAS, by a Resolution adopted on [November 10, 2020], County Council provided a 10-year extension of the 20-year exemption periods under existing fee agreements between the Sponsor and the County and between the Sponsor’s landlord and the County with respect to an existing project, and County Council also agreed to enter into a new fee agreement with the Sponsor in connection with an expansion of that project;

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes Agreement with the 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.

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 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. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

**Section 5. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: November 10, 2020  
Second Reading: November 17, 2020  
Public Hearing: \_\_\_\_\_, 2020  
Third Reading: \_\_\_\_\_, 2020



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

4847-8110-4844 v.1

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

**BETWEEN**

**PROJECT OFFER**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

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

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**TABLE OF CONTENTS**

---

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

ARTICLE VII  
DEFAULT

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

ARTICLE VIII  
PARTICULAR COVENANTS AND AGREEMENTS

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

ARTICLE IX  
SPONSOR AFFILIATES

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

ARTICLE X  
MISCELLANEOUS

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

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

**SUMMARY OF CONTENTS OF  
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

| <b>PROVISION</b>  | <b>BRIEF DESCRIPTION</b>  | <b>SECTION REFERENCE</b> |
|---|---|--------------------------|
| <b>Sponsor Name</b>   | <b>Project Offer</b>  | <b>Section 1.1</b>       |
| <b>Project Location</b>   | [to come]   | <b>Exhibit A</b>         |
| <b>Tax Map No.</b>  | [to come]   | <b>Exhibit A</b>         |
|   |   |                          |
|   |   |                          |
| <b>FILOT</b>  |   |                          |
| <ul style="list-style-type: none"> <li>• Phase Exemption Period</li> </ul>                  | 30 years  | <b>Section 1.1</b>       |
| <ul style="list-style-type: none"> <li>• Contract Minimum Investment Requirement</li> </ul> | \$2,500,000   | <b>Section 1.1</b>       |
| <ul style="list-style-type: none"> <li>• Investment Period</li> </ul>                       | Standard (5 years)  | <b>Section 1.1</b>       |
| <ul style="list-style-type: none"> <li>• Assessment Ratio</li> </ul>                        | 6%  | <b>Section 4.1(a)</b>    |
| <ul style="list-style-type: none"> <li>• Millage Rate</li> </ul>                            | 582.7   | <b>Section 4.1(a)</b>    |
| <ul style="list-style-type: none"> <li>• Fixed or Five-Year Adjustable Millage</li> </ul>   | Fixed   | <b>Section 4.1(a)</b>    |
| <ul style="list-style-type: none"> <li>• Claw Back Information</li> </ul>                   | Loss of FILOT benefits if do not invest at least \$2,500,000.                   | <b>Section 6.1</b>       |
| <b>Multicounty Park</b>   | I-77 Corridor Regional Industrial Park (Fairfield County is the partner county) | <b>Section 1.1</b>       |
| <b>Other Information</b>  |   |                          |

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

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of \_\_\_\_\_, 2020, 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 Offer, a corporation organized and existing under the laws of the State of Delaware (“*Sponsor*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) The Sponsor has made significant prior investments in the County, and in connection therewith the Sponsor entered into a previous fee-in-lieu of taxes agreement with the County;

(c) To date, the Sponsor has invested a total of approximately \$19 million in the County and currently employs approximately 103 people in the County;

(d) The Sponsor has committed to expand the investment at its facility (“*Facility*”) in the County, which investment will consist of taxable investment anticipated to be at least \$2,500,000;

(e) The Sponsor wishes to enter into a fee-in-lieu of *ad valorem* taxes agreement (“*Fee Agreement*”) with the County with respect to future investments in the County;

(f) By a Resolution adopted on \_\_\_\_\_, 2020, County Council agreed to enter into a fee agreement with the Sponsor with respect to the Sponsor’s future investments in the County; and

(g) By an ordinance enacted on \_\_\_\_\_, 2020, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT to induce the Sponsor to maintain and 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 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 January 29, 2022.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$2,500,000.

“**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.

“**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 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 January 29, 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.

**“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 January 30, 2027.

**“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.

**“Phase”** means the Economic Development Property placed in service during a particular year of the Investment Period.

**“Phase Exemption Period”** means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

**“Phase Termination Date”** means, with respect to each Phase, the last day of the property tax year which is the 29<sup>th</sup> year following the first property tax year in which the Phase is placed in service.

**“Project”** means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

**“Real Property”** means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

**“Removed Components”** means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

**“Replacement Property”** means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.



“*Sponsor*” means \_\_\_\_\_, a \_\_\_\_\_ corporation, referred to in the \_\_\_\_\_, 2020 Resolution referenced in the Recitals to this Fee Agreement as Project Offer, 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” by adopting an Inducement Resolution, as defined in the Act, on \_\_\_\_\_, 2020.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located 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 distribution center and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

### **ARTICLE III THE PROJECT**

**Section 3.1. The Project.** The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the Sponsor's fiscal year ending January 29, 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 shall be retroactively terminated as provided in Section 6.1 of 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 March 31 of each year during the term of this Fee Agreement, commencing on March 31, 2021, 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 Fairfield County, the County's partner in 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 582.7, 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, 2019.

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. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

**Section 4.5. Condemnation.**

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking*. In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

**Section 4.6. Calculating FILOT Payments on Diminution in Value.** If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

**Section 4.7. Payment of Ad Valorem Taxes.** If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

**Section 4.8. Place of FILOT Payments.** All FILOT Payments shall be made directly to the County in accordance with applicable law.

## ARTICLE V [RESERVED]

## ARTICLE VI CLAW BACK

**Section 6.1. Claw Back.** If the Company does not meet the Contract Minimum Investment Requirement during the Investment Period (not including any extension thereof), then the Project shall revert retroactively to *ad valorem* taxation and this Fee Agreement shall terminate, and the Company shall make payment to the County of the difference between the FILOT Payments actually made and the total retroactive amount referred to in this Section.

## 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;

provided, however, that there shall be no Cessation of Operations to the extent that what would otherwise constitute such Cessation occurs by reason of a “force majeure” as defined in subsection (e), below.

(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 material 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; provided, however, if by reason of “force majeure” as hereinafter defined, the Sponsor is unable in whole or in part to carry out any such term, condition, obligation or covenant, or if it takes longer than 30 days to cure such default and the Sponsor is diligently attempting to cure such default, there shall be no Event of Default. The term “force majeure” as used in this Section 7.1 shall mean circumstances not reasonably within the control of the parties, such as, without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; pandemics; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy;

(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 material 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; provided if by reason of “force majeure” as defined in subsection (e), above, the County is unable in whole or in part to carry out any such term, condition, obligation or covenant, or if it takes longer than 30 days to cure such default and the County is diligently attempting to cure such default, there shall be no Event of Default.

### **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 no less than 48 hours in advance, may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

**Section 8.2. Confidentiality.** The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“**Confidential Information**”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “**Confidential Information.**” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

### **Section 8.3. Indemnification Covenants.**

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “**Indemnified Party**”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor's expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

**Section 8.4. No Liability of County Personnel.** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 8.5. Limitation of Liability.** The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

**Section 8.6. Assignment.** The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

**Section 8.7. No Double Payment; Future Changes in Legislation.** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.



**Section 8.8. Administration Expenses.** The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in an amount not exceeding \$5,000 for work and other matters related to (i) the drafting, review, negotiation and approval of (A) this Fee Agreement and (B) any ordinances or other documents related to this Fee Agreement or to the Project, and (ii) any related matters. 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:**

**[TO COME]**

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

**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, pandemics, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10. Termination; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11. Entire Agreement.** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

**Section 10.12. Waiver.** Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

**Section 10.13. Business Day.** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken,

made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

**Section 10.14. *Agreement's Construction.*** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

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

**ATTEST:**

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

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes [and Incentive] Agreement]*

**PROJECT OFFER**

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 \_\_\_\_\_, 2020 (“Fee Agreement”), between Richland County, South Carolina (“County”) and Project Offer (“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**

4828-9261-9468 v.2

**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 and infrastructure credit agreement by and between Richland County, South Carolina and Project Yeti to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

**Notes:**

First Reading: November 10, 2020

Second Reading: November 17, 2020 {Tentative}

Third Reading: December 8, 2020 {Tentative}

Public Hearing:

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

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF *AD VALOREM* TAXES AND INFRASTRUCTURE CREDIT AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT YETI 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, South Carolina more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, PROJECT YETI, (“Sponsor”), desires to expand its manufacturing facility and operations in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$55,000,000 and the creation of 40 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 Infrastructure Credit 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; (2) locating or otherwise adding the Project in the Park; and (3) 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, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

**Section 5. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: November 10, 2020  
Second Reading: November 17, 2020  
Public Hearing:  
Third Reading:



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

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**FEE-IN-LIEU OF *AD VALOREM* TAXES AND INFRASTRUCTURE CREDIT AGREEMENT**

**BETWEEN**

**PROJECT YETI**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF DECEMBER 31, 2020**

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**TABLE OF CONTENTS**

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

ARTICLE VII  
DEFAULT

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

ARTICLE VIII  
PARTICULAR COVENANTS AND AGREEMENTS

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

ARTICLE IX  
SPONSOR AFFILIATES

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

ARTICLE X  
MISCELLANEOUS

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

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

| <b>PROVISION</b>                          | <b>BRIEF DESCRIPTION</b>                            | <b>SECTION REFERENCE</b> |
|---|---|--------------------------|
| <b>Sponsor Name</b>                       | <b>Project YETI</b>                                 |                          |
| <b>Project Location</b>                   | <b>Richland County, South Carolina</b>              |                          |
| <b>Tax Map No.</b>                        |   |                          |
|   |   |                          |
| <b>FILOT</b>                              |   |                          |
| • Phase Exemption Period                  | 30 years  |                          |
| • Contract Minimum Investment Requirement | \$55,000,000  |                          |
| • Contract Minimum Jobs Requirement       | 40  |                          |
| • Investment Period                       | 5 years   |                          |
| • Assessment Ratio                        | 6%  |                          |
| • Millage Rate                            | 0.5514  |                          |
| • Fixed or Five-Year Adjustable Millage   | Fixed   |                          |
| • Claw Back Information                   | N/A   |                          |
| <b>Multicounty Park</b>                   | TBD   |                          |
| <b>Infrastructure Credit</b>              |   |                          |
| • Brief Description                       | 45%   |                          |
| • Credit Term                             | 10 years  |                          |
| • Claw Back Information                   | Proportionate, based on investment and job creation |                          |
| <b>Other Information</b>                  |   |                          |

**FEE-IN-LIEU OF AD VALOREM TAXES AND INFRASTRUCTURE CREDIT AGREEMENT**

THIS FEE-IN-LIEU OF *AD VALOREM TAXES AND INFRASTRUCTURE CREDIT 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 YETI, a corporation 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 \$55,000,000 and the creation of 40 new, full-time jobs];

(d) By an ordinance enacted on [DATE], County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement 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 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, 2020.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$55,000,000.

“**Contract Minimum Jobs Requirement**” means not less than 40 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 Infrastructure Credit 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 [DATE], the Final Termination Date is expected to be [DATE], 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 years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2024.

“**MCIP Act**” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“**Multicounty Park**” means the multicounty industrial or business park governed by 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 29<sup>th</sup> year following the first property tax year in which the Phase is placed in service.



“**Project**” means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“**Real Property**” means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“**Removed Components**” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**Sponsor**” means PROJECT YETI 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 and/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 10, 2020 by adopting an Inducement Resolution, as defined in the Act on November 10, 2020.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located 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, 2020. 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, 2021 or on January 31 of the year following the year in which property is first placed in service in the Project, 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 0.5514 mils, 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. 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 documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

**Section 8.4. No Liability of County Personnel.** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her



official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 8.5. *Limitation of Liability.*** The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

**Section 8.6. *Assignment.*** The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

**Section 8.7. *No Double Payment; Future Changes in Legislation.*** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

**Section 8.8. *Administration Expenses.*** The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$[ ]. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

## ARTICLE IX SPONSOR AFFILIATES

**Section 9.1. *Sponsor Affiliates.*** The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

**Section 9.2. Primary Responsibility.** Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, “primary responsibility” means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.1. Notices.** Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE SPONSOR:**

PROJECT YETI

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

Burr & Forman, LLP  
Attn: Erik P. Doerring  
1221 Main Street, Suite 1800  
Columbia, SC 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: Emily Luther  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509

**Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor.** Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

**Section 10.3. Counterparts.** This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 10.4. Governing Law.** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

**Section 10.5. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

**Section 10.6. Amendments.** This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

**Section 10.7. Agreement to Sign Other Documents.** From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

**Section 10.8. Interpretation; Invalidity; Change in Laws.**

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor [(in addition to the Infrastructure Credit explicitly provided for above)] to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

**Section 10.9. Force Majeure.** The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10. Termination; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11. *Entire Agreement.*** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

**Section 10.12. *Waiver.*** Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

**Section 10.13. *Business Day.*** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

**Section 10.14. *Agreement's Construction.*** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

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

**ATTEST:**

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

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Infrastructure Credit Agreement]*

**PROJECT YETI**

\_\_\_\_\_

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

Its: Authorized Representative

*[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Infrastructure Credit 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**

**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**  
**FORTY-FIVE PERCENT (45%) FOR TEN (10) YEARS**

**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 [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 \$4,620,429 in Infrastructure Credits, and \$27,500,000 had been invested at the Project and 20 jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:*

*Jobs Achievement Percentage = 20/[Contract Minimum Jobs Requirement] = 50%*

*Investment Achievement Percentage = \$27,500,000/[\$[Contract Minimum Investment Requirement]] = 50%*

*Overall Achievement Percentage = (50% + 50%)/2 = [50]%*

*Claw Back Percentage = 100% - 50% = 50%*

*Repayment Amount = \$4,620,429 x 50% = \$2,310,215*

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; the execution and delivery of an infrastructure credit agreement to provide for infrastructure credits to Gable Oaks Housing Associates LP; and other related matters

**Notes:**

First Reading: November 10, 2020

Second Reading: November 17, 2020 {Tentative}

Third Reading: December 8, 2020 {Tentative}

Public Hearing:

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

**AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR INFRASTRUCTURE CREDITS TO GABLE OAKS HOUSING ASSOCIATES LP; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop a multicounty park with counties having contiguous borders with the County; and (ii) include property in the multicounty park which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County, and (ii) improved and unimproved real estate and personal property used in the operation of a manufacturing facility or commercial enterprise (collectively, “Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, Gable Oaks Housing Associates LP (“Company”) desires to acquire and rehabilitate an affordable rental housing project within the County (“Project”), consisting of a total investment of greater than \$20,000,000 of which \$6,000,000 is expected to be expended to rehabilitate and improve the Project;

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, specifically including property located at 901 Colleton Avenue, Columbia, South Carolina (“Property”) in the Park; and

WHEREAS, the County further desires to enter into an Infrastructure Credit Agreement between the County and the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Infrastructure Credits against certain of the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Infrastructure.

