

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



**Tuesday, SEPTEMBER 15, 2020**

**6:00 PM**

**ZOOM MEETING**

# RICHLAND COUNTY COUNCIL 2020



Bill Malinowski  
District 1  
2018-2022



Joyce Dickerson  
District 2  
2016-2020



Yvonne McBride  
District 3  
2016-2020



Paul Livingston  
District 4  
2018-2022



Allison Terracio  
District 5  
2018-2022



Joe Walker, III  
District 6  
2018-2022



Gwendolyn Kennedy  
District 7  
2016-2020



Jim Manning  
District 8  
2016-2020



Calvin "Chip" Jackson  
District 9  
2016-2020



Dalhi Myers  
District 10  
2016-2020



Chakisse Newton  
District 11  
2018-2022





Richland County Council

Regular Session  
September 15, 2020 - 6:00 PM  
Zoom Meeting  
2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER** The Honorable Paul Livingston,  
Chair Richland County Council
  - a. ROLL CALL
2. **INVOCATION** The Honorable Joe Walker
3. **PLEDGE OF ALLEGIANCE** The Honorable Joe Walker
4. **APPROVAL OF MINUTES** The Honorable Paul Livingston
  - a. Special Called Meeting: August 31, 2020 [PAGES 9-22]
5. **ADOPTION OF AGENDA** The Honorable Paul Livingston
6. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION ITEMS** Larry Smith,  
County Attorney
7. **CITIZEN'S INPUT** The Honorable Paul Livingston
  - a. For Items on the Agenda Not Requiring a Public Hearing
8. **CITIZEN'S INPUT** The Honorable Paul Livingston
  - a. Must Pertain to Richland County Matters Not on the Agenda  
(Items for which a public hearing is required or a public hearing  
has been scheduled cannot be addressed at time.)
9. **REPORT OF THE COUNTY ADMINISTRATOR** Leonardo Brown, County Administrator

- a. Coronavirus Update

**10. REPORT OF THE INTERIM CLERK OF COUNCIL** Michelle Onley, Interim Clerk of Council

**11. REPORT OF THE CHAIR** The Honorable Paul Livingston

**12. OPEN / CLOSE PUBLIC HEARINGS** The Honorable Paul Livingston

- a. An Ordinance authorizing deed to the City of Columbia for Clemson Road Widening 12" water line relocation; Richland County TMS#s 25700 and 25800 (portion)

**13. APPROVAL OF CONSENT ITEMS** The Honorable Paul Livingston

- a. 20-008MA  
Michael Winkler  
RU to NC (1.25 Acres)  
11045 Two Notch Road  
TMS # R29100-05-04 [THIRD READING] [PAGES 23-24]
- b. 20-015MA  
Brenda Miller  
RU to RS-MD  
8104 Brookmount Lane  
TMS # R14414-02-04 [THIRD READING] [PAGES 25-26]
- c. 20-018MA  
Ryan Horton  
RM-HD to GC (2.62 Acres)  
616 Percival Road  
TMS # R16716-01-01 [THIRD READING] [PAGES 27-28]
- d. 20-006MA  
Paul Pettinelli  
HI to GC (.9 Acres)  
1314 Rosewood Drive  
TMS # R11208-02-10 [THIRD READING] [PAGES 29-30]

**14. SECOND READING ITEMS** The Honorable Paul Livingston

- a. An Ordinance authorizing deed to the City of Columbia for Clemson Road Widening 12" water line relocation; Richland County TMS#s 25700 and 25800 (portion) [PAGES 31-41]

**15. FIRST READING ITEMS**

- a. Authorizing the issuance of General Obligation Bonds in one or more series, tax-exempt or taxable, in an amount not to exceed \$30,000,000, for the purpose of acquiring,

constructing, equipping, rehabilitating and improving various capital projects; authorizing the County Administrator to prescribe the details of the issuance and sale of the bonds and the form and details of the bonds; providing for the disposition of the proceeds of the bonds and the payment of the bonds; and other related matters [PAGES 42-64]

- b. Authorizing the issuance of Fire Protection Service General Obligation Bonds in one or more series, tax-exempt or taxable, in an amount not to exceed \$8,000,000 for the purpose of acquiring and constructing fire stations and acquiring fire protection equipment; authorizing the County Administrator to prescribe the details of the issuance and sale of the bonds and the form and details of the bonds; providing for the disposition of the proceeds of the bonds and the payment of the bonds; and other related matters [PAGES 65-87]

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

The Honorable Joyce Dickerson

- a. Home Detention/Electronic Monitoring Services [PAGES 88-92]

**17. REPORT OF ECONOMIC DEVELOPMENT COMMITTEE**

The Honorable Paul Livingston

- a. Award of Engineering Services contract for a cleared site at the Blythewood Business Park [PAGES 93-108]
- b. Authorizing the extension of the term of the fee in lieu of tax agreement dated as of September 1, 1999, by and between Richland County, South Carolina, and Carolina Ceramics LLC [PAGES 109-144]
- c. Consenting to and ratifying the partial assignment and assumption of a fee in lieu of tax and incentive agreement from PPT Real Estate Enterprises, L.P. to NL Ventures XI Northpoint, L.L.C.; and other related matters [PAGES 145-191]
- d. Authorizing, approving, ratifying and consenting to the partial assignment and assumption of an infrastructure credit and incentive agreement from PPT Real Estate Enterprises, L.P. to NL Ventures XI Northpoint, L.L.C.; and other related matters [PAGES 192-232]

**18. REPORT OF RULES & APPOINTMENTS COMMITTEE**

The Honorable Bill Malinowski

- a. NOTIFICATION OF VACANCIES

1.
  - a. Accommodations Tax – Five (5) Vacancies (ONE applicant must have a background in the lodging industry, THREE applicants must have a background in the cultural industry, and ONE applicant will fill an At-large seat)
  - b. Airport Commission – Three (3) Vacancies (ONE applicant must reside within the Rosewood, Shandon, or Hollywood-Rose Hill-Wales Garden neighborhoods)
  - c. Board of Assessment Appeals – One (1) Vacancy
  - d. Building Codes Board of Appeals – Six (6) Vacancies (ONE applicant must be from the Architecture Industry, ONE from the GAS Industry, ONE from the Building Industry, ONE from the Contracting Industry & TWO from Fire Industry as alternates)
  - e. Business Service Center – Two (2) Vacancies (ONE applicant must be from the Business Industry and ONE applicant must be a CPA)
  - f. Central Midlands Council of Governments – Three (3) Vacancies
  - g. CMRTA – One (1) Vacancy (Applicant familiar with COMET System and fiduciary experience preferred)
  - h. Community Relations Council – Eight (8) Vacancies
  - i. East Richland Public Service Commission – Two (2) Vacancies
  - j. Employee Grievance Committee – Six (6) Vacancies (MUST be a Richland County employee; 1 seat is an alternate)
  - k. Hospitality Tax – Four (4) Vacancies (TWO applicants must be from the Restaurant Industry)
  - l. Internal Audit Committee – Two (2) Vacancies (applicant with CPA preferred)
  - m. LRADAC – Two (2) Vacancies
  - n. Music Festival – Two (2) Vacancies
  - o. Procurement Review Panel – Two (2) Vacancies – (One applicant must be from the public procurement arena & one applicant must be from the consumer industry)
  - p. Richland Library Board of Trustees – One (1) Vacancy
  - q. Richland Memorial Hospital Board of Trustees – Two (2) Vacancies
  - r. River Alliance – One (1) Vacancy

