

RICHLAND COUNTY

REGULAR SESSION

AGENDA

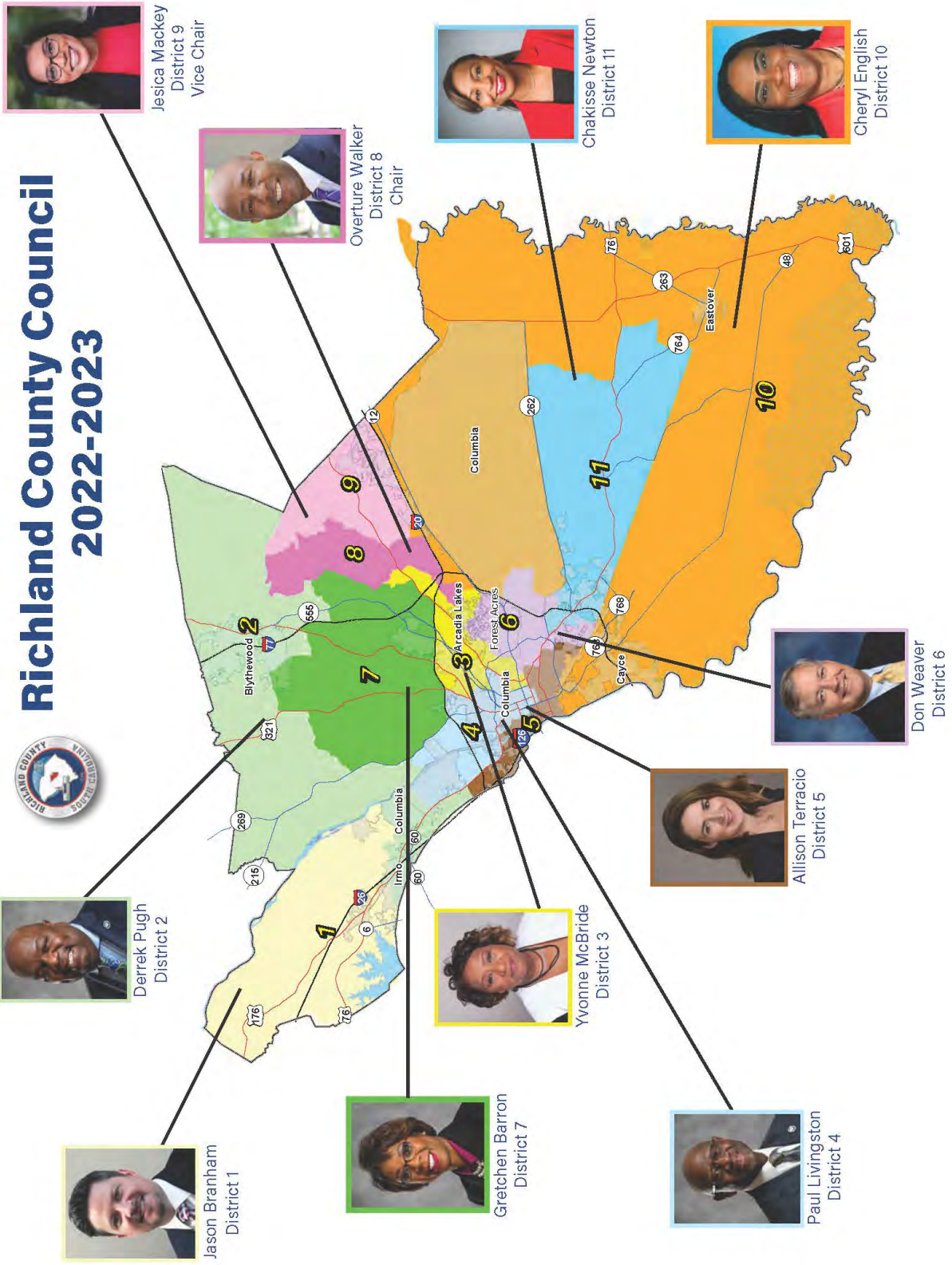


TUESDAY MARCH 07, 2023

6:00 PM

COUNCIL CHAMBERS

Richland County Council 2022-2023



Derrek Pugh
District 2

Jason Branham
District 1

Gretchen Barron
District 7

Yvonne McBride
District 3

Allison Terracio
District 5

Paul Livingston
District 4

Don Weaver
District 6

Overture Walker
District 8
Chair

Chakisse Newton
District 11

Cheryl English
District 10

Jessica Mackey
District 9
Vice Chair



**Richland County
Regular Session**

AGENDA

March 07, 2023 06:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

1. **CALL TO ORDER** The Honorable Overture Walker,
Chair Richland County Council
 - a. ROLL CALL
2. **INVOCATION** The Honorable Jesica Mackey
3. **PLEDGE OF ALLEGIANCE** The Honorable Jesica Mackey
4. **PRESENTATION OF PROCLAMATIONS**
 - a. A Proclamation Recognizing James Dale Truitt's Retirement The Honorable Yvonne McBride
 - b. A Proclamation recognizing Foodshare South Carolina and declaring March as National Nutrition Month The Honorable Yvonne McBride
The Honorable Paul Livingston
The Honorable Jason Branham
The Honorable Chakisse Newton
The Honorable Cheryl English
5. **PRESENTATION OF RESOLUTION**
 - a. A Resolution recognizing T. Dwight Hanna's Retirement The Honorable Jesica Mackey
6. **APPROVAL OF MINUTES** The Honorable Overture Walker
 - a. Special Called: February 14, 2023 [PAGES 8-12]
 - b. Zoning Public Hearing: February 28, 2023 [PAGES 13-16]
7. **ADOPTION OF AGENDA** The Honorable Overture Walker
8. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS [Pursuant to SC Code 30-4-70]** Patrick Wright,
County Attorney

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

9. **CITIZEN'S INPUT** The Honorable Overture Walker
- a. For Items on the Agenda Not Requiring a Public Hearing
10. **CITIZEN'S INPUT** The Honorable Overture Walker
- a. Must Pertain to Richland County Matters Not on the Agenda
(Items for which a public hearing is required or a public hearing
has been scheduled cannot be addressed at this time.)
11. **REPORT OF THE COUNTY ADMINISTRATOR** Leonardo Brown,
County Administrator
- a. Updates for Consideration
12. **REPORT OF THE CLERK OF COUNCIL** Anette Kirylo,
Clerk of Council
13. **REPORT OF THE CHAIR** The Honorable Overture Walker
14. **OPEN / CLOSE PUBLIC HEARINGS** The Honorable Overture Walker
- a. An Ordinance establishing the offense of using, discharging,
shooting, or igniting fireworks or similar explosives within
unincorporated Richland County between certain hours, to
provide exceptions, and to provide a penalty for each violation
15. **APPROVAL OF CONSENT ITEMS** The Honorable Overture Walker
- a. Case #22-038MA
Drew Huddleston
RU to GC (2.72 Acres)
W/S Hard Scrabble Road
TMS# R20300-04-17 [SECOND READING] [PAGES 17-18]
- b. Case # 22-039MA
Richland County
M-1 to HI (574.57 Acres)
Bluff Road and Longwood Road
TMS# R18900-02-22, R16100-02-03, R16200-03-02,
R16100-02-22, R18900-01-01, and R16100-02-07
[SECOND READING] [PAGES 19-20]
- c. Court Administration - Intergovernmental Agreement -Town of
Arcadia Lakes - Municipal Judge [PAGES 21-28]

- d. Treasurer's Office - Disbursement of Forestry Funds
[PAGES 29-34]
- e. Department of Public Works - Jim Hamilton–LB Owens
Airport - Use of Landside Airport Property [PAGES 35-37]
- f. Operational Services - Hampton Street - Elevator
Modernization [PAGES 38-49]
- g. Operational Services - Selective Demolition of Dillard's
[PAGES 50-54]

16. THIRD READING ITEMS

The Honorable Overture Walker

- a. An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within unincorporated Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation [PAGES 55-58]
- b. Authorizing the purchase of an existing mitigation bank to secure mitigation credits to support economic development projects; and other matters related thereto [PAGES 59-100]

17. SECOND READING ITEMS

The Honorable Overture Walker

- a. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Subtext; and other related matters [PAGES 101-123]

18. REPORT OF ECONOMIC DEVELOPMENT COMMITTEE

The Honorable Paul Livingston

- a. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company known to the county as Project Wichita; and other related matters [FIRST READING] [PAGES 124-147]
- b. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company currently identified as

Project Siquino; and other related matters [FIRST READING] [PAGES 148-171]

- c. Committing to negotiate a fee-in-lieu of ad valorem taxes and incentive agreement between Richland County and Project Charlie Echo; identifying the project; and other matters related thereto [PAGES 172-173]
- d. 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 Charlie Echo to provide for payment of a fee-in-lieu of taxes; authorizing certain special source credits; and other related matters [FIRST READING] [PAGES 174-207]

19. OTHER ITEMS

The Honorable Overture Walker

- a. A Resolution to appoint and commission Rayvoughn Demaris Ray as a Code Enforcement Officer for the proper security, general welfare, and convenience of Richland County [PAGE 208]
- b. FY23 - District 5 Hospitality Tax Allocations:
 - 1. Trustus Theatre - \$10,000 [PAGES 209-210]
- c. FY23 - District 7 Hospitality Tax Allocations:
 - 1. Homeless No More - \$1,000 [PAGES 211-212]

20. EXECUTIVE SESSION

Patrick Wright,
County Attorney

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

21. MOTION PERIOD

22. ADJOURNMENT

The Honorable Overture Walker



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



Richland County Council
SPECIAL CALLED
MINUTES
February 14, 2023 – 6:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Overture Walker, Chair; Jessica Mackey, Vice-Chair; Derrek Pugh, Jason Branham, Yvonne McBride, Paul Livingston, Don Weaver, Gretchen Barron, Cheryl English, and Chakisse Newton

NOT PRESENT: Allison Terracio

OTHERS PRESENT: Michelle Onley, Michael Byrd, Angela Weathersby, Dale Welch, Michael Maloney, Patrick Wright, Leonardo Brown, Anette Kirylo, Sandra Haynes, Tamar Black, Susan O’Cain, Jeff Ruble, Abhijit Deshpande, Crayman Harvey, Stacey Hamm, Chelsea Bennett, Casey White, Jennifer Wladischkin, Dan Kim, John Thompson, Geo Price, and Lori Thomas.

1. **CALL TO ORDER** – Chairman Overture Walker called the meeting to order at approximately 6:00 PM.
Mr. Walker noted, for the record, Ms. Terracio will not be in attendance due to traveling out of the country.
2. **INVOCATION** – The Invocation was led by Pastor Warren Bolton, Mt. Zion Baptist Church.
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by the Honorable Overture Walker.
4. **APPROVAL OF MINUTES**
 - a. **Regular Session: February 7, 2023** – Mr. Livingston moved to adopt the minutes as distributed, seconded by Ms. Barron.
In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton
Not Present: Terracio
The vote in favor was unanimous.
5. **ADOPTION OF AGENDA** – Mr. Patrick Wright, County Attorney, noted there were two items that qualified for Executive Session: 1741 Cushman Road – Potential Sale of Property and Item 15(a) – “An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation”.
Mr. Pugh moved to adopt the agenda as amended, seconded by Ms. Newton.
In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton
Not Present: Terracio
The vote in favor was unanimous.
6. **PRESENTATION OF PROCLAMATION AND RESOLUTIONS**
 - a. **A Proclamation recognizing the 30th Anniversary of Richland Main Library** – Ms. Newton presented the Richland Library a proclamation in honor of the 30th Anniversary of Richland Main Library. Ms. English requested to have her name added to the proclamation.

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February 14, 2023

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b. A Resolution recognizing the Red Cross and declaring January as National Blood Donor Month

Mr. Livingston moved to adopt the resolution recognizing the Red Cross and declaring January as National Blood Donor Month, seconded by Mr. Weaver.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

Ms. Chelsea Bennett, Deputy Director – Communications, read the resolution into the record on behalf of County Council.

c. A Resolution recognizing Wholespire and declaring February as American Heart Month – Ms. Chelsea Bennett, Deputy Director – Communications, read the resolution into the record on behalf of Council.

Ms. Barron moved to adopt the resolution recognizing Wholespire and declaring February as American Heart Month, seconded by Ms. Newton.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

POINT OF PERSONAL PRIVILEGE – Ms. Barron invited everyone to participate via Zoom or YouTube for the “Go Red for Women” Lunch and Learn on February 15th at Noon.

7. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION (Pursuant to SC Code 30-4-70)** – Mr. Patrick Wright, County Attorney, noted the following items qualified for Executive Session:

a. 1741 Cushman Drive – Legal Advice

b. “An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation – Legal Advice

8. **CITIZENS’ INPUT**

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

9. **CITIZENS’ INPUT**

a. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time.) – No one signed up to speak.

10. **REPORT OF THE COUNTY ADMINISTRATOR**

a. Updates for Consideration – Mr. Leonardo Brown, County Administrator, noted the following Town Hall Meetings:

- Districts 2 and 9 Proposed Re-Zoning: February 21, 2023 – 6 PM, Killian Park, 1424 Marthan Road
- District 7 Proposed Re-Zoning: March 6, 2023 – 6 PM, Adult Activity Center, 7494 Parklane Road

Mr. Brown noted the County will be supporting the American Heart Association by participating in the Midlands Heart Walk at Segra Park on March 25th. He challenged the Chair and Vice Chair to help sign up individuals to participate in the walk and other activities to encourage heart health.

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

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

POINT OF PERSONAL PRIVILEGE – Mr. Walker noted that Ms. McBride was presented with the Richard Allen Award at Allen University’s 17th Annual ‘A Mind Is’ UNCF Scholarship Gala.

13. **OPEN/CLOSE PUBLIC HEARINGS**

a. Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the project; the increase of the phase termination date, and an update to the fee payment schedule and amount and other related matters – No one signed up to speak.

14. **THIRD READING ITEM**

a. Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the projects; the increase of the phase

**Regular Session
February 14, 2023**

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termination date, and an update to the fee payment schedule and amount and other related matters – Mr. Livingston moved to approve this item, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

15. **SECOND READING ITEM**

- a. An ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation – Mr. Walker moved to include the following language: “It is unlawful to intentionally dump, throw, drop, deposit, or discard fireworks onto the land of another unless granted permission by the legal owner.” This language will be inserted at (c)(3) with subsequent being renumbered. In addition, to amend the language of (f) as follows: “2nd and 3rd offense violations are for convictions occurring within a period of five (5) years of a previous conviction.” Mr. Pugh seconded the motion.

In Favor: Branham, Pugh, McBride, Livingston, Barron, Walker, English, and Newton

Opposed: Weaver and Mackey

Not Present: Terracio

The vote was in favor.

- 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 Connect to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; authorizing the execution and delivery of a project development agreement or memorandum of understanding by Richland County, South Carolina; and other related matters – Mr. Livingston moved to approve this item, seconded by Mr. Weaver.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

16. **REPORT OF ECONOMIC DEVELOPMENT COMMITTEE**

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

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, English, and Newton

Recuse: Mackey (Due to her parent company representing the business)

Not Present: Terracio

The vote in favor was unanimous.

REPORT OF THE TRANSPORTATION AD HOC COMMITTEE

17.

- a. Blythewood Road Widening Award of Construction – Mr. Walker stated the committee recommended approval of staff's recommendation to award the construction contract to the lowest responsive, responsible bidder, Cherokee, Inc., in the amount of \$10,061,778.01, with a 10% contingency in the amount of \$1,006,177.80 to cover costs related to unforeseen conditions, for a total to be managed by staff of \$11,067,955.81.

Ms. Newton noted the briefing document mentioned the costs were greater than the previous estimate. She inquired where the difference in costs come from.

Mr. Walker responded the difference will come from the unused funds the original Blythewood Improvement, which was de-scoped.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

Ms. Mackey moved to reconsider this item, seconded by Ms. Barron.

Opposed: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The motion for reconsideration failed.

19. **OTHER ITEMS**

- a. FY23 – District 9 Hospitality Tax Allocations (Richland County Recreation Commission - \$3,000) – Mr. Pugh moved to approve this item, seconded by Ms. Mackey.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

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

Opposed: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The motion for reconsideration failed.

19. **EXECUTIVE SESSION**

- a. 1741 Cushman Road – Potential Sale of Property

- b. “An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation

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

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

***Council went into Executive Session at approximately 6:42 PM
and came out at approximately 7:28 PM***

Mr. Pugh moved to come out of Executive Session, seconded by Ms. McBride.

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

Chairman Walker stated no actions were taken during the excuse session.

20. **MOTION PERIOD** – No motions were received.

21. **ADJOURNMENT** – Ms. Barron moved to adjourn the meeting, seconded by Ms. Newton

In Favor: Branham, Pugh, McBride, Livingston, Weaver, Barron, Walker, Mackey, English, and Newton

Not Present: Terracio

The vote in favor was unanimous.

The meeting adjourned at approximately 7:32 PM.



Richland County Council

STATEMENT OF RECUSAL

In accordance with Section 8-13-700(B) [provides in part that no public official, public member or public employee may make, participate in making, or in any way attempt to use their official office, membership or employment to influence a governmental decision in which they, a member of their immediate family, an individual with whom they are associated, or a business with which they are associated has an economic interest.], I hereby recuse myself from all votes, deliberations and other action on the following matter(s):

(Please add agenda item number and description):

11ea - Delivery of a public infrastructure credit agreement to provide..... Project Subtext

REASONS FOR DISQUALIFICATION:

My parent company represents the business making the request

Jessica Mackey / Jessica Mackey

Print and sign your name

2/14/23

Date

Anette A. King

Print and sign your name

2/14/23

Date received by Clerk Dept.



Richland County Council
Zoning Public Hearing
MINUTES
February 28, 2023 – 7:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Jason Branham, Derrek Pugh, Yvonne McBride, Paul Livingston, Allison Terracio, Don Weaver, Gretchen Barron, Overture Walker, and Cheryl English

NOT PRESENT: Jesica Mackey and Chakisse Newton

OTHERS PRESENT: Geo Price, Angela Weathersby, Kyle Holsclaw, Anette Kirylo, Michelle Onley, Tamar Black, Tina Davis-Gooden, Andrea Hannah-Dennis, Leonardo Brown, Dan Kim, Dale Welch, Bryant Davis, Aric Jensen, Elizabeth McLean, Tommy DeLage, Chelsea Bennett, and Ty Davenport

1. **CALL TO ORDER** – Chairman Overture Walker called the meeting to order at approximately 7:00 PM.

Mr. Walker noted that Ms. Mackey had a family emergency, and Ms. Newton was traveling for business.

2. **ADDITIONS/DELETIONS TO THE AGENDA**- There were no additions/deletions to the agenda.
3. **ADOPTION OF AGENDA** – Ms. McBride moved to adopt the agenda as published, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor was unanimous.

4. **OPEN PUBLIC HEARING**

- a. **MAP AMENDMENTS [ACTION]**

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

Ms. English moved to defer this item until the March Zoning Public Hearing, seconded by Mr. Weaver.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor of deferral was unanimous.

2. Case # 22-036MA
Anthony & Danyelle Timmons
RM-HD to RC (3.00 Acres)
8350 Old Percival Road
TMS# R19814-03-01

Zoning Public Hearing
February 28, 2023

Ms. English moved to defer this item until the March Zoning Public Hearing, seconded by Mr. Weaver.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, O. Walker, and English

Not Present: Mackey and Newton.

The vote in favor of deferral was unanimous.

3. Case #22-038MA
Drew Huddleston
RU to GC (2.72 Acres)
W/S Hard Scrabble Road
TMS# R20300-04-17

Mr. Walker opened the floor to the public hearing.

Mr. John Davidson, Nexsen Pruet, PO Box 2426, Columbia, SC 29202

The floor to the public hearing was closed.

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

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor was unanimous.

4. Case # 22-039MA
Richland County
M-1 to HI (574.57 Acres)
Bluff Road and Longwood Road
TMS# R18900-02-22, R16100-02-03, R16200-03-02, R16100-02-22, R18900-01-01, and R16100-02-07

Mr. Walker opened the floor to the public hearing.

1. Ms. Penny Evans, 8400 Little John Drive, Columbia, SC 29209

The floor to the public hearing was closed.

Ms. English moved to approve this item, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor was unanimous.

5. Case # 22-040MA
Mark Meadows
RU to GC (1.00 Acres)
311 Killian Road
TMS# R14781-04-10

Mr. Walker opened the floor to the public hearing.

No one signed up to speak.

The floor to the public hearing was closed.

Ms. Barron noted, as has been her custom when there are rezoning requests in District 7, it is crucial the constituents have an opportunity to speak with the applicants and developers. She will host a town hall meeting for Cases 22-040MA, 22-042MA, and 23-001MA on Monday, March 6th, at 6:00 PM at the Parklane Adult Activity Center.

Ms. Barron moved to defer this item until the March Zoning Public Hearing, seconded by Mr. Weaver.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor of deferral was unanimous.

6. Case # 22-042MA
Samantha Kozlowski
RS-MD to OI (4 Acres)
2630 Clemson Road
TMS# R20200-01-39

Mr. Walker opened the floor to the public hearing.

No one signed up to speak.

The floor to the public hearing was closed.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor of deferral was unanimous.

7. Case # 22-043MA
Sergey Pikalov
GC to LI (5 Acres)
6505 N. Main Street
TMS# R11716-01-04

Mr. Walker opened the floor to the public hearing.

1. Mr. Sergey Pikalov
2. Ms. Gwendolyn Singletary
3. Mr. J. T. McLawhorn
4. Mr. Jimmy Wright
5. Mr. David Lewis, 816 Cokesbury Drive, Columbia, SC 29203

The floor to the public hearing was closed.

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

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote to deny the rezoning request was unanimous.

8. Case # 23-001MA
Heather Bounds
M-1 to RS-HD (77.78 Acres)
N/A Hard Scrabble Road
TMS# R17301-02-01

Mr. Walker opened the floor to the public hearing.

No one signed up to speak.

The floor to the public hearing was closed.

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

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor of deferral was unanimous.

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

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, and English

Not Present: Mackey and Newton

The vote in favor was unanimous.

The meeting adjourned at approximately 7:31 PM.

Richland County Council Request for Action

Subject:

Case #22-038MA
Drew Huddleston
RU to GC (2.72 Acres)
W/S Hard Scrabble Road
TMS# R20300-04-17

Notes:

First Reading: February 28, 2023
Second Reading: March 7, 2023 {Tentative}
Third Reading: March 21, 2023 {Tentative}
Public Hearing: February 28, 2023

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. ____-23HR

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 # 20300-04-17 FROM RURAL DISTRICT (RU) TO GENERAL COMMERCIAL DISTRICT (GC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # 20300-04-17 from Rural District (RU) to General Commercial District (GC).