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



**Section 1. *Statutory Findings.*** Based on representations made by the Company to the County, the County finds that the Project and the Infrastructure will enhance the economic development of the County.

**Section 2. *Expansion of the Park Boundaries, Inclusion of Property.*** The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is authorized. The Chair of County Council (“Chair”), is authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries and the amendment to the Park Agreement. Pursuant to the terms of the Park Agreement, the expansion of the Park’s boundaries to include the Property is complete on the adoption of this Ordinance by County Council and delivery of notice to Fairfield County of the inclusion of the Property in the Park.

**Section 3. *Approval of Infrastructure Credit; Authorization to Execute and Deliver Agreement.*** The Infrastructure Credits, as more particularly set forth in the Agreement, against the Company’s Fee Payments with respect to the Project are approved. The form, terms and provisions of the Agreement that is before this meeting are approved and all of the Agreement’s terms are incorporated in this Ordinance by reference as if the Agreement was set out in this Ordinance in its entirety. The Chair is authorized and directed to execute the Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Agreement and to deliver the Agreement to the Company.

**Section 4. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Company under this Ordinance and the Agreement.

**Section 5. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6. *General Repealer.*** Any prior ordinance, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

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

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: November 10, 2020  
Second Reading: November 17, 2020  
Public Hearing: [ ]  
Third Reading: [ ]

**EXHIBIT A**  
**FORM OF AGREEMENT**

**INFRASTRUCTURE CREDIT AGREEMENT**

**by and between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**GABLE OAKS HOUSING ASSOCIATES LP, a [] limited partnership**

**Effective as of: [], 2020**

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## INFRASTRUCTURE CREDIT AGREEMENT

This INFRASTRUCTURE CREDIT AGREEMENT, effective as of [], 2020 (“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 GABLE OAKS HOUSING ASSOCIATES LP, a South Carolina limited partnership (“Company” together with the County, “Parties,” each, a “Party”).

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop multicounty parks with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (collectively, “Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the “Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, the Company has committed to acquire and substantially rehabilitate an affordable housing project in the County know as Gable Oaks Apartments h a low-income rental housing project for seniors in the County (“Project”) on property more particularly identified by Exhibit A (“Land”), consisting of a total investment of greater than \$20,000,000, of which \$6,000,000 shall be expended to rehabilitate and improve the Project;

WHEREAS, the Project [shall be] encumbered by an Agreement as to Restrictive Covenants between the South Carolina State Housing Finance and Development Authority (“State Housing”) and the Company (“Restrictive Covenants”) pursuant to which the Company will agree that at least 40% of the completed dwelling units in the Project will be rented continuously to individuals or families whose total aggregate income at the time of initial occupancy does not exceed 60% of the area median gross income as computed by HUD at rents not in excess of the fair market rent as determined by HUD (“Low Income Rental Restrictions”); and

WHEREAS, by an ordinance enacted on [], 2020 (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property relating to the Project (“Property”) in the Park; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Infrastructure Credits against the Company’s Fee Payments with respect to the

Project for the purpose of assisting in paying the costs of certain Infrastructure, subject to the terms and conditions below.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

## **ARTICLE I REPRESENTATIONS**

**Section 1.1. *Representations by the County.*** The County represents to the Company as follows:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into and carry out its obligations under this Agreement;
- (c) The County has duly authorized and approved the execution and delivery of this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state law;
- (d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Agreement;
- (e) The County has approved the inclusion of the Property in the Park; and
- (f) Based on representations made by the Company to the County, the County has determined the Project and the Infrastructure will enhance the economic development of the County. Therefore, the County is entering into this Agreement for the purpose of promoting the development of decent, safe affordable housing, thereby contributing to the economic development of the County.

**Section 1.2. *Representations by the Company.*** The Company represents to the County as follows:

- (a) The Company is in good standing under the laws of the State of South Carolina, has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will comply with the Restrictive Covenants and will use commercially reasonable efforts to provide low-income housing at the Project for the balance of the units;
- (c) The Company will use commercially reasonable efforts to achieve the Company Commitment, as defined below; and
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound.

**ARTICLE II  
INFRASTRUCTURE CREDITS**

**Section 2.1. *Company Commitment.*** The Company shall invest not less than \$20,000,000 in the Project, of which \$6,000,000 shall be expended to rehabilitate and improve the Project (“Company Commitment”) by the Certification Date, as defined below. The Company shall certify to the County completion of the Project by no later than December 31, 2022 (“Certification Date”), by providing documentation to the County sufficient to reflect completion of the Project. If the Company fails to achieve and certify the Company 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. The benefits provided under this Agreement are subject to the clawback requirements set forth in Section 2.3 below.

**Section 2.2. *Infrastructure Credits.***

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

(b) For each property tax year in which the Company is entitled to an Infrastructure Credit (“Credit Term”), the County shall prepare and issue the Company’s annual property tax bill with respect to the Project net of the Infrastructure Credit set forth in Section 2.2(a) (“Net Fee Payment”). Following receipt of the annual bill from the County (the “Annual Bill”), the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND THE PARK AGREEMENT. THE INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE INFRASTRUCTURE CREDITS.

**Section 2.3. *Clawback.*** The County is offering the benefits provided under this Agreement based on the Company’s commitments to (i) cause the Project to be in compliance with the Low Income Rental Restrictions and (ii) maintain the Project in a safe and secure condition for the residents during the term of this Agreement and promptly address any code violations (“Code Violations”) communicated in writing to the Company by the City of Columbia, South Carolina (“City”). Failure to by the Company to meet these commitments will result in a loss of benefits and potential repayment of benefits as provided herein.

(a) In the event of a default of the Company under the Restrictive Covenants (after the expiration of any notice or remedial period contained thereunder) resulting from the Company's failure to satisfy the Low Income Rental Restrictions for any calendar year, the Company shall repay the Infrastructure Credits received for such year. The portion of the Infrastructure Credit to be repaid

("Repayment Amount") is based on the percentage of the occupied dwelling units in the Project which failed to satisfy the Low Income Rental Restrictions divided by the total number of occupied dwelling units in the Project for the prior calendar year, calculated as follows:

$$\text{Repayment Amount} = \text{Total Received} \times \text{Clawback Percentage}$$

$$\text{Clawback Percentage} = 100\% - \text{Low Income Rental Percentage}$$

Low Income Rental Percentage = Number Of Occupied Dwelling Units Which Failed To Satisfy the Low Income Rental Restrictions Divided By The Total Number Of Occupied Dwelling Units in the Project Subject to the Low Income Rental Restrictions For the Prior Calendar Year.

*For example, and by way of example only, if the Company had received \$500,000 in Infrastructure Credits, the Project contained 24 occupied dwelling units subject to The Low Income Rental Restrictions in any year and an event of default under the Restrictive Covenants had occurred due to the failure of the Company to satisfy the Low Income Rental Restrictions as to 8 occupied dwelling units in that calendar year, the Repayment Amount would be calculated as follows:*

$$\text{Low Income Rental Percentage} = 8/24 = 33.33\%$$

$$\text{Clawback Percentage} = 100\% - 33.33\% = 66.66\%$$

$$\text{Repayment Amount} = \$500,000 \times 66.66\% = \$33,330$$

All percentages will be rounded to the nearest two decimal places.

(b) The Project shall be maintained to ensure there are no significant conditions present that would threaten the safety or security of the residents. In addition, all code violations identified by the City and communicated in writing to the Company must be promptly addressed. The Company's failure to meet each of these conditions and provide the annual certifications required in the Credit Certificate (as defined below) shall cause the Company to forego and have no entitlement to the annual Infrastructure Credit due in that particular tax year.

(c) The Company shall, within 60 days of its receipt of the Annual Bill, prepare and return the Credit Certificate, attached hereto as Exhibit C ("Credit Certificate") certifying that (i) the Company satisfied the Low Income Rental Restrictions or certifying that an event of default occurred under the Restrictive Covenants due to the Company's failure to satisfy the Low Income Rental Restrictions, (ii) there are no conditions present at the Project that pose a threat to the safety and security of the residents and (iii) all Code Violations have been addressed (which shall be supported by documentation from the City). The Credit Certificate shall calculate and set forth the Repayment Amount for the prior calendar year, if any, and the Company shall remit the Repayment Amount along with the Credit Certificate. If not timely paid, the Repayment Amount is subject to the minimum amount of interest that South Carolina law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section survives termination of this Agreement.

**Section 2.4. Filings.** To assist the County in administering the Infrastructure Credits, the Company shall, for the Credit Term, prepare and file a separate schedule to the SCDOR PT-100, PT-300 with respect to the Property.



**Section 2.5 Cumulative Infrastructure Credit.** The cumulative dollar amount expended by the Company on Infrastructure shall equal or exceed the cumulative dollar amount of all the Infrastructure Credits received by the Company.

**Section 2.6. Termination Upon Receipt of Statutory Exemption.** If the South Carolina law provides that the Project qualifies for an exemption under South Carolina law, the Company shall be required to diligently pursue such exemption. This Agreement shall automatically terminate if the Project is determined to be exempt from ad valorem property taxes under South Carolina law.

### **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 that less than 50% of the Project is leased to the public for a 12 month period;

(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 Section 2.1 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) If there shall be two successive years in which the Company fails to certify in the Credit Certificate that (i) it has fully complied with the Low Income Rental Restrictions, (ii) there are no conditions present at the Project that pose a threat to the safety and security of the residents and (iii) all Code Violations have been addressed (which shall be supported by documentation from the City);

(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 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; and (iii) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

(b) The County acknowledges that the Company may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Company. The Company may clearly label any Confidential Information delivered to the County pursuant

to this Agreement as “Confidential Information.” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Company acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Company with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

**Section 4.2. *Assignment.*** The Company may assign or otherwise transfer any of its rights and interest in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably withheld.

**Section 4.3. *Provisions of Agreement for Sole Benefit of County and Company.*** Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied confers on any person or entity other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

**Section 4.4. *Severability.*** If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Agreement are unimpaired, and the Parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Agreement.

**Section 4.5. *Limitation of Liability.***

(a) The County is not liable to the Company, any of its lenders or its investors for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement.

(b) All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of County Council or any elected official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 4.6. *Indemnification Covenant.***

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a) above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within



with a copy to  
(does not constitute notice):     []

The County and the Company may, by notice given under this Section, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**Section 4.8. *Administrative Fees.*** The Company will reimburse, or cause reimbursement to, the County for the Administration Expenses in the amount of \$7,500. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expenses as set forth in the written request no later than 60 days following receipt of the written request from the County. For purposes of this Section, "Administration Expenses" means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys' fees. Administration Expenses do not include any costs, expenses, including attorneys' fees, incurred by the County (i) in defending challenges to the Fee Payments or Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

**Section 4.9. *Entire Agreement.*** This Agreement expresses the entire understanding and all agreements of the Parties with each other, and neither Party is bound by any agreement or any representation to the other Party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

**Section 4.10 *Agreement to Sign Other Documents.*** From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Agreement to effectuate the purposes of this Agreement.

**Section 4.11. *Agreement's Construction.*** Each Party and its counsel have reviewed this Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

**Section 4.12. *Applicable Law.*** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction, governs this Agreement and all documents executed in connection with this Agreement.

**Section 4.13. *Counterparts.*** This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 4.14. *Amendments.*** This Agreement may be amended only by written agreement of the Parties.

**Section 4.15. *Waiver.*** Either Party may waive compliance by the other Party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving Party.

**Section 4.16. Termination.** Unless first terminated under any other provision of this Agreement, this Agreement terminates on the expiration of the Credit Term and payment by the Company of any outstanding Net Fee Payment due on the 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**

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Chair, Richland County Council

*(SEAL)*  
ATTEST:

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Clerk to Council, Richland County Council

*[SIGNATURE PAGE 1 TO INFRASTRUCTURE CREDIT AGREEMENT]*

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

**GABLE OAKS HOUSING ASSOCIATES LP**

□

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

Name: □

Its: □

*[SIGNATURE PAGE 2 TO INFRASTRUCTURE CREDIT AGREEMENT]*



**EXHIBIT A**

**LAND DESCRIPTION**

901 Colleton Street, Columbia SC 29203

TMS Nos: 11706-11-03; 11705-03-01

[Legal Description to be added before third reading]

**EXHIBIT B**

**DESCRIPTION OF INFRASTRUCTURE CREDIT**

The Company is entitled to an Infrastructure Credit equal to 90% of the annual Fee Payment due with respect to the Project for a period of 45 years commencing with the first Fee Payment due with respect to the Project.

EXHIBIT C

FORM OF CREDIT CERTIFICATE

Reference is made to that certain Infrastructure Credit Agreement effective as of \_\_\_\_\_, 2020 ("*Credit Agreement*"), by and among Richland County, South Carolina ("*County*"), and Gable Oaks Housing Associates LP ("*Company*"). Each capitalized term not defined herein has the meaning ascribed thereto in the Credit Agreement. Company shall in each respective tax year, submit this Certification to County. The Company has received from the County the Annual Bill for tax year [YEAR].

In accordance with the terms of the Credit Agreement, the undersigned authorized agent of the Company certifies as follows for the tax year [YEAR]:

1. The Project contains [] units that are subject to the Low Income Rental Restrictions and [] of those units currently satisfy the Low Income Rental Restrictions.
2. There are no conditions present at the Project that pose a threat to the safety and security of the residents.
3. All Code Violations have been addressed (see attached supporting documentation from the City);

Note: If the Company is unable to certify as to BOTH 2 and 3, the Company shall not be entitled to any Infrastructure Credits for tax year [YEAR].

4. Because the Company fully complied with the Low Income Rental Restrictions, it is entitled to receive \$ \_\_\_\_\_ in Infrastructure Credits, which is the amount equal to 90% of the Company's fee in lieu of tax liability in tax year [YEAR] of \$ \_\_\_\_\_.

or

5. Because the Company did not comply with the Low Income Rental Restrictions, it shall pay the Repayment Amount shall be calculated as follows:

$$\begin{aligned} \text{Low Income Rental Percentage} &= \underline{\hspace{2cm}} \\ \text{Clawback Percentage} &= 100\% - \% \underline{\hspace{2cm}} \\ \text{Repayment Amount} &= \$ \underline{\hspace{2cm}} \times \underline{\hspace{2cm}} \% = \$ \underline{\hspace{2cm}} \end{aligned}$$

6. For tax year [YEAR], the Company is remitting the Repayment Amount equal to \$ \_\_\_\_\_ along with this Credit Certificate.

Should the County have a genuine dispute as to the validity or accuracy of the Repayment Amount calculations set forth in this Credit Certificate, the Company agrees to pay County's costs and fees, including its attorneys' fees and costs, associated with the certification, calculation, or adjustment of the Instructure Credits.