s. Transportation Penny Advisory Committee (TPAC) – Three (3) Vacancies

**b. NOTIFICATION OF APPOINTMENTS**

1. Board of Zoning Appeals - 1
  - a. Todd Beasley [PAGES 233-234]
2. Central Midlands Council of Governments - 3
  - a. Todd Beasley [PAGES 235-236]
  - b. Julie-Ann Dixon [PAGES 237-239]
3. Music Festival - 2
  - a. Kurtina J. Ricketts [PAGES 240-241]

**19. OTHER ITEMS**

The Honorable Paul Livingston

- a. FY21 Budget Considerations
  1. Safe Voting Plan 2020 Grant Agreement [PAGES 242-273]
  2. Riverbank Zoo Request
  3. School Resource Officers
  4. Victims Assistance - Sheriff's Department
- b. FY20 - District 3 Hospitality Tax Allocations [PAGES 274-275]

**20. EXECUTIVE SESSION**

Larry Smith, County Attorney

**21. MOTION PERIOD**

- a. I move to direct staff, by way of the County Administrator, to continue in its development of a proposal for the beautification of the Ole Antique Mall site as an expansion of the Broad River Road Corridor Façade Grant Program. This beautification effort is intended to be an intermediary improvement until such a time that the highest and best use for the site is determined via community engagement as part of the Richland Renaissance initiative. Staff should also work in concert with Richland County Sheriff's Department and the County Magistrate's Office to provide a comprehensive proposal for Council consideration.

The Honorable Joyce Dickerson

**22. ADJOURNMENT**



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





## Richland County Council

### SPECIAL CALLED MEETING

August 31, 2020

Immediately Following the Zoning Public Hearing  
Zoom Meeting

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

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

1. **CALL TO ORDER** – Mr. Livingston called the meeting to order at approximately 6:00 PM.

A moment of silence was held in remembrance of Councilman Calvin “Chip” Jackson.

2. **INVOCATION** – The Invocation was led by the Honorable Allison Terracio.

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

4. **APPROVAL OF MINUTES**

- a. **Regular Session: July 21, 2020** – Mr. Manning moved, seconded by Ms. Dickerson, to approve the minutes as distributed.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

- b. **Zoning Public Hearing: July 28, 2020** – Mr. Manning moved, seconded by Ms. Dickerson, to approve the minutes as distributed.

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

Opposed: Malinowski

Not Present: Walker and Kennedy

The vote was in favor.

- c. Special Called Meeting: July 28, 2020 – Mr. Manning moved, seconded by Ms. Dickerson, to approve the minutes as distributed.

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

Opposed: Malinowski

Not Present: Walker and Kennedy

The vote was in favor.

5. **ADOPTION OF AGENDA** – Mr. Livingston requested to add the following under the Report of the Chair: “Scheduling of Nuisance Ordinance Hearing”.

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

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

Opposed: Manning

Not Present: Walker and Kennedy

The vote was in favor.

6. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION** – No report was given.

7. **CITIZENS’ INPUT**

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

8. **CITIZENS’ INPUT**

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

9. **REPORT OF THE COUNTY ADMINISTRATOR**

- a. Coronavirus Update – Mr. Brown stated since the institution of the mask ordinance the Ombudsman’s Office has received 131 calls in response to concerns related to the ordinance. The Fire Marshal’s Office have responded to approximately 31 complaints, have issued 28 orders communicating to individuals what the mask ordinance says, and encouraging them to properly respond to the mask ordinance. No tickets were issued on those initial site visits.

Early on, we discussed providing masks to the community. Staff has gotten together and broken down the approximately 67,000 masks for distribution to the Council districts.

The County moved forward with signing the Subrecipient Agreement and submitted a request for reimbursement to the State.

DHEC informed the County they want to provide testing at the Health Department. No specific dates or times have been provided.

The following are the County's number of positive COVID tests: August 24<sup>th</sup> – 77 cases; August 25<sup>th</sup> – 79 cases; August 26<sup>th</sup> – 84 cases; August 27<sup>th</sup> – 76 cases; August 28 – 112 cases; August 29<sup>th</sup> – 195 cases; August 30<sup>th</sup> – 404 cases; August 31<sup>st</sup> – 193 cases. From the period of July 1 – 15, the County had a 22.6% positive rate; July 17 – 31, the rate was 26.2%; August 1 – 15, the rate was 23.2%; and August 16 – 30, the rate 29.5%.

As staff has been discussing what the County might look like when we re-open, or phase back in additional services, with the recent numbers it is certainly going to be a slower process because the numbers are going in the wrong direction. If 5% is the ideal goal, being at 29% is not going to cut it. And, if having a 14-day downward trend is going to be goal, then going up and having an average of over 100 cases per day is not going to cut it either.

Staff received some information about testing, as a strategy. Over the past few days, there have been some questions about the testing information we received. One of the key things is how to account for people who may not be showing signs or symptoms. We have received differing opinions on who needs to be tested. The testing information has not been consistent across the State and National entities the last couple of months.

Ms. Myers inquired if Council has adopted a policy, in terms of the CDC Guidelines, in regard to re-opening.

Mr. Brown responded Council has not.

Ms. Myers inquired if Council has adopted a policy, as far at the 5% number referenced.

Mr. Brown responded Council has not.

Ms. Myers inquired if Council has adopted a policy with regard to the targeting of any number, in terms of re-opening.

Mr. Brown responded Council has not.

Ms. Myers inquired where those policy recommendations be coming from.

Mr. Brown responded the general guidance would come from the guidelines provided by the CDC and DHEC.

Ms. Myers inquired if the Administrator considered it necessary for Council to adopt a policy.

Mr. Brown responded in the affirmative.

Ms. Newton inquired about what kind of discussions have happened in terms of evaluating how we might be able to provide more services remotely.

Mr. Brown responded part of the conversation has been what equipment we need to procure and what services we need to extend, so that more remote work can be done.

Ms. Newton stated that presumes we know which services we are going to offer remotely. She inquired if there has been a prioritization of what those services are, if there is an analysis that we can look at that show which services we provide in a non-Coronavirus world, and the services we are providing now.