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

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

Section IV. Effective Date. This ordinance shall be effective from and after _____, 2023.

RICHLAND COUNTY COUNCIL

By: _____
Overture Walker, Chair

Attest this _____ day of
_____, 2023

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: February 28, 2023
First Reading: February 28, 2023
Second Reading: March 7, 2023
Third Reading: March 21, 2023

Richland County Council Request for Action

Subject:

Case # 22-039MA
Richland County
M-1 to HI (574.57 Acres)
Bluff Road and Longwood Road
TMS# R18900-02-22, R16100-02-03, R16200-03-02, R16100-02-22, R18900-01-01, and
R16100-02-07

Notes:

First Reading: February 28, 2023
Second Reading: March 7, 2023 {Tentative}
Third Reading: March 21, 2023 {Tentative}
Public Hearing: February 28, 2023

STATE OF SOUTH CAROLINA
COUNTY COUNCIL OF RICHLAND COUNTY
ORDINANCE NO. ____-23HR

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 # R18900-02-22, R16100-02-03, R16200-03-02, R16100-02-22, R18900-01-01, AND R16100-02-07 FROM LIGHT INDUSTRIAL DISTRICT (M-1) TO HEAVY INDUSTRIAL DISTRICT (HI); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R18900-02-22, R16100-02-03, R16200-03-02, R16100-02-22, R18900-01-01, and R16100-02-07 from Light Industrial District (M-1) to Heavy Industrial District (HI).

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

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

Section IV. Effective Date. This ordinance shall be effective from and after _____, 2023.

RICHLAND COUNTY COUNCIL

By: _____
Overture Walker, Chair

Attest this _____ day of _____, 2023

Anette A. Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

Public Hearing: February 28, 2023
First Reading: February 28, 2023
Second Reading: March 7, 2023
Third Reading: March 21, 2023

Richland County Council Request for Action

Subject:

Court Administration - Intergovernmental Agreement - Town of Arcadia Lakes -
Municipal Judge

Notes:

February 28, 2023 – The A&F Committee recommended approval of the Intergovernmental Agreement (IGA) with the Town of Arcadia Lakes for a municipal judge position.

**RICHLAND COUNTY
ADMINISTRATION**

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



Agenda Briefing

Prepared by:	Sandra Sutton	Title:	Chief Magistrate
Department:	Court Administration	Division:	
Date Prepared:	November 1, 2022	Meeting Date:	February 28, 2023
Legal Review	Elizabeth McLean via email	Date:	January 25, 2023
Budget Review	Abhijit Deshpande via email	Date:	December 8, 2022
Finance Review	Stacey Hamm via email	Date:	December 8, 2022
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Administration & Finance		
Subject	Intergovernmental Agreement - Municipal - Town of Arcadia Lakes		

RECOMMENDED/REQUESTED ACTION:

Chief Magistrate Sutton respectfully requests the approval of the Intergovernmental Agreement (IGA) with the Town of Arcadia Lakes for a municipal judge position.

Request for Council Reconsideration: Yes

FIDUCIARY:

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

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

There is no fiscal impact to the County. Per the IGA, the municipalities shall pay compensation for its respective municipal judge, including, but not limited to FICA and state retirement.

Applicable department/grant key and object codes: N/A

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Not applicable.

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

There are no comments.

REGULATORY COMPLIANCE:

Sections 4-9-40 and 14-25-25 of the South Carolina Code of Laws 1976, as amended

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

This intergovernmental agreement is made by and between Richland County and the Town of Arcadia Lakes to assign an existing magistrate of the County in good standing to serve as a Town Municipal judge for the municipality. Richland County and the municipality political subdivision are authorized to enter into this agreement by virtue of the provisions of Sections 4-9-40 and 14-25-25 of the South Carolina Code of Laws 1976, as amended, and as further authorized by Order(s) of the South Carolina Supreme Court in existence preceding this agreement.

The Chief Magistrate Judge Sandra A. Sutton has approved the selection of the Honorable Phillip Newsome to serve as the Town Municipal Court Judge for the Town of Arcadia Lakes for a term of four years. The Judge will perform all functions and provide such services to the Town of Arcadia Lakes customarily rendered or provided for the municipal judges within the ordinances. The Judge will provide services such as conducting bench and jury trials, issuing warrants, cease and desist orders, setting bonds, setting fines and penalties for violations of ordinances under due process of the law. The provision of these services shall be in a time and manner so as to not interfere with Judge Newsom's regular duties with Richland County as a magistrate judge.

The Town of Arcadia Lakes shall provide compensation for services rendered on their behalf. The Town of Arcadia Lakes will pay Richland County one hundred dollars (\$100) per month plus the employer's share of FICA, state retirement, and any sums customarily paid by the employer.

The Town of Arcadia Lakes will be responsible for defending any claims, demands, and/or actions brought against the Town of Arcadia Lakes that may arise as result of any acts and/or omissions on the part of The Honorable Phillip Newsome during the course of providing such judicial services to the Town of Arcadia Lakes.

This is a standard agreement that is used by many municipal political subdivisions of Richland County. Failure to commit to such an agreement will cause undue financial hardship in the smaller municipalities to hire a full-time or part-time municipal judge to serve as a municipal judge.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INITIATIVE:

Goal 1: Foster Good Governance; Objective 1.5: Collaborate with other governments

ATTACHMENTS:

1. Draft Intergovernmental Agreement

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

**INTERGOVERNMENTAL
AGREEMENT
(Municipal Judge)**

This Agreement made and entered into by and between the County of Richland, a political subdivision of the State of South Carolina, hereinafter referred to as “County”, and the Town of Arcadia Lakes, a municipality political subdivision of the State of South Carolina, hereinafter referred to as “Town”:

WHEREAS, in accordance with the laws of the State of South Carolina, the Town is desirous of providing under its existing adopted ordinances, and Appointed Judge being a qualified magistrate, in good standing, and serving presently within the magisterial system for the County; and

WHEREAS, the town shall appoint such magistrate to serve as its municipal judge for such term (s) as agreed to herein below, and for such compensation as set by Town, and agreed to by County and further consented to by the appointed municipal judge; and

WHEREAS, the County is willing to permit the Honorable Phillip Newsom, a magistrate of the County in good standing, hereinafter referred to as “ Judge Newsom” to serve as the Municipal Court Judge for the Town; and

WHEREAS, The County and Town are authorized to enter into this Agreement by virtue of the provisions of Sections 4-9-40 and 14-25-25 of the South Carolina Code of Laws 1976, as amended, and as further authorized by Order(s) of the South Carolina Supreme Court in existence preceding this agreement.

NOW THEREFORE, it is mutually agreed by and between the Town and County, with consent of Judge Sandra A. Sutton and Judge Newsom, as follows:

1. Judge Newsom shall serve as the Municipal Court Judge for the Town of Arcadia Lakes, South Carolina for a term of four years within the conditions of this agreement.

2. Judge Newsom shall perform all functions and provide such services to the Town as have been customarily rendered or provided for by Municipal Judges within the ordinances of Town, consisting of, but not limited to conducting bench and jury trials, issuing warrants, cease and desist orders, setting bonds, setting fines and penalties for violations of ordinances under due process, and such other duties and functions as shall be agreed upon by the parties and the Town provided for by law. The provision of such services shall be in a time and manner so as not to interfere with Judge Newsom's regular duties with Richland County as a magistrate.
3. While performing the functions and duties of the Municipal Judge, Judge Newsom shall be totally responsible and dedicated to the benefit and objectives of the judicial system of the Town, without interference from or influence by the County, its employees, or its Council. Judge Newsom when acting for and on behalf of the Town's judicial system shall under this intergovernmental agreement be authorized on behalf of Town, to hold Court and related Courtroom functions in such location as at time is assigned to him for holding Court as a magistrate for the County.
4. In order to compensate the County for the services of Judge Newsom for serving as Town Municipal Judge, the Town shall pay the County the sum of One Hundred (\$100.00) Dollars per month, plus the employer's share of FICA, State Retirement, and any other sums customarily paid by an employer, (calculated on the monthly prorated amount paid), said sum being due on or before the last day of each month that said judicial services are rendered to Town. Said sum shall constitute the compensation to Judge Newsom for services as Municipal Judge hereunder for retainer and availability under this intergovernmental agreement.

Notwithstanding the foregoing, in the event Judge Newsom, on behalf of the Town solely under its judicial system, is called upon to render services by holding court or hearings for specific matters relating to the Town ordinances, then in such event the Town and Judge Newsom may agree upon additional compensation for such services, not to exceed the sum equivalent to that amount paid by the County for such time expended in a like such

case or matter to be calculated and based upon the hourly salary at such time otherwise owing to Judge Newsom by the County for like services. Any monies paid by Town shall include employer's share of FICA, State Retirement, and any other sums customarily paid by an employer, calculated on the monthly prorated amount paid.

5. All compensation for Judge Newsom's services as a Town Municipal Judge, including but not limited to FICA and state retirement, shall be paid by the Town according to paragraph 4, above to the extent such compensation is earned for services provided for herein. The sums paid to the County for the services of Judge Newsom, less the deductions set forth herein, shall be duly paid over to Judge Newsom. In the event that Judge Newsom's services as Town Municipal Judge terminate for any reason, this Agreement shall automatically terminate, the compensation paid by the Town to the County pursuant to this Agreement shall cease, and no further payments pursuant to this Agreement shall be made to Judge Newsom.

It is further understood and agreed by the parties and Judge Newsom, is evidenced by his signature below, that for the purposes of determining Judge Newsom's salary under S. C. Code Section 22-8-40(i) only, no monies paid pursuant to the Agreement shall constitute Judge Newsom's salary from Richland County, but shall be considered merely as a pass through payment from the Town for services rendered as a Town Municipal Judge pursuant this Agreement. As such, cessation of payments pursuant to this Agreement shall not constitute a reduction of salary under S. C. Code Section 22-8-40(i) and the County shall not be required to pay Judge Newsom any monies to compensate for the loss of monies associated with cessation of his services as a Town Municipal Judge under this Agreement.

6. This agreement may be terminated by the Town, the County or Judge Newsom by giving all other parties thirty (30) days written notice of termination, excepting of course if Judge Newsom ceases to be a magistrate, or the immediate termination for breach of contract, either of which would not require notice but constitute termination.

7. This Agreement may be amended, modified or changed only by written agreement of the Council of Richland County and Council of Town of Arcadia Lakes; except that, the Town reserves the right to alter or change, from time to time, the compensation rendered to Judge Newsom for his services to the Town without further approval of the County or according to the terms hereof. Any such change in compensation shall be reported within thirty (30) days to the County by the Town.
8. The Town shall be responsible for defending any and all claim(s), demands, and/or actions brought against the Town and/or Judge Newsom arising out of or from any act(s) and/or omissions(s) on the part of Judge Newsom during the course of providing such judicial services to the Town according to authorities of law.
9. The assignment of Judge Newsom as the Municipal Judge for the Town shall be made by the Chief Summary Court Judge (“Chief Magistrate”) for Richland County, S. C. in accordance with the terms of this Agreement. Additionally, the Town shall comply with the requirements of S. C. Code Ann. Section 14-25-15 2004), and in particular (i) shall pursuant to subsection (A) appoint and qualified”; and (ii) shall pursuant to subsection (B) “notify South Carolina Court Administration of” the appointment of Judge Newsom as Municipal Judge for Town of Arcadia Lakes, South Carolina.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF WE THE UNDERSIGNED have this ____ day of June 2020 set out hands(s) and seal(s) hereon.

RICHLAND COUNTY

WITNESSES

By: Overture Walker
Its: Richland County Council Chair

TOWN OF ARCADIA LAKES

By: Mark W. Huguley
Its: Mayor

AND I DO SO CONSENT AND AGREE

Phillip Newsom
As Richland County Magistrate
And Individually

Richland County Council Request for Action

Subject:

Treasurer's Office - Disbursement of Forestry Funds

Notes:

February 28, 2023 – The A&F Committee recommended approval of the resolution to distribute \$33,575.26 in Federal Forestry Funds. The allocation of said funds would be as follows:

Richland School District One - \$5,492.88

Richland School District Two - \$7,018.42

Richland/Lexington District Five - \$4,276.32

Public Roads - \$16,787.64

**RICHLAND COUNTY
ADMINISTRATION**

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



Agenda Briefing

Prepared by:	David A. Adams	Title:	Treasurer
Department:	Treasurer's Office	Division:	
Date Prepared:	February 6, 2023	Meeting Date:	February 8, 2023
Legal Review	R. Allyce Bailey via email	Date:	February 7, 2023
Budget Review	Abhijit "Abhi" Deshpande via email	Date:	February 7, 2023
Finance Review	Stacey D. Hamm via email	Date:	February 7, 2023
Approved for consideration:	Assistant County Administrator	Lori J. Thomas, MBA, CGFO	
Meeting/Committee	Administration & Finance		
Subject	Federal Forestry Funds		

RECOMMENDED/REQUESTED ACTION:

The County Treasurer recommends the approval of the resolution to distribute \$33,575.26 in Federal Forestry Funds.

Request for Council Reconsideration: Yes

FIDUCIARY:

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

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

A total of \$33,575.26 will be divided according to a ratio set forth by Council for the benefit of public schools and public roads. There are no costs to the County associated with this request.

Applicable department/grant key and object codes: To be determined

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Not applicable.

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

I have reviewed the attached documents and see no legal concerns posed by the documents.

REGULATORY COMPLIANCE:

Title 10, §2665(e)(2) of the United States Code of Laws, "the amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated."

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

The Richland County Treasurer has received funds from the Office of the State Treasurer for Federal Forestry Funds. Council is requested to approve a Resolution distributing these funds. Federal Forestry Funds are generated based on a portion of the net proceeds generated by the sale of forest products extracted from McEntire Air Force Base and other military installations located within Richland County. The total amount of forestry funds available at this time for allocation by Council is \$33,575.26.

Note: These funds are not received annually.

Pursuant to Title 10, §2665(e)(2) of the United States Code of Laws, “the amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.”

Since the SC Legislature has not enacted, to date, any law prescribing how these funds are to be allocated, the specific amounts to be allocated for the benefit of public schools and public roads of Richland County are at the discretion of Richland County Council.

The last time that Richland County Council allocated federal forestry funds, which totaled \$684,752.95, was in October 2021. The Council allocated 100% to the Road Maintenance fund of the County to be used for the construction and/or improvements of public roads within the County. No funds were allocated to Richland School District One, Richland School District Two, or Richland / Lexington School District Five, which, if allocated, would have been apportioned according to the respective student population of each school district.

Prior to its 2021 allocation, Council allocated 50% of the funds to public schools and 50% of the funds to public roads in 2018, 2017, 2014, 2012 and 2011.

If Council should proceed with the 50% allocation for the schools, the amounts per school district will be as follows:

School District	Number of Students	Allocation
Richland School District One	*22,151	\$5,492.88
Richland School District Two	*28,303	\$7,018.42
Richland / Lexington School District Five	**17,245	\$4,276.32
Public Roads	\$16,787.64	
Sources	*SC Annual School District Report Card Summary	
	**Richland / Lexington School District Five – District 5 students who live in Richland County	

A total of \$33,575.26 will be divided according to a ratio set forth by Council for the benefit of public schools and public roads. There are no costs to the County associated with this request.

The related Resolution from the Richland County Treasurer regarding these funds is attached for your convenience.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INTIATIVE:

Goal 3: Commit to fiscal responsibility; Objective 3.1: Align budget to priorities and seek alternative revenue sources

ADDITIONAL COMMENTS FOR CONSIDERATION:

- 2011 Council allocated 50% of the funds (\$2,640.89) to the schools, and 50% of the funds (\$2,640.89) to public roads.
- 2012 Council allocated 50% of the funds (\$3,700) to the schools, and 50% of the funds (\$3,700) to public roads.
- 2014 Council allocated 50% of the funds (\$3,845.20) to the schools, and 50% of the funds (\$3,845.20) to public roads.
- 2017 Council allocated 50% of the funds (\$12,163.49) to the schools, and 50% (\$12,163.50) of the funds to public roads.
- 2018 Council allocated 50% of the funds (\$16,383.13) to the schools and 50% \$(16,383.13) of the funds to public roads.
- 2021 Council allocated 100% of the funds to public roads (\$684,752.95).

ATTACHMENTS:

1. Resolution
2. Invoice Record Details

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

A RESOLUTION OF THE

RICHLAND COUNTY COUNCIL

A RESOLUTION TO ALLOCATE FEDERAL FOREST FUNDS

WHEREAS, the State of South Carolina receives forty percent (40%) of the net proceeds from the sale of forest products on land owned or leased by a military department; and

WHEREAS, the Office of the State Treasurer issues a check to Richland County representing a share of federal monies generated at McEntire Air Force Base and at other military installations located within the County; and

WHEREAS, the Richland County Treasurer currently has a total of \$33,575.26 in Military Forest Fund monies, which was received from the Office of the State Treasurer; and

WHEREAS, pursuant to 10 U.S.C. §2665(e)(2), “the amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated”; and

WHEREAS, the South Carolina Legislature has not enacted, to date, any law prescribing how these funds are to be allocated, so that allocation must be determined for the benefit of both the public schools and public roads of Richland County;

NOW, THEREFORE, BE IT RESOLVED that the Richland County Council does hereby allocate the Military Forest Funds of \$33,575.26 as follows:

____% (\$_____) to Richland School District One, Richland School District Two, and Richland/Lexington School District Five, to be apportioned according to the respective student population of each school district; and

____% (\$_____) to be transferred to the General Fund of Richland County, to be used for the construction and/or improvement of public roads within the County.

ADOPTED THIS the _____ day of _____, 2023.

By: Overture Walker
Its: County Council Chair
Richland County Council

ATTEST:

Clerk to Council



State Treasurer of South Carolina
CURTIS M. LOFTIS JR.

ONLINE Vendor Payment Search

[Home](#) > [Search](#) > Details

Invoice Record Details

Only the state agency listed below is able to provide detailed information about this payment. To inquire about the payment, please locate the phone number for the agency in the [SC State Phone Directory](#).

If you need further assistance, you may [email the State Treasurer's Office](#) or call us at 803.734.2686.

You searched for *EIN / SSN: 0024, Issued amount: 33575.26*

Item Summary:

Issue Date 01/18/2023
Issue Amount \$33,575.26
Check Payee RICHLAND COUNTY TREASURER
EDI Reference Number 1001606216
EDI Identifier 121000240000015
Clearing Doc Number 3427642869
Warrant Number
Fiscal Year 2023
Agency Number E160
Agency Name STATE TREASURERS OFFICE

Item Details:

Invoice Record	Invoice Number	Invoice Date	Invoice Amount	Customer Reference Number	Account Reference
1	MILITARYFORESTRY	01/13/2023	\$33,575.26		

Contact Information

For discrepancies with search results, please contact the [State Treasurer's Office](#): **803.734.2101**

For technical questions concerning this application, contact [SC.gov](#):

Email: support@portal.sc.gov

Phone: 866.340.7105 | M-F, 8a.m.-5p.m.

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Richland County Council Request for Action

Subject:

Department of Public Works - Jim Hamilton-LB Owens Airport - Use of Landside Airport Property

Notes:

February 28, 2023 – The A&F Committee recommended authorizing staff to coordinate the use of Landside Airport Property for the Corvair Vintage Car Show at an upcoming weekend date to be determined. The event is tentatively planned to be from mid-morning to late afternoon (approximately 10:00 AM until 4:00 PM).

**RICHLAND COUNTY
ADMINISTRATION**

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



Agenda Briefing

Prepared by:	Christopher S. Eversmann	Title:	General Manager
Department:	Public Works	Division:	Airport
Date Prepared:	February 6, 2023	Meeting Date:	February 28, 2023
Legal Review	Patrick Wright via email	Date:	February 10, 2023
Risk Management Review:	Brittney Hoyle-Terry via email	Date:	February 14, 2023
Budget Review	Abhijit "Abhi" Deshpande via email	Date:	February 13, 2023
Finance Review	Stacey D. Hamm via email	Date:	February 10, 2023
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCCEM	
Meeting/Committee	Administration & Finance		
Subject	Use of Landside Airport Property		

RECOMMENDED/REQUESTED ACTION:

Staff requests County Council’s authorization to coordinate the use of Landside Airport Property for the Corvair Vintage Car Show at an upcoming weekend date to be determined. The event is tentatively planned to be from mid-morning to late afternoon (approximately 10:00 a.m. until 4:00 p.m.).

Request for Council Reconsideration: Yes

FIDUCIARY:

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

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

There will be no direct financial impact to the County for use of this property.

Applicable department/grant key and object codes:

RISK MANAGEMENT FEEDBACK:

If Council approves this request, Risk Management will ensure their insurance coverage is adequate.

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

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

Airport staff in consultation with Risk Management and the County Attorney’s Office will require appropriate insurance coverage as well as Hold Harmless Agreements by participants. Display vehicles and patrons will remain outside of the Airport perimeter fence to minimize safety and security concerns.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

The Airport General Manager recently received a preliminary request for use of landside (outside of the perimeter fence) airport property for a Corvair car show to be held spring 2023. A member of the Corvair Car Club who is also an aircraft owner and tenant at the airport made the request. A similar request for a car show (fundraiser) was considered and approved in the past (though the event was never conducted).

Event Details

- CORSA (Corvair Society of America) meeting and car show (<https://www.corvair.org/>);
- Spring - Summer 2023 / weekend date to be determined (TBD);
- 30 to 50 cars / 60 to 100 people.

The point of contact (POC) has checked with the CORSA organization who indicates that they have insurance to cover shows such as this. Appropriate insurance coverage and certificate as well as Hold Harmless agreements will be required.

Airport Staff recommends approval of this request based on the following:

- Consistency with Richland County’s Strategic Plan (Goal 5)
- Community goodwill;
- Economic activity (travel / dining / hotel usage);
- Airport exposure (with little-to-no safety / security concerns).

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INTIATIVE:

This request is consistent with Richland County’s Strategic Plan (Goal 5 - Achieve Positive Public Engagement)

ADDITIONAL COMMENTS FOR CONSIDERATION:

Though this request was received after the Airport Commission's January 2023 meeting, it has been shared via email with all Commissioners. All responses received were supportive; none were negative.

Richland County Council Request for Action

Subject:

Operational Services - Hampton Street - Elevator Modernization

Notes:

February 28, 2023 – The A&F Committee recommended awarding a contract to Metro Elevator for the modernization of a total of six hydraulic elevators located at 2000 Hampton St. and 2020 Hampton St.