Submitted this \_\_\_ day of \_\_\_\_\_.

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

## Richland County Council Request for Action

**Subject:**

Approving the transfer of certain real property located in Richland County, the granting of certain options and other matters related thereto

**Notes:**

First Reading: November 10, 2020

Second Reading: November 17, 2020 {Tentative}

Third Reading: December 8, 2020 {Tentative}

Public Hearing:

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

**APPROVING THE TRANSFER OF CERTAIN REAL PROPERTY  
LOCATED IN RICHLAND COUNTY, THE GRANTING OF CERTAIN  
OPTIONS AND OTHER MATTERS RELATED THERETO.**

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 transact its real property;

WHEREAS, the County owns certain property on Farrow Road as more particularly identified by TMS No. 17600-01-033 (“Property”) and has identified the Property as property the County desires to sell to further the economic development of the County; and

WHEREAS, Collett Properties, Inc. (“Collett”) proposes to make an investment in the County at the Property and has made an offer to purchase the Property from the County ;

WHEREAS, the County desires to enter into an Agreement of Sale, Option and Right of First Offer with Collett (“Agreement”), the form of which is attached as Exhibit A to set forth the terms and conditions of the sale of a portion of the Property by the County to the Purchaser and the granting of an option and right of first offer with respect to the remainder of the Property.

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

**Section 1. Findings.** County Council determines that the sale of the Property is a proper governmental and public purposes and is anticipated to benefit the general public welfare of the County.

**Section 2. Approval of Sale and Option of Property.** County Council approves the sale and option of the Property by the County as more fully set forth in the Agreement and authorizes the County Council Chair, the County Administrator, and the Director of Economic Development, as appropriate, to execute and deliver those documents that may be reasonably necessary to accomplish the sale or optioning of the Property as set forth in the Agreement. Any actions taken in the name of the County prior to the effective date of this Ordinance with respect to the purchase of the Property are expressly ratified and confirmed.

**Section 3. Approval of Agreement.** County Council approves and ratifies the negotiation, preparation, execution and delivery of the Agreement, the form, terms and provisions of which shall be finally approved by the County Council Chair, the County Administrator or the Director of Economic Development, as appropriate, following receipt of advice from counsel to the County. The execution of the Agreement by any of the foregoing shall be conclusive evidence of approval of the final form of the Agreement.

**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 on behalf of the County as deemed necessary, desirable or appropriate to effect the transactions described in this Ordinance.

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

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: November 10, 2020  
Second Reading: November 17, 2020  
Public Hearing:  
Third Reading:

**EXHIBIT A**  
**FORM OF AGREEMENT**

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF RICHLAND                )

**AGREEMENT OF SALE, OPTION AND  
RIGHT OF FIRST OFFER**

THIS AGREEMENT OF SALE, OPTION AND RIGHT OF FIRST OFFER (the “*Agreement*”) is made and entered into as of the \_\_\_\_ day of September, 2020 (“*Effective Date*”), by and between **RICHLAND COUNTY, SOUTH CAROLINA** (“*Seller*”) and **COLLETT PROPERTIES, INC.** (“*Buyer*”).

**WITNESSETH:**

1. Agreement to Sell and Purchase, Grant of Option and Right of First Refusal. For and in consideration of the Earnest Money (as defined below) paid by Buyer to Escrow Agent (as defined below), the mutual covenants and agreements contained herein, including without limitation payment of the Purchase Price at the Closing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to (i) sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the Property (as defined below), (ii) grant to Buyer the Option (as defined below) on the Phase II Property (as defined below), subject to all terms and conditions set forth herein, and (iii) grant to Buyer the ROFO (as defined below) on the Phase III Property (as defined below), subject to all terms and conditions set forth herein.

2. Property. The property subject to this Agreement, all located on Farrow Road in Richland County, South Carolina known as Parcel #R17600-01-33 and more particularly shown on Exhibit A attached hereto and made a part hereof, is as follows, with each parcel of property including all improvements, plants, shrubs and trees located on such parcel, and being together with all rights, easements and appurtenances thereunto belonging to such parcel:

a. Agreement to Sell and Purchase – Property. The parcel subject to the agreement to sell and buy is that certain parcel designated as “*Phase I*” containing **17.30 acres** on Exhibit A (the “*Property*”).

b. Option – Phase II Property. The parcel subject to the Option (as defined below) is that certain parcel designated as “*Phase II*” containing **26.29 acres** on Exhibit A (the “*Phase II Property*”).

c. ROFO – Phase III Property. The parcel subject to the ROFO (as defined below) is that certain parcel designated as “*Phase III*” containing **24.62 acres** on Exhibit A (the “*Phase III Property*”).

3. Earnest Money. Within five (5) days of the Effective Date, Buyer shall deliver to Chicago Title Insurance Company (“*Escrow Agent*”) the sum of Fifteen Thousand Dollars (\$15,000.00) (“*Earnest Money*”). If the Earnest Money is deposited into an interest-bearing account at the direction of Buyer, all interest shall accrue to the benefit of Buyer. At Closing, the Earnest Money shall be credited against the Purchase Price and disbursed to Seller. All other matters relating to the escrow of the Earnest Money shall be governed by Section 36 herein.

4. Purchase Price; Method of Payment. The purchase price for the Property, hereinafter called the “*Purchase Price*”, shall be Three Hundred Thousand and 00/100 Dollars (\$300,000.00). Subject to any adjustments provided for herein, Buyer shall pay at Closing (as defined below) the balance of the



Purchase Price remaining after application of the Earnest Money and any applicable prorations by certified, cashier's or wired funds.

5. Closing. Provided that Buyer has not terminated this Agreement prior to the end of the Inspection Period (as defined below), the closing of the purchase and sale of the Property ("**Closing**") will be held via an escrow (the "**Escrow**") facilitated by Escrow Agent on any date selected by Buyer ("**Closing Date**") which is on or before that date which is thirty (30) days following the end of the Inspection Period. Notwithstanding the foregoing, if the date that is thirty (30) days after the last day of the Inspection Period is not a business day, the Closing Date, unless otherwise mutually agreed by the parties, will be extended to the next business day. Further, the Closing Date may be further extended to accommodate any period specified in Section 7 or Section 8 with respect to Title Objections or Survey Objections.

6. Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Buyer and Seller at Closing, or thereafter if Buyer and Seller shall agree, with respect to the Purchase Price:

(a) All city, state and county real estate taxes, 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. Seller shall be exclusively responsible for the payment of any rollback taxes applicable to the Property, if any. In the event Impositions are not applicable to the Property on the date of Closing, no proration shall be applicable. 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. 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, Buyer shall be responsible for payment in full of the Impositions within the time fixed for payment thereof and before the same shall become delinquent. Seller shall deliver to Buyer 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) Buyer may, at Buyer's expense and prior to the end of the Inspection Period, examine the title to the Property and shall give Seller written notice of any objections which Buyer reasonably determines would impact the intended development of the Property (each a "**Title Objection**"), and Seller shall, within ten (10) days after receipt of such Title Objection, elect by written notice to Buyer to either (i) at Seller's sole cost and expense, take such actions as may be necessary to correct such of said objections as Buyer specifies in said notice, or (ii) decline to correct such objections. The failure of Seller to give Buyer notice of Seller's selection shall be deemed to be an election of (ii) above. In the event Seller elects to correct less than all of such objections or elects option (ii) above, then, at the option of Buyer, Buyer may, as its sole and exclusive remedies: (1) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer 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; (2) extend the period of time in which Seller has to cure the Title Objections, for a period not to exceed thirty (30) days, with the Closing Date extended for a corresponding period, until Seller has satisfied such Title Objection and Seller agrees to use its best efforts to satisfy any such Title Objection; or (3) waive the Title Objection. At any time prior to the Closing Date, Buyer may update title

to the Property, and if any matters of title have arisen since the date of the Buyer's initial title examination, Buyer shall give written notice to Seller of the same, and the same provisions shall apply with respect to the obligations of Seller and Buyer's rights and remedies in the event that Seller does not cure the Title Objections. If Buyer fails to give notice of its election to terminate this Agreement as a result of any Title Objection or any Survey Objection within ten (10) days of Seller's failure or refusal to cure any Title Objection or Survey Objection, for any reason whatsoever, Buyer's right to terminate this Agreement under this Section 7 or under Section 8 of this Agreement shall expire and any Title Objections (excluding Monetary Encumbrances as defined below) and Survey Objections shall be deemed to be "**Permitted Exceptions**". Moreover, any matter disclosed on title or the Survey (or any update of either obtained by Buyer) to which Buyer does not timely raise a Title Objection (excluding Monetary Encumbrances) or a Survey Objection or which are approved by Buyer, and any Title Objection and/or Survey Objection that is waived or deemed to have been waived by Buyer, shall be deemed to be a "**Permitted Exception**".

(b) Any mortgage, lien, judgment, or other claim in a liquidated amount which constitutes an encumbrance on title to the Property (the "**Monetary Encumbrances**") (whether or not the same is disclosed by the title examination or listed in any notice of title objection by Buyer) shall not in any event be a Permitted Exception hereunder, but such claim shall be paid, bonded or insured by Seller to the satisfaction of the Buyer and Escrow Agent (in its capacity as title insurer).

(c) Except as provided hereinafter, from and after the Effective Date of this Agreement through Closing, Seller shall not mortgage or otherwise encumber the Property, or take any action or permit any happening that would interfere with the transaction contemplated by this Agreement, including granting or imposing any timber rights or deeds, clearing of timber, easements, warranty, conditions or restrictions with respect to the Property without obtaining Buyer's consent, which shall be granted or withheld in Buyer's discretion.

#### 8. Survey.

(a) Buyer shall, at its cost and expense, obtain a survey of the Property ("**Survey**") prepared by a surveyor registered and licensed in the State of South Carolina and deliver a copy thereof to Seller promptly after receipt, and in no event later than fifteen (15) days prior to expiration of the Inspection Period. Such survey shall be signed and certified by the surveyor. Subject to Seller's approval of the Survey, the Survey shall be recorded in the real estate records of Richland County, South Carolina, and the legal description of the Property set forth in the limited warranty deed to be delivered by Seller at Closing shall be based upon and shall conform to the Survey.

(b) Buyer shall, prior to the end of the Inspection Period, give Seller written notice pursuant to this Agreement if Buyer objects to a specific matter which affects Buyer's intended development of the Property as shown on said Survey (each a "**Survey Objection**"), and Seller shall, within ten (10) days after Buyer has received notice, elect by written notice to Buyer to either (i) at Seller's sole cost and expense, take such actions as may be necessary to correct such of said objections as Buyer specifies in said notice, or (ii) decline to correct such objections. The failure of Seller to give Buyer notice of Seller's selection shall be deemed to be an election of (ii) above. In the event Seller elects to correct less than all of such objections or elects option (ii) above, Buyer shall have ten (10) days after receipt of Seller's notice, as its sole and exclusive remedies, to elect either to (1) proceed with this Agreement and waive the Survey Objection which Seller has elected not to correct, or (2) terminate this Agreement and receive a refund of the Earnest Money. The failure by Buyer to give Seller notice of Buyer's election shall be deemed to be an election of option (2) above.

(c) Prior to Closing, Buyer shall also, at its cost and expense, obtain (i) a survey of the Phase II Property adequate for the legal description on a recorded memorandum of the Option and (ii) a survey of the Phase III Property adequate for the legal description on a recorded memorandum of the ROFO. Such

surveys shall be subject to Seller's approval. No formal subdivision of the Phase II Property or the Phase III Property shall be affected in connection with recordation of the memorandum of the Option or the memorandum of the ROFO.

9. Investigation of the Property.

(a) Buyer shall have until one hundred eighty (180) days after the Effective Date, herein called the "***Inspection Period***", in which to examine and investigate the Property, and to determine whether the Property is suitable and satisfactory to Buyer. In the event that Buyer shall determine, in Buyer's sole and absolute judgment and discretion, that the Property is in any manner unsuitable or unsatisfactory to Buyer for any reason or no reason, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller on or before 5:00 p.m. Eastern Standard Time on the last day of the Inspection Period, in which event the full amount of the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void except those rights and obligations that expressly survive the termination of this Agreement.

(b) Between the Effective Date hereof and the Closing Date, Buyer and Buyer's agents and designees shall have the right to enter the Property for the purposes of inspecting the Property and making surveys, mechanical and structural engineering studies, and any other investigations and inspections as Buyer may reasonably require to assess the condition of the Property including without limitation customary environmental inspections and subsurface soil tests; *provided, however*, that (i) Buyer shall not be entitled to conduct any environmental investigations on the Property beyond a Phase I environmental site assessment (*i.e.*, no sampling, drilling, etc.) without the prior written consent of Seller, such consent not to be unreasonably withheld provided the Phase I environmental report recommends additional testing, and (ii) such activities by or on behalf of Buyer shall not damage the Property and shall not materially interfere with Seller's normal ownership activities conducted on or from the Property. Buyer hereby agrees to repair any damage to the Property resulting from or in connection with, and to restore the Property to as close to its original condition as is practicable following the exercise of Buyer's rights under this Agreement, which obligation shall survive the termination of this Agreement.

(c) Prior to the Effective Date, Seller delivered to Buyer certain documents and information with respect to the Property (collectively, and together with all other items delivered from Seller to Buyer, the "***Seller Deliveries***"). Seller makes no representation or warranty as to the accuracy or completeness of any of the Seller Deliveries, and Buyer acknowledges and agrees that all of the Seller Deliveries are provided to Buyer as a convenience only and that any reliance on or use of the Seller Deliveries shall be at the sole risk of Buyer.

(d) Buyer hereby agrees to reimburse Seller for all actual and direct 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 Seller by reason of the Buyer's exercise of the rights, duties and privileges granted to Buyer in this Section; provided, however, in no event shall Buyer be liable for any pre-existing environmental conditions within the Property revealed by its investigations. The obligations of Buyer contained in the immediately preceding sentence shall expressly survive the Closing or any termination of this Agreement, in each case, for a period of one (1) year, and shall not be subject to the liquidated damage provisions of Section 13 hereof.

10. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Subject to payment of the Purchase Price, Seller shall deliver to Buyer via the Escrow the following documents and instruments, duly executed by or on behalf of Seller: (i) limited warranty deed, in recordable form, conveying the Property (the "*Deed*"); (ii) an Owner's Affidavit or similar certificate, in form and substance reasonably acceptable to Escrow Agent (in its capacity as title insurer), with respect to the Property; (iii) a certificate of Seller stating that Seller 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 Escrow Agent (in its capacity as title insurer) as a condition to insuring Buyer'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 Seller 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; and (vi) an affidavit in form and content acceptable to Buyer and Buyer's title insurance company that the Property does not constitute a majority of the assets of Seller.