Mr. Brown responded staff will be working on providing that information to Council, and determining which services are high volume, in-person services, so they can be shifted to a remote service (i.e. Auditor, Treasurer, etc.) Staff has been provided information by the Ombudsman's Office regarding questions and concerns they have received regarding services.

Mr. Livingston noted that he planned to schedule a Coronavirus Ad Hoc Committee in the near future to discuss some of these details.

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

11. **REPORT OF THE CHAIR**

- a. Scheduling Nuisance Ordinance Hearing – Mr. Livingston stated Council received information regarding the closing of a business, per the County's nuisance ordinance. Per the ordinance, the business is entitled to an appeal hearing, and he has received a request from the property owner for an appeal hearing. He will contact his colleagues to determine a date and time to hold the hearing.

12. **OPEN/CLOSE PUBLIC HEARINGS**

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Infrastructure Credit Agreement, and amendments of certain existing fee-in-lieu of ad valorem agreements, by and between Richland County, South Carolina and Project Quattro; to provide for payments of fees-in-lieu of taxes; authorizing certain infrastructure and other related matters – No comments were received.

13. **APPROVAL OF CONSENT ITEMS**

- a. 20-006MA, Paul Pettinelli, HI to GC (.9 Acres), 1314 Rosewood Drive, TMS # R11208-02-10 [SECOND READING]
- b. 20-008MA, Michael Winkler, RU to NC (1.25 Acres), 11045 Two Notch Road, TMS # R29100-05-04 [SECOND READING]
- c. 20-015MA, Brenda Miller, RU to RS-MD, 8104 Brookmount Lane, TMS # R14414-02-04 [SECOND READING]
- d. 20-018MA, Ryan Horton, RM-HD to GC (2.62 Acres), 616 Percival Road, TMS # R16716-01-01 [SECOND READING]
- e. County Attorney's Office – Request to Close a County Road – Murray Tract

Mr. Manning moved, seconded by Ms. Terracio, to approve the consent items.

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

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Not Present: Walker and Kennedy

The vote in favor was unanimous.

14. **THIRD READING**

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and Infrastructure Credit Agreement, and amendments of certain existing fee-in-lieu of ad valorem agreements, by and between Richland County, South Carolina, and Project Quattro; to provide for payments of fees-in-lieu of taxes; authorizing certain infrastructure credits; and other related matters – Mr. Manning moved, seconded by Ms. McBride, to approve Items 14(a) and (b).

Mr. Malinowski stated he would like to vote on the items individually.

Mr. Manning withdrew his motion.

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

Ms. Terracio inquired if there is any additional information that can be publicly shared regarding this item.

Mr. Ruble responded PIO has prepared a press release, which will be sent out tomorrow morning should Council approve Third Reading of this item.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

- b. Approving the transfer of certain property located in the Blythewood Park to Fairfield Electric Cooperative; and other related matters – Ms. Dickerson moved, seconded by Mr. Manning, to approve this item.

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

Opposed: Malinowski

Not Present: Walker and Kennedy

The vote was in favor.

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

- a. Approval of the Award Sum from SC State Revolving Fund (SRF) towards the South East Sewer and Water Expansion Project – Ms. Myers inquired, if the County only built what is described in the briefing documents, would the system work.

Dr. Thompson responded it would not work because you have to be able to build infrastructure to get to the Eastover Wastewater Treatment facility.

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Ms. Myers inquired about the cost of that portion of the project.

Dr. Thompson stated the entire project cost approximately \$25M.

Ms. Myers stated, if we built the standalone portion, which consistently has been described as the school's portion, would the schools be any better off than they are today.

Dr. Thompson responded not without the backbone of the system.

Ms. Myers stated, for clarification, so it is necessary to build the other parts of it to add to the portions on the school campuses.

Dr. Thompson responded you would have to build the entire infrastructure to convey the waste.

Ms. Myers stated, for clarification, if it is a better analysis, of what we are defining as the school's portion, which recognizes you have to build a whole system, and not just a pump.

Dr. Thompson responded if only the school system was using it, but we understand the community will be using it as well.

Ms. Myers stated, assuming only the school system is using it, can we build just on the school property and have a working system.

Dr. Thompson responded you would not be conveying waste anywhere.

Ms. Myers inquired if the residential customers were incidental to the school system.

Dr. Thompson responded, based on recent information, it appears the system was built for the schools.

Ms. Myers stated, if that is the case, she would like to understand why we have consistently stated only "X" amount will be used for the schools. It leads the public, and others, to believe that the schools are being disadvantaged by this system. She inquired if it is accurate to describe the costs for the project as only the lift stations on the school property.

Dr. Thompson responded we would need more than the lift stations on the property.

Ms. Myers requested that we reflect the actual cost of building this network to clean up the schools, so we get past the discussion of if the County is trying to make money on the back of the school. Where we are is, this is a system that residents can join, but it is primarily to fix these schools and get waste off of their premises. She noted there would be no \$30M bond, but for the fact that we are getting the waste off of the school grounds. She suggested the way the briefing documents are written may be too narrow and misleading. She inquired, outside of this project, what are Richland County's multi-million dollar projects.

Mr. Brown responded the other project would be the Transportation Penny.

Ms. Myers inquired if we have spent any time educating the public on this project, outside of what Councilmembers have done.

Mr. Brown responded there have not been any public meeting recently because there is some questions that have not been fully answered.

Ms. Myers inquired if Administration knew how much has been spent on public education for the Transportation Penny.

Mr. Brown responded that he did not know the amount.

Ms. Myers noted she knows that it was at least \$300,000 a year until the PDT contract ended. She suggested, given the size of this project, we need to represent it to the public and there be a concerted effort to dispel the miscommunication, misunderstanding and misinformation in the public domain. There needs to be a plan developed to make the community aware of why it is critically important to get the human waste off the grounds of the schools, and why it is helpful, not harmful, to the community where it will sit.

Ms. Myers moved, seconded by Ms. Dickerson, to accept the \$1M.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

- b. Little Jackson Creek Up-Ditch Work Authorization Award – Ms. Dickerson stated the committee recommended to approve Work Authorization No 10 (Scope Amendment) for additional consultant services for the Little Jackson Creek Up-Ditch Hazard Mitigation Grant Project (HMGP) in the amount of \$127,853.

Mr. Malinowski inquired if the retaining wall the County is going into is on railroad property.

Ms. Williams responded the retaining wall was put in on the small portion of the entire length of the up-ditch, and is not on the railroad side. It is on the property owner's side. When they reached out to the property owner, the County was informed the railroad put it in because the property was eroding away.

Mr. Malinowski noted the briefing document states, "No real estate services related to private landowners" is needed. He inquired if that is correct.

Ms. Williams responded that is correct. In order to go in with the equipment, the County is obtaining the construction easements on both sides. Outside of the CSX permit fees, which we are trying to get waived, there should be no other real estate costs or services.