**RICHLAND COUNTY
ADMINISTRATION**

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



Agenda Briefing

Prepared by:	Hayden Davis	Title:	Project Manager
Department:	Operational Services	Division:	
Date Prepared:	January 26, 2023	Meeting Date:	February 28, 2023
Legal Review	Elizabeth McLean via email	Date:	February 21, 2023
Budget Review	Abhijit "Abhi" Deshpande via email	Date:	February 13, 2023
Finance Review	Stacey D. Hamm via email	Date:	February 10, 2023
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Administration & Finance		
Subject	Contract award of Hampton Street Elevator's Modernization		

RECOMMENDED/REQUESTED ACTION:

Staff recommends Council award a contract to Metro Elevator for the modernization of a total of six hydraulic elevators located at 2000 Hampton St. (three elevators) and 2020 Hampton St. (three elevators)

Request for Council Reconsideration: Yes

FIDUCIARY:

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

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

County Council approved the reallocation of bond funds at its March 1, 2022 Special Called meeting. Funds are encumbered on requisition R2300991.

Applicable department/grant key and object codes: GL-13449995.530300/JL-13443170.530300.

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Request for Bid RC-539-B-23 "Hampton Street Elevator's Modernization" was issued on September 16, 2022; there were six responses to the request. Procurement reviewed the submittals, and the recommendation is to award to Metro Elevator Inc., the lowest responsive responsible bidder deemed most advantageous to the County.

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

The County Attorney Office's approved and stamped contract is attached.

REGULATORY COMPLIANCE:

The inspection and operation of elevators fall under the jurisdiction of the SC Department of Labor, Licensing and Regulation (SCLLR). During annual inspections, code violations were documented and corrected. Upon review of repair options, staff determined that the most practical solution to address the reoccurring violations and reliability concerns was to perform an elevator modernization. The modernization will also address replacement part scarcity which has led to extended downtimes and high repair costs.

MOTION OF ORIGIN:

“...to approve the Consent Items.”

Council Member	The Honorable William Malinowski, formerly of District 1
Meeting	Special Called
Date	March 1, 2022

STRATEGIC & GENERATIVE DISCUSSION:

The Richland County Administration Building and the Richland County Health Building, located at 2020 Hampton Street and 2000 Hampton Street respectively, were constructed in the early 1990's. The buildings' design incorporated three elevators: two banked passenger elevators located in the main lobby and one freight elevator for each building. The six elevators have not been modernized with new controllers and equipment since the building's construction. Therefore, the elevator equipment in the buildings are original to the facility and have exceeded the expected lifespan of 25 years. Due to high annual service costs, high repair costs, and the unavailability of replacement parts, staff determined the elevators needed to be modernized to improve the reliability and reduce the monthly down time and annual maintenance cost.

Staff is requesting approval of a contract between Metro Elevator Inc. and Richland County to modernize the three hydraulic elevators at 2000 Hampton St. and the three hydraulic elevators at 2020 Hampton St. in the amount of \$761,850.00 with a contingency of approximately 30%. The total cost of the project will not exceed \$990,000 as previously approved by Council. The contingency is requested to address any unforeseen conditions due to the age and complexity of the equipment and the number of tie-ins such as the fire alarm, HVAC, and security system. Any use of the contingency must be requested in writing by the contractor, reviewed and recommended by the County's project manager, and approved by the County Administrator.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INITIATIVE:

By undertaking this project, the elevators will comply with current safety codes, and will be more efficient and reliable, contributing to the improvement of the Administration/Health facility (Strategic Goal 4.3 "Create excellent amenities and facilities.").

ADDITIONAL COMMENTS FOR CONSIDERATION:

The work on the elevators will be coordinated with Administration and building tenants to help minimize the impact on the facility. The contractor will ensure that no more than two elevators will be

scheduled to be out-of-service at a time (one in each building). It is anticipated that the project will take about a year to complete once a contract is executed.

Once the modernizations are completed, the elevators will comply with current safety codes. The downtime and maintenance cost of each elevator will be greatly reduced.

ATTACHMENTS:

1. Bid Tab sheet
2. Contract

RC-539-B-23, Hampton Street Elevator's Modernization
Dated 10/28/2022 @ 4:00PM

Supplier	Carolina Elevator	Delaware Elevator	Metro Elevator	Schindler Elevator	Southern Elevator	TK Elevator
Total Cost	\$ 787,914.0	\$931,224	\$ 761,850.0	\$ 999,678.0	1,002,482.60	\$ 802,846.0

CONTRACT AGREEMENT
Metro Elevator Inc.
RC- 539-B-23

THIS Contract Agreement is dated as of the [REDACTED] day of [REDACTED] in the year 2023 by and between **RICHLAND COUNTY, SOUTH CAROLINA**, (hereinafter called "OWNER") and **Metro Elevator Inc.** (hereinafter called "CONTRACTOR") for the following Project, for which the Work under the Contract Documents may be the whole or only a part, is generally described in the OWNER's Invitation for Bids: Bid No. **RC-539-B-23** (hereafter called "Invitation For Bids") as follows:

- **Hampton Street Elevator's Modernization.**
- **Annual maintenance for six (6) Hydraulic passenger elevators at the two Richland County locations designated and contracted for elevator services.**

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

1.1 CONTRACTOR shall complete all work for the Project as specified or indicated in the Contract Documents (the "Work"). The Work is generally described as follows:

- **Modernization of six (6) Hydraulic passenger elevators located at 2000 and 2020 Hampton Street Columbia, SC 29204**

Article 2. INSPECTOR.

2.1 The OWNER has designated Hayden Davis as its representative and he will assume all duties and responsibilities and will have the rights and authority assigned to the INSPECTOR as described in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. Construction Engineering and Inspection shall also be performed by Todd Whiteheart as the INSPECTOR. The INSPECTOR information for notice purposes is:

Hayden Davis	Whiteheart Elevator Solutions,
Richland County Operational Services	218 Burnette Acres
400 Powell Road	Winston Salem, NC 27107
Columbia, South Carolina 29203	(336) 287-3306
(803) 576-3586	

Article 3. CONTRACT TIME.

3.1 The Work will be Substantially Complete no later than **December 31, 2023** ("the Contract Time.") The Contractor shall achieve Final Completion of the Project within thirty (30) Days after the Work is Substantially Complete.

- 3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not Substantially Complete within the time(s) specified above. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **Two Hundred Fifty** Dollars (**\$250.00**) for each calendar day that expires after the time specified in paragraph 3.1 for completion of work.
- 3.3 The Contract Time may be changed only by a Change Order or Claim as defined in the SCDOT Standards Specifications and for the reasons stated in the General Conditions that are part of the Invitation For Bids.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, and in accordance with the unit bid prices submitted in the Contractor's Response to the Invitation for Bids on **October 28, 2022** with an initial contract amount of **\$ 761,850.00**.
- 4.2 The Contract Price may be changed only by a Change Order for the reasons stated in the General Conditions that are part of the Invitation For Bids.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions in the Invitation for Bids but in no case shall submit Applications for Payment more than once per month. Applications for Payment will be processed by INSPECTOR as provided in the General Conditions.

- 5.1 Payment Terms. Payment will be made within thirty (30) days after acceptance of completed order/project in accordance with the payment schedule. Payment applications for construction contracts are to be submitted on the latest standard AIA Application for Payment form for unit price contracts. Application for Payment shall reflect work completed through the last day of the month. Retainage for construction contracts will be on each Application for Payment is as follows: 10% of completed, 10% of stored materials. Partial payments will be made as follows: Provided an Application for Payment is received by the INSPECTOR, or project manager, no later than the 10th of the month, the OWNER shall make payment to the CONTRACTOR not later than thirty (30) days from receipt of the approved Application for Payment. If an Application for Payment is received by the INSPECTOR after the 10th day of the month, payment shall be made by the OWNER no later than thirty (30) days after the INSPECTOR, or project manager, approves the Application for Payment.
- 5.2 Final Payment. Upon Final Completion and acceptance of the Work in accordance with the General Conditions in the Invitation For Bids, OWNER shall pay the remainder of the Contract Price and retainage as recommended by INSPECTOR as provided in this Article, subject to any offsets due to OWNER as provided in this Agreement.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all conditions and including any federal, state, and local Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 6.2 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by CONTRACTOR for such purposes.
- 6.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 6.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 6.5 CONTRACTOR has given INSPECTOR written notice of all conflicts, error or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by INSPECTOR is acceptable to CONTRACTOR.
- 6.6 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents which compromise the entire Agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Contract Agreement.
- 7.2 The OWNER's Invitation For Bids: Bid No. **RC-539-B-23** (Not attached but incorporated herein by reference thereto.) The Invitation For Bids includes all documents that were part of the advertisement of the Project, including but not limited to Instructions to Bidders, General Provisions, and General Conditions in the bid documents.
- 7.3 Contractor's Response to Bid No. **RC-539-B-23** including its Bid Bond. (Not attached but incorporated herein by reference thereto.)
- 7.4 Technical Specifications, Special Provisions and Addendums provided in the bid documents that is part of the Invitation for Bids. (Not attached but incorporated herein by reference thereto.)

- 7.5 The following, which may be delivered or issued after the effective date of the Agreement and not attached hereto:
- a) Notice to Proceed
 - b) Performance Bond
 - c) Payment Bond
 - d) Fully executed Written Amendments
 - e) Fully executed Work Change Directive(s)
 - f) Fully executed Change Order(s)
- 7.6 Additionally, if not included in the Invitation for Bids, the OWNER's General Conditions that are the standard terms and conditions for doing business with Richland County and found at <http://www.richlandonline.com/Government/Departments/BusinessOperations/Procurement.aspx> ("OWNER's Standard General Conditions") are part of the Contract Documents.
- 7.7 Order of Precedence. This Agreement, including the Exhibits listed above, are collectively called in this Agreement "the Contract Documents," and form the entire Agreement between the parties, superseding all prior negotiations, representations, or agreements, whether written or oral. The Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of the Agreement, any other Contract Document and any Exhibit irreconcilably conflicts with a provision of the Agreement, the following rules of interpretation shall control:
- 7.7.1 As between this primary Agreement document and any of the other Contract Documents (including the Invitation For Bids and the contract terms and conditions included therein), this Agreement shall govern.
- 7.7.2 As between the Invitation For Bids and the SCDOT Standards Specifications, the Invitation For Bids shall govern, including all Supplemental Specifications and Addenda issued by the OWNER as part of the Invitation For Bids.
- 7.7.3 As between any other Contract Document (except the Contractor's Response to the Invitation for Bids and the OWNER's Standard General Conditions), the other Contract Document shall govern.
- 7.8 Degree of Application: CONTRACTOR. Should there be a conflict between any provision of any Contract Document that is not determined by the Order of Precedence section herein, the CONTRACTOR will be assumed to have agreed to the more onerous obligation or duty between or among the conflicting terms.

Article 8. MISCELLANEOUS.

- 8.1 Terms used in this Agreement will have the meanings indicated in the Invitation For Bid documents, including the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specially stated to the

contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.5 If the CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of written notice from the OWNER to commence and continue correction of such default or neglect with diligence and promptness, the OWNER may, without prejudice to other remedies the OWNER may have, correct such deficiencies and deduct from payments then or thereafter due the CONTRACTOR the reasonable cost of correcting such deficiencies, including OWNER'S expenses and compensation for additional engineering services made necessary by such default, neglect or failure. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amounts, the CONTRACTOR shall pay the difference to the OWNER. Should the CONTRACTOR default under its obligations in the performance of this Agreement and is terminated by the OWNER prior to Substantial Completion of the Work, the CONTRACTOR shall be liable to the OWNER for all actual, consequential and incidental damages as a consequence of CONTRACTOR'S default, including but not limited to, the additional cost to complete the Work under the approved schedule at the time of the CONTRACTOR'S default and any liquidated damages that may result from any resulting delay of the date of Substantial Completion.
- 8.6 The CONTRACTOR warrants to the OWNER and INSPECTOR that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CONTRACTOR further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit.
- 8.7 If the CONTRACTOR encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in the character of the Work to be provided in the Contract Documents, the CONTRACTOR shall promptly provide notice of a Claim to the OWNER and the INSPECTOR before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If the INSPECTOR determines that conditions differ materially and cause an increase or decrease in the CONTRACTOR'S cost of, or time required for, performance of any part of the Work, the INSPECTOR will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the INSPECTOR determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the INSPECTOR shall promptly notify the OWNER and CONTRACTOR in writing, stating the reasons. The failure of the

CONTRACTOR to provide written notice of the nature of the Claim within the ten (10) days, and that the Claim may result in a delay or additional cost to the OWNER, is an absolute waiver of the CONTRACTOR's right to any additional contract time or compensation because of such site conditions. This waiver applies notwithstanding the OWNER's actual knowledge and notice of the site conditions and/or CONTRACTOR's Claim associated with such site conditions.

- 8.8 The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- 8.9 Non-Appropriation: Any contract entered into by the OWNER resulting from this bid invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.
- 8.10 Indemnification: The contractor shall indemnify and hold harmless the OWNER, its officials, employees, temporary and leased workers and volunteers from and against any and all damages, losses and expenses, including but not limited to attorney's fees, arising out of, or resulting from negligent performance of the Work defined herein, but only to the extent caused or contributed to by the negligent acts or omissions of contractor, its subcontractors and consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damages, loss or expense is caused in part by a party indemnified hereunder..
- 8.11 Governing Law: This Agreement is to be construed in accordance with the laws of the State of South Carolina.

ARTICLE 9. INSURANCE.

At least ten (10) business days prior to CONTRACTOR'S start date Contractor shall provide OWNER a certificate of insurance with all insurance required by the State of South Carolina and minimally the below insurance with companies having a Best Rating of A-, VII or higher. All insurance shall be at Contractor's expense and be maintained throughout the contract period.

CONTRACTOR must have these same insurance requirements for any of its subcontractors, and verify them, or insure them under CONTRACTOR'S policies. CONTRACTOR shall provide and shall request insurers to provide the OWNER 30 days written notice of any cancelation, non-renewal or reduction in coverage. CONTRACTOR agrees the OWNER is covered by any provisions or limits in excess of the minimum requirements of this contract. The policies shall be noncontributory. Any deductibles or retentions are the responsibility of the CONTRACTOR. Any breach of this contract is material. The OWNER reserves the right to modify these requirements, including the limits.

The commercial general liability policy and the auto liability policy shall include: a) contractual liability b) a waiver of subrogation for the OWNER, its officers, officials, employees, leased and temporary employees and volunteers c) primary coverage even if the policy asserts it is excess, secondary or contingent and d) severability of interest.

The certificate shall name the OWNER, its officers, officials, employees, leased and temporary employees and volunteers as additional insureds with coverage as comprehensive as Insurance Offices Form CG 20 10 11 85.

CONTRACTOR shall obtain a commercial general liability policy with minimum limits of one million dollars per occurrence and two million dollars aggregate. The completed operations coverage shall extend at least two years beyond the completion date.

CONTRACTOR shall obtain a workers' compensation policy that provides South Carolina coverage ("Other States" coverage is unacceptable.) and employer's liability with \$500,000 limits per accident / per disease. Subrogation against the OWNER shall be waived for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

Article 10. OTHER PROVISIONS.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate, under seal. One counterpart each has been delivered to OWNER, CONTRACTOR and INSPECTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on 2023.

OWNER:

CONTRACTOR:

RICHLAND COUNTY

METRO ELEVATOR INC.

By: _____

By: _____

Its: County Administrator

Its: _____

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(INSPECTOR)

Designated Representative:

Designated Representative:

And
Richland County (OWNER)
Office of Procurement & Contracting
2020 Hampton Street, Suite 3064
Columbia, SC 29204

Richland County Attorney's Office


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

Richland County Council Request for Action

Subject:

Operational Services - Selective Demolition of Dillard's

Notes:

February 28, 2023 – The A&F Committee recommended awarding a contract to NEO Corporation to provide selective demolition services at the Dillard’s space at Columbia Mall. Staff recommends a 15% contingency based on the age of the building and issues that may arise.



Agenda Briefing

Prepared by:	Hayden Davis	Title:	Project Manager
Department:	Operational Services	Division:	
Date Prepared:	February 7, 2023	Meeting Date:	February 28, 2023
Legal Review	Patrick Wright via email	Date:	February 9, 2023
Budget Review	Abhijit "Abhi" Deshpande via email	Date:	February 13, 2023
Finance Review	Stacey D. Hamm	Date:	February 14, 2023
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
Meeting/Committee	Administration & Finance		
Subject	Award of a Contract for Selective Demolition		

RECOMMENDED/REQUESTED ACTION:

Staff recommends Council approval of the award of a contract to NEO Corporation to provide selective demolition services at the Dillard’s space at Columbia Mall. Staff recommends a 15% contingency based on the age of the building and issues that may arise.

Request for Council Reconsideration: Yes

FIDUCIARY:

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

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

The funds for this project are from two sources. \$200,000 has been provided by the South Carolina Department of Social Services (SCDSS) in account 1347995000.532200. The current balance of this line item is \$195,000. These funds must be expended by June 30, 2023 and will be the first funds utilized for the payment of invoices.

The additional \$203,000 is in account 1220992020/4881900.532200 which are American Rescue Plan Act funds allocated by Council for the Family Service Center construction project.

Applicable department/grant key and object codes: 1347995000.532200
1220992020/4881900.532200

OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:

Request for Bid RC-552-B-23 was publicly issued on October 24, 2022; there was one submittal. NEO Corporation's bid was evaluated and deemed responsive and responsible, and the recommendation is to award a contract.

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

There are no legal concerns regarding this matter.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

Richland County purchased the Dillard’s retail space at the Columbia Place Mall to help meet the future expansion/modernization of the County facilities. The development of this facility addresses the current and future needs of the SC Departments of Social Services (SCDSS) and the Department of Health and Environmental Control (SCDHEC).

The County has contracted with a cost-estimating group to help establish design criteria and budget costs. Selective demolition of the architectural finishes within the space helps the cost estimation group with the investigative process. This work will remove most of the architectural finishes (ceiling tile, drywall, flooring, casework, etc.) throughout the space to allow the design team more access and visibility to the mechanical, electrical, plumbing and structural systems (MEPS). However, the metal studs, ceiling grid, and other systems that support the existing MEPS systems will remain in place to allow the systems to continue to operate. This selective demolition will assist the overall design process and minimize any unknown conditions for the proposed Family Services Center. This work will address design constraints and unknown conditions due to the age of the facility.

If approved, the County will contract with NEO Corporation to perform the work. Once the contract is signed, the company will work with the County to schedule and coordinate the work to minimize the impact on the facility. The contractor will also obtain all the required permits and authorizations to perform the work. Once the contract is executed and work is scheduled, it is estimated to take approximately 12 -16 weeks following permitting.

If the selective demolition contract is not approved, the County will continue with the current design process hoping that the project will not encounter any unknown conditions that might be discovered in the selective demolition process which could affect the overall budget of the project and/or its schedule. Additionally, the County will return the allocated \$200,000 from SCDSS which must be used by June 30, 2023. This decision could affect the design and construction process as well as the total overall budget for the renovation of the facility.

ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INITIATIVE:

This project aligns with the Strategic Plan Goals "4.3 Create excellent amenities and facilities" and 6.7 "Address current and future resource needs."

ATTACHMENTS:

1. Bid Tabulation

RC-552-B-23 Selective Demolition Services
Due November 22, 2022 @ 2:00PM

	NEO Corporation
Total Cost	\$ 398,000.0

Richland County Council Request for Action

Subject:

An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within unincorporated Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation

Notes:

December 15, 2022 – The D&S Committee recommended Council to approve the proposed ordinance to include recommendations from the County Attorney’s Office and suggestions made during the committee meeting.

First Reading: February 7, 2023

Second Reading: February 14, 2023

Third Reading: March 7, 2023 {Tentative}

Public Hearing: March 7, 2023

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

AN ORDINANCE ESTABLISHING THE OFFENSE OF USING, DISCHARGING, SHOOTING, OR IGNITING FIREWORKS OR SIMILAR EXPLOSIVES WITHIN UNINCORPORATED RICHLAND COUNTY BETWEEN CERTAIN HOURS, TO PROVIDE EXCEPTIONS, AND TO PROVIDE A PENALTY FOR EACH VIOLATION.

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

SECTION I. The Richland County Code of Ordinances, Chapter 18, Offenses, is hereby amended by adding:

Sec. 18-7. Fireworks and Similar Explosives

- a) Except as otherwise provided in this section, it is unlawful for a person to use, discharge, shoot, or ignite fireworks or similar explosives within Richland County between the hours of 10:00 PM and 7:00 AM. This section may not be construed to prohibit the discharge or lighting of sparklers or similar pyrotechnic products which generate no appreciable noise at any time.
- b) Notwithstanding the provisions of subsection (a), the permitted hours for the use of fireworks must be extended on the Fourth of July and New Year's Eve. Therefore, it is only unlawful for a person to use, discharge, shoot, or ignite fireworks or similar explosives within Richland County between the hours of ~~12:30~~1:00 AM and ~~9:00~~7:00 AM on July 5th and January 1st.
- c) It is unlawful to:
 - (1) Negligently, recklessly, or intentionally direct the discharge of fireworks towards a structure, animal, or person;
 - ~~(2)~~ Intentionally detonate fireworks upon the land of another without express prior consent;
 - ~~(2)~~~~(3)~~ Intentionally dump, throw, drop, deposit, discard, or otherwise fire onto another's property without express prior consent;
 - ~~(3)~~~~(4)~~ Offer for sale or sell permissible fireworks to children under the age of ~~fourteen (14)~~ sixteen (16) years unless accompanied by a parent;
 - ~~(4)~~~~(5)~~ To ignite or detonate fireworks within six hundred (600) feet of a church, hospital, public school, unless authorized by the proper officials or managers of the property, during the times allowable under section b;
 - ~~(5)~~~~(6)~~ To ignite or detonate permissible fireworks within a motor vehicle or discharge a permissible fireworks from a motor vehicle; and
 - ~~(6)~~~~(7)~~ To place or throw an ignited firework into or at a motor vehicle.
- d) A County fire or law enforcement official may seize, take, remove, or cause to be removed all stocks of fireworks or explosives held in violation of the provisions of this section.

- ~~e) A violation of this section is punishable by a civil penalty of up to one hundred dollars (\$100). Each violation of this section may be punished as a separate offense.~~
- e) A violation of this section is punishable by a civil penalty of up to:
- (1) \$500, for a 1st offense;
 - (2) \$750, for a 2nd offense; and,
 - (3) \$1,000 for a 3rd or subsequent offense.
- (f) 2nd and 3rd offense violations are for violations occurring within a period of five (5) years of a previous violation.
- ~~f) After three separate violations in a single location over a period of six months, the location can be declared to be a public nuisance and further unlawful activities may be abated by the county sheriff or a lawful officer serving under him. Once a property is declared a public nuisance, a property owner will be responsible for the cost of abatement and any subsequent violation of this section will carry a fine of \$1,000.~~
- g) The County Fire Marshal or his or her designee fire official may issue a permit authorizing the use of fireworks or a public display of fireworks or similar explosives. The fire official may, in his or her discretion, grant or refuse to grant the permit or grant the permit subject to restrictions and limitations provided by this ordinance or deemed necessary in the interest of public safety in connection with such public display or exhibition by the fire official.
- g) Nothing in this article may be construed to prohibit the use of flares or similar devices necessary for the safe operation of railroads, buses, trucks, or other vehicles within the County.
- h) Disputed violations will be heard in the local magistrate court upon petition of the alleged offender.