(b) Buyer shall deliver to Seller via the Escrow the following funds, documents and instruments, duly executed on behalf of Buyer: (i) the Purchase Price in accordance with the terms of this Agreement; (ii) evidence in form and substance reasonably satisfactory to Seller that Buyer 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) Seller shall pay Seller'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, one-half of all escrow fees and closing costs charged by the Escrow Agent, and other fees or charges of any kind or nature customarily paid by sellers in similar transactions in South Carolina.

(b) Buyer shall pay its attorney fees, the costs associated with any financing obtained by Buyer, Buyer'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 Buyer insuring Buyer's title to the Property pursuant to Section 6(b) hereof, the cost of the Survey, one-half of all escrow fees and closing costs charged by the Escrow Agent, and the recording costs associated with the recording of the Seller's deed to Buyer.

(c) All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

#### 12. Possession at Closing. Seller shall surrender possession of the Property to Buyer at Closing.

#### 13. Warranties, Representations, Additional Covenants of Seller and Buyer.

(a) In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer as follows as of the Effective Date:

(i) That this Agreement has been duly authorized and executed on behalf of Seller and constitutes the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

(ii) There are no actions, suits or proceedings pending or, to Seller's actual knowledge without any duty to investigate, threatened against, by or affecting Seller which affect title to the Property or which question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign; and that there

are no pending or, to Seller's actual knowledge without any duty to investigate, threatened or contemplated condemnation actions involving all or any portion of the Property.

(iii) That to Seller's actual knowledge without any duty to investigate, except as may be disclosed in the Seller Deliveries, the title commitment or the Survey, 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 utilities.

(iv) Seller has received no written notice of the existence of any areas on the Property where hazardous substances or wastes have been generated, disposed of, released or found in violation of Environmental Law (defined below), and, to Seller's actual knowledge without any duty to investigate, except as may be disclosed in the Seller Deliveries, no hazardous substances or wastes have been generated, disposed of, released or found on the Property in violation of Environmental Law. 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 (collectively, "*Environmental Law*"). In the event Seller receives written notice of any such violations affecting the Property prior to Closing, Seller promptly shall notify Buyer thereof.

(v) Seller has not received any written notice from any municipal, county, state or other governmental authority, and has no actual knowledge without any duty to investigate, of any violations of any statutes, codes, ordinances, rules or regulations with respect to the Property.

(vi) Seller has received no written 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 Seller has no actual knowledge without duty to investigate of any such violations. In the event Seller receives written notice of any such violations affecting the Property prior to Closing, Seller promptly shall notify Buyer thereof.

(vii) Seller has entered into no agreement or lease, oral or written, that will be binding upon Buyer or the Property, and there are no tenants or other persons or entities on the Property claiming through Seller which will have a right of possession beyond the date of Closing.

(b) Any reference to "Seller's actual knowledge" above shall be limited to the actual knowledge, without duty of investigation of Jeff Ruble, as the Director of Economic Development for Richland County, *provided however*, the foregoing representations and warranties are given by Seller only and not any individual. The obligation of Buyer that arises to purchase the Property at Closing and to perform under this Agreement shall be subject to the representations and warranties made by Seller in this Agreement being true in all material respects as of the date of this Agreement and as of the Closing Date (with Seller's delivery of the Deed being deemed certification that all representations and warranties are true in all material respects as of the Closing Date), and Seller having performed all covenants and obligations and complied with all conditions required of it by this Agreement. In the event any representation or warranty of Seller is untrue in any material respect as of the date of this Agreement or on the Closing Date, such event shall be deemed a Seller default hereunder entitling Buyer to any remedies available pursuant to Section 15(b) herein.

(c) In order to induce Seller to enter into this Agreement, Buyer represents and warrants to Seller as follows as of the Effective Date:

(ii) That this Agreement has been duly authorized and executed on behalf of Buyer and constitutes the valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms.

(iii) There are no actions, suits or proceedings pending or, to Buyer's actual knowledge without any duty to investigate, threatened against, by or affecting Buyer which question the validity or enforceability of this Agreement or of any action taken by Buyer under this Agreement, in any court or before any governmental authority, domestic or foreign.

(iii) That the execution and delivery of the documents and instruments to be executed and delivered by Buyer on the Closing Date, and the performance by Buyer of Buyer'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, to the best of Buyer's knowledge, will not violate any contract, agreement or other instrument to which Buyer is a party, or any law, judicial order or judgment of any nature by which Buyer is bound.

(d) The obligation of Seller that arises to sell the Property at Closing and to perform under this Agreement shall be subject to the representations and warranties made by Buyer in this Agreement being true in all material respects as of the date of this Agreement and as of the Closing Date, and Buyer having performed all covenants and obligations and complied with all conditions required of it by this Agreement. In the event any representation or warranty of Buyer is untrue in any material respect as of the date of this Agreement or on the Closing Date, such event shall be deemed a Buyer default hereunder entitling Seller to any remedies available pursuant to Section 15(a) herein

14. Disclaimer; AS IS. Subject to the express representations and warranties of Seller set forth in this Agreement and the Deed, it is understood and agreed that Seller is not making and has not at any time made any representations or warranties of any kind or character, expressed or implied, as to habitability, merchantability, or fitness for a particular purpose (other than the limited warranty of title to be set forth in the deed). Subject to the express representations and warranties of Seller set forth in this Agreement and the Deed, Buyer acknowledges and agrees that upon closing, Seller shall sell and convey to Buyer and buyer shall accept the property "AS IS, WHERE IS, WITH ALL FAULTS". Upon closing, Buyer shall assume the risk that adverse matters, including but not limited to, all manner of defects and adverse physical conditions, may not have been revealed by Buyer's investigations, and Buyer, upon closing, except in connection with any express representations and warranties of Seller made in this Agreement, shall be deemed to have waived, relinquished and released Seller (and Seller's members, managers, officers, directors, shareholders, employees and agents) from and against any and all claims, demands, causes of action (including, without limitation, causes of action in tort), losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Seller (and Seller's members, managers, officers, directors, shareholders, employees and agents) at any time by reason of or arising out of any latent or patent defects, physical conditions, violations of any applicable laws or any and all other acts, omissions, events, circumstances or matters regarding the Property. Except as otherwise expressly provided in this Agreement, Buyer's acceptance of the Deed shall be deemed a discharge of all of the obligations of Seller hereunder and all of Seller's representations, warranties, covenants and agreements in this Agreement shall merge in the deed executed at the Closing and shall not survive the Closing, except and to the extent that, pursuant to the express provisions of this Agreement, any of such representations, warranties, covenants or agreements are to survive the Closing. Seller and Buyer acknowledge that the compensation to be paid to Seller for the Property reflects that the Property is being sold subject to the provisions of this Section, and Seller and Buyer agree that the provisions of this Section shall survive Closing.

15. Remedies

(a) Provided that Seller is not in default under this Agreement, 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 Buyer under this Agreement and such default is not cured within ten (10) days after written notice by Seller to Buyer specifying the default (except for Buyer's obligation to close timely, or to timely deliver the documents and/or funds required to be delivered by Buyer under Section 10 of this Agreement, for which there shall be no notice and cure opportunity), then Seller may terminate this Agreement by written notice to Buyer, in which event the Earnest Money shall be retained by Seller as full liquidated damages for such default, 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 (except for those rights and obligations that expressly survive termination hereof). The parties acknowledge that Seller's actual damages in the event of a default by Buyer 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 Earnest Money shall be the sole and exclusive remedy of Seller by reason of a default by Buyer under this Agreement, and Seller hereby waives and releases any right to sue Buyer, and hereby covenants not to sue Buyer, for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount which is herein provided to Seller as full liquidated damages.

(b) Provided that Buyer is not in default under this Agreement, 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 Seller under this Agreement, and such default is not cured within ten (10) days after written notice by Buyer to Seller specifying the default (except for Seller's obligation to close timely, or to timely deliver the documents required to be delivered by Seller under Section 10 of this Agreement, for which there shall be no notice and cure opportunity), then Buyer shall be entitled, as its sole and exclusive remedies hereunder, to either (i) terminate this Agreement by giving written notice of strict termination to Seller whereupon the Earnest Money shall be returned to Buyer, Seller shall reimburse Buyer all of Buyer's out-of-pocket expenses incurred in connection with this Agreement and Buyer's intended acquisition and development of the Property (such reimbursement in no event to exceed \$25,000), 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 (except for those rights and obligations that expressly survive termination hereof), or (ii) seek specific performance of this Agreement. In no event shall Seller be liable to Buyer for any punitive, speculative or consequential damages. Buyer shall be deemed to have elected to terminate this Agreement if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before the date that is 60 days following the date upon which the Closing was to have occurred.

16. 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, Buyer shall have the right at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing, in which event the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. If Buyer does not so terminate this Agreement, Seller shall assign to Buyer at Closing all rights of Seller in and to any awards or other proceeds paid or payable thereafter by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

17. Assignment. Other than assignment to an affiliate of Buyer including a newly formed entity of which a majority is owned by partners of Buyer, this Agreement may not be assigned by Buyer without prior written consent of Seller. This Agreement shall not be assigned by Seller.

18. 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.

19. Brokers. Seller warrants and represents to the Buyer that Seller shall be responsible for payment of all brokerage commissions or fees payable to **Colliers International** and shall indemnify Buyer from and against any claims made by such party. Other than Colliers International, each party represents and warrants to the other that it has not dealt with any other real estate brokers who may claim a fee or commission in connection with the transactions contemplated hereby as a result of such party's acts, and each party agrees to indemnify and hold the other harmless against any such claim made by any broker claiming by, through or under such party. The indemnity obligation contained in this Section 18 shall expressly survive the Closing or any termination of this Agreement.

20. Survival. Subject to the terms of Sections 30, 31 and 32 herein, 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 for one (1) year.

21. Modification. This Agreement supersedes all prior discussions and agreements between Buyer and Seller with respect to the purchase and sale of the Property and other matters contained herein, and contains the sole and entire understanding between Buyer and Seller with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer.

22. Applicable Law; Waiver of Jury Trial. 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. The parties hereto waive trial by jury in any action, proceeding or counterclaim arising out of this Agreement.

23. Time. Time is and shall be of the essence of this Agreement.

24. 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.

25. 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.

26. 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.

Buyer: Collett Properties, Inc.  
1111 Metropolitan Ave., Suite 700  
Charlotte, NC 28204  
Attn: Teddy Hull



With a copy to: Collett Properties, Inc.  
1111 Metropolitan Ave., Suite 700  
Charlotte, NC 28204  
Attn: Michael E. Robbe, Esq.

Seller: Richland County, South Carolina  
2020 Hampton Street  
Columbia, South Carolina 29201  
Attn: County Administrator  
Phone: 803.576.2054

Richland County, South Carolina  
Economic Development Office  
1201 Main Street, Suite 1110  
Columbia, South Carolina 29201  
Attn: Jeff Ruble

With a copy to: Parker Poe Adams & Bernstein LLP  
1221 Main Street, Suite 1100  
Columbia, South Carolina 29201  
Attn: Ray Jones  
Phone 803.255.8000

27. Unified Transaction. Notwithstanding anything else set forth herein that might appear to be to the contrary, under no circumstances whatsoever may either Seller or Buyer compel the other to consummate the transactions described herein with respect to less than all of the Property. Seller and Buyer hereby acknowledge and agree that this Agreement is not intended to have any conditions or other provisions that would permit either party to partially terminate this Agreement with respect to only part of the Property. Accordingly, either all of the Property or none of the Property must be transferred at the Closing.

28. Counterparts, Separate Signature Pages and Electronic Signatures. This Agreement may be executed in several counterparts and by separate signature pages, each of which may be deemed an original, and all such counterparts and separate signature pages together shall constitute one and the same Agreement. Furthermore, executed counterparts of this Agreement may be delivered by facsimile or other reliable electronic means (including emails of pdf documents), and such facsimile or other electronic transmission shall be valid and binding for all purposes.

29. General Agreements. The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant. In the event that any date described in this Agreement for the performance of an action required hereunder by Seller, Buyer and/or the Escrow Agent falls on a Saturday, Sunday or federal legal holiday, such date shall be deemed postponed until the next business day thereafter. As used in this Agreement, the term "business day" means a day that is not a Saturday, Sunday or federal legal holiday.

30. Option – Phase II Property. For a period of three (3) years from the date of Closing (the "**Option Period**"), but subject to the Option/ROFO Exception as set forth in Section 32 below, Buyer shall have an option (the "**Option**") to purchase the Phase II Property at a purchase price of \$25,000 per acre or such other reduced per acre price as mutually agreed upon by Buyer and Seller. At any time during the Option Period, Buyer may provide written notice to Seller of its election to exercise the Option (the "**Exercise**"). If Buyer delivers the Exercise, the parties shall enter into a purchase agreement generally

consistent with the terms of this Agreement, *provided however*, the inspection period under said purchase agreement shall be restated to be one hundred twenty (120) days.

31. ROFO – Phase III Property. For a period of five (5) years from the date of Closing, but subject to the Option/ROFO Exception as set forth in Section 32 below, Buyer shall have a right of first offer (the “**ROFO**”) with respect to the Phase III Property. Prior to offering the Phase III Property for sale to any third party or responding to a third party offer to purchase the Phase III Property, Seller shall first offer to sell the Phase III Property to Buyer at what Seller deems to be then-current market terms and conditions, with such offer made in writing (the “**ROFO Offer**” with such terms and conditions set forth in the ROFO Offer, the “**ROFO Proposal**”). Following Buyer’s receipt of the ROFO Offer, the parties shall negotiate in good faith to finalize a contract of sale for the Phase III Property. In the event the parties have not executed a contract of sale for the Phase III Property within forty-five (45) days after the date of Buyer’s receipt of the ROFO Offer, Seller may market the Phase III Property to third party purchasers, and may sell the Phase III Property to any third party purchaser as long as the terms of such sale are not more favorable than those set forth in the ROFO Offer, *provided however*, in the event that Seller agrees to terms to sell the Phase III Property to a third party purchaser and one of the specific terms of such agreement is more favorable than a specific term set forth in the ROFO Offer, Seller must offer Buyer in writing the option of purchasing the Phase III Property at the same terms agreed to by the third party purchaser (an “**Updated ROFO Proposal**”), and Buyer shall have a period of ten (10) business days from the date of receipt of such offer to accept such Updated ROFO Proposal. Failure of Buyer to accept in writing within such 10-business day period shall be deemed rejection, and Seller may proceed to sell the Phase III Property to such third party purchaser on the terms set forth in the Updated ROFO Proposal.