Mr. Malinowski stated, the scope of services, assumes the up-ditch will not be considered jurisdictional Waters of the United States. He inquired when we will be certain.

Ms. Williams responded they submitted the request to the Army Corps of Engineers for them to look at. It could take a couple of months for them to get back with the County.

Mr. Malinowski stated, for clarification, if it is determined that it is Waters of the United States, what more is going to be needed from the County.

Ms. Williams responded they may look at us to do mitigation somewhere else. In other projects, the County has been able to alter the work, or limit it, to avoid having to do additional permit requirements.

Mr. Malinowski inquired if the County will have to go onto the railroad property.

Ms. Williams responded we will not be working on the railroad property, but because we will be in the vicinity of it, we have to get the easement permit to go into their right-of-way.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

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

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

Not Present: Walker and Kennedy

The motion for reconsideration failed.

- c. Home Detention/Electronic Monitoring Services – Ms. Dickerson stated the committee recommended to continue the electronic monitoring program and approve the award of a contract for home detention services to Offender Management Services.

Ms. Myers stated she thought the committee recommended extending the contract for one year and opening up a bid and approval process by the end of the one-year contract extension.

Mr. Malinowski stated one of his questions, at the committee meeting, related to the detainees and if Richland County was paying for all of them, regardless of where they came from. In response, Mr. Myers stated that all General Session/Circuit Court detainees are County detainees, regardless of the municipality. He requested an explanation of that because if other municipalities send them there, unincorporated Richland County should not be paying for them to be there. Right now, we have requirements that whichever municipality sends an individual to the Detention Center they have to pay a daily fee for that individual to be there, so he does not see why that does not carry over to this part. Any additional fees should carry over to the municipality, as well.

Mr. Myers stated the only portion the municipalities pay is when the detainee are charged with municipality offenses, and are not General Session offenses. Once they are General Session offenses, their bond is set and the County takes responsibility.

Ms. Dickerson stated, for clarification, if that means the County is responsible for the home detention monitoring services.

Mr. Smith responded, the current agreement, with the municipalities, covers the basics of the stay of a detainee in the Detention Center (i.e. food). He stated it would require an amendment to the current agreement, regarding what they will pay, to defer the costs to the County for the detainees. The County would need to take a look at each individual agreement with the municipalities to review the language, and determine when the agreements can be amended.



Mr. Malinowski requested a friendly amendment to direct Legal to immediately begin reviewing the agreements to determine if the County can charge municipalities for home detention services for their detainees.

Ms. Myers accepted the friendly amendment.

Mr. Malinowski inquired if stakeholder input was obtained from the detainees.

Mr. Myers responded input was not obtained from the detainees utilizing the monitoring services.

Mr. Malinowski inquired as who Dan Goldberg and William Bilton are, as they were two of the evaluators.

Mr. Myers stated they are from the Solicitor's Office.

Mr. Malinowski stated, when you look at the evaluations, those two individuals consistently gave the current provider higher ratings than anyone else, and lower ratings to the other vendors, which he finds unusual. If you take their ratings out, Corrective Solutions rates higher.

Mr. Newton inquired, if the Magistrate's Office has looked at doing an analysis, in terms of whom we are assigning the monitoring too, or what is the policy. As we look broadly at the program, what is governing who gets an ankle bracelet?

Mr. Smith responded it is the Magistrate's discretion as to who will be placed on the monitoring program. He is not sure of all the criteria, but he knows they typically consider putting someone on that has not committed a serious crime.

Ms. Newton inquired if it would be in the County's purview to understand the criteria and how they conform to best practices.

Mr. Smith responded, in terms of evaluating the cost benefit analysis, to know exactly what they are utilizing as a criteria that would be correct.

Ms. Newton stated she is not trying to derail what we are trying to do, but as we look at negotiating an agreement, depending on what we work out, she does not know how that could affect the agreement we plan to negotiate.

Ms. McBride inquired if we are utilizing the home monitoring services to the extent that we do not need it. She also noted that Mr. Malinowski is not the only one that was concerned about the evaluation scores.

Mr. Malinowski stated, his recollection is, the higher the number, the higher the costs.

Ms. Wladischkin responded the higher the score, the better the cost proposal. She indicated she could provide the numbers to Council.

Ms. Myers inquired if Ms. Pringle has any anecdotal information regarding the individuals utilizing the monitoring services.

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

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

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

- a. Authorizing the extension of the term of the fee in lieu of tax agreement dated as of September 1, 1999, by and between Richland County, South Carolina, and Carolina Ceramics, LLC – Mr. Livingston stated the committee recommended approval of this item.

Ms. Myers stated she is exceptionally grateful for how Mr. Jackson guided the Economic Development Committee and the work he put into keeping all Councilmembers informed of what was going on.

Mr. Malinowski noted the information he saw was older, and he did not see current information where they were requesting the extension. He does not understand why they want the extension, what we are getting out of it, and what are they required to invest.

Mr. Ruble responded the original fee-in-lieu was issued in 1999, and based on an \$8M investment. The County has the ability to create a 5-year investment window, but the County can also extend that, which they did for up to 8 years. The company has accomplished the investment. We are now at the end of the term of the fee-in-lieu agreement. They have requested the County to extend it another 5 years. If Council decides not to do that, it means all their property would go ad valorem and their property taxes would jump dramatically. The company originally came to us our “Existing Industry Program” and said they needed help. They had new investors and were trying to turn the company around, but needed some help from the County. We anticipate the company will make further investments at the plant, but this a stop gap measure during the pandemic.

Mr. Malinowski stated, for clarification, all of the original agreements have been completed, and there is nothing for the County, other than giving up additional taxes.

Mr. Ruble responded the taxes in the area are pretty high, so if you kick them out of the fee their taxes will jump, and you run the risk of bankrupting the company or asking them to move to another county. If you extend the fee, it does not cost the County a lot of money and there is a good chance they will make additional investments.

Mr. Malinowski inquired as to how much it will cost the County.

Mr. Ruble responded he did not currently have those numbers available, but can provide them.

Ms. Dickerson inquired about how many people were employed by this company.

Mr. Ruble responded, as he recalls, their employment has fluctuated. They took a hard hit in 2008 with the housing prices, and have tried to increase employment since then, but they have struggled. They are getting outside investors to come in and help them resurrect the plant.

Mr. Malinowski stated, it appears, Council does not have complete information. He understands the company may have fell on hard time during the housing crisis, but we are now asking the taxpayer to

come up with the funds to keep a company going, when currently many of the current businesses and taxpayers are falling on hard times.

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

In Favor: Malinowski, Dickerson, McBride, Terracio, Manning and Newton

Opposed: Livingston and Manning

Not Present: Walker and Kennedy

The vote was in favor.

- b. Consenting to and ratifying the partial assignment and assumption of a fee in lieu of tax and incentive agreement from PPT Real Estate Enterprises, L.P. to NL Ventures XI Northpoint, L.L.C.; and other related matters – Mr. Livingston stated the committee recommended approval of this item.