SECTION II. Effective Date. This ordinance shall be enforced from and after July 1, 2023.

RICHLAND COUNTY COUNCIL

By: _____
Overture Walker, Chair

Attest this _____ day of
_____, 2023.

Anette Kirylo
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

Richland County Council Request for Action

Subject:

Authorizing the purchase of an existing mitigation bank to secure mitigation credits to support economic development projects; and other matters related thereto

Notes:

First Reading: January 3, 2023

Second Reading: February 7, 2023

Third Reading: March 7, 2023 {Tentative}

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

**AUTHORIZING THE PURCHASE OF AN EXISTING MITIGATION BANK TO
SECURE MITIGATION CREDITS TO SUPPORT ECONOMIC DEVELOPMENT
PROJECTS; 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;

WHEREAS, pursuant to a Mitigation Banking Instrument dated December 22, 2015 and approved by the U.S. Army Corps of Engineers (“USACE”) on April 18, 2016 (“MBI”), Mill Creek Mitigation Holdings LLC, a Delaware limited liability company (“Mill Creek”) is the sponsor of the environmental mitigation bank known as the Mill Creek Mitigation Bank (“Bank”);

WHEREAS, the Bank was organized and operated to generate wetland preservation credits and wetland enhancement/restoration credits and stream preservation credits and stream enhancement/restoration credits (collectively, “Mitigation Credits”) to offset unavoidable adverse impacts to or the loss of wetlands and streams and other natural habitats and ecosystems;

WHEREAS, ready access to Mitigation Credits is necessary for the success of eligible economic development projects within the County;

WHEREAS, Mill Creek has submitted to USACE a Year Five Monitoring Report for the Bank, and USACE has confirmed that the monitoring-phase requirements under the MBI have been fully satisfied and that all conditions for final credit release have been met;

WHEREAS, in order to ensure the County would have sufficient Mitigation Credits to support its penny tax program, the County and Mill Creek previously entered into a Purchase and Sale Agreement dated February 14, 2014 (“Credit Purchase Agreement”) pursuant to which the County purchased an initial tranche of Mitigation Credits from the Bank; and

WHEREAS, in order secure control of all of the remaining Mitigation Credits in the Bank at a discounted price, the County desires to purchase the Bank from Mill Creek pursuant to the terms of Asset Purchase Agreement, the form of which is attached hereto as Exhibit A (“Agreement”). The Agreement entitles the County to, among other things, certain excess credits delineated under the Credit Purchase Agreement consisting of 577 wetlands Credits, all of Mill Creek’s other rights under the MBI and the Credit Purchase Agreement, Mill Creek’s rights under a mitigation easement agreement and certain other rights, and also requires the assumption of certain obligations of Mill Creek relating to the Bank.

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

Section 1. Findings. County Council determines that the execution of the Agreement and the transactions contemplated therein are proper governmental and public purposes and are anticipated to benefit the general public welfare of the County.

Section 2. Approval of Agreement. County Council approves the form of the Agreement and the transactions contemplated therein and authorizes each of the County Council Chair, the County Administrator, and the Director of Economic Development to negotiate execute and deliver the Agreement, the final form, terms and provisions of which shall be finally approved by the County Council Chair, the

County Administrator or the Director of Economic Development, following receipt of advice from counsel to the County, with the execution of the Agreement by the County Council Chair, the County Administrator or the Director of Economic Development to constitute conclusive evidence of the final approval thereof

Section 3. Further Acts. County Council authorizes each of the County Council Chair, the County Administrator, or the Director of Economic Development, 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, including a deed for the Property or other closing affidavits and certificates, as deemed necessary, desirable or appropriate to effect the transactions described in this Ordinance. Any actions taken in the name of the County prior to the effective date of this Ordinance with respect to the sale of the Property are expressly ratified and confirmed.

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

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

RICHLAND COUNTY, SOUTH CAROLINA

Chairman of County Council

(SEAL)
ATTEST:

Clerk to County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

READINGS:

First Reading: January 3, 2023
Second Reading: February 7, 2023
Third Reading: March 7, 2023

EXHIBIT A
ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT
BY AND BETWEEN
MILL CREEK MITIGATION HOLDINGS LLC
as **Seller**,
and
RICHLAND COUNTY, SOUTH CAROLINA
as **Buyer**,
dated as of
March [•], 2023

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DISCLOSURE SCHEDULES:

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[other Sections to be listed as necessary/appropriate]

EXHIBITS:

A – Form of Bill of Sale, Assignment, and Assumption Agreement

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of January [•], 2023 (the “Effective Date”), is entered into between **MILL CREEK MITIGATION HOLDINGS LLC**, a Delaware limited liability company (“Seller”), and **RICHLAND COUNTY, SOUTH CAROLINA**, a South Carolina political subdivision (“Buyer”).

BACKGROUND STATEMENT

A. Pursuant to a Mitigation Banking Instrument dated December 22, 2015 and approved by the U.S. Army Corps of Engineers (“USACE”) on April 18, 2016 (the “MBI”), a copy of which has been provided to Buyer, Seller is the sponsor of the environmental mitigation bank known as the Mill Creek Mitigation Bank (the “Bank”) located on the Bank Property (as hereinafter defined), which has been organized and operated to generate wetland preservation credits and wetland enhancement/restoration credits (“Wetland Credits”) and stream preservation credits and stream enhancement/restoration credits (“Stream Credits”) for use by Buyer and others to provide compensatory mitigation for unavoidable adverse impacts to or the loss of Waters of the United States, including wetlands, resulting from activities authorized under the Clean Water Act and the Rivers and Harbors Act of 1899.

B. Seller, as bank sponsor, submitted to USACE a Year Five Monitoring Report for the Bank, and USACE has confirmed by letter dated September 7, 2022 (the “Final Release Letter”) that the monitoring-phase requirements under the MBI are complete and that the requirements necessary for the final credit release have been met.

C. Pursuant to the Final Release Letter and later confirmation from USACE, the following Wetland Credits and Stream Credits for the Bank (“Credits”) have been released:

Credit Classification:	Released Credits
Wetland Preservation Credits	384.00
Wetland Enhancement/Restoration Credits	1,007.40
Stream Preservation Credits	16,151.00
Stream Enhancement/Restoration Credits	57,798.00
Total	75,340.40

D. In anticipation of the creation of the Bank and Seller’s completion of the mitigation work required by the MBI as a condition to the release of Credits, Buyer and Seller previously entered into a Purchase and Sale Agreement for Reserved Mitigation Credits dated February 14, 2014 (the “Credit Purchase Agreement”). Under the Credit Purchase Agreement, Buyer agreed to purchase 800 Wetland Credits (at a price of \$10,000 per Wetland Credit) (the “Buyer Wetland Credits”) and 30,000 Stream Credits (at a price of \$100 per Stream Credit) (the “Buyer Stream Credits”) as they were released from the Bank, for a total price of \$11 million. The Buyer Wetland Credits and the Buyer Stream Credits are referred to in this Agreement collectively as the “Buyer Credits.”

E. USACE released all of the Buyer Credits and Buyer has paid to Seller the entire \$11 million purchase price for the Buyer Credits, thereby providing Buyer with all right, title and interest in the Buyer Credits, subject to the terms of the Credit Purchase Agreement.

F. As further provided (and subject to the conditions and limitations contained) in the Credit Purchase Agreement, Buyer is entitled to cause Seller to sell any otherwise-available Buyer Credits for which Buyer has no current need (“Surplus Buyer Credits”) to third parties who may wish to purchase such Credits for use in connection with their own projects. Upon any such sale of Surplus Buyer Credits, Seller is entitled to a consulting fee equal to 8% of the gross sale proceeds attributable thereto, and Buyer is entitled to receive and retain 92% of such gross sales proceeds.

G. The Credit Purchase Agreement likewise sets out Buyer’s and Seller’s rights with respect to the sale by Seller of Credits that are released under the MBI in excess of the Buyer Credits (“Excess Credits”). Subject to the conditions and limitations contained in the Credit Purchase Agreement, upon any sale of Excess Credits, Buyer is entitled to receive 20% of the gross sales proceeds and Seller is entitled to receive and retain the remaining 80% of such gross sales proceeds.

H. Section 1 of the Disclosure Schedules (which are incorporated herein by reference) (the “Current Credit Schedule”) sets forth as of the Effective Date: (i) the total number of Buyer Wetland Credits that have been withdrawn for use in connection with projects undertaken by Buyer or Affiliates of Buyer or sold by Buyer to third parties as Surplus Buyer Credits (“Buyer Projects”); (ii) the total number of Buyer Wetland Credits that have been (or are committed to be) withdrawn by or for SCDOT under the SCDOT Contract; (iii) the total number of Buyer Stream Credits that have been withdrawn for use in connection with Buyer Projects; and (iv) the total number of Buyer Stream Credits that have been (or are committed to be) withdrawn for SCDOT under the SCDOT Contract.

I. The Current Credit Schedule also sets forth as of the Effective Date the current status of the 591.40 Wetland Credits and 42,824.00 Stream Credits that constitute Excess Credits, including (i) an estimated calculation of the Excess Credits that will be removed from the ledger of the Bank as required under the MBI to account for previous sales of Surplus Buyer Credits outside the primary service area of the Bank, and (ii) the total number of Excess Stream Credits that have been (or are committed to be) withdrawn by or for SCDOT under the SCDOT Contract.

J. Now that USACE has released all Credits related to the Bank, Seller wishes to transfer and assign to Buyer, and Buyer wishes to acquire from Seller, (i) all of the remaining Excess Credits, (ii) Seller’s rights under the MBI and the Credit Purchase Agreement, (iii) Seller’s rights under the Mitigation Easement Agreement (as hereinafter defined), and (iv) certain other rights of Seller as specified herein. Buyer will also assume certain specified liabilities and obligations of Seller relating to the Bank, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE I:

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. In the case of Buyer, such term also includes any agency, office, or department of Richland County, South Carolina.

“Agreement” has the meaning ascribed to it in the preamble.

“Assumed Liabilities” has the meaning ascribed to it in Section 2.03.

“Bank” has the meaning ascribed to it in Recital A.

“Bank Property” means the 1,359.57-acre portion of the Real Property that is subject to the MBI.

“Basket Amount” has the meaning ascribed to it in Section 7.04(a).

“Bill of Sale, Assignment, and Assumption Agreement” has the meaning ascribed to it in Section 3.03(a)(i).

“Business Day” means any day except Saturday, Sunday, or any other day on which commercial banks located in Columbia, South Carolina are authorized or required by Law to be closed for business.

“Buyer” has the meaning ascribed to it in the preamble.

“Buyer Credits” has the meaning ascribed to it in Recital D.

“Buyer Fundamental Representations” means the representations and warranties of Buyer set forth in Section 5.01 (Organization of Buyer), Section 5.02 (Authority of Buyer; Enforceability), Section 5.04 (Legal Proceedings), and Section 5.05 (Brokers).

“Buyer Projects” has the meaning ascribed to it in Recital H.

“Buyer Stream Credits” has the meaning ascribed to it in Recital D.

“Buyer Wetland Credits” has the meaning ascribed to it in Recital D.

“Cash Consideration” means the sum of Five Million Dollars (\$5,000,000).

“Closing” has the meaning ascribed to it in Section 3.01.

“Closing Date” has the meaning ascribed to it in Section 3.01.

“Contract” means any contract, lease, deed, mortgage, license, instrument, note, legally binding commitment or undertaking, indenture, joint venture agreement or arrangement, or other legally binding agreement, commitment, or arrangement, whether written or oral.

“Credits” has the meaning ascribed to it in Recital C.

“Credit Purchase Agreement” has the meaning ascribed to it in Recital D.

“Current Credit Schedule” has the meaning ascribed to it in Recital H.

“Deposit” means the sum of One Hundred Fifty Thousand Dollars (\$150,000).

“Disclosure Schedules” means the schedules (including the Current Credit Schedule) delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement, as the same may be updated or supplemented by Seller before the Closing Date.

“Electronic Delivery” has the meaning ascribed to it in Section 8.16.

“Encumbrance” means any charge, claim, community property interest, pledge, equitable interest, statutory or other lien, option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification, and injunctive relief) arising out of, based on, or resulting from: (a) the presence, Release of, or exposure to any Hazardous Materials; or (b) any actual or alleged noncompliance with or Liabilities arising under or pursuant to any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any Law or any Governmental Order: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or

groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal, or remediation of any Hazardous Materials.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision, or other action required under or issued, granted, given, authorized by, or made pursuant to Environmental Law.

“Excess Credits” has the meaning ascribed to it in Recital F.

“Excluded Assets” has the meaning ascribed to it in Section 2.02.

“Excluded Books and Records” has the meaning ascribed to it in Section 2.02(e).

“Excluded Contracts” has the meaning ascribed to it in Section 2.02(a).

“Excluded Liabilities” has the meaning ascribed to it in Section 2.04.

“Escrow Agent” means [•].

“Final Release Letter” has the meaning ascribed to it in Recital B.

“Governmental Authority” means any federal, state, local, tribal, or foreign governmental authority or political subdivision thereof, or any agency, authority, commission, or instrumentality of such government or political subdivision, or any self-regulated organization or other nongovernmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“Knowledge of Seller” or “Seller’s Knowledge,” or any other similar knowledge qualification, means (i) the actual knowledge of Charles Thompson or Brian Normanly or (ii) such

actual knowledge as any of such individuals would reasonably be expected have after such inquiry as is reasonable under the circumstances.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement or rule of law of any Governmental Authority.

“Liabilities” means liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

“Long-Term Endowment Fund” means the long-term endowment fund in the amount of Five Hundred Thousand Dollars (\$500,000) established pursuant to the MBI and previously funded by Seller.

“Losses” means, to the extent permitted by applicable law, losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the reasonable cost of enforcing any right to recovery hereunder and the reasonable cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“Material Adverse Effect” means any event, occurrence, fact, condition, or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise), or assets of the Bank, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis.

“MBI” has the meaning ascribed to it in Recital A.

“Mitigation Easement Agreement” means the Mitigation Easement Agreement entered into with respect to the Real Property dated February 14, 2014 between R.C. McEntire, Jr., Claude W. Smith, W.D. Morris, and S. Stanley Juk, Jr. (collectively the “Mill Creek Partners”) as grantors and Seller as grantee, recorded in Book 1926-1542 of the land records of Richland County as Instrument No. 2014008808 on February 18, 2014, as assigned to Buyer by a Blanket Bill of Sale and Assignment made by and among the Mill Creek Partners and Buyer, dated February 14, 2014.

“Nonbank Acreage” means the 426.78-acre portion of the Real Property that is not included in the Bank Property.

“Ordinary Course of Business” means the ordinary course of Seller’s operation of the Bank in a manner that is consistent with the normal day-to-day operations or past practices of Seller with respect to the Bank.

“Permit” means any certificate of occupancy, permit, license, franchise, approval, authorization, registration, variance, or other certificate or similar right obtained, or required to be obtained, from any Governmental Authority relating to the development, construction, restoration,

ownership, operation, monitoring, or use and occupancy of the Bank Property or the Bank, including the approval letters issued by USACE for the operation of the Bank and the approval of the MBI in accordance with all applicable Laws.

“Permitted Encumbrances” has the meaning ascribed to it in Section 4.04.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

“Purchased Assets” has the meaning ascribed to it in Section 2.01.

“Qualified Settlement Offer” has the meaning ascribed to it in Section 7.04(e)(iii).

“Real Property” means the parcel of real property consisting of approximately 1,786.35 acres located in Richland County, South Carolina more fully identified and described in Exhibit A to the Mitigation Easement Agreement.

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of such Person.

“Rock Dam Quitclaim Deeds” means the four Quit Claim Deeds dated February 14, 2014 to Seller as grantee from the following grantors: (i) S. Stanley Juk, Jr., (ii) Robert C. McEntire, Jr., (iii) W.D. Morris, and (iv) Claude W. Smith, in each case remising, releasing, and quit-claiming to Seller the grantor’s undivided one-fourth interest in a certain rock dam located in Mill Creek as described therein, which Quit Claim Deeds are recorded in the Land Records of Richland County, SC in Books 1926-1595, 1926-1598, 1926-1601, 1926-1604, respectively.

“SCDOT” means the South Carolina Department of Transportation.

“SCDOT Contract” means the Agreement for Purchase and Sale of Stream and/or Wetland Mitigation Credits dated December 2, 2022 by and between SCDOT and Seller pursuant to which SCDOT has purchased for future use 22.80 Buyer Wetland Credits and 16,500.00 Stream Credits (of which 15,387.88 constitute Buyer Stream Credits and 1,112.12 constitute Excess Credits) for an aggregate purchase price of \$3,172,500, which purchase price has been paid in full and allocated between Seller and Buyer as provided in the Credit Purchase Agreement but which Credits as of the Effective Date remain on the ledger of the Bank and will not be transferred until after the Closing Date.

“Seller” has the meaning ascribed to it in the preamble.

“Seller Fundamental Representations” means the representations and warranties (i) of Seller set forth in Section 4.01 (Organization of Seller), Section 4.02 (Authority of Seller; Enforceability), Section 4.04 (Title to Purchased Assets), Section 4.07 (Legal Proceedings; Governmental Orders), and Section 4.11 (Brokers).

“Stream Credits” has the meaning ascribed to it in Recital A.

“Surplus Buyer Credits” has the meaning ascribed to it in Recital D.

“Taxes” means any and all federal, state, local, foreign, and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatsoever, together with any interest, additions, or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement, or other document relating to Taxes required by Law to be filed with any Governmental Authority, including any schedule or attachment thereto, and including any amendment thereof.

“Third-Party Claim” has the meaning ascribed to it in Section 7.04(e)(i).

“Transaction Documents” means this Agreement; the Bill of Sale, Assignment, and Assumption Agreement; and the other agreements, instruments, and documents required to be delivered at the Closing.

“USACE” has the meaning ascribed to it in Recital A.

“Wetland Credits” has the meaning ascribed to it in Recital A.

ARTICLE II PURCHASE AND SALE ASSETS; ASSUMPTION OF LIABILITIES

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller’s right, title, and interest in, to, and under the following assets, properties, and rights that are used or held for use in connection with the Bank (collectively, the “Purchased Assets”):

(a) All of Seller’s rights under the MBI existing on or arising on or after the Closing Date, including all rights in, to, and in respect of (i) all of the Credits (both Buyer Credits and Excess Credits) remaining available for withdrawal from the Bank as set forth in the Current Credit Schedule and (ii) the funds in the Long-Term Endowment Fund, which will be transferred by Seller to Buyer at Closing via a credit to Buyer on the closing statement in an amount equal to the amount of funds currently in such Long-Term Endowment Fund;

(b) All of Seller’s rights under the Credit Purchase Agreement existing on or arising on or after the Closing Date;

(c) All of Seller's rights under the Mitigation Easement Agreement existing on or arising on or after the Closing Date as and to the extent such rights relate to the Bank Property;

(d) All of Seller's rights to use the name "Mill Creek Mitigation Bank" in connection with the ownership and operation of the Bank;

(e) All of Seller's rights under the Rock Dam Quitclaim Deeds;

(f) All of Seller's rights under the SCDOT Contract existing on or arising on or after the Closing Date;

(g) Copies of books and records of Seller relating to the Bank or the Credits that are or may be necessary for Buyer's operation of the Bank after the Closing Date, including sales contracts, formal written correspondence submitted to or received from the USACE (including monitoring reports submitted to and credit release letters received from the USACE), and the Credit ledger (the "Included Books and Records");

(h) All of Seller's rights and claims under warranties and indemnities, and all similar rights against third parties, to the extent related to any Purchased Assets and arising or accruing on or after the Closing Date;

(i) All insurance benefits, including rights and proceeds, arising on or after the Closing Date from or relating to the Bank, the Purchased Assets, or the Assumed Liabilities; and

(j) All goodwill and the going concern value associated with the Bank.

Section 2.02 Excluded Assets. Notwithstanding the foregoing or any other provision hereof, the Purchased Assets shall not include the following assets (collectively, the "Excluded Assets") and Buyer shall not acquire any right or interest therein:

(a) Contracts to which Seller or any of its Affiliates may be a party, other than the MBI, the Credit Purchase Agreement, the Mitigation Easement Agreement, contracts for the sale or reservation of Credits entered into prior to Closing where such Credits have not yet been debited from the Bank, the warranties and indemnities referenced in Section 2.01(h), and the insurance benefits referenced in Section 2.01(i) (the "Excluded Contracts");

(b) Seller's rights under the Mitigation Easement Agreement existing on or arising on or after the Closing Date as and to the extent such rights relate to the Nonbank Acreage;

(c) Any tangible personal property, whether owned or leased, of Seller or any of its Affiliates;

(d) Any prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, and similar

sums and fees (including any such item relating to the payment of Taxes), other than payments related to the sale of Credits prior to Closing, to which payments Buyer is entitled under the Credit Purchase Agreement;

(e) Any books and records of Seller, other than the Included Books and Records, including books of account, Tax returns, and other financial ledgers, and general, financial, and accounting records, correspondence files, research and development files, records, and data, strategic plans, internal financial statements, and marketing and promotional surveys, material, and research (“Excluded Books and Records”); and

(f) The rights that accrue or will accrue to Seller under this Agreement or any of the other Transaction Documents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and fully and timely pay, perform, and discharge the following Liabilities of Seller (collectively, the “Assumed Liabilities”) and no other Liabilities:

(a) All Liabilities of Seller existing or arising on or after the Closing Date and arising under the MBI, the Credit Purchase Agreement, or the Mitigation Easement Agreement, but excluding such Liabilities arising out of or related to Seller’s negligence, willful misconduct, failure to perform, improper performance, or breach of warranty or other breach, default, non-compliance or violation by Seller on or before the Closing;

(b) All Liabilities of Seller under the SCDOT Contract existing on or arising on or after the Closing Date (including the obligation to transfer Credits in accordance therewith); and

(c) Those Liabilities of Seller (if any) identified in Section 2.03(c) of the Disclosure Schedules.