32. Option/ROFO Exception. Notwithstanding the rights set forth above with respect to the Option and the ROFO, Seller may at any time sell the Phase II Property or Phase III Property to a manufacturing or warehouse distribution end user for the self-development and operation of such property without such sale being subject to either the Option or the ROFO (the “**Option/ROFO Exception**”). Buyer agrees at the closing of any such sale under the Option/ROFO Exception to release any written memorandum of the Option or ROFO, as applicable.

33. Memorandum. Upon the request of Buyer, Seller shall execute a memorandum of the Option and ROFO for the purpose of recording.

34. Subdivision. In the event a subdivision is required pursuant to applicable law in connection with the conveyance of the Property to Buyer, Seller shall use good faith, diligent efforts to cause the Property to be properly subdivided in compliance with such applicable law, and it shall be a condition precedent to Buyer’s obligations to close the transaction contemplated in this Agreement that all necessary approvals respecting such subdivision shall be obtained and shall be final and non-appealable prior to or as of the Closing. In the event this condition is not satisfied prior to Closing after Seller’s good faith, diligent efforts to so comply, Buyer shall be entitled to terminate this Agreement by giving written notice thereof to Seller whereupon the Earnest Money shall be returned to Buyer, 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 (except for those rights and obligations that expressly survive termination hereof).

35. Operation of Property Pending Closing. Pending the Closing, Seller shall operate the Property in the normal course of business, in accordance with all existing standards, practices and procedures (including, without limitation, the maintenance of Seller’s property insurance), and shall maintain the Property in good condition and repair. From and after the Effective Date, Seller shall not encumber the Property in any manner or enter into new leases or amend, renew or make modifications to existing leases without the prior written consent of Buyer. In addition, Seller shall not, from and after the Effective Date, enter into any new contracts

that remain in effect beyond the Closing Date and/or include any termination fee incurred or to be incurred by Buyer without first obtaining Buyer's written consent

36. Escrow of Earnest Money. The Earnest Money shall be held in escrow (the "EM Escrow") by Escrow Agent subject to the terms and provisions of this Agreement. If the EM Escrow shall be terminated by the mutual agreement of Seller and Buyer or if the Escrow Agent shall be unable to determine at any time to whom the Earnest Money should be paid or if a dispute should develop between Seller and Buyer concerning to whom the Earnest Money should be paid, then in any such event, the Escrow Agent shall pay the same in accordance with the joint written instructions of Seller and Buyer. In the event that such written instructions shall not be received by the Escrow Agent within ten (10) days after the Escrow Agent shall have served written requests for instructions upon Seller and Buyer, the said Escrow Agent shall have the right to pay all or any portion of the Earnest Money into any state or federal court located in Richland County, South Carolina and interplead Seller and Buyer in respect thereof, and thereafter the Escrow Agent shall be discharged of any obligations in connection with the Earnest Money. If costs and expenses (including attorneys' fees) are incurred by the Escrow Agent because of litigation or dispute between Seller and Buyer arising out of the holding of said funds, the non-prevailing party (i.e., either Seller or Buyer) shall pay the Escrow Agent such reasonable costs and expenses incurred. Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding or investment of the Earnest Money held in EM Escrow pursuant hereto except for negligence or willful misconduct; that the Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this EM Escrow; and that in the event of any dispute under this EM Escrow, the Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken in good faith in accordance with the opinion of counsel. The Escrow Agent's address for purposes of mailing or delivery of documents and notices is as follows:

Chicago Title Insurance Company  
Attn: Scott Mansfield  
200 Tryon Street, Suite 800  
Charlotte, NC 28244  
E-mail: scott.mansfield@ctt.com  
Direct: (704) 319-7097

Provisions with respect to notices as otherwise set forth in this Agreement shall apply with respect to matters pertaining to this EM Escrow

*Signature page to follow.*

IN WITNESS WHEREOF, the Seller has caused this Agreement to be executed by its duly authorized officer effective as of the Effective Date set forth above.

**SELLER:**

**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 September, 2020.


\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires \_\_\_\_\_

IN WITNESS WHEREOF, the Buyer has caused this Agreement to be executed by its duly authorized officer effective as of the Effective Date set forth above.

**SELLER:**

**COLLETT PROPERTIES, INC.**

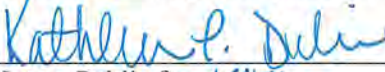
By:   
Name: John Collett  
Title: President

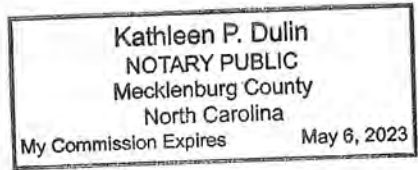
STATE OF North Carolina  
COUNTY OF Mecklenburg

**ACKNOWLEDGMENT**

I, Kathleen P. Dulin, Notary Public, certify that **John Collett, as President of COLLETT PROPERTIES, INC.**, personally came before me this day and voluntarily executed the foregoing as his/her act and deed.

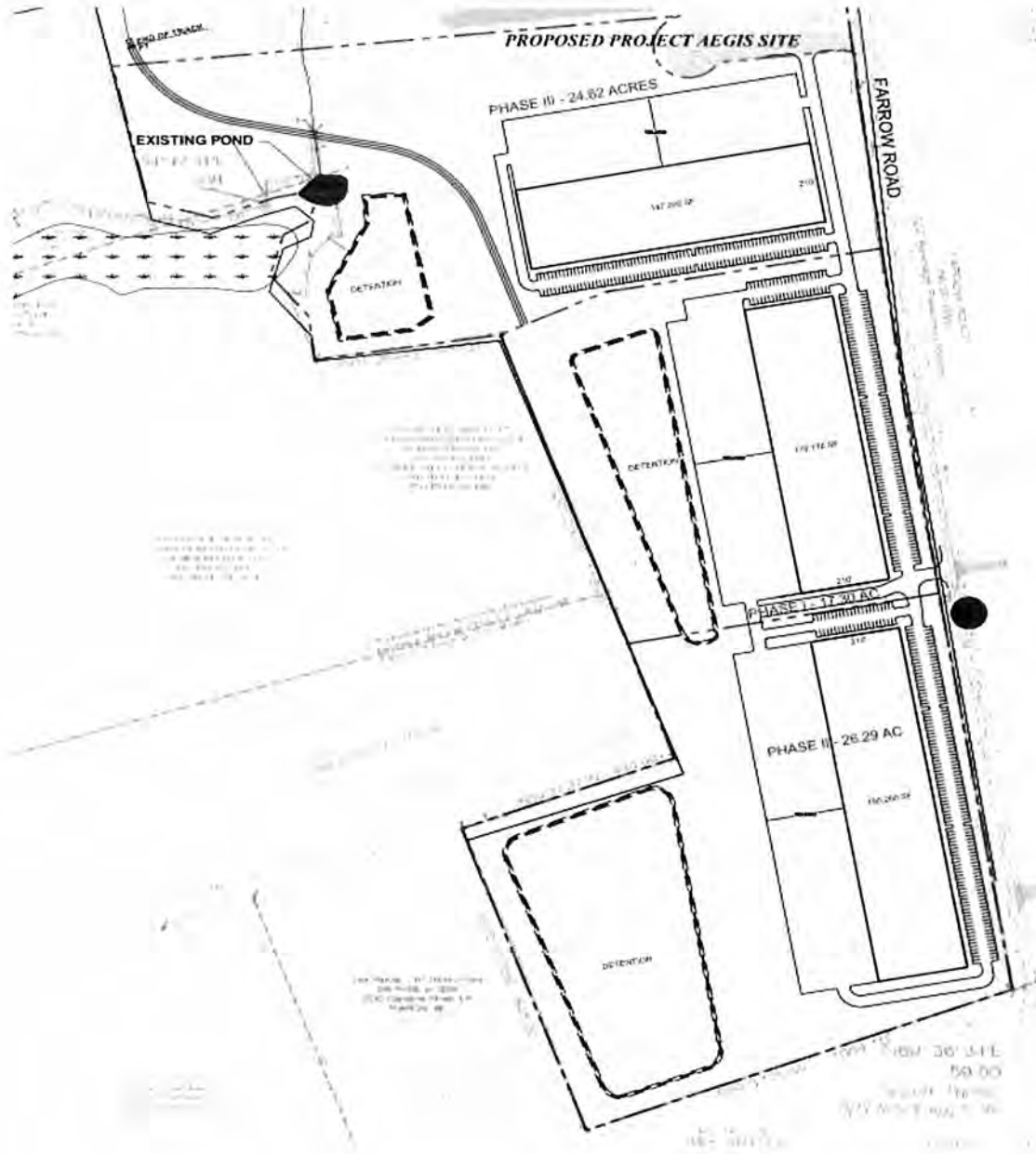
Witness my hand and official seal,  
this the 24 day of September, 2020.

  
Notary Public for North Carolina



My Commission Expires May 6, 2023

**EXHIBIT "A"**



SOUTH CAROLINA

)

)

RICHLAND COUNTY

)

**A RESOLUTION**

**COMMITTING TO NEGOTIATE A FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT BETWEEN RICHLAND COUNTY AND PROJECT CROSS; IDENTIFYING THE PROJECT; AND OTHER MATTERS RELATED THERETO**

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 (“FILOT Payments”) with respect to economic development property, as defined in the Act;

WHEREAS, Project Cross, an entity whose name cannot be publicly disclosed at this time (“Sponsor”), desires to invest capital in the County in order to expand its existing facilities in the County (“Project”);

WHEREAS, the Project is anticipated to result in an investment of approximately \$60,315,000 in taxable real and personal property and the creation of approximately 700 new, full-time equivalent jobs; and

WHEREAS, as an inducement to the Sponsor to locate the Project in the County, the Sponsor has requested that the County negotiate an agreement (“Agreement”), which provides for FILOT Payments with respect to the portion of the Project which constitutes economic development property, as defined in the Act.

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

**Section 1.** This Resolution is an inducement resolution for this Project for purposes of the Act.

**Section 2.** County Council commits to enter into the Agreement, which provides for FILOT Payments with respect to the portion of the Project which constitutes economic development property. The further details of the FILOT Payments and the agreement will be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

**Section 3.** County Council identifies and reflects the Project by this Resolution, therefore permitting expenditures made in connection with the Project before the date of this Resolution to qualify as economic development property, subject to the terms and conditions of the Agreement and the Act.

**Section 4.** This Resolution is effective after its approval by the County Council.

RESOLVED: November 17, 2020

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, Richland County Council

*(SEAL)*  
ATTEST:

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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 and incentive agreement by and between Richland County, South Carolina and Project Cross to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters

**Notes:**

First Reading: November 17, 2020 {Tentative}  
Second Reading: December 8, 2020 {Tentative}  
Third Reading: December 15, 2020 {Tentative}  
Public Hearing:

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

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU  
OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT BY AND  
BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT  
CROSS 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 Cross (“Sponsor”) desires to expand its existing facilities in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$60,315,000 and the creation of 702 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, the substantially final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (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; and (2) locating certain portions of the Project in the Park (to the extent not already so included); and (3) providing Infrastructure Credits, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure; and

WHEREAS, the Sponsor is a party to that certain Infrastructure Credit Agreement with the County dated December 14, 1999, as the same was amended and restated as of December 1, 2009 (the “1999 SSRC Agreement”), pursuant to Section 3.03 of which the Sponsor is presently receiving special source revenue credits (“SSRCs”) equal to 20% of the Fee Payments (as defined therein), subject to reduction if the number of full-time employees falls below 650, and which SSRCs presently run through property tax year 2025; and

WHEREAS, the Sponsor has requested a five-year extension of the SSRCs under the 1999 SSRC Agreement such that the SSRCs shall extend through property tax year 2030; and

WHEREAS, the Sponsor is a party to that certain Lease Agreement with the County dated July 11, 2000, as the same has been amended from time to time (the “2000 Lease Agreement”), the term of which was initially 20 years for each phase of investment placed in service by the Sponsor (the “Term”) and pursuant to which the Sponsor is presently receiving SSRCs of 20% which run through property tax year 2022; and

WHEREAS, the Sponsor has requested a 10-year extension of the Term of the 2000 Lease Agreement and an extension of the SSRCs under the 2000 Lease Agreement such that the SSRCs shall extend through property tax year 2030; and

WHEREAS, the Sponsor has caused to be prepared and presented to the County that certain Amendment to 1999 SSRC Agreement and 2000 Lease Agreement to effectuate the foregoing requests, the substantially final form of which is attached as Exhibit B (the “Amendment”), and the County is agreeable to such requests and has determined that the Amendment is an appropriate instrument for the aforementioned purposes.

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. *Approval of Amendment.*** The Amendment is hereby approved. The form, terms and provisions of the Amendment that is before this meeting are approved and all of the Amendment's terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council ("Chair") is authorized and directed to execute the Amendment 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 Amendment and to deliver the Amendment to the Sponsor.