Mr. Malinowski inquired if the company caused an investment of at least \$25M and create 150 new jobs by the end of the compliance period.

Mr. Ruble responded there was a clawback of \$45,000, which they wrote the County a check for.

Mr. Malinowski noted the documentation says, the creation of at least 150 new jobs, without regard to jobs maintained, which means they can be here today and gone tomorrow, and they will have fulfilled their requirement. He inquired if there has been any additional research to determine how many of jobs are still there.

Mr. Ruble responded there is 250 – 300 employees. He stated the noted language was a flaw in the past negotiations. There should have been a maintenance agreement.

Ms. Myers inquired as to why we would not adopt the language Mr. Malinowski pointed out as a condition of the transfer.

Mr. Ruble responded the deal was made in 2012, so we would have to go back and amend an old contract. We are not asking the County to give up anything, but to allow them to transfer property to a third-party. The \$45,000 clawback they paid was related to the earlier deal, and resolved all of the issues. The deal is no longer on holds with the County.

Ms. Myers stated given they have asked to transfer this contract, and there was a flaw in the original agreement, which could stand to disadvantage Richland County employees working at this company, would it not be prudent to accept what Mr. Malinowski and said. Then, upon approval, we would amend the contract. Our approval is contingent upon an amendment to the contract that recognizes that you have to maintain this level of employment.

Mr. Livingston stated, for clarification, if Pure Power continued to do business, and did not change ownership, would everything remain the same.

Mr. Ruble responded in the affirmative. In answer to Ms. Myers' question, ideally we would had that language in, and if we had to do it over again. Going forward, that is no longer an issue. They paid their penalty, and the employment number is no longer in effect.

Ms. Myers stated they are asking for something; therefore, we get the right to ask for something too.

Mr. Ruble stated he may need to go back to Parker Poe and explore this matter.

Mr. Smith stated he is not familiar with this transaction, but he would say generally when you are negotiating something that could potentially trigger you counteroffering with some conditions on your approval process. To the extent that there is a potential for the County to be in a position to ensure that the employment level stays within a certain range, it seems that is worth exploring being included in this transaction.

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

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

Opposed: Livingston

Not Present: Walker and Kennedy

The vote was in favor.

- c. Authorizing, approving, ratifying and consenting to the partial assignment and assumption of an infrastructure credit and incentive agreement from PPT Real Estate Enterprises, L.P. to NL Ventures XI Northpoint, L.L.C.; and other related matters – Mr. Malinowski moved, seconded by Ms. Myers, to defer this item.

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

Opposed: Livingston and Manning

Not Present: Walker and Kennedy

The vote was in favor.

## 17. OTHER ITEMS

- a. Face Mask Ordinance Extension – Mr. Manning moved, seconded by Ms. McBride, to extend the face mask ordinance for another 61 days.

Mr. Malinowski inquired if we have any new statistical data. The emergency ordinance was passed 60 days ago based upon information gleaned from March 11-27. On June 25, there was generalized information, but nothing specific. To automatically approve continuance of an ordinance, without new information, is not proper.

Mr. Livingston stated he is basing it on information from DHEC.

Mr. Malinowski stated SC Code 16-7-110, "No person over sixteen years of age shall appear or enter upon any lane, walk, alley, street, road, public way or highway of this State or upon the public property of the State or of any municipality or county in this State while wearing a mask or other device which conceals his identity." If that is still in place, we are in violation of State law.

Mr. Smith stated the Attorney General issued an opinion that counties do have the authority, under Home Rule, to issue face mask ordinances. Within that opinion, they also opined that particular section of State law was not applicable because most of the devices that are used as masks do not prevent you from identifying the person.

Mr. Malinowski stated we also do not have a set of guidelines as to what is considered a permissible mask. He believes individuals need to be able to think and act on their own without the government stepping in and telling them what to do. He thinks this is a matter of individual businesses and government agencies putting notices on their entranceways that masks are required. The most recent information that he has received was that 6% of death are from COVID only. The remaining 94% are from underlying reasons.

Mr. Smith stated, when we passed the face mask ordinance in June, we did not know that we had a positivity rate, like we have now. Whenever the Governor issued his stay at home order, the positivity rate was 4 – 5%. Today it was up to 15.5%. Yesterday it was 21%.

Mr. Malinowski stated the positivity rate is not only due to the lack of wearing face masks. If the positivity rate is that high, it is obvious the face mask ordinance is not doing what we want it to.

Ms. Dickerson moved seconded by Ms. McBride, to call for the question.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

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

Opposed: Malinowski

Not Present: Walker and Kennedy

The vote was in favor.

- b. Memorandum of Understanding – COMET – Mapping Services – Mr. Welch stated this is an item where the COMET has requested the GIS Department to put their routes on their map pages. The MOU was brought to Council, and approved, in December. After which, the COMET’s attorneys had some concerns about the language, particularly in the indemnification area. Mr. Farrar reviewed the document, and suggested some language to address those concerns.

Mr. Manning inquired if the COMET’s attorney has reviewed this language.

Mr. Welch responded in the affirmative, and they are willing to accept the proposed language.

Mr. Manning moved, seconded by Ms. Dickerson, to approve this item.

Mr. Malinowski noted the briefing document states the financial impact to the County will be negligible. He requested an approximate cost.

Mr. Welch responded it would require approximately one (1) hour per quarter.

Special Called Meeting

August 31, 2020

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Mr. Malinowski noted, on p. 327, it states, "...the COMET will be solely responsible for any damages to the COMET's or any third party's computer..." He inquired if Richland County is considered a third party.

Mr. Farrar responded, when the agreement came back, the COMET proposed language that said we will indemnify the County if they cause any damages to anybody, so long as it is not the County's fault, and he had no problems with the proposed language.

Mr. Malinowski inquired if this is the same MOU that was recommended for approval in December 2019.

Mr. Farrar responded in the affirmative.

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

Not Present: Walker and Kennedy

The vote in favor was unanimous.

18. **EXECUTIVE SESSION** – There were no items for Executive Session.
19. **MOTION PERIOD**
  - a. Once Council approves an action no Council member is to individually go to a staff member in an effort to accomplish/change something that was not in the approved information/action by Council [MALINOWSKI] – This item was referred to the Rules & Appointments Committee.
20. **ADJOURNMENT** – The meeting adjourned at approximately 8:00 PM.

## Richland County Council Request for Action

**Subject:**

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

**Notes:**

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

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

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R29100-05-04 FROM RURAL DISTRICT (RU) TO NEIGHBORHOOD COMMERCIAL DISTRICT (NC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R29100-05-04 from Rural District (RU) to Neighborhood Commercial District (NC).