Without in any way limiting the generality of subsection (a), effective on and as of the Closing Buyer (or an Affiliate of Buyer designated in writing by Buyer before the Closing Date) shall become and be substituted as the “Bank Sponsor” under the MBI, and Buyer and Seller shall promptly take such steps as may be necessary to effectuate such designation and substitution in accordance with the rules and regulations of USACE relating thereto.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform, or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “Excluded Liabilities”). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities that Seller or such Affiliates are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following:

(a) Any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation, and performance of this Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby, including

fees and expenses of counsel, accountants, consultants, advisers, and others (“Seller Transaction Costs”);

(b) Any Liabilities for (i) Taxes of Seller (or any member or Affiliate of Seller) or relating to the Bank, the Purchased Assets, or the Assumed Liabilities; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.02(a); or (iii) other Taxes of Seller (or any member or Affiliate of Seller) of any kind or description (including any Liability for Taxes of Seller or any member or Affiliate of Seller that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) Any Liabilities to the extent relating exclusively to or arising exclusively out of any of the Excluded Assets;

(d) Any Liabilities arising out of or relating to any Action arising out of or relating to the Bank or the Purchased Assets, to the extent such Action arises out of or relates to acts, omissions, facts, circumstances, or conditions existing or occurring on or before the Closing Date;

(e) Any Liabilities of Seller arising under or in connection with any employee benefit plan providing benefits to any present or former employee of Seller or any of its Affiliates;

(f) Any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors, or consultants of Seller or any of its Affiliates, including any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers’ compensation, severance, retention, termination, or other payments;

(g) Any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances, or conditions existing on or before the Closing or otherwise to the extent arising out of any actions or omissions of Seller;

(h) Any Liabilities to the extent arising under any of the Excluded Contracts;

(i) Any Liabilities associated with Indebtedness of Seller or the Bank owing to financial institutions; and

(j) Any Liabilities arising out of, related to, in respect of, or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order.

Section 2.05 Purchase Price and Payment.

(a) Purchase Price. The aggregate purchase price (the “Purchase Price”) to be paid by Buyer to Seller for the Purchased Assets shall consist of: (i) the Cash Consideration plus (ii) the assumption of the Assumed Liabilities.

(b) Payment of Cash Consideration. Buyer shall pay the Cash Consideration, less the amount of the Deposit, on the Closing Date by wire transfer of immediately available funds to an account or accounts designated in writing by Seller at least two (2) Business Days before the Closing Date and shall unconditionally authorize in writing the release of the Deposit to or as directed by Seller.

Section 2.06 Deposit; Escrow Agent.

(a) Upon Seller's execution and delivery of this Agreement, Buyer shall pay over to the Escrow Agent, by wire transfer to the noninterest-bearing trust account maintained by the Escrow Agent at [●], the amount of the Deposit, which shall be held by the Escrow Agent in such account and, unless otherwise agreed in writing by Seller and Buyer, disbursed as follows:

(i) If and when Closing occurs, the Escrow Agent shall promptly disburse the Deposit to or as directed by Seller;

(ii) If Seller elects to terminate this Agreement pursuant to and in accordance with Section 3.05, then, upon written direction from Buyer (or, if Buyer does not provide such written direction to the Escrow Agent within three (3) Business Days after Seller's written request therefor, upon Seller's written demand to the Escrow Agent a copy of which Seller certifies in writing has been provided to Buyer), the Escrow Agent shall promptly disburse the Deposit to Seller by wire transfer of immediately available funds to an account designated in writing by Seller; and

(iii) If Buyer elects to terminate this Agreement pursuant to and in accordance with Section 3.06, then, upon written direction from Seller (or, if Seller does not provide such written direction to the Escrow Agent within three (3) Business Days after Buyer's written request therefor, upon Buyer's written demand to the Escrow Agent a copy of which Buyer certifies in writing has been provided to Seller), the Escrow Agent shall promptly disburse the Deposit to Buyer by wire transfer of immediately available funds to an account designated in writing by Buyer.

(b) Seller and Buyer further agree as follows with respect to the duties, responsibilities, rights, and obligations of the Escrow Agent:

(i) The Escrow Agent shall only be responsible for the safekeeping of the Deposit and disbursement thereof in accordance with the provisions of this Section 2.06.

(ii) The Escrow Agent may act in reliance upon any writing or instrument or signature that the Escrow Agent, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument in the absence of actual knowledge to the contrary, and may assume that any person purporting to give any writing, notice, advice, authorization, or instructions in connection with the provisions hereof has been duly authorized to do so. More generally, the Escrow Agent's duties hereunder shall be limited to those specifically provided herein.

(iii) In the event of any disagreement between Buyer and Seller, or between either Buyer or Seller and any person not a party to this Agreement, resulting in adverse claims or demands being made in respect of the Deposit or the disbursement thereof, or in the event the Escrow Agent, in good faith, is in doubt as to what action the Escrow Agent should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, for as long as such disagreement continues or such doubt exists, and in any such event the Escrow Agent shall not be or become liable in any way to any person for its failure or refusal to act. The Escrow Agent shall be entitled at any time, in its sole and absolute discretion: (x) to deposit all or any portion of the Deposit with the clerk of any court of competent jurisdiction or (y) to commence an action in the nature of an interpleader for a determination of the respective rights of Buyer and Seller in the Deposit (or both (x) and (y)), and, in any such case, to recover the Escrow Agent's costs and expenses, including attorneys' fees and expenses, out of the Deposit. Notwithstanding the foregoing, the Escrow Agent may in its discretion obey the order, judgment, decree, or levy of any court, whether with or without jurisdiction, or of any agency of the United States or any political subdivision thereof, or of any agency of any state or of any political subdivision thereof, and the Escrow Agent is hereby authorized, in its sole discretion, to comply with and obey any such orders, judgments, decrees, or levies. The Escrow Agent shall also be entitled to consult outside counsel of its choice and shall have full and complete authorization and protection to act in reliance on the advice of such counsel.

(iv) The Escrow Agent shall not, in its capacity as escrow agent, be liable to anyone whatsoever by reason of any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which it may do or refrain from doing in connection herewith unless caused by or arising out of its own gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special or consequential damages caused by its gross negligence or willful misconduct.

(v) The rights of the Escrow Agent under this subsection (b) are cumulative and in addition to all other rights that it may have by law or otherwise.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, and in particular the satisfaction or waiver in writing of the conditions to Closing set forth in Section 3.02, the consummation of the transactions contemplated by this Agreement (the "Closing") shall take place remotely by exchange of documents and signatures (or their electronic counterparts), on March 14, 2023 or on such earlier or later date as the parties may agree (the "Closing Date").

Section 3.02 Conditions to Closing. The parties' obligations to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction (or waiver in writing) of each of the following conditions precedent:

(a) Each party shall have fully and timely performed each and all obligations to be performed on or before the Closing Date by such party under this Agreement or any of the other Transaction Documents;

(b) Each party's representations and warranties contained in this Agreement shall be true and correct in all material respects as though made on the Closing Date; and

(c) This Agreement and the transactions contemplated hereby shall have been approved by the Richland County Council in accordance with applicable Laws.

Section 3.03 Closing Deliverables.

(a) At the Closing, Seller and Buyer shall deliver to each other the following:

(i) a bill of sale, assignment, and assumption agreement in substantially the form of Exhibit A (the "Bill of Sale, Assignment, and Assumption Agreement"), duly executed by each of them;

(ii) a deed or other instrument in form and substance reasonably satisfactory to both Buyer and Seller conveying to Buyer or Buyer's designee Seller's rights under the Mitigation Easement Agreement existing on or arising on or after the Closing Date as and to the extent such rights relate to the Bank Property as provided in Section 2.01(c);

(iii) a quitclaim deed in form and substance reasonably satisfactory to both Buyer and Seller remising, releasing, and quitclaiming to Buyer or Buyer's designee, without warranty of any kind other than as to Seller's right to convey, Seller's rights under the Rock Dam Quitclaim Deeds as provided in Section 2.01(e); and

(iv) an amended and restated Mitigation Easement Agreement in form and substance reasonably satisfactory to both Buyer and Seller that limits Seller's rights under the Mitigation Easement Agreement after Closing to the Nonbank Acreage;

(b) At the Closing, Seller shall, in addition to the items specified in subsection (a), deliver or cause to be delivered to Buyer the following:

(i) originals or true and correct copies of the Included Books and Records;

(ii) such other instruments of transfer, duly executed by Seller, as Buyer may reasonably request to effectuate and confirm the transfer of ownership to Buyer of the Purchased Assets;

(iii) a certificate from the manager of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the managers or members of Seller authorizing the execution, delivery, and performance of this Agreement and the other Transaction Documents to which Seller is a party and the consummation of the transactions contemplated hereby and thereby and stating that all such resolutions are in full force and

effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and

(iv) such other customary instruments of transfer, assumption, filings, or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement and all of the transactions contemplated hereby, including such confirmations or approvals as the USACE may indicate are required after the Effective Date.

(c) At the Closing, Buyer (x) shall pay to Seller the balance of the Cash Consideration as specified in Section 2.05 and (y) shall, in addition to the items specified in subsection (a), deliver to Seller the following:

(i) a certificate from the [•] of Buyer certifying that attached thereto are true and complete copies of all resolutions and ordinances adopted by the Richland County Council authorizing the execution, delivery, and performance of this Agreement and the other Transaction Documents to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby and stating that all such resolutions and ordinances are in full force and effect and are all the resolutions and ordinances adopted in connection with the transactions contemplated hereby and thereby; and

(ii) such other customary instruments of transfer, assumption, filings, or documents, in form and substance reasonably satisfactory to Seller, as may be required to give effect to this Agreement and all of the transactions contemplated hereby.

Section 3.04 Closing Prorations. Any fees of the Escrow Agent shall be borne equally, and the parties shall prorate any additional costs according to South Carolina custom.

Section 3.05 Seller's Right to Terminate and Retain Deposit.

(a) Notwithstanding any other provision of this Agreement, if Closing does not occur on the Closing Date on account of (i) Buyer's failure to fully and timely perform each and all obligations to be performed by Buyer on or before the Closing Date as required by Section 3.02(a) or (ii) the failure of Buyer's representations and warranties contained in this Agreement to be true and correct in all material respects as though made on the Closing Date as required by Section 3.02(b) or (iii) the failure of the Richland County Council to have approved this Agreement and the transactions contemplated hereby as contemplated by Section 3.02(c) on or before the Closing Date, then Seller may, by written notice to Buyer given in accordance with Section 8.02 on or after the Closing Date, elect to terminate this Agreement, in which event:

(i) Seller shall be entitled to receive and retain the Deposit and Buyer shall immediately direct the Escrow Agent to release the Deposit to Seller as provided in Section 2.06(a)(ii); and

(ii) This Agreement shall terminate and the parties shall have no further obligations to each other, except for those obligations set forth in **Error! Reference source**

not found. (Public Announcements) and, to the extent applicable to matters or circumstances arising or existing after the effective date of termination, ARTICLE VIII.

(b) Seller and Buyer agree that: (i) the amount of damages that Seller would sustain (x) upon a breach of this Agreement by Buyer or (y) by virtue of any failure of the transactions contemplated hereby to be consummated that gives rise to a termination of this Agreement by Seller pursuant to subsection (a) of this Section would be difficult to ascertain with reasonable certainty; (ii) the amount of the Deposit represents their mutually agreed-upon reasonable estimate of such damages; and (iii) such amount constitutes liquidated damages and not a penalty. Accordingly, if Seller terminates this Agreement pursuant to subsection (a) of this Section, or if the parties otherwise fail to consummate the transactions contemplated by this Agreement and such failure is due to a breach by Buyer of this Agreement or Buyer's failure to timely perform or satisfy any of the conditions to Closing specified in Section 3.02 to be performed or satisfied by Buyer, then Seller shall, as its sole and exclusive remedy therefor, be entitled to receive and retain the Deposit in lieu of any and all other damages or monetary remedies.

Section 3.06 Buyer's Right to Terminate and to Return of Deposit. Notwithstanding any other provision of this Agreement, if Closing does not occur on the Closing Date on account of (i) Seller's failure to fully and timely perform each and all obligations to be performed by Seller on or before the Closing Date as required by Section 3.02(a) or (ii) the failure of Seller's representations and warranties contained in this Agreement to be true and correct in all material respects as though made on the Closing Date as required by Section 3.02(b), then Buyer may, by written notice to Seller given in accordance with Section 8.02 on or after the Closing Date, elect to terminate this Agreement, in which event:

(a) Buyer shall be entitled to receive the return of the Deposit and Seller shall immediately direct the Escrow Agent to release the Deposit to Buyer as provided in Section 2.06(a)(iii); and

(b) This Agreement shall terminate and the parties shall have no further obligations to each other, except for those obligations set forth in **Error! Reference source not found.** (Public Announcements) and, to the extent applicable to matters or circumstances arising or existing after the effective date of termination, ARTICLE VIII.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct in all material respects as of the Effective Date and will be true and correct in all material respects on and as of the Closing Date.

Section 4.01 Organization of Seller. Seller is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State of Delaware and has full legal power and authority to own and operate the Bank and to own, operate, or lease the properties and assets now owned, operated, or leased by it and to carry on its business as currently conducted.

Section 4.02 Authority of Seller; Enforceability. Seller has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Seller. This Agreement and each other Transaction Document to which Seller is a party has been duly executed and delivered by Seller, and (assuming due authorization, execution, and delivery by the other party or parties thereto, if any) this Agreement and each other Transaction Document to which Seller is a party constitutes a legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting or relating to creditors' rights generally and the availability of injunctive relief and other equitable remedies.

Section 4.03 No Conflicts; Consents. The execution, delivery, and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of formation, operating agreement, or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Bank, or the Purchased Assets; (c) to the Knowledge of Seller, require the consent of, or notice to or other action by, any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify, or cancel any Contract or Permit to which Seller is a party or by which Seller or the Bank is bound or to which any of the Purchased Assets is subject; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. To the knowledge of Seller, no consent, approval, Permit, Governmental Order, or declaration or filing with, or notice to, any Governmental Authority (including USACE) is required by or with respect to Seller in connection with (e) the execution and delivery of this Agreement or any of the other Transaction Documents to which Seller is a party, and (f) the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Title to Purchased Assets. Except as limited in Section 3.03(a)(iii) with respect to Seller's rights under the Rock Dam Quitclaim Deeds, Seller has good and valid title to and the right to convey all of the Purchased Assets. All such Purchased Assets are, and will be assigned and transferred to Buyer, free and clear of Encumbrances except for liens for Taxes not yet due and payable (the "Permitted Encumbrances").

Section 4.05 Suitability and Sufficiency of Purchased Assets. EXCEPT AS PROVIDED IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER regarding the suitability of any of the Purchased Assets for the uses contemplated by Buyer or their fitness for any particular purpose, including any use or purpose known to or reasonably knowable by Seller.

Section 4.06 MBI, MBI Obligations, Credit Purchase Agreement, Mitigation Easement and Credits.

(a) Seller has provided to Buyer true, correct, and complete copies of the MBI (including any modifications and amendments thereto), the Final Release Letter and any other correspondence with USACE concerning transferability of the MBI;

(b) The MBI is valid, binding, enforceable, in full force and effect, and, to Seller's Knowledge, transferable to Buyer;

(c) Seller is not in breach or default under the MBI, the Credit Purchase Agreement, or the Mitigation Easement, and no event has occurred or circumstance exists that, with the delivery of notice, passage of time, or both, would constitute such a breach or default or other non-compliance with the MBI, the Credit Purchase Agreement, or the Mitigation Easement;

(d) Seller has not received any notice of any non-compliance, breach or default, or of any event that with notice or lapse of time, or both, would constitute a non-compliance, breach or default, by Seller under the MBI and the other party thereto is not in breach or default thereunder, and neither party to the MBI has exercised any termination rights with respect thereto;

(e) Seller has not assigned, transferred, or otherwise granted to any Person any rights under the MBI or the Mitigation Easement, except with respect to Credits withdrawn (or to be withdrawn) from the Bank as reflected on the Current Credit Schedule;

(f) The Current Credit Schedule is complete, and accurately reflects the Credits available in the Bank for sale or withdrawal on the Closing Date;

(g) Seller has not pledged, mortgaged, or otherwise granted an Encumbrance on its interest in or rights under the MBI, the Mitigation Easement Agreement, the Credit Purchase Agreement, or any Credits; and

(h) The Bank is in compliance with the obligations and standards of the MBI and the Mitigation Easement in all material respects, and to Seller's Knowledge there are no facts, circumstances, or conditions existing on or before the Closing that with the passage of time would lead to the Bank not being in compliance with the obligations and standards of the MBI and the Mitigation Easement in all material respects.

Section 4.07 Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Bank, the Purchased Assets, or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. To the knowledge of Seller, no event has occurred or circumstances exist that may give rise to or serve as a basis for any such Action.

(b) To the Knowledge of Seller, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties, or awards against, relating to, or affecting Seller or the Bank.

Section 4.08 Compliance With Laws. Seller has complied, and is now complying, with all Laws applicable to the operation of the Bank as currently conducted or the use of the Purchased Assets.

Section 4.09 Environmental Matters.

(a) The operations of Seller with respect to the Bank and the Bank Property are currently and have been in compliance with all Environmental Laws. Seller has not received from any Person, with respect to the Bank or the Bank Property (or any portion thereof), any: (i) Environmental Notice or Environmental Claim or (ii) written request for information pursuant to any Environmental Law that either remains pending or unresolved or is the source of ongoing obligations or requirements as of the Closing Date.

(b) To the knowledge of Seller, there has been no Release of Hazardous Materials in contravention of, or that results in a violation of, Environmental Law with respect to the Bank or the Bank Property, and Seller has not received an Environmental Notice that the Bank or the Bank Property or any portion thereof (including soils, groundwater, surface water, or buildings and other structure located thereon) has been contaminated with any Hazardous Materials that could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law by, Seller.

Section 4.10 Employment Matters. Seller does not have, and has never had, any employees. There is no Contract (i) for the employment or engagement of any individual (as an employee, independent contractor, or otherwise) or (ii) relating to the payment of any severance, termination, or bonus payment to any present or former employee of Seller or any of its Affiliates for which Buyer will become liable.

Section 4.11 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct in all material respects as of the Effective Date and will be true and correct in all material respects on and as of the Closing Date.

Section 5.01 Organization of Buyer. Buyer is a political subdivision of the State of South Carolina created and existing under the Laws of the State of South Carolina and has full legal power and authority to own, operate, or lease the properties and assets now owned, operated, or leased by it and to carry on its activities as currently conducted.

Section 5.02 Authority of Buyer; Enforceability. Buyer has full legal power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a

party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and each other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder, and (upon approval of the Richland Count Counsel as contemplated by Section 3.02(c)) the consummation by Buyer of the transactions contemplated hereby and thereby have been (or upon approval of the Richland Count Counsel as contemplated by Section 3.02(c) will have been) duly authorized by all requisite action on the part of Buyer. This Agreement and each other Transaction Document to which Buyer is a party has been duly executed and delivered by Buyer, and (assuming due authorization, execution, and delivery by each other party thereto) this Agreement and each other Transaction Document to which Buyer is a party constitutes a legal, valid, and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting or relating to creditors' rights generally and the availability of injunctive relief and other equitable remedies.

Section 5.03 No Conflicts; Consents. The execution, delivery, and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the charter or similar governing documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) to the knowledge of Buyer, require the consent of, or notice to or other action by, any Person under any Contract to which Buyer is a party. To the knowledge of Buyer, no consent, approval, Permit, Governmental Order, or declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or any other Transaction Documents to which Buyer is a party or (upon approval of the Richland Count Counsel as contemplated by Section 3.02(c)) the consummation of the transactions contemplated hereby and thereby.

Section 5.04 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to or serve as a basis for any such Action.

Section 5.05 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 5.06 Nonreliance. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in this Agreement and (b) neither Seller nor any other Person on behalf of Seller or its Affiliates has made any representation or warranty as to Seller, the Purchased Assets, or this Agreement, except as expressly set forth in this Agreement.

ARTICLE VI ADDITIONAL COVENANTS

Section 6.01 Litigation Cooperation. If Buyer or Seller or any of their Affiliates shall become engaged or participate in any Action relating in any way to the Purchased Assets, the Excluded Assets, the Assumed Liabilities, or the Excluded Liabilities, Seller and Buyer shall, if requested to do so and at the cost and expense of the requesting party, cooperate in all reasonable respects in connection therewith, including by making available to requesting party (or any of its Affiliates) any records in its possession that may be relevant thereto.

Section 6.02 Tax Matters.

(a) All transfer, documentary, sales, use, stamp, registration, value added, and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents shall be borne and paid by Buyer. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and shall cooperate with respect thereto as necessary).

(b) Buyer and Seller shall cooperate fully with each other, as and to the extent reasonably requested by either of them, in connection with the preparation and filing of any Tax Return, statement, report, or form or any audit, litigation, or other Action with respect to Taxes. Such cooperation shall include the retention of all Tax Returns (including supporting work papers) and (upon request) the provision of records and information that are reasonably relevant to any such audit, litigation, or other Action or any tax planning. To the extent not transferred to Buyer pursuant to the terms of this Agreement, Seller agrees to (i) retain for the period required by Law all Tax Returns, books, and records with respect to Tax matters pertinent to Seller relating to any taxable period or portion thereof ending before the Closing Date in such Person's possession at the time of Closing and to abide by all record retention agreements entered into with any Governmental Authority and (ii) give Buyer reasonable written notice before destroying or discarding any such books and records and in such case, if Buyer so requests, allow Buyer to take possession of such Tax Returns and such books and records.

(c) If requested by Buyer, Seller shall notify all of the Governmental Authorities in the jurisdictions that impose Taxes on Seller or where Seller has a duty to file Tax Returns of the transactions contemplated by this Agreement in the form and manner required by such Governmental Authorities, if the failure to make such notifications or receive any available tax clearance certificate could subject Buyer to any Taxes of Seller. If any Governmental Authority asserts that Seller is liable for any Tax, Seller shall promptly pay any and all such amounts and shall provide evidence to Buyer that such liabilities have been paid in full or otherwise satisfied.

Section 6.03 Operation of the Bank, etc. Pending Closing. From the Effective Date until the Closing (or the earlier termination of this Agreement by Seller pursuant to Section 3.05 or by Buyer pursuant to Section 3.06), except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), Seller shall: (x) operate the Bank in the Ordinary Course of Business and use its best efforts to maintain and preserve intact the goodwill of USACE and other regulators with which it

has relationships relating to the Bank and (y) not sell or agree or commit to sell any Credits, including Excess Credits. Without limiting the foregoing, from the Effective Date until the Closing Date (or the earlier termination of this Agreement by Seller pursuant to Section 3.05 or by Buyer pursuant to Section 3.06), Seller shall:

- (a) preserve and maintain all of its Permits;
- (b) pay its Taxes when due;
- (c) continue in full force and effect without modification all liability, casualty, and other insurance policies, except as required by applicable Law;
- (d) perform all of its obligations under the MBI and all other Contracts relating to or affecting the Purchased Assets; and
- (e) comply in all material respects with all applicable Laws.