**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, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

**Section 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

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Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

First Reading: November 17, 2020  
Second Reading:  
Public Hearing:  
Third Reading:

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

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

**BETWEEN**

**PROJECT CROSS**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF [DECEMBER 15], 2020**

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**TABLE OF CONTENTS [to complete when finalized]**

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|   | Page |
|---|------|
| Recitals.....   | []   |
| <br><b>ARTICLE I</b><br><b>DEFINITIONS</b><br><br>                          |      |
| Section 1.1 Terms.....  | []   |
| <br><b>ARTICLE II</b><br><b>REPRESENTATIONS AND WARRANTIES</b><br><br>      |      |
| Section 2.1 Representations, Warranties, and Agreements of the County.....  | []   |
| Section 2.2 Representations, Warranties, and Agreements of the Sponsor..... | []   |
| <br><b>ARTICLE III</b><br><b>THE PROJECT</b><br><br>                        |      |
| Section 3.1 The Project.....  | []   |
| Section 3.2 Leased Property.....  | []   |
| Section 3.3 Filings and Reports.....  | []   |
| <br><b>ARTICLE IV</b><br><b>FILOT PAYMENTS</b><br><br>                      |      |
| Section 4.1 FILOT Payments.....   | []   |
| Section 4.2 FILOT Payments on Replacement Property.....                     | []   |
| Section 4.3 Removal of Components of the Project.....                       | []   |
| Section 4.4 Damage or Destruction of Economic Development Property.....     | []   |
| Section 4.5 Condemnation.....   | []   |
| Section 4.6 Calculating FILOT Payments on Diminution in Value.....          | []   |
| Section 4.7 Payment of <i>Ad Valorem</i> Taxes.....                         | []   |
| Section 4.8 Place of FILOT Payments.....                                    | []   |
| <br><b>ARTICLE V</b><br><b>ADDITIONAL INCENTIVES</b><br><br>                |      |
| Section 5.1 Infrastructure Credits.....                                     | []   |
| Section 5.2 Other Incentives.....   | []   |
| <br><b>ARTICLE VI</b><br><b>CLAW BACK</b><br><br>                           |      |
| Section 6.1 Claw Back.....  | []   |



ARTICLE VII  
DEFAULT

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

ARTICLE VIII  
PARTICULAR COVENANTS AND AGREEMENTS

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

ARTICLE IX  
SPONSOR AFFILIATES

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

ARTICLE X  
MISCELLANEOUS

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

- Exhibit A – Description of Property
- Exhibit B – Form of Joinder Agreement
- Exhibit C – Accountability Resolution
- Exhibit D – Description of Infrastructure Credit
- 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 |
|---|--|-------------------|
| <b>Sponsor Name</b>   | <b>Project Cross</b>                     |                   |
| <b>Project Location</b>   | <b>To be completed for third reading</b> |                   |
| <b>Tax Map No.</b>  | <b>To be completed for third reading</b> |                   |
|   |  |                   |
|   |  |                   |
| <b>FILOT</b>  |  |                   |
| <ul style="list-style-type: none"> <li>• Phase Exemption Period</li> </ul>                  |  |                   |
| <ul style="list-style-type: none"> <li>• Contract Minimum Investment Requirement</li> </ul> |  |                   |
| <ul style="list-style-type: none"> <li>• [Contract Minimum Jobs Requirement]</li> </ul>     |  |                   |
| <ul style="list-style-type: none"> <li>• Investment Period</li> </ul>                       |  |                   |
| <ul style="list-style-type: none"> <li>• Assessment Ratio</li> </ul>                        |  |                   |
| <ul style="list-style-type: none"> <li>• Millage Rate</li> </ul>                            |  |                   |
| <ul style="list-style-type: none"> <li>• Fixed or Five-Year Adjustable Millage</li> </ul>   |  |                   |
| <ul style="list-style-type: none"> <li>• Claw Back Information</li> </ul>                   |  |                   |
| <b>Multicounty Park</b>   |  |                   |
| <b>[Infrastructure Credit]</b>  |  |                   |
| <ul style="list-style-type: none"> <li>• [Brief Description]</li> </ul>                     |  |                   |
| <ul style="list-style-type: none"> <li>• [Credit Term]</li> </ul>                           |  |                   |
| <ul style="list-style-type: none"> <li>• [Claw Back Information]</li> </ul>                 |  |                   |
| <b>Other Information</b>  |  |                   |

## FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (“*Fee Agreement*”) is entered into effective as of December 15, 2020 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 Cross, a corporation 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 expand its existing facilities (collectively, the “*Facility*”) in the County, consisting of taxable investment in real and personal property of not less than \$60,315,000 and the creation of at least 702 new, full-time jobs;

(d) By an ordinance enacted on December 15, 2020, 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 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, 2020.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$60,315,000.

“**Contract Minimum Jobs Requirement**” means not less than 702 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-300T 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, 2054, the Final Termination Date is expected to be January 15, 2056, 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, 2025.

**“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, originally 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 29<sup>th</sup> year following the first property tax year in which the Phase is placed in service.

**“Project”** means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“**Real Property**” means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“**Removed Components**” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**Sponsor**” means Project Cross 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" by adopting an Inducement Resolution, as defined in the Act, on November 17, 2020.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Real Property comprising the Project in the Multicounty Park to the extent such Real Property is not already included.

**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 corporate headquarters and service facilities 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, 2020. 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, 2021, 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 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, which rates are as follows:

For all portions of the Project located in Tax District 2ER: 586.7  
For all portions of the Project located in Tax District 2CC: 656.6  
For all portions of the Project located in Tax District 1UR: 477.5

The Company shall file a separate Schedule PT-300T (or successor form) for the components of the Project in each of the above-referenced tax districts and shall identify the applicable tax district and



millage rate in the project description component of each filing in order to make the identification of the applicable millage rate for each separate form readily apparent to the Department and the County.

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. 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 documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

**Section 8.4. No Liability of County Personnel.** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or

performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 8.5. *Limitation of Liability.*** The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

**Section 8.6. *Assignment.*** The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

**Section 8.7. *No Double Payment; Future Changes in Legislation.*** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

**Section 8.8. *Administration Expenses.*** The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$6,000. 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:**

**[to be added for third reading]**

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

Haynsworth Sinkler Boyd, P.A.  
Attn: Will Johnson  
P.O. Box 11889  
Columbia, SC 29211-1889

**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, pandemic, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10. Termination; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.



(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11. *Entire Agreement.*** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

**Section 10.12. *Waiver.*** Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

**Section 10.13. *Business Day.*** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

**Section 10.14. *Agreement's Construction.*** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

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

**ATTEST:**

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

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes [and Incentive] Agreement]*

**[PROJECT/SPONSOR NAME]**

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

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

**EXHIBIT A  
PROPERTY DESCRIPTION**

**[to be completed for third reading]**

**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 Infrastructure Credits shall equal 20% of the FILOT Payment due for the first ten payments hereunder, which are anticipated to be the payments for property tax years 2021 through 2030.**

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

**Repayment Amount = Total Infrastructure Credits 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.

Provided, if the Investment Achievement Percentage of Jobs Achievement Percentage is 90% of higher, then such percentage shall be deemed to be 100%.

*For example, and by way of example only, if the County granted \$100,000 in Infrastructure Credits, and \$54,283,500 had been invested at the Project and 561.6 jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:*

*Jobs Achievement Percentage = 561.6/702 = 80%*

*Investment Achievement Percentage = \$53,077,200/\$60,315,000 = 88%*

*Overall Achievement Percentage = (80% + 88%)/2 = 84%*

*Claw Back Percentage = 100% - 84% = 16%*

*Repayment Amount = \$100,000 x 16% = \$16,000*

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

**EXHIBIT B**  
**FORM OF AMENDMENT**

**AMENDMENT TO 1999 SSRC AGREEMENT AND 2000 LEASE AGREEMENT**

This Amendment (the “Amendment”) to the 1999 SSRC Agreement and 2000 Lease Agreement by and between RICHLAND COUNTY, SOUTH CAROLINA (the “County”) and PROJECT CROSS (the “Company”) is made and entered into this day of \_\_\_\_\_, 2020.

WITNESSETH:

WHEREAS, the Company and the County entered into that certain Infrastructure Credit Agreement dated December 14, 1999, as the same was amended and restated as of December 1, 2009 (the “1999 SSRC Agreement”); and

WHEREAS, the Company and the County entered into that certain Lease Agreement dated July 11, 2000, as the same has been amended from time to time (the “2000 Lease Agreement”); and

WHEREAS, the Company is presently receiving special source revenue credits (“SSRCs”) equal to 20% of the Fee Payments due under the 1999 SSRC Agreement (subject to reduction if the number of full-time employees falls below 650), which SSRCs presently run through property tax year 2025, and the Company has requested an extension of the term of such SSRCs through property tax year 2030; and

WHEREAS, the term of the 2000 Lease Agreement is 20 years for each phase of investment placed in service by the Sponsor thereunder (the “Term), and the Company has requested a ten-year extension of the Term; and

WHEREAS, the Company is presently receiving SSRCs equal to 20% of the payments in lieu of taxes due pursuant to the 2000 Lease Agreement (subject to adjustment if the Company falls short of established investment levels), which SSRCs presently run through property tax year 2022, and the Company has requested an extension of the term of such SSRCs through property tax year 2030.

WHEREAS, the Company is considering an additional investment in the County of approximately \$60,315,000 that is anticipated to create 702 new, full-time jobs in the County (the “Project”), and the Company has represented to the County that the requests set forth herein would enhance the Company’s ability to achieve the desired investment and job creation levels associated with the Project; and

WHEREAS, pursuant to an Ordinance of the County Council of even date herewith, the County Council has approved the execution of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Company agree as follows:

1. The term of the SSRCs under the 1999 SSRC Agreement is hereby extended through property tax year 2030.

2. The Term of the 2000 Lease Agreement is hereby extended by ten years.

3. The term of the SSRCs under the 2000 Lease Agreement is hereby extended through property tax year 2030.

Except as otherwise provided herein, the 1999 SSRC Agreement and 2000 Lease Agreement each shall remain in full force and effect, including the percentage reductions in the SSRCs if the agreed-upon job and investment levels, as applicable, are not satisfied.

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT CROSS, each pursuant to due authority, have executed this Amendment as of the date first written above.

**RICHLAND COUNTY, SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk to Richland County Council

**PROJECT CROSS**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**APPLICATION FOR SERVICE ON RICHLAND COUNTY  
COMMITTEE, BOARD OR COMMISSION**

**Applicant MUST reside in Richland County.**

Name: Andrew R. (Andy) Tolleson, PE, DGE

Home Address: 2309 Rembert Street Columbia SC 29201

Telephone: (home) 803-269-2651 (work) 803-783-9001

Office Address: 305A Stoneridge Drive Columbia SC 20210

Email Address: atolleson@tollesonltd.com

Educational Background: BS and MS in Civil Engineering Design

Professional Background: Program Manager. Zero Claims Record. Strategic Planner. Designer

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Hospital Trustee, LRADAC, Airport or Zoning, CMCOG

Reason for interest: Lifetime Richland County and Columbia resident. Business owner and citizen interested in offering my leadership experiences.

Your characteristics/qualifications, which would be an asset to Committee, Board or

Commission: Successful business owner and Engineer of record on major projects. Planner and expert witness.

Professional: Local Business owner with extensive experiences in USA and International.

Presently serve on any County Committee, Board or Commission? **None.**

Any other information you wish to give? Established relationships with Council & County staff.

Recommended by Council Member(s): Hon Paul Livingston

Hours willing to commit each month: Flexible schedule will serve as needed.

**CONFLICT OF INTEREST POLICY**

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No X


**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No X

If so, describe : I am owner of Richland County SLBE Certified Consulting Engineering and Construction firm and provide services on County related projects.

Applicant's Signature



Date

Oct 01, 2020

Return to:

**Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

**Staff Use Only**

|   |                          |
|---|--------------------------|
| Date Received: <u>10/1/20</u>                           | Received by: <u>unho</u> |
| Date Sent to Council: _____                             |                          |
| Status of Application:    Approved    Denied    On file |                          |



Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


Patricia B. O'Hara  
Applicant's Signature

11/30/2019  
Date

**Return to:  
Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

|   |   |
|---|---|
| <b>Staff Use Only</b>   |   |
| Date Received: <u>12-3-19</u>                                       | Received by: <u></u> |
| Date Sent to Council: _____   |   |
| Status of Application: <input type="checkbox"/> Approved 193 of 218 | <input type="checkbox"/> Denied <input type="checkbox"/> On file  |

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


Patrol B. O'Keefe  
Applicant's Signature

11/30/2019  
Date

**Return to:  
Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

|   |   |
|---|---|
| <b>Staff Use Only</b>   |   |
| Date Received: <u>12-3-19</u>   | Received by: <u></u> |
| Date Sent to Council: _____   |   |
| Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file | 194 of 218  |



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Applicant MUST reside in Richland County.

Name: PRENTISS McLAURIN
Home Address: 100 TRADITION CIRCLE COLUMBIA, S.C. 29229
Telephone: (home) 803-736-5633 (work)
Office Address: N/A
Email Address: PMELLAURIN001@sc.rr.com
Educational Background: BS, CHAFIN COLLEGE LIMESTONE COLLEGE
Professional Background: SUPERVISOR VETERAN SUPPORT DEPT OF WORK FORCE 26 YR AIR FORCE
Male [X] Female [ ] Age: 18-25 [ ] 26-50 [ ] Over 50 [ ]
Name of Committee in which interested: AIRPORT COMMISSION
Reason for interest: AIRFIELD MANAGER, AIT CONTROLLER, SUPERVISOR OF VETERAN & MANAGEMENT EXPERIENCE
Your characteristics/qualifications, which would be an asset to Committee, Board or Commission: I HAVE AIRFIELD EXPERIENCE, TALK TO FBO'S & WORK WITH COMMUNITIES ON AIRFIELD MANAGEMENT
Presently serve on any County Committee, Board or Commission? HAVE SERVED ON PLANNING COMMISSION
Any other information you wish to give? EXPERIENCE WITH PUBLIC & CIVILIAN CONTRACTORS
Recommended by Council Member(s): GWENDOLY KENNEDY
Hours willing to commit each month: 20 HR A WEEK

CONFLICT OF INTEREST POLICY

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No X \_\_\_\_\_

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No X \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Brian McLean  
Applicant's Signature

22 Sept 2020  
Date

**Return to:  
Clerk of Council, Post Office Box 192, Columbia, SC 29202.  
For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

|   |   |
|---|---|
| <b>Staff Use Only</b>   |   |
| Date Received: <u>9/24/20</u>                                       | Received by: <u>YHNO</u>  |
| Date Sent to Council: _____   |   |
| Status of Application: <input type="checkbox"/> Approved 196 of 218 | <input checked="" type="checkbox"/> Denied <input type="checkbox"/> On file |



+

**APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION**

**Applicant MUST reside in Richland County.**

Name: John D. Parrish \_\_\_\_\_

Home Address: 369 Bookman Mill Road Irmo, SC 29063 \_\_\_\_\_

Telephone: (home) 803.331.8245 \_\_\_\_\_ (work) 803.530.6243 \_\_\_\_\_

Office Address: UofSC Office of the President, Osborne Bldg. Columbia, SC 29208 \_\_\_\_\_

Email Address: JDP5@mailbox.sc.edu \_\_\_\_\_

Educational Background: Sumter High School \_\_\_\_\_

Professional Background: SC Highway Patrol, SC National Guard, Small Business Owner, Pilot \_\_\_\_\_

**Male** Female Age: 18-25 26-50 **Over 50**

Name of Committee in which interested: **Richland County Airport Commission** \_\_\_\_\_

Reason for interest: Have served on the Richland County Airport Commission for the past 4 years and my term expires 12.13.2020. I would like to be considered to exercise my second and final 4 year term on the Richland County Airport Commission when current term expires on 12.13.2020.

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:

Currently serve as Vice Chair Richland County Airport Commission and Chair of Operations and Facilities Committee.

Presently serve on any County Committee, Board or Commission? **Richland County Airport Commission** \_\_\_\_\_

Any other information you wish to give? Would like to continue service on the RCAC.

Recommended by Council Member(s): Councilwoman Allison Terracio

Hours willing to commit each month: Whatever needed.

**CONFLICT OF INTEREST POLICY**

It is the policy of Richland County to require disclosure of any personal or financial interest that may be influenced by decisions of the Committee, Board or Commission for which any citizen applies for membership.

Such conflict of interest does not preclude service but shall be disclosed before appointment. The Clerk of Council shall be notified of any change on an annual basis and members of all Committees, Boards or Commissions shall be required to abstain from voting or influencing through discussion or debate, or any other way, decisions of the Committee, Board or Commission affecting those personal and financial interests.

All statements so filed shall be signed and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge, it is true and complete.