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

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

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

RICHLAND COUNTY COUNCIL

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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



## Richland County Council Request for Action

**Subject:**

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

**Notes:**

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

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

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R14414-02-04 FROM RURAL DISTRICT (RU) TO RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT (RS-MD); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # 14414-02-04 from Rural District (RU) to Residential Single-Family Medium Density District (RS-MD).

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

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

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

RICHLAND COUNTY COUNCIL

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

## Richland County Council Request for Action

**Subject:**

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

**Notes:**

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

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

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R16716-01-01 FROM RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT (RM-HD) TO GENERAL COMMERCIAL DISTRICT (GC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R16716-01-01 from Residential Multi-Family High Density District (RM-HD) to General Commercial District (GC).

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

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

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

RICHLAND COUNTY COUNCIL

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

## Richland County Council Request for Action

**Subject:**

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

**Notes:**

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

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

AN ORDINANCE OF THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, AMENDING THE ZONING MAP OF UNINCORPORATED RICHLAND COUNTY, SOUTH CAROLINA, TO CHANGE THE ZONING DESIGNATION FOR THE REAL PROPERTY DESCRIBED AS TMS # R11208-02-10 FROM HEAVY INDUSTRIAL DISTRICT (HI) TO GENERAL COMMERCIAL DISTRICT (GC); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section I. The Zoning Map of unincorporated Richland County is hereby amended to change the real property described as TMS # R11208-02-10 from Heavy Industrial District (HI) to General Commercial District (GC).

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

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

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

RICHLAND COUNTY COUNCIL

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

## Richland County Council Request for Action

**Subject:**

An Ordinance authorizing deed to the City of Columbia for Clemson Road Widening 12" water line relocation; Richland County TMS#s 25700 and 25800 (portion)

**Notes:**

First Reading: July 28, 2020

Second Reading: September 15, 2020 {Tentative}

Third Reading: October 6, 2020 {Tentative}

Public Hearing: September 15, 2020

**RICHLAND COUNTY  
ADMINISTRATION**

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



**Agenda Briefing**

**Prepared by:** Michael Niermeier, Director

**Department:** Transportation

**Date Prepared:** July 20, 2020

**Meeting Date:** July 28, 2020

<b>Legal Review</b>	Elizabeth McLean via email	<b>Date:</b>	July 22, 2020
<b>Budget Review</b>	James Hayes via email	<b>Date:</b>	July 21, 2020
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	July 21, 2020
<b>Approved for consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM	
<b>Committee</b>	Transportation Ad Hoc		
<b>Subject:</b>	Clemson Rd. Widening Waterline Deeds		

**Recommended Action:**

Staff recommends that Council approve an ordinance transferring ownership of the waterlines to the City of Columbia.

**Motion Requested:**

Move to approve an ordinance transferring ownership of the waterlines to the City of Columbia.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

There is no additional fiscal impact for the execution of this deed.

**Motion of Origin:**

There is no associated Council motion of origin.

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



**Discussion:**

As part of the Clemson Rd. Widening Project, the contractor has installed new waterlines along a portion of the roadway. Because Richland County managed the design and now construction of the project, the new waterlines are considered County property. The City requires that these waterlines be deeded over to them so that they can abandon the old waterlines and begin use of the new lines.

The City of Columbia's Legal Department drafted the deed, and it has been reviewed and approved by the County Attorney's Office. The execution of this deed will require an ordinance amendment and three readings.

**Attachments:**

1. Waterline deed prepared by the City of Columbia
2. Draft ordinance

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
DEED TO WATER LINES FOR CLEMSON ROAD WIDENING 12" WATER LINE RELOCATION; RICHLAND COUNTY TMS #25700 AND 25800; CF #346-15

**RICHLAND COUNTY**

to

**CITY OF COLUMBIA**

FOR VALUE RECEIVED, Richland County of Columbia, South Carolina (also hereinafter referred to as "Grantor") of does hereby bargain, sell, transfer and convey unto the City of Columbia (also hereinafter referred to as "Grantee"), its successors and assigns, all of Grantor's rights, title and interests in and to the below described water lines:

All those certain water lines, the same being 6", 8" and 12" in diameter including valves, valve boxes, fire hydrants, meter boxes, service lines to meter boxes and easement boundaries, lead lines to fire hydrants (including 6" DIP), and all components to complete the system and more clearly shown on City File #346-15.

All metes, courses, bounds and measured distances described herein are approximate. The precise metes, courses, bounds and measured distances are more particularly described and as shown on City File #346-15, which is incorporated herein by specific reference thereto.

A 12" water line beginning at a 12"x12" tapping sleeve and 12" valve and tie to an existing 12" City of Columbia water line (12" Water Main Extension along Clemson Road and 8" Water Main Extension along Chimneyridge Drive; CF #220-371) located in the outer perimeter of the southwestern right-of-way of Clemson Road (SCDOT; S-40-52), twenty-two and four tenths (22.4) feet southeast of the northern property corner of Richland County TMS #25700-02-01, n/f Peach Farm Limited Partnership (reference being made to the portion of parcel along the western side of Clemson Road); thence extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of one and one tenth (1.1) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, nineteen and one tenth (19.1) feet southeast of the said northern property corner of TMS #25700-02-01; thence turning and extending therefrom in a northwesterly/more northerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of one and seven tenths (1.7) feet to joined 45° and 11.25° bends, located in the outer perimeter of the southwestern right-of-way of Clemson Road, fifteen and five tenths (15.5) feet southeast of the said northern property corner of TMS #25700-02-01; thence turning and extending therefrom in a northeasterly/more northerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of eleven and five tenths (11.5) feet to joined 22.5° and 45° vertical bends, located in the outer perimeter of the southwestern right-of-way of Clemson Road, thirteen and nine tenths (13.9) feet northeast of the said northern property corner of TMS #25700-02-01; thence turning and extending therefrom in a northeasterly direction crossing Clemson Road, for a distance of eighty-three and nine tenths (83.9) feet to a 45° bend, located in the outer perimeter of the northeastern right-of-way of Clemson Road, forty-five and nine tenths (45.9) feet northwest of the southwestern/westernmost property corner of Richland County TMS #25700-04-02, n/f Naromi, LP; thence turning and extending therefrom in a northerly direction along the outer perimeter of the northeastern right-of-way of Clemson Road, for a distance of one