Section 6.04 Further Assurances. Following the Closing, each of the parties shall, and shall cause such party's respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VII REMEDIES FOR DAMAGES AND LIMITATIONS THEREON

Section 7.01 Survival; Knowledge. All representations, warranties, covenants, and agreements of the parties in or arising under this Agreement (including the Disclosure Schedules) and the other Transaction Documents shall survive the Closing. Each representation and warranty shall be deemed qualified or waived to the extent that a party to whom the representation or warranty was made, whether as a result of its due diligence investigation before the Closing Date or otherwise as a result of actual disclosure by the other party before the Closing Date, has actual knowledge with respect to facts, circumstances, or claims that, if the same had in fact been disclosed herein or in the Disclosure Schedules by the other party, such representation or warranty would in fact be true and correct.

Section 7.02 Buyer's Remedies. In the event of any of the following:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, any of the other Transaction Documents, or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;
- (b) any breach or nonfulfillment by Seller of any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement, any of the other Transaction Documents, or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) Seller's failure to pay or otherwise perform or discharge as and when due any Excluded Liability, which failure results in the assertion of any claim against or Loss by Buyer; or

(d) Seller's intentional misrepresentation, willful misconduct, or fraud;

Seller shall (subject to the conditions and limitations contained in Section 7.04) be liable to Buyer for any and all Losses incurred or sustained by, or imposed upon, Buyer to the extent based upon, arising out of, with respect to, or by reason of such inaccuracy, breach, nonfulfillment, intentional misrepresentation, willful misconduct, or fraud.

Section 7.03 Seller's Remedies. In the event of any of the following:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement, any of the other Transaction Documents, or any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(b) any breach or nonfulfillment of any covenant, agreement, or obligation to be performed by Buyer pursuant to this Agreement, any of the other Transaction Documents, or any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(c) Buyer's failure to pay or otherwise perform or discharge as and when due any Assumed Liability; or

(d) Buyer's intentional misrepresentation, willful misconduct, or fraud;

Buyer shall (subject to the conditions and limitations contained in Section 7.04) be liable to Seller for any and all Losses incurred or sustained by, or imposed upon, Seller to the extent based upon, arising out of, with respect to, or by reason of such inaccuracy, breach, nonfulfillment, intentional misrepresentation, willful misconduct, or fraud.

Section 7.04 Certain Limitations on Claims for Damages.

(a) Notwithstanding anything set forth in this ARTICLE VII to the contrary, except in the case of fraud, intentional misrepresentation, or willful misconduct, Seller shall not be liable to Buyer under Section 7.02(a) for any money damages in respect of Losses suffered or incurred by Buyer on account of any inaccuracies in or breaches of any representations or warranties of Seller until the aggregate total amount of Losses under such subsection exceeds \$50,000 (the "Basket Amount"), and then only to the extent that the aggregate amount of such Losses exceeds the Basket Amount.

(b) Notwithstanding anything set forth in this ARTICLE VII to the contrary, except in the case of fraud, intentional misrepresentation, or willful misconduct, Buyer shall not be liable to Seller under Section 7.03(a) for any money damages in respect of Losses suffered or incurred by Seller on account of any inaccuracies in or breaches of any representations or warranties of Buyer

until the aggregate total amount of Losses under such subsection exceeds the Basket Amount, and then only to the extent that the aggregate amount of such Losses exceeds the Basket Amount,

(c) Notwithstanding anything set forth in this ARTICLE VII to the contrary:

(i) The limitations set forth in subsections (a) and (b) of this Section 7.04 shall not apply in the case of fraud, intentional misrepresentation, or willful misconduct; and

(ii) Except in the case of fraud, intentional misrepresentation, or willful misconduct, the aggregate total amount of damages in respect of all Losses (whether arising out of or in respect of inaccuracies in or breaches of representations or warranties or breaches or nonfulfillments of covenants, agreements, or obligations) (x) for which Seller shall be liable to Buyer or (y) for which Buyer shall be liable to Seller, as applicable, shall not exceed fifteen percent (15%) of the Cash Consideration.

(d) Notwithstanding anything set forth in this ARTICLE VII to the contrary, neither party shall be liable for money damages in respect of any Losses suffered or incurred by the other party, as the case may be:

(i) Under Section 7.02(a) (in respect of any inaccuracies in or breaches of any representations or warranties of Seller) unless Seller shall have received written notice of the claim for damages specifying the factual basis of that claim in reasonable detail (to the extent then known by Buyer) on or before the first anniversary of the Closing Date, except and to the extent that such claim is based on an alleged inaccuracy in or breach of any of the Seller Fundamental Representations, in which case such notice must be received not later than sixty (60) days after the expiration of the applicable statute of limitations with respect to such claim; or

(ii) Under Section 7.03(a) (in respect of any inaccuracies in or breaches of any representations or warranties of Buyer) unless Buyer shall have received written notice of the claim for damages specifying the factual basis of that claim in reasonable detail (to the extent then known by Seller) on or before the first anniversary of the Closing Date, except and to the extent that such claim is based on an alleged inaccuracy in or breach of any of the Buyer Fundamental Representations, in which case such notice must be received not later than sixty (60) days after the expiration of the applicable statute of limitations with respect to such claim.

(e) Notwithstanding anything set forth in this ARTICLE VII to the contrary, in no event shall Seller have any liability to Buyer in respect of Losses that Buyer may suffer or incur, whether on account of Seller's failure to pay or otherwise perform or discharge as and when due any Excluded Liability or otherwise, unless Buyer has satisfied in respect of such Losses or any claim or matter giving rise thereto all of the conditions precedent set forth in paragraphs (i), (ii), and (iii) below:

(i) Notice of Third-Party Claims. If Buyer receives notice or otherwise becomes aware of the assertion of any claim or the commencement of any Action by any Person who is not a party to this Agreement (a "Third-Party Claim") against Buyer that

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PPAB 8546138v4

Buyer believes may give rise to a claim for damages by Buyer against Seller under this Agreement, Buyer shall give Seller reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third-Party Claim or, if earlier, at least five (5) days before any answer or other responsive pleading in such Action must be filed. The failure to give such prompt written notice shall not, however, relieve Seller of its obligations in respect of such Third-Party Claim, except to the extent that Seller forfeits or is deprived of rights or defenses or is otherwise materially prejudiced by reason of such failure. Such notice by Buyer shall describe the Third-Party Claim in reasonable detail, shall include copies of any pleadings and all material written evidence thereof, and shall indicate the estimated amount, if reasonably practicable, of the Losses that Buyer reasonably believes it has sustained or may sustain.

(ii) Right to Defend. Seller shall have the right to participate in, or by giving written notice to Buyer to assume, the defense of any Third-Party Claim at Seller's expense and by Seller's own counsel, and Buyer shall cooperate in good faith in such defense. In the event that Seller assumes the defense of any Third-Party Claim, subject to Section 7.04(e)(iii), Seller shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal, or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of Buyer. Buyer shall have the right to participate in the defense of any Third-Party Claim with counsel selected by it, subject to Seller's right to control the defense thereof, but all fees and disbursements of such counsel shall be borne by Buyer. Notwithstanding the foregoing, however, if in the reasonable written opinion of counsel to Buyer, (x) there are legal defenses available to Buyer that are different from or additional to those available to Seller or (y) there exists a conflict of interest between Seller and Buyer that cannot be waived, Seller shall be liable for the reasonable fees and expenses of counsel to Buyer in each jurisdiction for which Buyer determines counsel is required. If Seller elects not to compromise or defend such Third-Party Claim, fails to promptly notify Buyer in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third-Party Claim, Buyer may, subject to Section 7.04(e)(iii), pay, compromise, or defend such Third-Party Claim and Seller shall indemnify Buyer for any and all Losses to which Buyer is otherwise entitled under this Agreement based upon, arising from, or relating to such Third-Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket costs) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(iii) Settlement of Third-Party Claims. Notwithstanding any other provision of this Agreement, Seller shall not enter into any settlement of any Third-Party Claim without the prior written consent of Buyer, except as provided in this Section 7.04(e)(iii). If (x) a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer and provides, in customary form, for the unconditional release of Buyer from all liabilities and obligations in connection with such Third-Party Claim (a "Qualified Settlement Offer") and (y) Seller desires to accept and agree to such Qualified Settlement Offer, Seller shall give written notice to that effect

to Buyer. If Buyer fails to consent to the Qualified Settlement Offer within ten (10) days after its receipt of such notice, Buyer may elect, at its own cost and expense, to continue to contest or defend such Third-Party Claim, and in such event the maximum liability of Seller as to such Third-Party Claim shall not exceed the amount of the Qualified Settlement Offer. If Buyer fails to consent to the Qualified Settlement Offer within the above ten-day time period and also fails to promptly assume in writing the defense of such Third-Party Claim, Seller may settle the Third-Party Claim upon the terms set forth in the Qualified Settlement Offer. If Buyer has assumed the defense pursuant to paragraph (ii) of this subsection (e), it shall not agree to any settlement without the written consent of Seller (which consent shall not be unreasonably withheld, conditioned, or delayed).

Section 7.05 Exclusive Remedies. The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims for equitable relief and claims arising from fraud, criminal activity, or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement, or obligation set forth in this Agreement or any of the Transaction Documents or otherwise relating to the subject matter of this Agreement shall be subject to the provisions and limitations set forth in this ARTICLE VII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims, and causes of action for any breach of any representation, warranty, covenant, agreement, or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may now or hereafter have against the other party hereto and its Affiliates and Representatives arising under or based upon any Law, except in accordance with and subject to the provisions and limitations set forth in this ARTICLE VII. Nothing in this ARTICLE VII shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal, or intentional misconduct.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 8.02 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) if sent by email of a PDF document (with confirmation of transmission), one (1) Business Day after the date it is sent if sent during normal business hours of the recipient and two (2) Business Days thereafter if sent after normal business hours of the recipient; or (d) on the fifth Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.02):

If to Seller: Mill Creek Mitigation Holdings LLC
Attention: David P. Hoffer
23 South Main St., Ste. 3A
Hanover, NH 03755
Email: dhoffer@lymetimber.com

With copies (which shall not constitute notice) to:

Neuberger, Quinn, Gielen, Rubin & Gielen, P.A.
Attention: Michael L. Quinn, Esq.
1 South St., 27th Floor
Baltimore, MD 21202
Email: mlq@nqgrg.com

And to: Eco-Capital Advisors, LLC
Attention: Charles Thompson
3414 Peachtree Rd, NE, Ste. 990
Atlanta, GA 30326
E-mail: thompson@ecocapitaladvisors.com

If to Buyer: Richland County, South Carolina
Attention: County Administrator
Administration Building
2020 Hampton St., Room 4058
PO Box 192
Columbia, SC 29202
E-mail: adminoffice@richlandcountysc.gov

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

Parker Poe
Attention: Ray Jones, Esq.
1221 Main St., Ste. 1100
Columbia, SC 29201
E-mail: rayjones@parkerpoe.com

Section 8.03 Interpretation; Rules of Construction.

(a) For purposes of this Agreement: (i) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (ii) the word “or” is not exclusive; (iii) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole; and (iv) “party” refers to either of the parties to this Agreement, *i.e.*, either Seller or Buyer.

(b) Unless the context otherwise requires, references in this Agreement: (i) to Articles and Sections, or to Disclosure Schedules and Exhibits, mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to or otherwise furnished in accordance with, this Agreement; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as theretofore amended, supplemented, and modified; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

(c) This Agreement shall be construed without regard to any presumption or rule requiring or permitting construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(d) The Disclosure Schedules and Exhibits referred to herein shall be construed with, and constitute an integral part of, this Agreement and by this reference are hereby incorporated fully herein.

Section 8.04 Headings. The headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

Section 8.05 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effectuate the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits, and the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control. This Agreement supersedes all prior agreements and understandings between the parties with respect to the transactions contemplated by this Agreement.

Section 8.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as expressly set forth herein, neither party may assign its rights or delegate performance of its obligations hereunder without the prior written consent of the other party. In no event, however, shall any otherwise permitted assignment relieve the assigning party of any of its obligations hereunder.

Section 8.08 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by the party to be charged therewith. No waiver by either party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by either party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 8.10 Severability. If any term or other provision of this Agreement is held to be invalid, illegal, or incapable of being enforced pursuant to Applicable Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon a determination that any term or other provision of this Agreement is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement in such a manner so as to effectuate the original terms of this Agreement as closely as permitted by applicable Law and public policy so that the transactions contemplated hereby may be consummated as originally contemplated to the greatest extent possible.

Section 8.11 Disclosure Schedules. Each representation, warranty, and covenant set forth herein shall have independent significance. In the event of any inconsistency between the statements in the body of this Agreement and those in any of the Disclosure Schedules, the statements in the Disclosure Schedules will control.

Section 8.12 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of South Carolina without regard to any provision that would result in the application of the laws of any other state or jurisdiction.

(b) ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA SITTING IN COLUMBIA OR THE COURTS OF THE STATE OF SOUTH CAROLINA LOCATED IN RICHLAND COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION, SUIT, OR

PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT, OR PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT, OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, **EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY** IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SUBSECTION (c).

Section 8.13 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.14 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 8.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 8.16 Electronic Delivery. This Agreement and any signed agreement or instrument to be delivered in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine, electronic mail, or other electronic device (any such delivery, an “Electronic Delivery”), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of either party hereto or to any such other agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such other agreement or instrument shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through

the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed as of the Effective Date by their duly authorized officers.

SELLER:

MILL CREEK MITIGATION HOLDINGS LLC
By LTC Management LLC, its Manager

By: _____
Name:
Title: Managing Member

BUYER:

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Name:
Title:

DISCLOSURE SCHEDULES

SECTION 1

Current Credit Schedule

EXHIBIT A

Form of Bill of Sale, Assignment, and Assumption Agreement

[Attached]

Richland County Council Request for Action

Subject:

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Subtext; and other related matters

Notes:

First Reading: February 14, 2023

Second Reading: March 7, 2023 {Tentative}

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A PUBLIC INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR PUBLIC INFRASTRUCTURE CREDITS TO A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT SUBTEXT; AND OTHER RELATED MATTERS.

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

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding infrastructure serving the County (collectively, “Public Infrastructure”);

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

WHEREAS, a company identified for the time being as Project Subtext (the “Company”), has, as part of a commercial development to be located in the County, committed to establish student housing in the County (“Project”) including, and to be located on, land more particularly identified in the Agreement (as hereinafter defined) (“Land”), consisting of total taxable investment by the Company in real and personal property of not less than **[\$85,000,000]**, and in connection with the Project, anticipates making investment in certain Public Infrastructure;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and to amend the Park Agreement to include the Land and other real and personal property comprising the Project (collectively, the “Property”) in the Park; and

WHEREAS, the City of Columbia, South Carolina, the municipality in which the Property is located, must consent to the expansion of the boundaries of the Park to include the Property in the Park in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, the County further desires to enter into a Public Infrastructure Credit Agreement with the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of

assisting in paying the costs of certain Public Infrastructure invested by the Company at, in, or in connection with, the Project, subject to the terms and conditions set forth in the Agreement.

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

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

Section 2. *Expansion of the Park Boundaries; Inclusion of Property.* The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is, contingent upon the City of Columbia's consent to such expansion in accordance with Section 4-1-170(C) of the Act, 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, receipt of the consent of the City of Columbia as to the inclusion of the Property in the Park, and delivery of written notice to Fairfield of the inclusion of the Property in the Park, which written notice shall include a copy of this Ordinance and identification of the Property.

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

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

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

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

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

[End of Ordinance]

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading: February 14, 2023
Second Reading: March 7, 2023
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF AGREEMENT

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

by and between

RICHLAND COUNTY, SOUTH CAROLINA

and

PROJECT SUBTEXT

Effective as of: [_____, 2023]

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

This PUBLIC INFRASTRUCTURE CREDIT AGREEMENT, effective as of [_____, 2023] (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and a company identified for the time being as PROJECT SUBTEXT (as hereinafter defined “Company” together with the County, “Parties,” each, a “Party”).

WITNESSETH:

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

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding public infrastructure serving the County (collectively, “Public Infrastructure”);

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

WHEREAS, as part of a commercial development to be located in the County, the Company has committed to establish market rate housing in the County (“Project”) including, and to be located on, land more particularly identified on Exhibit A hereto (“Land”), consisting of total taxable investment by the Company in real and personal property of not less than [\$85,000,000], and in connection with the Project, anticipates making investment in certain Public Infrastructure as further described herein;

WHEREAS, by an ordinance enacted on [_____, 2023] (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property comprising the Project (“Property”) in the Park, and the City of Columbia, South Carolina consented to such expansion of Park boundaries by an ordinance enacted on [_____, 2023] in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested by the Company at, in, or in connection with, the Project, subject to the terms and conditions below.

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

**ARTICLE I
REPRESENTATIONS**

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

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

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

- (a) The Company is in good standing under the laws of [_____] has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve the Investment Commitment, as defined below, at the Project;
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound; and
- (d) The Company covenants to complete any and all Company Public Infrastructure in a workmanlike manner and in accordance with all applicable codes and regulations.

**ARTICLE II
PUBLIC INFRASTRUCTURE CREDITS**

Section 2.1. *Investment Commitment.* The Company shall invest not less than [**\$85,000,000**] in taxable property in the Project ("Investment Commitment") by [_____, **2028**] ("Certification Deadline"). The Company shall certify to the County achievement of the Investment Commitment on a date no later than the Certification Deadline ("Certification Date"), by providing documentation, which documentation may include, without limitation, pay applications, invoices, and accounting logs, and, only with respect to the personal property portion of the Project, any SCDOR PT-100 filed by the Company with respect to the

Project, to the County's Economic Development Department sufficient to reflect achievement of the Investment Commitment, in form and substance reasonably acceptable to the County. Notwithstanding anything in this Agreement to the contrary, the Certification Date shall not be later than, and may not be extended past, the Certification Deadline. If the Company fails to achieve and so certify the Investment Commitment by the Certification Deadline, the County may terminate this Agreement and, upon any such termination, the Company shall no longer be entitled to any further benefits under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Certification Deadline shall not be later than, and may not be extended past, the last day of the year which is five years after the effective date of this Agreement.

Section 2.2. Public Infrastructure Commitment.

(a) Prior to receiving the Public Infrastructure Credits under this Agreement, the Company shall make an investment in Public Infrastructure in the County which may be comprised of any or all of the following improvements and facilities benefitting the public or dedicated to public use: water, sewer, or stormwater improvements, greenspaces, recreation or community facilities, pedestrian or transportation facilities, parking facilities, facade redevelopment, roadway improvements, and energy production or communications technology infrastructure. Public Infrastructure may also include expenditures on the eradication of blight.

(b) In connection with the Project, the Company has committed with commercially reasonable efforts to invest in the Public Infrastructure as described on Exhibit B hereto ("Company Public Infrastructure"). The Company shall certify its actual investment in the Company Public Infrastructure to the County on the Certification Date, by providing documentation, which documentation may include, without limitation, pay applications, invoices, and accounting logs, to the County's Economic Development Department sufficient to reflect the Company's investment in the Company Public Infrastructure, in form and substance reasonably acceptable to the County. If the Company fails to substantially complete the Company Public Infrastructure by the Certification Deadline in the cumulative total investment amount set forth on Exhibit B hereto, then the Company may not be entitled to the full value of the Public Infrastructure Credit as provided by this Agreement.

(c) Following the Certification Date, the County's Economic Development Department shall have 30 days ("Verification Deadline") to verify the Company's investment in the Company Public Infrastructure. The County has the right to exclude from the investment in Company Public Infrastructure certified by the Company any costs the County determines, in its sole discretion, to be ineligible costs. The County may also reject any Company Public Infrastructure investment as ineligible if the County determines, in its sole discretion, that it has not been completed in a workmanlike manner or in accordance with applicable codes or regulations. The County's Economic Development Department shall, on a date no later than the Verification Deadline (the "Verification Date"), provide to the Company, by written notice, the County's determination of the verified amount of Company Public Infrastructure investment. Failure to provide such a written determination by the Verification Deadline shall be deemed to be a determination by the County that all Company Public Infrastructure investment certified by the Company is verified as eligible costs, and, in such event, the Verification Date shall be deemed to be the Verification Deadline.

Section 2.3. Public Infrastructure Credit.

(a) To assist in paying for costs of Company Public Infrastructure, the County shall provide a Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project, commencing with the first Fee Payment following the Verification Date. The term, amount and calculation of the Public Infrastructure Credit is described on Exhibit C hereto.

(b) For each tax year for which the Company is entitled to a Public Infrastructure Credit, the County shall prepare and issue the Company's annual Fee Payment bill with respect to the Project net of the Public Infrastructure Credit set forth in **Section 2.3(a)** of this Agreement ("Net Fee Payment"). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

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

(d) The County makes no representation or warranty with respect to the Company Public Infrastructure. The execution and delivery of this Agreement and the extension of the Public Infrastructure Credit do not constitute a commitment by the County to maintain the Company Public Infrastructure.

Section 2.4. Filings; Administration. To assist the County in administering the Public Infrastructure Credit, with respect to the Company's Fee Payments due with respect to the personal property portion of the Project, the Company shall, for each tax year corresponding to the Credit Term, as defined on Exhibit C hereto, prepare and file a separate schedule to the SCDOR PT-100 with respect to the personal property portion of the Project. Additionally, the Company shall, on or before January 31 of each year following the commencement of the Credit Term, deliver to the Economic Development Director of the County the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit D, as may be amended by subsequent resolution, with respect to the Company.

Section 2.5 Cumulative Public Infrastructure Credit. The cumulative dollar amount of the Public Infrastructure Credit shall not exceed the amount invested by the Company in Company Public Infrastructure, as verified, or deemed verified, by the County on or before the Verification Deadline. The County Economic Development Department shall provide the verified investment amount to the County Auditor for purposes of applying the Public Infrastructure Credit in accordance with **Section 2.3** of this Agreement.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1. Events of Default. The following are "Events of Default" under this Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; for purposes of this Agreement, "abandonment or closure of the Project" means failure to place all or a portion of the Project in service by December 31, 2028;

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

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in **Sections 2.1** and **2.2** of this Agreement and under **(a)** above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

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

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 3.2. Remedies on Default.

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 3.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 3.4. Remedies Not Exclusive. No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

Section 3.5. *Nonwaiver.* A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

Section 4.1. *Examination of Records; Confidentiality.*

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; (iii) verifying the investment in the Company Public Infrastructure; and (iv) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

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

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

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

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

Section 4.5. *Limitation of Liability.*

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

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

(c) The County is not responsible for the Company Public Infrastructure and disclaims all liability with respect to the Company Public Infrastructure.