Any person who willfully files a false or incomplete statement of disclosure or no change of condition, or who willfully fails to make any filing required by this article, shall be subject to such discipline, including censure and disqualification from the Committee, Board or Commission, by majority vote of the council.

*Have you been convicted or pled no contest of a crime other than minor traffic violations; checking yes does not automatically preclude you from consideration for appointment.*

Yes \_\_\_\_\_ No \_\_\_\_\_

#### STATEMENT OF FINANCIAL OR PERSONAL INTERESTS

Do you have any financial or personal interest in any business or corporation (profit or not-for-profit) that could be potentially affected by the actions of the Committee, Board or Commission?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

J.D. Parrish  
Applicant's Signature

9.03.2020  
Date

**Return to:**  
**Clerk of Council, Post Office Box 192, Columbia, SC 29202.**  
**For information, call 576-2060.**

**One form must be submitted for each Committee, Board or Commission on which you wish to serve.**

**Applications are current for one year.**

|   |                                 |
|---|---------------------------------|
| <b>Staff Use Only</b>   |                                 |
| Date Received: <u>9/3/20</u>  | Received by: <u>[Signature]</u> |
| Date Sent to Council: _____   |                                 |
| Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file |                                 |



**Agenda Briefing**

|                                    |   |                                   |                   |                            |                   |
|------------------------------------|---|-----------------------------------|-------------------|----------------------------|-------------------|
| <b>Prepared by:</b>                | Daniel M. Coble   |                                   | <b>Title:</b>     | Associate Chief Magistrate |                   |
| <b>Department:</b>                 | Central Court   | <b>Division:</b>                  |                   |                            |                   |
| <b>Date Prepared:</b>              | August 27, 2020   | <b>Meeting Date:</b>              | November 12, 2020 |                            |                   |
| <b>Legal Review</b>                |   |                                   |                   | <b>Date:</b>               |                   |
| <b>Budget Review</b>               | James Hayes via email   |                                   |                   | <b>Date:</b>               | November 10, 2020 |
| <b>Finance Review</b>              | Stacey Hamm via email   |                                   |                   | <b>Date:</b>               | November 10, 2020 |
| <b>Approved for consideration:</b> | Assistant County Administrator  | John M. Thompson, Ph.D., MBA, CPM |                   |                            |                   |
| <b>Committee</b>                   | Renaissance Ad Hoc  |                                   |                   |                            |                   |
| <b>Subject:</b>                    | Relocation of Dutch Fork Magistrate’s Office and RCSD Region 4 Office |                                   |                   |                            |                   |

**CHIEF MAGISTRATE’S RECOMMENDED ACTION:**

Determine if this action is a top priority; identify funding; and move forward with relocating the Dutch Fork Magistrate’s Office and RCSD Region 4 Office to 2956 Broad River Rd. (the Old Antiques Mall building). If this issue is determined to be critical, then it is recommended that this matter be presented to County Council for approval and authorization to move forward with the solicitation of demolishing the existing building and to start the design/build process.

Request for Council Reconsideration: Yes

**FIDUCIARY:**

|   |  |     |  |    |
|---|--|-----|--|----|
| Are funds allocated in the department’s current fiscal year budget? |  | Yes |  | No |
| If no, is a budget amendment necessary?                             |  | Yes |  | No |

An estimated \$6,900,000.00 (dependent on final design and scope of work.)

**ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:**

Per the Director of the Office of Budget and Grants Management, funding has been identified for magistrate needs in the County’s current debt funding to be received; however, Council will make the final decision on what projects will receive those funds

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

**REGULATORY COMPLIANCE:**

**MOTION OF ORIGIN:**

I move to direct staff, by way of the County Administrator, to continue in its development of a proposal for the beautification of the Ole Antique Mall site as an expansion of the Broad River Road Corridor Façade Grant Program. This beautification effort is intended to be an intermediary improvement until such a time that the highest and best use for the site is determined via community engagement as part of the Richland Renaissance initiative. Staff should also work in concert with Richland County Sheriff’s Department and the County Magistrate’s Office to provide a comprehensive proposal for Council consideration.

|                |                             |
|----------------|-----------------------------|
| Council Member | Joyce Dickerson, District 2 |
| Meeting        | Regular Session             |
| Date           | September 15, 2020          |

**STRATEGIC & GENERATIVE DISCUSSION:**

Chief Administrative Judge Tomothy C. Edmond of the Magistrate Courts has requested that the existing Richland County owned Dutch Fork Magistrate’s Office and RCSD Region 4 Office, both currently located at 1019 Beatty Rd., be relocated to a Richland County owned parcel located at 2956 Broad River Rd. The Beatty Road facility was purchased in 2005 and renovated at that time. In 2006, additional land next door was purchased for additional parking. In 2014, this additional lot was paved. The Beatty Road facility had \$800,000.00 identified in needed capital improvements (new roof and repaving of existing parking lot) in the FY19-FY2027 Operational Services CPI program. Additional funds would be required to address all the needs and ADA requirements within the facility.

This magistrate office has had years of problems with plumbing and other maintenance issues. These issues include:

1. Plumbing: the sewer drain clogs practically every week. They are working on the drain lines again next week. The County should have extensive documentation (and the related expenses) of the terrible condition of the sewer drains
2. Drainage (outside) at the front of the building: at least one of the drains for run-off water (rain) at the front of the building is not functional. When it rains water does not run off but stands in front of the building until it evaporates. Standing water is an issue.
3. Many ceiling tiles throughout the office are sagging. Some of them will fall soon if not repaired or replaced
4. Courtroom security has been a problem, and the facility does not have a working panic button.
5. The wooden “bridge” from the public parking lot to the sidewalk leading to our door is unsafe. There has been at least one lawsuit with this bridge when a litigant fell and injured themselves.
6. The employee parking lot is in bad shape. There are cracks and holes in the asphalt. In some spots, the weeds growing up through the pavement cracks are waist high right now. The holes



are a liability if someone gets injured. The public parking lot is in better condition than the lot behind the building but it could use a new layer of pavement or be repaved.

7. There is limited space in general and no more additional space for storing closed case files. The kitchen and judge's personal office are currently being used for overflow storage.
8. We have no clear handicap parking space in the public parking lot, which could be a violation of the ADA.
9. There are cracks in the wall throughout the building, and the carpet is worn throughout the building.
10. There are issues with clean running water in the kitchen, which the staff uses for their lunches and breaks.
11. Both bathrooms have large holes in the concrete floor. The clean-outs were covered in concrete and holes were dug to get to them.

Because the Magistrate Court is shared by the Richland County Sheriff's Department, the Sheriff's Department has also had maintenance issues that need to be addressed. These issues include:

- 1) Security fencing is in disrepair. There is no way to secure the perimeter of this specific property. Putting gates up on the present driveways will not keep people from having access to the front of the building.
- 2) Carpeting in the building needs to be replaced.
- 3) Constant moisture issues in the vault.
- 4) Insufficient space for number of personnel assigned to the facility.
- 5) Insufficient space to meet with community leaders.
- 6) Present garage space is not suitable for operational capacity of RCSD in relation to community need.
- 7) Numerous ceiling tile cracked or broken and several light covers will not stay on.
- 8) Parking lot is a liability. It needs to be graded and leveled. There is also a very deep culvert drain that is a safety hazard due to how deep it drops from the rest of the parking lot.
- 9) Cracks in different places along the walls and door frames.
- 10) Exterior of the building needs to be pressure-washed and new professional signage is needed.

The maintenance issues are a reoccurring cost to the County, yet they only seem to be a band aid. These issues have and will likely continue cause liability issues and lawsuits. By moving into a new

building, we can resolve many of these reoccurring costs and see a tangible benefit to our court staff and litigants.

The 2956 Broad River Rd. (the Old Antiques Mall building) property was purchased in 2018 for the amount of \$750,000.00 according to the County's GIS website. This site has a dilapidated building that would be razed, and a new facility would be erected, designed specifically to meet the needs of the two departments. It is estimated that the demolition of the old building will cost approximately \$375,000 (depending on the scope of work and the amount of hazardous materials required to be removed.)

The estimated project cost to build a new Magistrate Office and Sheriff substation based on the initial estimated construction cost and designed for the Hopkins site is \$6.48 million, assuming a 13,800-14,000 square foot facility-similar to the Beatty Road Facility. This would bring the project total estimated cost to around \$ 6.893 million dollars. For budgetary numbers, it is recommended that \$6.9 million dollars be identified and funded to start the project. If current designs are utilized as the basic design, the project is estimated to take about 24 months from initial approval to project completion and turn-over.

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

| Magistrate & Sheriff Estimated office budget for New Dutch Fork Facility |   |                 |  |
|--|---|-----------------|--|
| <b>6/11/2019</b>   |   |                 |  |
| <b>Site purchase</b>   |   |                 |  |
|  | Investigating reports/surveys/rezoning/will serve | \$              |  |
|  | Site purchase                                     | \$              |  |
|  | Closing cost                                      | \$              |  |
| <b>Site construction</b>   |   |                 |  |
|  | Demolition of old building                        | \$ 375,000.00   | (a \$40,000 allowance for ACM removal)   |
|  | Off-site utilities                                | \$ 150,000.00   | Estimated  |
|  | site work   | \$ 200,000.00   | Estimated  |
|  | building construction                             | \$ 4,671,357.83 | (for Magistrate construction + 6% inflation); (for Sheriff's + 8% inflation); + change orders to date; + (security/fire + 10% inflation/contingency)x2 for both sides; + (AV +10% inflation/contingency)+ signage allowance- based on a 14,000 sf facility |
|  | Furniture, Fixtures, and Equipment                | \$ 270,000.00   | Estimated  |
| <b>Soft cost</b>   |   |                 |  |
|  | A&E (10%)   | \$ 502,135.78   |  |
|  | Permits & fees (2%)                               | \$ 97,427.16    |  |
|  | Project contingency (10% of total cost)           | \$ 626,592.08   |  |
|  |   |                 |  |

**ATTACHMENTS:**

1. Correspondence from Richland County Sheriff and Richland County Chief Magistrate



*Richland County Sheriff's Department*



*Richland County Summary Court*

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November 10, 2020

Richland County Administrator Leonardo Brown  
Richland County Chairman Paul Livingston  
Renaissance Ad Hoc Committee Chairwoman Joyce Dickerson


RE: Old Antique Mall

There has been discussion about "beautifying" the old antique mall on Broad River Road in an effort to improve its aesthetic appeal. It is our opinion that any funds (federal, state or county) should not be spent in this manner. The funds should be spent towards demolishing the building that has degraded the quality of life in the surrounding community for years. The "improvements" that have been suggested will only encourage crime and continue to deteriorate the Broad River corridor.


We ask that all resources and efforts be exhausted to demolish the antique mall building and move forward with replacing the also deteriorating Dutch Fork Magistrate/Region 4 Offices on Beatty Road. A briefing document has been prepared, and is attached to this letter, in relation to the liability that the Beatty Road Office holds for the County and the negative impact it is having on County employees and the community as a whole.

Thank you for your consideration in this matter.

Sincerely,



Leon Lott  
Sheriff



Timothy Edmond  
Chief Admin Judge

LL:TE:swp

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5623 Two Notch Road, Columbia SC 29223  
(803) 576-3000  
www.rcsd.net

## Richland County Council Request for Action

**Subject:**

Alvin S. Glenn Detention Center - Detainee Telephone Service

**Notes:**

October 27, 2020 – The A&F Committee forwarded this item to Council with a recommendation to award the contract to GTL for detainee telephone services at the ASGDC, and to cap the amount at \$0.10/minute.



**Agenda Briefing**

**Prepared by:** Ronaldo D. Myers, Director  
**Department:** Alvin S. Glenn Detention Center  
**Date Updated:** November 05, 2020 **Meeting Date:** September 22, 2020

|                                    |                                |                                   |                    |
|------------------------------------|--------------------------------|-----------------------------------|--------------------|
| <b>Legal Review</b>                | Elizabeth McLean via email     | <b>Date:</b>                      | September 16, 2020 |
| <b>Budget Review</b>               | James Hayes via email          | <b>Date:</b>                      | September 15, 2020 |
| <b>Finance Review</b>              | Stacey Hamm via email          | <b>Date:</b>                      | September 16, 2020 |
| <b>Approved for Consideration:</b> | Assistant County Administrator | John M. Thompson, Ph.D., MBA, CPM |                    |
| <b>Committee</b>                   | Administration & Finance       |                                   |                    |
| <b>Subject:</b>                    | Detainee Telephone Service     |                                   |                    |

**Recommended Action:**

Staff recommends approval of the contract to GTL for the detainee telephone service at the Alvin S. Glenn Detention Center.

At its October 27, 2020 meeting, the Administration & Finance Committee moved to accept staff’s recommendation with the direction that rates are not to exceed \$.10 per minute. Should Council approve the committee’s recommendation, staff will negotiate with the vendor as directed.

**Motion Requested:**

1. Move to approve the contract for the detainee telephone service at the Alvin S. Glenn Detention Center; or,
2. Move to deny the contract for the detainee telephone service.

**Request for Council Reconsideration:** Yes

**Fiscal Impact:**

There is no financial impact to Richland County.

**Motion of Origin:**

There is no associated Council motion of origin.

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

## Discussion:

Since 1987, the detention center has privatized the detainee telephone services to provide better service to the detainees without a cost to Richland County.

In January 2020, Richland County Council solicited for a detainee telephone service for the Alvin S. Glenn Detention Center. The current phone contract is held by AmTel Communications. There were five perspective vendors that responded to RFP. (See attached score sheet). The RFP covered the following telephone communication services: GTL was the most responsive vendor. See the below information in reference to GTL.

---

### Inmate Telephone Systems

GTL's feature-rich Inmate Telephone System is a turnkey solution that comes complete with all hardware and software, including the telephone network, circuits, monitoring and recording system, call-control system, secure database, telephones, workstations, printers, and associated software.



### Visitation Management

The GTL VisitMe video visitation solution allows facilities to transition traditional in-person visitation service to a more secure on-premise or remote alternative. The VisitMe Scheduler can eliminate long queues in the visitation area by avoiding the chaos of having a high volume of concurrent visitors.



### Inmate Messaging

Message Link provides an electronic alternative to an otherwise inefficient and potentially tainted communication method. As contraband and cryptic messages are entering correctional facilities through an ever-rising level of creativity, Message Link provides a secure, controlled environment for inmate messaging.





## Handheld Devices

GTL's latest products for the corrections market consist of a series of personal wireless devices for offenders. We provide a restricted operating system that thwarts unauthorized attempts to modify a device's internal settings and prohibits users from installing unapproved applications

## Inmate Services

**DOCUMENTS, REQUESTS, GRIEVANCES, COMMISSARY** Paperless and customizable solutions save staff time, eliminate human error, and expedite processes.

**VIDEO VISITS, PHONE CALLS, AND MESSAGING** (including photo and video attachments) Communication options provide productive and innovative ways for inmates to stay connected with friends and family.