**APPROVED AS TO FORM**



and six tenths (1.6) feet to a 45° bend, located in the outer perimeter of the of the northeastern right-of-way of Clemson Road, forty-eight and one tenth (48.1) feet northwest of the southwestern/westernmost property corner of said TMS #25700-04-02; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the northeastern right-of-way of Clemson Road and generally parallel to Richland County TMS #25700-04-02, 07, 05, 08, 01, 25800-04-01, 25700-04-03, 04, 25800-04-01, 15, 17 and 21, for a distance of four thousand three hundred seventy-six (4376) feet to joined 45° and 45° bends, located in the outer perimeter of the northeastern right-of-way of Clemson Road, one hundred five and nine tenths (105.9) tenths (105.9) feet southeast of the westernmost property corner of Richland County TMS #25800-04-21, n/f Jordan; thence turning and extending therefrom in a southwesterly direction crossing Clemson Road, for distance of eighty-six and two tenths (86.2) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, one hundred forty and five tenths (140.5) feet southeast of the northeastern property corner of Richland County TMS #25800-07-14, n/f C&L Investments, LLC; thence turning and extending therefrom in a northwesterly/more westerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of three (3) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, one hundred thirty-six and two tenths (136.2) feet southeast of the northeastern property corner of said TMS #25800-07-14; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road and generally parallel to TMS #25800-04-01 and 25800-07-14, for a distance of one hundred fifty-seven and seven tenths (157.7) feet to a joined 45° and 45° bends, located in the outer perimeter of the of the southwestern right-of-way of Clemson Road, thirty-seven and three tenths (37.3) feet north of the northeastern property corner of said TMS #25800-07-14; thence turning and extending therefrom in a northeasterly direction along the outer perimeter of the southwestern right-of-way of Clemson road, for a distance of four and eight tenths (4.8) feet to a 45° vertical bend and 12"x12" tapping sleeve tied to an existing 12" City of Columbia water line (Richland Northeast Industrial Park; CF #109-16), located in the outer perimeter of the of the southwestern right-of-way of Clemson Road, forty-five and nine tenths (45.9) feet northernmost of the northeastern property corner of said TMS #25800-07-14; thence terminating.

**Also**, a 6" water line beginning at a 12"x6" tapping sleeve and 6" valve and tie to an existing 12" City of Columbia water line (12" Water Main Extension along Clemson Road and 8" Water Main Extension along Chimneyridge Drive; CF #220-371) located in the outer perimeter of the southwestern right-of-way of Clemson Road (SCDOT; S-40-52) approximately thirty-four (34) feet southeast of the said northern property corner of Richland County TMS #25700-02-01; thence extending therefrom in a southeasterly/more easterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of one and three tenths (1.3) feet to a fire hydrant, located in the outer perimeter of the southwestern right-of-way of Clemson Road approximately thirty-two (32) feet southeast of the said northern property corner of said TMS #25700-02-01; thence terminating.

**Also**, a 6" water line beginning at a 12"x12"x6" tee and tie to the aforescribed 12" water line located in the southwestern right-of-way of Clemson Road, seventeen and three tenths (17.3) feet northeast of the said northern property corner of Richland County TMS #25700-02-01; thence extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road generally parallel to Richland County TMS #25700-03-06, n/f Prime Clemson Storage, LLC, for a distance of eighty-nine and two tenths (89.2) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, fifty-eight and eight tenths (58.8) feet southeast of the eastern property corner of Richland County TMS #25700-03-03, n/f Gracelife Church; thence turning and extending therefrom in a northwesterly/more westerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of two and three tenths (2.3) feet to a 45° bend, located in the outer

perimeter of the southwestern right-of-way of Clemson Road, fifty-five and six tenths (55.6) feet southeast of the eastern property corner of said TMS #25700-03-03; thence turning and extending therefrom in a northwesterly/more northerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of two and two tenths (2.2) feet to a 6"x6" tapping sleeve and 6" valve and tie to an existing 6" City of Columbia water line (Storage-R-U's; CF #256-02), located in the outer perimeter of the southwestern right-of-way of Clemson Road, fifty-two and seven (52.7) feet southeast of the eastern property corner of said TMS #25700-03-03; thence terminating.

**Also**, a 12" water line beginning at a 12"x12" tee and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, ninety-four and seven tenths (94.7) feet northwest of the southernmost property corner of Richland County TMS #25700-04-05, n/f Park Holding Company, LLC; thence extending therefrom in a northeasterly direction along the driveway area of said TMS #25700-04-05, for a distance of fifty-three and seven tenths (53.7) feet to a 45° bend, located in said driveway of said TMS #25700-04-05 approximately one hundred one (101) feet northwest of the southernmost property corner of said TMS #25700-04-05; thence turning and extending therefrom in a northerly direction along said driveway area, for a distance of three and one tenths (3.1) feet to a 45° bend, located in said driveway area approximately one hundred four (104) feet north of the southernmost property corner of said TMS #25700-04-05; thence turning and extending therefrom in a northwesterly direction crossing said driveway area, for a distance of four and five tenths (4.5) feet to a 12"x12" tapping sleeve and 12" valve and tie to an existing 12" City of Columbia water line (Kraemer Medical Office; CF #336-05), located at the southernmost property corner of TMS #25700-04-08, n/f Cohn & Cohn, Inc., LLC, approximately one hundred seven (107) feet northwest of the southern property corner of said TMS #25700-04-05; thence terminating.

**Also**, an 8" water line beginning at a 12"x8" tapping sleeve and 8" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, one hundred sixty-four and one tenth (164.1) feet northwest of the southernmost property corner of Richland County TMS #25700-04-01, n/f Clemson University; thence extending therefrom in a southwesterly direction crossing Clemson Road, for a distance of seventy-two and nine tenths (72.9) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road approximately one hundred ninety-five (195) feet northwest of the southernmost property corner of said TMS #25700-04-01; thence turning and extending therefrom in a westerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of four and six tenths (4.6) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, two hundred seven and nine tenths (207.9) feet northwest of the southernmost property corner of said TMS #25700-04-01; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of three and two tenths (3.2) feet to an 8"x8" tapping sleeve and valve and tie to an existing 8" City of Columbia water line (Royal Pines Water Project, Phase 2; CF #229-25), located in the outer perimeter of the southwestern right-of-way of Clemson Road approximately two hundred ten (210) feet northwest of the southernmost property corner of said TMS #25700-04-01; thence terminating.

**Also**, a 6" water line beginning at a 12"x6" tee and 6" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, two hundred twenty-eight and four tenths (228.4) feet northwest of the northern property corner of Richland County TMS #25700-03-03, n/f Gracelife Church; thence extending therefrom in a northeasterly direction along the outer perimeter of the northeastern right-of-way of Clemson Road and said TMS #25700-04-01, for a distance of seventeen (17) feet to a 6"x6" tee and 6" valve and 6" solid sleeve and tie to an existing 6" City of Columbia water line (Animal Diagnostic Laboratory Building; CF

#187-14D), located in the outer perimeter of the northeast right-of-way of Clemson Road, two hundred thirty-eight and one tenth (238.1) feet northwest of the northern property corner of said TMS #25700-03-03; thence terminating.