Section 4.6. *Indemnification Covenant.*

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

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

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

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

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

Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

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

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

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

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

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

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

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

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

Section 4.17. Business Day. If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

[TWO SIGNATURE PAGES FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Council, Richland County Council

[SIGNATURE PAGE 1 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

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

PROJECT SUBTEXT

By: _____

Name: _____

Its: _____

[SIGNATURE PAGE 2 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

EXHIBIT A

LAND DESCRIPTION

[*Legal description to be modified, and Tax Map Number to be inserted, following third reading.]

EXHIBIT B (See Section 2.2)

DESCRIPTION OF COMPANY PUBLIC INFRASTRUCTURE

The Company Public Infrastructure includes a structured parking garage featuring approximately 500 parking spaces; the Company anticipates that such parking garage will include parking for residents, employees, as well as commercial/retail parking spaces. In addition to the structured parking garage, the Company Public Infrastructure will consist of extensive streetscape improvements, including the construction or restoration of sidewalks and pedestrian street lighting improvements. The anticipated total cost of the Company Public Infrastructure is approximately \$9,711,432 and is further detailed below:

Type	Investment
Parking Structure	\$8,811,432
ROW Improvements (sidewalks & landscaping)	\$350,000
Burial of Overhead Power Lines	\$400,000
Pedestrian Style Street Lighting	\$150,000

Notwithstanding anything above or in this Agreement to the contrary, the Company and the County acknowledge and agree that: (i) the Company Public Infrastructure shall, subject to the provisions of **Section 2.2(c)** of this Agreement, include, in addition to that described and delineated above, any Public Infrastructure invested in by the Company in connection with the Project and consisting of improvements or infrastructure included within the description of Public Infrastructure set forth in **Section 2.2** of this Agreement; and, (ii) the specific line item budget amounts listed above are current estimates and the actual expenditures made by the Company with respect to each such line item may fluctuate as the Project develops.

EXHIBIT C (See Section 2.3)

DESCRIPTION OF PUBLIC INFRASTRUCTURE CREDIT

The County shall provide a 50% Public Infrastructure Credit against the Fee Payments due and owing from the Company to the County with respect to the Project as provided in this Agreement, provided, the cumulative total amount of the Public Infrastructure Credit shall not exceed the Company's investment in the Company Public Infrastructure.

The Company is eligible to receive the Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project for a period of 10 consecutive years, beginning with the first such Fee Payment due with respect to the Project following the Verification Date and ending on the earlier of the 10th year or the year in which the cumulative total amount of the Public Infrastructure Credit equals the Company's investment in the Company Public Infrastructure ("Credit Term").

EXHIBIT D (See Section 2.4)

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

See attached.

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

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

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:


Clerk to County Council

Richland County Council Request for Action

Subject:

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company known to the county as Project Wichita; and other related matters

Notes:

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

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A PUBLIC INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR PUBLIC INFRASTRUCTURE CREDITS TO A COMPANY KNOWN TO THE COUNTY AS PROJECT WICHITA ; AND OTHER RELATED MATTERS.

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

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding infrastructure serving the County (collectively, “Public Infrastructure”);

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

WHEREAS, Project Wichita (“Company”) desires to develop a conventional multi-housing development within the County (“Project”), consisting of taxable investments in real and personal property of not less than \$90,000,000;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and amend the Park Agreement to include the real and personal property relating to the Project (“Property”) in the Park;

WHEREAS, the City of Columbia, South Carolina, the municipality in which the Property is located, must consent to the expansion of the boundaries of the Park to include the Property in the Park in accordance with Section 4-1-170(C) of the Act; and

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

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

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

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

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

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

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

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

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

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading: March 7, 2023
Second Reading:
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF AGREEMENT

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

by and between

RICHLAND COUNTY, SOUTH CAROLINA

and

PROJECT WICHITA

Effective as of: [April 4, 2023]

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

This PUBLIC INFRASTRUCTURE CREDIT AGREEMENT, effective as of [DATE] (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and a company known to the county as Project Wichita, a South Carolina limited liability company (“Company” together with the County, “Parties,” each, a “Party”).

WITNESSETH:

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

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of designing, acquiring, constructing, improving or expanding public infrastructure serving the County (collectively, “Public Infrastructure”);

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

WHEREAS, the Company has committed to develop a Conventional Multi-Family Housing Development in the County (“Project”) on property more particularly identified by Exhibit A (“Land”), consisting of taxable investment in real and personal property of not less than \$90,000,000;

WHEREAS, by an ordinance enacted on [DATE] (“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 the City of Columbia, South Carolina consented to such expansion of Park boundaries by an ordinance enacted on [_____, 2023] in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested by the Company at or in connection with the Project, subject to the terms and conditions below.

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

ARTICLE I REPRESENTATIONS

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

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

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

- (a) The Company is in good standing under the laws of the State of South Carolina, has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve the Investment Commitment, each as defined below, at the Project;
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound; and
- (d) The Company covenants to complete the Public Infrastructure in a workmanlike manner and in accordance with all applicable codes and regulations.

ARTICLE II PUBLIC INFRASTRUCTURE CREDITS

Section 2.1. *Investment Commitment.* The Company shall invest not less than \$90,000,000 in taxable property at the Project ("Investment Commitment") by the Certification Date, as defined below. The Company shall certify to the County achievement of the Investment Commitment by no later than December 31, 2028 ("Certification Date"), by providing documentation to the County sufficient to reflect achievement of the Investment Commitment, in form and substance reasonably acceptable to the County. If the Company fails to achieve and certify the Investment Commitment by the Certification Date, the County may terminate this Agreement and, on termination, the Company is no longer entitled to any further

benefits under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Certification Date shall not be later than, and may not be extended past, the last day of the year which is five years after the effective date of this Agreement.

Section 2.2. Public Infrastructure Commitment.

(a) Prior to receiving the Public Infrastructure Credits under this Agreement, the Company shall make an investment in Public Infrastructure in the County which may be comprised of the following improvements and facilities benefitting the public or dedicated to public use: water sewer, or stormwater improvements, greenspaces, recreation or community facilities, pedestrian or transportation facilities, parking facilities, facade redevelopment, roadway improvements, and energy production or communications technology infrastructure. Public Infrastructure may also include expenditures on the eradication of blight.

(b) The Company has committed to invest in the Public Infrastructure as described on Exhibit B. The Company shall certify its actual investment in the Public Infrastructure to the County by the Certification Date, by providing documentation, in form and substance reasonably acceptable to the County, to the County's Economic Development Department sufficient to reflect the amount invested in the Public Infrastructure. If the Company fails to complete the Public Infrastructure by the Certification Date, then the Company may not be entitled to the full value of the Public Infrastructure Credits as provided by this Agreement.

(c) Following the Certification Date, the County's Economic Development Department shall have 30 days ("Verification Date") to verify the Company's investment in the Public Infrastructure. The County has the right to exclude from the investment in Public Infrastructure certified by the Company any costs the County determines, in its sole discretion, to be ineligible costs. The County may also reject any Public Infrastructure investment as ineligible if the County determines, in its sole discretion, that it has not been completed in a workmanlike manner or in accordance with applicable codes or regulations. The County's Economic Development Department shall, on a date no later than the Verification Date, provide to the Company, by written notice, the County's determination of the verified amount of investment made by the Company in Public Infrastructure. Failure to provide a written verification by the Verification Date shall be deemed to be a determination by the County that all costs certified by the Company are verified as eligible costs.

Section 2.3. Public Infrastructure Credits.

(a) To assist in paying for costs of Public Infrastructure, the County shall provide a Public Infrastructure Credit against certain of the Company's Fee Payments due with respect to the Project, commencing with the first Fee Payment following the Verification Date. The term, amount and calculation of the Public Infrastructure Credit is described in Exhibit C.

(b) For each property tax year in which the Company is entitled to a Public Infrastructure Credit ("Credit Term"), the County shall prepare and issue the Company's annual Fee Payment bill with respect to the Project net of the Public Infrastructure Credit set forth in Section 2.3 (a) ("Net Fee Payment"). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE PUBLIC INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE PUBLIC INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND

THE PARK AGREEMENT. THE PUBLIC INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE PUBLIC INFRASTRUCTURE CREDITS.

(d) The County makes no representation or warranty with respect to the Public Infrastructure. The execution and delivery of this Agreement and the extension of the Public Infrastructure Credit do not constitute a commitment by the County to maintain the Public Infrastructure.

Section 2.4. Filings. To assist the County in administering the Public Infrastructure Credits, the Company shall, for the Credit Term, prepare and file with the County such separate schedules or information with respect to the Property as may be necessary to distinguish the Property from any other property of the Company. Additionally, the Company shall, on or before January 31 of each year during the Credit Term, which is anticipated to commence on or before in January 31, 2025, deliver to the Economic Development Director of the County the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit D, as may be amended by subsequent resolution, with respect to the Company.

Section 2.5 Cumulative Public Infrastructure Credit. The cumulative dollar amount of the Public Infrastructure Credit shall not exceed the amount invested by the Company in Public Infrastructure, as verified, or deemed verified, by the County as of the Verification Date. The County Economic Development Department shall provide the verified investment amount to the County Auditor for purposes of applying the Public Infrastructure Credit in accordance with Section 2.3 of this Agreement.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1. Events of Default. The following are "Events of Default" under this Fee Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; For purposes of this Agreement, "abandonment or closure of the Project" means failure to place all or a portion of the Project in service by December 31, 2028;

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

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in Sections 2.1 and 2.2 and under (a) above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

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

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 3.2. Remedies on Default.

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate the Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate the Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 3.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 3.4. Remedies Not Exclusive. No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

Section 3.5. Nonwaiver. A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

**ARTICLE IV
MISCELLANEOUS**

Section 4.1. Examination of Records; Confidentiality.

(a) The County and its authorized agents, at any reasonable time upon prior reasonable notice of not less than seven (7) business days, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; (iii) verifying the investment in Public Infrastructure; and (iv) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

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

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

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

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

Section 4.5. Limitation of Liability.

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

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

(c) The County is not responsible for the Public Infrastructure and disclaims all liability with respect to the Public Infrastructure.

Section 4.6. Indemnification Covenant.

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

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

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

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

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

Section 4.7. Notices. All notices, certificates, requests, or other communications under this Agreement are sufficiently given and are deemed given, unless otherwise required by this Agreement, when (i) delivered and confirmed by United States first-class, registered mail, postage prepaid or (ii) sent by facsimile, and addressed as follows:

if to the County:	Richland County, South Carolina Attn: Director of Economic Development 2020 Hampton Street Columbia, South Carolina 29204 Phone: 803.576.2043 Fax: 803.576.2137
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with a copy to
(does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202
Phone: 803.255.8000
Fax: 803.255.8017

if to the Company:

with a copy to

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 not exceeding \$5,000. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expenses as set forth in the written request no later than 60 days following receipt of the written request from the County. For purposes of this Section, "Administration Expenses" means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys' fees. Administration Expenses do not include any costs, expenses, including attorneys' fees, incurred by the County (i) in defending challenges to the Fee Payments or Public Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

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

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

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

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

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

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

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

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

Section 4.17. *Business Day.* If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

*[TWO SIGNATURE PAGES FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Council, Richland County Council

[SIGNATURE PAGE 1 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

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

PROJECT WICHITA

By: _____

Name: _____

Its: _____

[SIGNATURE PAGE 2 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

EXHIBIT A

LAND DESCRIPTION

All that certain real property located at 1409 Huger Street, Columbia, Richland County, South Carolina, containing approximately 5.88 acres, more or less, as shown on that certain plat prepared for South Carolina Electric & Gas Co. by Associated E & S, Inc. dated August 22, 2014, and last revised on march 12, 2015, and recorded in the office of the Register of Deeds for Richland County, South Carolina in plat book 2013, at page 2860, on march 23, 2015 [(the "**plat**"), a copy of which is attached hereto and incorporated herein..

TMS Number: Portion of 09009-13-01; and a portion of TMS Number 08912-13-01.

The Property does not include that portion of TMS Number 09009-13-01 located on the opposite side of Williams Street and also bounded by Lady Street.

EXHIBIT B (See Section 2.2)

DESCRIPTION OF PUBLIC INFRASTRUCTURE

PUBLIC INFRASTRUCTURE IMPROVEMENTS (CORE)

- **ADDITION OF 643-SPACE STRUCTURED PARKING FACILITY AND 42 SURFACE PARKING SPACES TO ACCOMMODATE DOWNTOWN VISITORS**
- **RELOCATION AND MODERNIZATION OF SEWER MAINS LOCATED ON-SITE**
- **RELOCATION AND MODERNIZATION OF STORMWATER MAINS LOCATED ON-SITE**
- **RELOCATION, MODERNIZATION AND BURYING OF ELECTRIC LINES LOCATED ON-SITE**
- **ADDITION OF SIDEWALKS ALONG ROADWAYS ADJACENT TO PROJECT**
- **COMPLETION OF REQUIRED ENVIRONMENTAL REMEDIATION AND CONTINUED MONITORING ACTIVITIES RELATED TO PRIOR INDUSTRIAL USES OF THE SITE**
- **ADDITION OF SITE LIGHTING**
- **ANY OFF-SITE ROADWAY IMPROVEMENTS**
- **ADDITION OF ADDITIONAL STORMWATER DETENTION/WATER QUALITY INFRASTRUCTURE TO IMPROVE WATER QUALITY FOR DRAINAGE BASIN THROUGHOUT DOWNTOWN, LEADING INTO CONGAREE RIVER**
- **ADDITION OF PUBLIC “POCKET PARK” AT CORNER OF HUGER ST AND WASHINGTON ST**
- **SOFT COSTS ATTRIBUTED TO RIGHT-OF-WAY, PARKING IMPROVEMENTS, UTILITY RELOCATION AND UPGRADE, ENVIRONMENTAL INCLUDING BUT NOT LIMITED TO: SITE WORK, ARCHITECTURAL, CIVIL ENGINEERING, DEVELOPER FEE, CONSTRUCTION MANAGEMENT FEE, INSPECTIONS, AND LEGAL/ADMINISTRATIVE/ACCOUNTING EXPENSES/INTEREST**

TOTAL CORE PUBLIC INFRASTRUCTURE IMPROVEMENTS: []

PUBLIC INFRASTRUCTURE IMPROVEMENTS (ANCILLARY)

- **INCREASED COST OF CONSTRUCTION TO ADD “STOREFRONT” FACADE TO ACTIVATE SITE AND PROMOTE CONNECTIVITY WITH OTHER ADJACENT USES**
- **ADDITIONAL ARCHITECTURAL EXPENSE TO BETTER BLEND INTO THE DOWNTOWN LANDSCAPE (ESTIMATED COST: \$1,000,000)**
- **ADDITION OF LANDSCAPING ALONG ROADWAYS ADJACENT TO PROJECT**

TOTAL ANCILLARY PUBLIC INFRASTRUCTURE IMPROVEMENTS: []

EXHIBIT C (See Section 2.3)

DESCRIPTION OF PUBLIC INFRASTRUCTURE CREDIT

The County shall provide a [50%] Public Infrastructure Credit against the Fee Payments due and owing from the Company to the County with respect to the Project as provided in this Agreement, provided, the cumulative total amount of the Public Infrastructure Credit shall not exceed the Company's investment in the Public Infrastructure.

The Company is eligible to receive the Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project for a period of [10] consecutive years, beginning with the first such Fee Payment due with respect to the Project following the Verification Date and ending on the earlier of the 10th year or the year in which the cumulative total amount of the Public Infrastructure Credit equals the Company's investment in the Company Public Infrastructure ("Credit Term").

EXHIBIT D (See Section 2.5)

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

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

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.


RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA



Chair, Richland County Council

(SEAL)
ATTEST:



Clerk to County Council

Richland County Council Request for Action

Subject:

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company currently identified as Project Siquino; and other related matters

Notes:

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

**STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____**

AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A PUBLIC INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR PUBLIC INFRASTRUCTURE CREDITS TO A COMPANY CURRENTLY IDENTIFIED AS PROJECT SIQUONO; AND OTHER RELATED MATTERS.

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

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding infrastructure serving the County (collectively, “Public Infrastructure”);

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

WHEREAS, A company currently identified as Project Siquono (the “Company”), has, as part of a commercial development to be located in the County, committed to establish market rate housing in the County (“Project”) including, and to be located on, land more particularly identified in the Agreement (as hereinafter defined) (“Land”), consisting of total taxable investment by the Company in real and personal property of not less than **[\$66,000,000]**, and in connection with the Project, anticipates making investment in certain Public Infrastructure;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and to amend the Park Agreement to include the Land and other real and personal property comprising the Project (collectively, the “Property”) in the Park; and

WHEREAS, the City of Columbia, South Carolina, the municipality in which the Property is located, must consent to the expansion of the boundaries of the Park to include the Property in the Park in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, the County further desires to enter into a Public Infrastructure Credit Agreement with the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of

assisting in paying the costs of certain Public Infrastructure invested by the Company at, in, or in connection with, the Project, subject to the terms and conditions set forth in the Agreement.

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

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

Section 2. *Expansion of the Park Boundaries; Inclusion of Property.* The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is, contingent upon the City of Columbia's consent to such expansion in accordance with Section 4-1-170(C) of the Act, 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, receipt of the consent of the City of Columbia as to the inclusion of the Property in the Park, and delivery of written notice to Fairfield of the inclusion of the Property in the Park, which written notice shall include a copy of this Ordinance and identification of the Property.

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

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

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

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

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

[End of Ordinance]

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading: March 7, 2023
Second Reading:
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF AGREEMENT

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

by and between

RICHLAND COUNTY, SOUTH CAROLINA

and

PROJECT SIQUONO

Effective as of: [_____, 2023]

PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

This PUBLIC INFRASTRUCTURE CREDIT AGREEMENT, effective as of [_____, 2023] (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and a company identified for the time being as PROJECT SIQUNO (as hereinafter defined “Company” together with the County, “Parties,” each, a “Party”).

WITNESSETH:

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

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding public infrastructure serving the County (collectively, “Public Infrastructure”);

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

WHEREAS, as part of a commercial development to be located in the County, the Company has committed to establish market rate housing in the County (“Project”) including, and to be located on, land more particularly identified on Exhibit A hereto (“Land”), consisting of total taxable investment by the Company in real and personal property of not less than [\$66,000,000], and in connection with the Project, anticipates making investment in certain Public Infrastructure as further described herein;

WHEREAS, by an ordinance enacted on [_____, 2023] (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property comprising the Project (“Property”) in the Park, and the City of Columbia, South Carolina consented to such expansion of Park boundaries by an ordinance enacted on [_____, 2023] in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested by the Company at, in, or in connection with, the Project, subject to the terms and conditions below.

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

**ARTICLE I
REPRESENTATIONS**

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

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

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

- (a) The Company is in good standing under the laws of [_____] has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve the Investment Commitment, as defined below, at the Project;
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound; and
- (d) The Company covenants to complete any and all Company Public Infrastructure in a workmanlike manner and in accordance with all applicable codes and regulations.

**ARTICLE II
PUBLIC INFRASTRUCTURE CREDITS**

Section 2.1. *Investment Commitment.* The Company shall invest not less than **[\$66,000,000]** in taxable property in the Project ("Investment Commitment") by [_____, 2028] ("Certification Deadline"). The Company shall certify to the County achievement of the Investment Commitment on a date no later than the Certification Deadline ("Certification Date"), by providing documentation, which documentation may include, without limitation, pay applications, invoices, and accounting logs, and, only with respect to the personal property portion of the Project, any SCDOR PT-100 filed by the Company with respect to the

Project, to the County's Economic Development Department sufficient to reflect achievement of the Investment Commitment, in form and substance reasonably acceptable to the County. Notwithstanding anything in this Agreement to the contrary, the Certification Date shall not be later than, and may not be extended past, the Certification Deadline. If the Company fails to achieve and so certify the Investment Commitment by the Certification Deadline, the County may terminate this Agreement and, upon any such termination, the Company shall no longer be entitled to any further benefits under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Certification Deadline shall not be later than, and may not be extended past, the last day of the year which is five years after the effective date of this Agreement.

Section 2.2. Public Infrastructure Commitment.

(a) Prior to receiving the Public Infrastructure Credits under this Agreement, the Company shall make an investment in Public Infrastructure in the County which may be comprised of any or all of the following improvements and facilities benefitting the public or dedicated to public use: water, sewer, or stormwater improvements, greenspaces, recreation or community facilities, pedestrian or transportation facilities, parking facilities, facade redevelopment, roadway improvements, and energy production or communications technology infrastructure. Public Infrastructure may also include expenditures on the eradication of blight.

(b) In connection with the Project, the Company has committed with commercially reasonable efforts to invest in the Public Infrastructure as described on Exhibit B hereto ("Company Public Infrastructure"). The Company shall certify its actual investment in the Company Public Infrastructure to the County on the Certification Date, by providing documentation, which documentation may include, without limitation, pay applications, invoices, and accounting logs, to the County's Economic Development Department sufficient to reflect the Company's investment in the Company Public Infrastructure, in form and substance reasonably acceptable to the County. If the Company fails to substantially complete the Company Public Infrastructure by the Certification Deadline in the cumulative total investment amount set forth on Exhibit B hereto, then the Company may not be entitled to the full value of the Public Infrastructure Credit as provided by this Agreement.

(c) Following the Certification Date, the County's Economic Development Department shall have 30 days ("Verification Deadline") to verify the Company's investment in the Company Public Infrastructure. The County has the right to exclude from the investment in Company Public Infrastructure certified by the Company any costs the County determines, in its sole discretion, to be ineligible costs. The County may also reject any Company Public Infrastructure investment as ineligible if the County determines, in its sole discretion, that it has not been completed in a workmanlike manner or in accordance with applicable codes or regulations. The County's Economic Development Department shall, on a date no later than the Verification Deadline (the "Verification Date"), provide to the Company, by written notice, the County's determination of the verified amount of Company Public Infrastructure investment. Failure to provide such a written determination by the Verification Deadline shall be deemed to be a determination by the County that all Company Public Infrastructure investment certified by the Company is verified as eligible costs, and, in such event, the Verification Date shall be deemed to be the Verification Deadline.

Section 2.3. Public Infrastructure Credit.

(a) To assist in paying for costs of Company Public Infrastructure, the County shall provide a Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project, commencing with the first Fee Payment following the Verification Date. The term, amount and calculation of the Public Infrastructure Credit is described on Exhibit C hereto.

(b) For each tax year for which the Company is entitled to a Public Infrastructure Credit, the County shall prepare and issue the Company's annual Fee Payment bill with respect to the Project net of the Public Infrastructure Credit set forth in **Section 2.3(a)** of this Agreement ("Net Fee Payment"). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

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

(d) The County makes no representation or warranty with respect to the Company Public Infrastructure. The execution and delivery of this Agreement and the extension of the Public Infrastructure Credit do not constitute a commitment by the County to maintain the Company Public Infrastructure.