**EDUCATIONAL CONTENT** Educational videos, exercises, courses, and more help inmates transition into the next phase of their lives, secure employment, and break the cycle of reincarceration.

**JOB & LIFE SKILLS** The Learning Management System features content designed to help inmates prepare for work and relationships on the outside.

**MULTIMEDIA CONTENT** Games, music, movies, newsfeed, books, and more reduce stress and keep inmates engaged.

**LAW LIBRARY** Electronic law library provides access to research material while reducing inmate movement around the facility.

**EBOOKS** Tens of thousands of eBooks with titles covering fiction, religion, addiction, recovery, and more.

## The Inspire Tablet Difference

**AVAILABLE TO EVERY INMATE** Inspire offers both free and premium content for inmates on flexible payment models.

**DESIGNED FOR THE CORRECTIONS ENVIRONMENT** Inspire tablets have a multi-layered security architecture that allows for inmates to access locked-down content without navigating to tablet settings or the Internet.

**PROPRIETARY WIRELESS NETWORK** At the heart of the Inspire tablet's network security is GTL Gatekeeper – a full featured security access control software.

**ULTRA-SECURE, LOCKED-DOWN DEVICES** Inspire uses a highly-secure, customized Android operating system that has been modified to permanently remove features that could present potential security risks. Inmates have no access to core device settings other than volume, rotation, and brightness control.

**INDUCTIVE CHARGING** Inspire tablets offer multiple unique charging methods, including wireless charging, to ensure that they are always ready for use.

**AUTOMATES AND DIGITIZES FACILITY SYSTEMS** Inspire tablets help facilities go paperless and automate costly processes such as grievances, requests, and commissary ordering.

**Attachments:**

1. Procurement Consolidated Score Sheet
2. Agenda Briefing Addendum dated September 25,2020
3. Agenda Briefing Addendum dated November 12, 2020

| Consolidated Evaluations    |                |            |            |            |              |            |
|-----------------------------|----------------|------------|------------|------------|--------------|------------|
| Evaluation Criteria         | Maximum Points | AMTEL      | GTL        | SECURUS    | IC SOLUTIONS | EDOVO      |
| RC-280-P-2020               |                |            |            |            |              |            |
| Project Name                |                |            |            |            |              |            |
| Inmate Telephone Services   |                |            |            |            |              |            |
| <b>Company Profile</b>      | 30             |            |            |            |              |            |
| Evaluator 1                 |                | 30         | 25         | 30         | 28           | 27         |
| Evaluator 2                 |                | 27         | 25         | 26         | 26           | 22         |
| Evaluator 3                 |                | 29         | 25         | 30         | 28           | 30         |
|                             |                | <b>86</b>  | <b>75</b>  | <b>86</b>  | <b>82</b>    | <b>79</b>  |
| <b>System Proposed</b>      | 30             |            |            |            |              |            |
| Evaluator 1                 |                | 28         | 30         | 30         | 28           | 27         |
| Evaluator 2                 |                | 25         | 27         | 27         | 25           | 27         |
| Evaluator 3                 |                | 29         | 30         | 30         | 28           | 20         |
|                             |                | <b>82</b>  | <b>87</b>  | <b>87</b>  | <b>81</b>    | <b>74</b>  |
| <b>Support and Training</b> | 20             |            |            |            |              |            |
| Evaluator 1                 |                | 20         | 20         | 20         | 20           | 20         |
| Evaluator 2                 |                | 15         | 18         | 12         | 18           | 16         |
| Evaluator 3                 |                | 20         | 20         | 20         | 20           | 20         |
|                             |                | <b>55</b>  | <b>58</b>  | <b>52</b>  | <b>58</b>    | <b>56</b>  |
| <b>Commission</b>           | 20             |            |            |            |              |            |
| Evaluator 1                 |                | 10         | 20         | 13         | 15           | 5          |
| Evaluator 2                 |                | 10         | 20         | 13         | 15           | 5          |
| Evaluator 3                 |                | 10         | 20         | 13         | 15           | 5          |
|                             |                | <b>30</b>  | <b>60</b>  | <b>39</b>  | <b>45</b>    | <b>15</b>  |
|                             |                |            |            |            |              |            |
| <b>GRANDTOTAL</b>           | <b>0</b>       | <b>253</b> | <b>280</b> | <b>264</b> | <b>266</b>   | <b>224</b> |



**Agenda Briefing Addendum**

|                                    |  |                              |                    |
|------------------------------------|--|------------------------------|--------------------|
| <b>Prepared by:</b>                | Ronaldo D. Myers   | <b>Title:</b>                | Director           |
| <b>Department:</b>                 | Alvin S. Glenn Detention Center                                  | <b>Division:</b>             |                    |
| <b>Contributor:</b>                |  | <b>Title:</b>                |                    |
| <b>Contributor:</b>                |  | <b>Title:</b>                |                    |
| <b>Date Prepared:</b>              | September 25,2020  | <b>Meeting Date:</b>         | September 22, 2020 |
| <b>Approved for Consideration:</b> | Assistant County Administrator                                   | John Thompson, PhD, MBA, CPM |                    |
| <b>Committee:</b>                  | Administration & Finance   |                              |                    |
| <b>Agenda Item:</b>                | 4g. Alvin S. Glenn Detention Center - Detainee Telephone Service |                              |                    |

**COUNCIL INQUIRY #1:**

Inquiries were made as to the cost per detainee, rates charged by other similarly sized detention centers

*Reply:*

Please see the attached spreadsheet.

**COUNCIL INQUIRY#2:**

What is the revenue of the system?

*Reply:*

| Calendar Year | Revenue Generated |
|---------------|-------------------|
| 2019          | \$519,000         |
| 2018          | \$491,000         |
| 2017          | \$483,000         |

**COUNCIL INQUIRY #3:**

To where is the revenue directed?

*Reply:*

The revenue goes into the County’s general fund.

**COUNCIL INQUIRY #4:**

How is the revenue allocated?

*Reply:*

The funds are allocated according to Richland County's budget process. Those funds do not go directly back to the detention center.

**COUNCIL INQUIRY #5:**

Are indigent detainees also charged the rate?

*Reply:*

All detainees are charged the same rate. If a detainee is truly indigent, a supervisor can pull the detainee out of his/her unit so s/he may use a county phone.

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

The detention center has not negotiated with the vendor for the rates.

**ATTACHMENTS:**

1. Cost comparison sheet

Cost Per Call Comparison

09.25.20 Addendum - Attachment 1

| County     | Local  | Intralata | Interlata | International | Video Visitation |
|------------|--------|-----------|-----------|---------------|------------------|
| Aiken      | \$0.15 | \$0.21    | \$0.21    | \$0.25        | \$0.25           |
| Greenville | \$0.12 | \$0.21    | \$0.21    | \$0.60        | Not Offered      |
| Horry      | \$0.25 | not given | not given | not given     | \$0.20           |
| Lexington  | \$0.21 | \$0.21    | \$0.21    | \$1.00        | \$0.20           |
| Richland   | \$0.16 | \$0.44    | \$0.44    | \$0.50        | \$0.33           |
| York       | \$0.21 | not given | not given | not given     | Not Offered      |

Definitions

IntraLata      Calls within the state  
 InterLata      Calls from state to state



**Agenda Briefing Addendum**

|                                    |   |                                   |                   |
|------------------------------------|---|-----------------------------------|-------------------|
| <b>Prepared by:</b>                | Ronaldo D. Myers  | <b>Title:</b>                     | Director          |
| <b>Department:</b>                 | Alvin S. Glenn Detention Center                                   | <b>Division:</b>                  |                   |
| <b>Date Prepared:</b>              | November 12, 2020   | <b>Meeting Date:</b>              | November 10, 2020 |
| <b>Approved for Consideration:</b> | Assistant County Administrator                                    | John M. Thompson, Ph.D., MBA, CPM |                   |
| <b>Committee:</b>                  |   |                                   |                   |
| <b>Agenda Item:</b>                | 15a: Alvin S. Glenn Detention Center - Detainee Telephone Service |                                   |                   |

**COUNCIL INQUIRY #1:**

Staff was asked to enumerate the percentage of the current contracted rate of \$.16 which is received as commission by the County with the current vendor

*Reply:*

See Attachment 1.

**COUNCIL INQUIRY#2:**

Staff was asked to enumerate/estimate the potential percentage on the proposed rate of \$.10 per minute which will be received as commission by the County with the proposed vendor

*Reply:*

See Attachment 1.

**COUNCIL INQUIRY #3:**

Staff was asked to enumerate the cost of fees associated with the service which are received directly by the vendor

*Reply:*

See Attachment 1. Despite staff attempts, the current vendor and the proposed vendor have not provided information relative to the cost of service and equipment provision.

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

**ATTACHMENTS:**

1. Phone Revenue
2. FCC Consume Guidance: Telephone Service for Incarcerated Individuals

| Contract Terms | Annual Average # of Calls | Annual Average # of Total Call Minutes | Cost Per Minute | Total         | Commission Rate at 68.6% | Fees Directly to the Provider |
|----------------|---------------------------|--|-----------------|---------------|--------------------------|-------------------------------|
| Current        | 37,379                    | 3,752,268                              | \$ 0.16         | \$ 600,362.88 | \$ 411,848.94            | \$ 188,513.94                 |

| Contract Terms | Annual Average # of Calls | Annual Average # of Total Call Minutes | Cost Per Minute | Total         | Commission Rate at 92% | Fees Directly to the Provider |
|----------------|---------------------------|--|-----------------|---------------|------------------------|-------------------------------|
| Proposed       | 37,379                    | 3,752,268                              | \$ 0.15         | \$ 562,840.20 | \$ 517,812.98          | \$ 45,027.22                  |
| Alternative 1  | 37,379                    | 3,752,268                              | \$ 0.10         | \$ 375,226.80 | \$ 345,208.66          | \$ 30,018.14                  |
| Alternative 2  | 37,379                    | 3,752,268                              | \$ 0.05         | \$ 187,613.40 | \$ 172,604.33          | \$ 15,009.07                  |

Estimate of Total Detainee Days Incarcerated at ASGDC for 2020 249,930  
 (Average Daily Population (682) x 365 days)

Note: All fees must be included in the total contracted cost of the call excepted for the attached FCC sheet  
 Note: Presently, ASGDC does not have any information on the cost for at-home video visitation





# Consumer Guide

## Telephone Service for Incarcerated Individuals

As part of the FCC's efforts to ensure that rates for interstate and international phone calls are just and reasonable for all Americans, the agency is working to rein in the excessive rates and egregious fees on phone calls paid by some of society's most vulnerable people: families trying to stay in touch with loved ones serving time in jail or prison.

Telephone calling options for incarcerated individuals (also known as inmate telephone services and inmate calling services) are limited, as incarcerated persons typically cannot choose their calling provider. This lack of competition, combined with unrestricted rates, has often resulted in unreasonably high phone bills for incarcerated individuals and their families.

### Rate caps for interstate calls from prisons and jails

FCC rate caps apply only to interstate long-distance calls, but not to in-state long distance, local, or international calls. The current interim, interstate rate caps are 21 cents a minute for debit/prepaid calls and 25 cents a minute for collect calls.

On August 7, 2020, the FCC proposed to lower the rate caps for interstate calls and to establish new rate caps for international calling (<https://docs.fcc.gov/public/attachments/FCC-20-111A1.pdf>). The interim rate caps will remain in effect while the Commission considers public comment and acts on its proposals.

### Additional service charges

Providers are allowed to impose the additional service charges listed in the chart below in connection with interstate or international calling services for incarcerated individuals. As of November 23, 2020, consumers may have to pay higher or different additional service charges, if at the time the charges are imposed the calls to which they relate are clearly only in-state calls. (<https://docs.fcc.gov/public/attachments/FCC-20-111A1.pdf>).

| Permitted Additional Service Charges   | Monetary Cap Per Use / Instruction  |
|--|---|
| Applicable taxes and regulatory fees   | Provider may pass these charges through to consumers directly with no markup                                      |
| Automated payment fees   | \$3.00  |
| Single-call fees (i.e., fees for collect calls billed through third parties on a call-by-call basis)   | Provider may pass this charge through to consumers directly with no markup, plus the per-minute rate for the call |
| Live agent fee (i.e., phone payment or account set up with optional use of a live operator)  | \$5.95  |
| Paper bill/statement fees (no charge permitted for electronic bills/statements)  | \$2.00  |
| Prepaid account funding minimums and maximums  | Prohibit prepaid account funding minimums and prohibit prepaid account funding maximums under \$50                |
| Third-party financial transaction fees (e.g., MoneyGram, Western Union, credit card processing fees, and transfers from third party commissary accounts) | Provider may pass this charge through to end user directly, with no markup  |



## Calls involving the use of TTY

In addition, the Commission has acted to protect incarcerated people with hearing or speech disabilities by limiting charges for calls in which incarcerated individuals or those they call use TTY (text telephones). Per-minute rates for TTY-to-TTY calls are capped at 25 percent of the rates providers charge for other calls involving incarcerated individuals and providers are not permitted to collect any charge or fee for TTY-to-voice or voice-to-TTY calls.

## Other rules for interstate calling services for incarcerated individuals

No provider of calling services for incarcerated individuals may block a collect call solely because it lacks a prior billing relationship with the called party's telephone provider unless the provider also offers debit, pre-paid, or pre-paid collect calling options.

FCC rules require that, when an incarcerated person places a collect call, each service provider must identify itself to the person receiving the call before connecting the call. Each service provider must also disclose how the receiving party may obtain rate quotations before the call is connected.

Additionally, the service provider must permit the receiving party to terminate the telephone call at no charge before the call is connected.

## Filing a complaint

If you feel you or a family member has been overcharged by a provider of calling services for incarcerated individuals, you can file a complaint with the FCC.

- File a complaint online at [consumercomplaints.fcc.gov](https://consumercomplaints.fcc.gov)
- By phone: 1-888-CALL-FCC (1-888-225-5322); TTY: 1-888-TELL-FCC (1-888-835-5322); ASL 1-844-432-2275
- By mail (please include your name, address, contact information and as much detail about your complaint as possible):

Federal Communications Commission  
Consumer and Governmental Affairs Bureau  
Consumer Inquiries and Complaints Division  
45 L Street NE  
Washington, DC 20554

## Other resources

States may have their own rules governing in-state calling services for incarcerated individuals. To complain about violations of state rules, contact the state public utility commission in the state where the call took place. State public utility commission addresses may be found at [naruc.org/about-naruc/regulatory-commissions](https://naruc.org/about-naruc/regulatory-commissions) or in the government section of your local telephone directory.

## Alternate formats

To request this article in an alternate format - braille, large print, Word or text document or audio - write or call us at the address or phone number above, or send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov).

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