Section 2.4. Filings; Administration. To assist the County in administering the Public Infrastructure Credit, with respect to the Company's Fee Payments due with respect to the personal property portion of the Project, the Company shall, for each tax year corresponding to the Credit Term, as defined on Exhibit C hereto, prepare and file a separate schedule to the SCDOR PT-100 with respect to the personal property portion of the Project. Additionally, the Company shall, on or before January 31 of each year following the commencement of the Credit Term, deliver to the Economic Development Director of the County the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit D, as may be amended by subsequent resolution, with respect to the Company.

Section 2.5 Cumulative Public Infrastructure Credit. The cumulative dollar amount of the Public Infrastructure Credit shall not exceed the amount invested by the Company in Company Public Infrastructure, as verified, or deemed verified, by the County on or before the Verification Deadline. The County Economic Development Department shall provide the verified investment amount to the County Auditor for purposes of applying the Public Infrastructure Credit in accordance with **Section 2.3** of this Agreement.

ARTICLE III DEFAULTS AND REMEDIES

Section 3.1. Events of Default. The following are "Events of Default" under this Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; for purposes of this Agreement, "abandonment or closure of the Project" means failure to place all or a portion of the Project in service by December 31, 2028;

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

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in **Sections 2.1** and **2.2** of this Agreement and under **(a)** above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

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

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 3.2. Remedies on Default.

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 3.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 3.4. Remedies Not Exclusive. No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.

Section 3.5. *Nonwaiver.* A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

Section 4.1. *Examination of Records; Confidentiality.*

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; (iii) verifying the investment in the Company Public Infrastructure; and (iv) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

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

Section 4.2. *Assignment.* The Company may assign or otherwise transfer any of its rights and interests in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, any assignment of this Agreement, in whole or in part, to an affiliated entity of the Company is hereby approved without any further action of the County Council. The County's Director of Economic Development must receive notice of any assignment to an affiliated entity of the Company. For purposes of this Agreement, "affiliated entity" shall mean any corporation, limited liability company, partnership or other person or entity which now or hereafter owns all or part of the Company or which is now or hereafter owned in whole or in part by the Company, or by any partner, shareholder or owner of the Company, and shall also include any subsidiary, affiliate or other person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

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

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

Section 4.5. Limitation of Liability.

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

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

(c) The County is not responsible for the Company Public Infrastructure and disclaims all liability with respect to the Company Public Infrastructure.

Section 4.6. Indemnification Covenant.

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

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

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

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

“Administration Expenses” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys’ fees. Administration Expenses do not include any costs, expenses, including attorneys’ fees, incurred by the County (i) in defending challenges to the Fee Payments or Public Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County’s Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County’s choice.

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

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

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

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

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

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

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

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

Section 4.17. Business Day. If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

[TWO SIGNATURE PAGES FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to Council, Richland County Council

[SIGNATURE PAGE 1 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

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

PROJECT SIQUNO

By: _____

Name: _____

Its: _____

[SIGNATURE PAGE 2 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]

EXHIBIT A

LAND DESCRIPTION

[*Legal description to be modified, and Tax Map Number to be inserted, following third reading.]

EXHIBIT B (See Section 2.2)

DESCRIPTION OF COMPANY PUBLIC INFRASTRUCTURE

The Company Public Infrastructure includes a site work, streetscaping, landscaping and public surface parking. Additional Public Infrastructure improvements include water, sewer and stormwater improvements and a public park with a walking path. The anticipated total cost of the Company Public Infrastructure is approximately \$7,545,945 and is further detailed below:

Public Infrastructure Budget Estimate	
<u>Description</u>	<u>Budget</u>
Site Work/Streetscaping/Landscaping (including public surface parking)	\$3,624,098
Water/Sewer/Stormwater Improvements	\$1,042,917
Water/Sewer/Stormwater Impact Fees	\$1,168,640
Retention and Detention Ponds	\$661,760
Public Parks & Walking Paths	\$456,500
General Conditions	\$592,029
Total Public Infrastructure Costs	\$7,545,945

Notwithstanding anything above or in this Agreement to the contrary, the Company and the County acknowledge and agree that: (i) the Company Public Infrastructure shall, subject to the provisions of **Section 2.2(c)** of this Agreement, include, in addition to that described and delineated above, any Public Infrastructure invested in by the Company in connection with the Project and consisting of improvements or infrastructure included within the description of Public Infrastructure set forth in **Section 2.2** of this Agreement; and, (ii) the specific line item budget amounts listed above are current estimates and the actual expenditures made by the Company with respect to each such line item may fluctuate as the Project develops.

EXHIBIT C (See Section 2.3)

DESCRIPTION OF PUBLIC INFRASTRUCTURE CREDIT

The County shall provide a 50% Public Infrastructure Credit against the Fee Payments due and owing from the Company to the County with respect to the Project as provided in this Agreement, provided, the cumulative total amount of the Public Infrastructure Credit shall not exceed the Company's investment in the Company Public Infrastructure.

The Company is eligible to receive the Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project for a period of 10 consecutive years, beginning with the first such Fee Payment due with respect to the Project following the Verification Date and ending on the earlier of the 10th year or the year in which the cumulative total amount of the Public Infrastructure Credit equals the Company's investment in the Company Public Infrastructure ("Credit Term").

EXHIBIT D (See Section 2.4)

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

See attached.

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

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

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:


Clerk to County Council

SOUTH CAROLINA

)

)

RICHLAND COUNTY

)

A RESOLUTION

COMMITTING TO NEGOTIATE A FEE-IN-LIEU OF AD VALOREM TAXES AND INCENTIVE AGREEMENT BETWEEN RICHLAND COUNTY AND PROJECT CHARLIE ECHO; 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 Charlie Echo, an entity whose name cannot be publicly disclosed at this time (“Sponsor”), desires to invest capital in the County in order to expand certain manufacturing and related facilities in the County (“Project”);

WHEREAS, the Project is anticipated to result in an investment of at least \$16,500,000, in the aggregate, in taxable real and/or personal property and the creation of at least 100 new, full-time jobs, in the aggregate; 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, amongst other incentives, 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 negotiate the Agreement, which provides for FILOT Payments with respect to the portion of the Project which constitutes economic development property, and certain other incentives as shall be set forth therein. The further details of the FILOT Payments, such other incentives, 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 and after 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.

[End of Resolution]

RESOLVED: March 7, 2023

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk to County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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 Charlie Echo to provide for payment of a fee-in-lieu of taxes; authorizing certain special source credits; and other related matters

Notes:

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

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF AD VALOREM TAXES AND INCENTIVE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT CHARLIE ECHO TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AUTHORIZING CERTAIN SPECIAL SOURCE CREDITS; AND OTHER RELATED MATTERS.

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

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

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide special source revenue credits (“Special Source 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, a company identified for the time being as Project Charlie Echo (“Sponsor”), desires to expand certain manufacturing and related facilities in the County (“Project”), which the Sponsor anticipates will consist of, in the aggregate, taxable investment in real and personal property of not less than \$16,500,000 and the creation of, in the aggregate, at least 100 new, full-time jobs; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, as sponsor, the 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; (ii) locating the Project in the Park; and (iii) providing Special Source 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; and

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

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

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

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

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

[End of Ordinance]

RICHLAND COUNTY, SOUTH CAROLINA

Chair, Richland County Council

(SEAL)
ATTEST:

Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

First Reading: March 7, 2023
Second Reading:
Public Hearing:
Third Reading:

EXHIBIT A

FORM OF FEE AGREEMENT

See attached.

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

BETWEEN

PROJECT CHARLIE ECHO

AND

RICHLAND COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF [●]

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**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

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

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name	[●]	Section 1.1, Page [●]
Project Location	[●]	
Tax Map No.	[●]	Exhibit A
FILOT		
• Phase Exemption Period	30 years	Section 1.1, Page [●]
• Contract Minimum Investment Requirement	\$16,500,000	Section 1.1, Page [●]
• Contract Minimum Jobs Requirement	100	Section 1.1, Page [●]
• Investment Period	5 years	Section 1.1, Page [●]
• Assessment Ratio	6%	Section 4.1, Page [●]
• Millage Rate	580.5 mills	Section 4.1, Page [●]
• Fixed or Five-Year Adjustable Millage	Fixed	Section 4.1, Page [●]
• Claw Back Information	Termination of Fee Agreement and claw back if investment does not reach the Act Minimum Investment Requirement	Section 6.1, Page [●]
Multicounty Park	I-77 Corridor Regional Industrial Park	Section 1.1, Page [●]
Special Source Credits		
• Brief Description	60% Special Source Credit against each FILOT Payment due from the Sponsor during the Credit Term	Exhibit D
• Credit Term	12 consecutive tax years, commencing with the tax year for which the initial FILOT Payment is due from the Sponsor under this Fee Agreement	Exhibit D
• Claw Back Information	Pro-rata claw back and prospective reduction in Special Source Credits if investment does not reach the Contract Minimum Investment Requirement and/or jobs do not reach the Contract Minimum Jobs Requirement	Section 6.2, Page [●] and Exhibit E
Other Information	N/A	N/A

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

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of [●], 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 a company identified for the time being as Project Charlie Echo (“*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 special source revenue credits (“*Special Source Credits*”) 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 certain manufacturing and related facilities (“*Facility*”) in the County, which the Sponsor anticipates will consist of, in the aggregate, taxable investment in real and personal property of not less than \$16,500,000 and the creation of, in the aggregate, at least 100 new, full-time jobs;

(d) By an ordinance enacted on [●], County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT, certain Special Source Credits, and other incentives, as more particularly described in this Fee Agreement, to induce the Sponsor to expand the 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, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Act.

“*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, Special Source Credits or other incentives provided by this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

"Code" means the Code of Laws of South Carolina, 1976, as amended.

"Commencement Date" means the last day of the property tax year during which the initial Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be [●].

"Contract Minimum Investment Requirement" means a taxable investment in real and personal property in the Project of not less than \$16,500,000, in the aggregate, within the Investment Period.

"Contract Minimum Jobs Requirement" means not less than 100 new, 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 a Special Source Credit is applicable, as described in Exhibit D.

"Department" means the South Carolina Department of Revenue, or any successor entity thereto.

"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 comprising the Project placed in service within 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 now or hereafter acquired for use on or about the Real Property.

"Event of Default" means any event of default specified in Section 7.1 of this Fee Agreement.

"Fee Agreement" means this Fee-In-Lieu of *Ad Valorem* Taxes and Incentive Agreement, as originally executed and as may be supplemented or amended from time to time.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1 of this Fee Agreement.

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

“**Final Termination Date**” means the later of (i) the date on which the last FILOT Payment with respect to the Final Phase is made, or (ii) the date on which all Special Source Credits due from the County hereunder have been fully provided by the County, unless this Fee Agreement is first terminated in accordance with the terms of this Fee Agreement.

“**Improvements**” means all improvements now or hereafter constructed on 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 Sponsor presently anticipates, and the County hereby acknowledges and agrees, that the Investment Period, unless so extended, will end on [●]

“**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 each annual FILOT Payment net of the applicable Special Source Credit.

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

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

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

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

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

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

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

“**South Carolina Freedom of Information Act**” means Title 30, Chapter 4 of the Code.

“**Special Source Credits**” means the special source revenue credits provided to the Sponsor pursuant to Section 4-1-175 of the MCIP Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Special Source Credits are to be used for the payment of, or reimbursement for, Infrastructure constituting real property, improvements and infrastructure before any use for the payment of, or reimbursement for, Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“**Sponsor**” means a company identified for the time being as Project Charlie Echo 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 any entity that participates in the investment or job creation in, or 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 [●] by adopting an Inducement Resolution, as defined in the Act on [●].

(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 on terms, and for a duration, sufficient to facilitate the County's provision of the Special Source Credits set forth in this Fee Agreement.

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 [●] 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, Special Source Credits, 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, Special Source Credits, 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, Special Source Credits, 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, or cause the construction or acquisition of, the Project and (ii) meet, or cause to be met, the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 20[●]. 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 and/or the Contract Minimum Jobs Requirement are 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 with the first January 31 following the Commencement Date, the Sponsor shall deliver to the Economic Development Director of the County (the “***Economic Development Director***”) with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County’s Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

ARTICLE IV FILOT PAYMENTS

Section 4.1. *FILOT Payments.*

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property and Improvements portion of the Phase, the County and the Sponsor have

elected to use the fair market value established in the first year of the Phase Exemption Period), multiplied by

- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 580.5 mills, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 20[●].

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7 of this Fee Agreement.

Section 4.2. FILOT Payments on Replacement Property. If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1 of this Fee Agreement, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace and such replacement occurs after the end of the Investment Period.

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 prospectively 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 tax year corresponding to the calendar 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 for a particular 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. *Special Source Credits.* To assist in paying for costs of Infrastructure, the Sponsor is entitled to claim a Special Source 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 Special Source Credits is described in Exhibit D. In no event may the Sponsor's aggregate Special Source Credits received pursuant to this Section exceed the aggregate expenditures by the Sponsor and any Sponsor Affiliates on Infrastructure.

For each tax year for which a Special Source Credit is applicable, 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 BACKS

Section 6.1. *FILOT Claw Back.* If the Sponsor fails to achieve the Act Minimum Investment Requirement, without regard to any extension permitted by this Fee Agreement or the Act, then this Fee Agreement shall immediately terminate and the Sponsor shall make payments as required by the Act.

Section 6.2. *Special Source Credits 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 with respect to the Special Source Credits. 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 6.2 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, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency of such payment and requesting that it be remedied;

(c) A Cessation of Operations. For purposes of this Fee Agreement, a "*Cessation of Operations*" means a publicly announced closure of the Facility made by the Sponsor or a complete cessation of operations at the Project that continues for a period of twelve (12) consecutive 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) and (b) 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 paragraphs (d) and (f) 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 (each, a “**Claim**”).

(b) In the event the County resists or defends against any Claim on behalf of an Indemnified Party, the County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its reasonable costs, including reasonable attorneys’ fees, incurred in connection with the County’s response to or defense against such Claim. The County shall provide, on a monthly basis, a statement of all such costs incurred in its response to or defense against such Claim during such month, together with reasonable documentation evidencing the costs shown on the statement, and the Sponsor shall pay the County within 30 days of receipt of such statement and documentation. However, the County is not required to provide any portions of such documentation which may be privileged or confidential to evidence the costs.

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

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of any 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 any 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, including, without limitation, copies of any citations,

orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a Claim.

(f) Notwithstanding anything in this Fee Agreement to the contrary, the Sponsor's obligation to indemnify and save any Indemnified Party harmless against and from any Claim, and to pay the costs, or reimburse the County for costs, arising from any such Claim shall at no time during the Fee Term exceed the savings theretofore received by the Sponsor as a result of the FILOT and Special Source Credit arrangements set forth herein.

(g) The obligations under this Section 8.3 shall survive the termination of this Fee Agreement.

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

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

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

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

Section 8.8. Administration Expenses. The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$[●]. 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 Charlie Echo
Attn: [●]
[●]
[●]

WITH A COPY TO (does not constitute notice):

Nexsen Pruet, LLC
Attn: Tushar V. Chikhliker
1230 Main Street, Suite 700
Columbia, South Carolina 29201

IF TO THE COUNTY:

Richland County, South Carolina
Attn: Richland County Economic Development Director
2020 Hampton Street

Columbia, South Carolina 29204

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

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

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

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

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

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

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

Section 10.8. Interpretation; Invalidity; Change in Laws.

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentives 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 Special Source Credits 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 expressly stated in this Fee Agreement to survive termination, including specifically the obligations arising under Section 8.3 of this Fee Agreement, shall survive such termination.

(d) Beginning with the tax year corresponding to the property tax year following the property tax year containing the Final Termination Date, 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. Beginning with the tax year corresponding to the property tax year following the property tax year in which the Sponsor terminates this Fee Agreement with respect to all or any portion of the Project pursuant to this Section 10.10, the Sponsor shall no longer be obligated to make FILOT Payments under this Fee Agreement with respect to all or such portion of the Project.

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 CHARLIE ECHO

By: _____
Its: _____

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

EXHIBIT A
REAL PROPERTY DESCRIPTION

[To be inserted.]

EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement, effective [●] (“Fee Agreement”), between Richland County, South Carolina (“County”) and a company identified for the time being as Project Charlie Echo (“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.

_____, as a Sponsor Affiliate
Date _____ Name of Entity _____
By: _____
Its: _____

IN WITNESS WHEREOF, the undersigned hereby designates the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

PROJECT CHARLIE ECHO, as Sponsor

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

See attached.

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY
PRACTICES CONCERNING ECONOMIC DEVELOPMENT
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

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

Section 1. The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

Section 2. The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

Section 3. A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office
Attention: Kim Mann
1201 Main Street, Suite 910
Columbia, SC 29201

Section 4. This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

Section 5. The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.

Section 6. In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA


Chair, Richland County Council

(SEAL)
ATTEST:



Clerk to County Council

EXHIBIT D (see Section 5.1)
DESCRIPTION OF SPECIAL SOURCE CREDITS

The Sponsor shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT Payment due from the Sponsor under this Fee Agreement for twelve (12) consecutive tax years, commencing with the tax year for which the initial FILOT Payment is due under this Fee Agreement (“*Credit Term*”), in an amount equal to sixty percent (60%) of each such FILOT Payment.

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

EXHIBIT E (see Section 6.2)
DESCRIPTION OF SPECIAL SOURCE CREDITS CLAW BACK

Repayment Amount = Total Special Source 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 (based on highest level of Project investment within Investment Period) / Contract Minimum Investment Requirement [may not exceed 100%]

Jobs Achievement Percentage = Actual New, Full-Time Jobs Created (based on highest level of jobs created at the Project within Investment Period) / Contract Minimum Jobs Requirement [may not exceed 100%]

In calculating each achievement percentage, only the investment made or new jobs achieved up to the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement will be counted.

For example, and by way of example only, if the County granted \$[I] in Special Source Credits, and \$[D] is the highest level invested in the Project and [A] jobs is the highest level of jobs created within the Investment Period, the Repayment Amount would be calculated as follows:

Jobs Achievement Percentage = [A]/[Contract Minimum Jobs Requirement] = [C]%

Investment Achievement Percentage = \$[D]/\$[Contract Minimum Investment Requirement] = [F]%

Overall Achievement Percentage = ([C]% + [F]%) / 2 = [G]%

Claw Back Percentage = 100% - G% = H%

Repayment Amount = \$[I] x [H]% = \$[J]

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.

The Sponsor shall continue to be eligible for the Special Source Credits against each FILOT Payment due from the Sponsor for the remaining tax years of the Credit Term; provided, however, that in the event that determination of the Overall Achievement Percentage results in a positive percentage figure, the initial Special Source Credits percentage set forth in Exhibit D of this Fee Agreement (60%) shall be reduced for the remaining tax years of the Credit Term by a percentage equal to the Overall Achievement Percentage (i.e., for an Overall Achievement Percentage of 10%, a resulting prospective Special Source Credits percentage of 54%).



**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

RESOLUTION

**A RESOLUTION TO APPOINT AND COMMISSION RAYVOUGHN DEMARIS RAY
AS A CODE ENFORCEMENT OFFICER FOR THE PROPER SECURITY, GENERAL
WELFARE, AND CONVENIENCE OF RICHLAND COUNTY**

WHEREAS, the Richland County Council, in the exercise of its general police power, is empowered to protect the health and safety of the residents of Richland County; and

WHEREAS, the Richland County Council is further authorized by Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended, to appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the County;

NOW, THEREFORE, BE IT RESOLVED THAT: Rayvoughn Demaris Ray is hereby appointed and commissioned as a Code Enforcement Officer of Richland County for the purpose of providing for the proper security, general welfare, and convenience of the County, replete with all the powers and duties conferred by law upon constables in addition to such duties as may be imposed upon him by the governing body of this County, including the enforcement of the County's animal control regulations and the use of an ordinance summons, and with all the powers and duties conferred pursuant to the provisions of Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended. Provided, however, Rayvoughn Demaris Ray shall not perform any custodial arrests in the exercise of his duties as a code enforcement officer. This appointment shall remain in effect only until such time as the individual so appointed is no longer employed by Richland County to enforce the County's animal control regulations.

ADOPTED THE 7th DAY OF MARCH, 2023.

Overture Walker - Chair
Richland County Council District 8

ATTEST this 7th day of March, 2023

Anette A. Kirylo
Richland County Clerk to Council



REQUEST OF ACTION

Subject: FY23 - District 5 Hospitality Tax Allocations

A. Purpose

County Council is being requested to approve a total allocation of **\$10,000** for District 5.

B. Background / Discussion

For the 2022 - 2023 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

Motion List (3rd reading) for FY17: Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

Motion List (3rd reading) for FY23, Regular Council Meeting – June 7, 2022: Establish Hospitality Tax discretionary accounts for each district in FY23 at the amount of \$82,425. Move that all unallocated district specific H-Tax funding for FY21-22 be carried over and added to any additional funding for FY22-23.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY23 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 5 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$ 82,425
FY2022 Remaining	\$ 75,200
Trustus Theatre	\$ 10,000
Total Allocation	\$ 10,000
Remaining FY2023 Balance	\$ 47,625

C. Legislative / Chronological History

- 3rd Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3rd Reading of the Budget FY19- June 21, 2018
- 3rd Reading of the Budget FY20- June 10, 2019
- 3rd Reading of the Budget FY21- June 11, 2020
- 3rd Reading of the Budget FY22- June 10, 2021
- 3rd Reading of the Budget FY23- June 7, 2022

D. Alternatives

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

E. Final Recommendation

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.



REQUEST OF ACTION

Subject: FY23 - District 7 Hospitality Tax Allocations

A. Purpose

County Council is being requested to approve a total allocation of **\$1,000** for District 7.

B. Background / Discussion

For the 2022 - 2023 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

Motion List (3rd reading) for FY17: Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

Motion List (3rd reading) for FY23, Regular Council Meeting – June 7, 2022: Establish Hospitality Tax discretionary accounts for each district in FY23 at the amount of \$82,425. Move that all unallocated district specific H-Tax funding for FY21-22 be carried over and added to any additional funding for FY22-23.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY23 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 7 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$ 82,425
FY2022 Remaining	\$ 60,900
	Homeless No More
	\$ 1,000
Total Allocation	\$ 1,000
Remaining FY2023 Balance	\$104,325

C. Legislative / Chronological History

- 3rd Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3rd Reading of the Budget FY19- June 21, 2018
- 3rd Reading of the Budget FY20- June 10, 2019
- 3rd Reading of the Budget FY21- June 11, 2020
- 3rd Reading of the Budget FY22- June 10, 2021
- 3rd Reading of the Budget FY23- June 7, 2022

D. Alternatives

1. Consider the request and approve the allocation.
2. Consider the request and do not approve the allocation.

E. Final Recommendation

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.