**Also**, an 8" water line beginning at a 12"x8" tapping sleeve and 8" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, two hundred fifty-five and two tenths (255.2) feet southeast of the western property corner of Richland County TMS #25700-04-01, n/f Clemson University; thence extending therefrom in a southwesterly direction crossing Clemson Road, for a distance of eighty-four and eight tenths (84.8) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, fifteen and three tenths (15.3) feet southeast of the northern property corner of Richland County TMS #25700-03-02, n/f Gracelife Church; thence turning and extending therefrom in a westerly direction crossing the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of six tenths (0.6) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, thirteen and six tenths (13.6) feet southeast of the northern property corner of said TMS #25700-03-02; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road and generally parallel to said TMS #25700-03-02, for a distance of two and six tenths (2.6) feet to an 8"x8" tapping sleeve and 8" valve and tie to an existing 8" City of Columbia water line (Escue Warehouse Company; CF #187-14A), located in the outer perimeter of the southwestern right-of-way of Clemson Road, eight and eight tenths (8.8) feet southeast of the northern property corner of said TMS #25700-03-02; thence terminating.

**Also**, a 12" water line beginning at a 12"x12" tee and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, seventy-four and five tenths (74.5) feet northwest of the western property corner of Richland County TMS #25700-04-01, n/f Clemson University; thence extending therefrom in a northeasterly direction along the outer perimeter of the northeastern right-of-way of Clemson Road, for a distance of three and nine tenths (3.9) feet to a 45° bend, located in the outer perimeter of the northeastern right-of-way of Clemson Road, seventy-three and three tenths (73.3) feet northwest of the western property corner of said TMS #25700-04-01; thence turning and extending therefrom in a northerly direction along the outer perimeter of the northeastern right-of-way of Clemson Road, for a distance of eight tenths (0.8) feet to a 12"x12" tapping sleeve and 12" valve and tie to an existing 12" City of Columbia water line (Brown Motor Works; CF #320-17), located in the outer perimeter of the northeastern right-of-way of Clemson Road, seventy-five and nine tenths (75.9) feet northwest of the western property corner of said TMS #25700-04-01; thence terminating.

**Also**, a 6" water line beginning at a 12"x12"x6" tee and 6" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road one hundred two and five tenths (102.5) feet northeast of the easternmost property corner of Richland County TMS #25700-03-07, n/f 330 Main Equities, LLC et.al.; thence extending therefrom in a southwesterly direction crossing Clemson Road, for a distance of ninety and eight tenths (90.8) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, eight and six tenths (8.6) feet northeast of the easternmost property corner of said TMS #25700-03-07; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of thirteen and three tenths (13.3) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, twenty and four tenths (20.4) feet northwest of the easternmost property corner of said TMS #25700-03-07; thence turning and extending therefrom in a northeasterly direction crossing the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of three (3) feet to a 6"x6" tapping sleeve and 6" valve and tie to an existing 6" City of Columbia water line (Forum

Development II; CF #276-07A), located in the outer perimeter of the southwestern right-of-way of Clemson Road, twenty-four and one tenth (24.1) feet northwest of the easternmost property corner of said TMS #25700-03-07; thence terminating.

**Also**, a 6" water line beginning at a 12"x12"x6" tee and 6" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, one hundred fifty-three and one tenth (153.1) feet southwest of the westernmost property corner of Richland County TMS #25700-04-03, n/f P. Keith Huggins Investments, LLC; thence extending therefrom in a southwesterly direction crossing Clemson Road, for a distance of seventy-three and eight tenths (73.8) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, two hundred thirty-four (234) feet southwest of the westernmost property corner of said TMS #25700-04-03; thence turning and extending therefrom in a westerly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of five and one tenth (5.1) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, two hundred thirty-eight and seven tenths (238.7) feet southwest of the westernmost property corner of said TMS #25700-04-03; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of ten (10) feet to a 6"x6" tapping sleeve and 6" valve and tie to an existing 6" City of Columbia water line (Forum Development II; CF #276-07A), two hundred forty and five tenths (240.5) feet southwest of the westernmost property corner of said TMS #25700-04-03; thence terminating.

**Also**, an 8" water line beginning at a 12"x12"x8" tee and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, twenty and six tenths (20.6) feet south of the southeasternmost property corner of Richland County TMS #25800-04-15, n/f Holley; thence extending therefrom in a northeasterly direction along the outer perimeter of the northeastern right-of-way of Clemson Road, for a distance of eight and nine tenths (8.9) feet to a 45° bend, located in the outer perimeter of the northeastern right-of-way of Clemson Road, eleven and five tenths (11.5) feet southeast of the southeasternmost property corner of said TMS #25800-04-15; thence turning and extending therefrom in an easterly direction along the outer perimeter of the northeastern right-of-way of Clemson Road, for a distance of one and nine tenths (1.9) feet to joined 45° and 11.25° bends, located in the outer perimeter of the northeastern right-of-way of Clemson Road, twelve and five tenths (12.5) feet southeast of the southeasternmost property corner of said TMS #25800-04-15; thence turning and extending therefrom in a southeasterly direction along the outer perimeter of the northeastern right-of-way of Clemson Road, for a distance of seven and two tenths (7.2) feet to an 8"x8" tapping sleeve and 8" valve and tie to an existing 8" City of Columbia water line (Richland Northeast Industrial Park; CF #187-14B), located in the outer perimeter of the northeastern right-of-way of Clemson Road, twenty-one and nine tenths (21.9) feet southeast of the southeasternmost property corner of said TMS #25800-04-15; thence terminating.

**Also**, a 6" water line beginning at a 12"x12"x6" tee and 6" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road one hundred thirty-two and nine tenths (132.9) feet northeast of the eastern property corner of Richland County TMS #25800-07-09, n/f Hancock Clemson, LLC; thence extending therefrom in a southwesterly direction crossing Clemson Road, for a distance of eighty-nine and five tenths (89.5) feet to a fire hydrant, located in the outer perimeter of the southwestern right-of-way of Clemson Road, ninety and seven tenths (90.7) feet southeast of the eastern property corner of said TMS #25800-07-09; thence terminating.

**Also**, a 6" water line beginning at a 12"x12"x6" tee and 6" valve and tie to the aforescribed 12" water line located in the outer perimeter of the northeastern right-of-way of Clemson Road, one hundred seventy-six and four tenths (176.4) feet north of the northwestern property corner of Richland County TMS #25800-07-09, n/f Hancock Clemson, LLC; thence extending therefrom in a southwesterly direction along Clemson Road, for a distance of ninety and two tenths (90.2) feet to a 45° bend, located in the outer perimeter of the southwestern right-of-way of Clemson Road, one hundred thirty-seven and nine tenths (137.9) feet northwest of the northwestern property corner of said TMS #25800-07-09; thence turning and extending therefrom in a northwesterly direction along the outer perimeter of the southwestern right-of-way of Clemson Road, for a distance of twenty-one (21) feet to a 6"x6" tapping sleeve and valve and tie to an existing 6" City of Columbia water line (EPC Clemson Rd; CF #312-24), located in the outer perimeter of the southwestern right-of-way of Clemson Road, one hundred sixty and seven tenths (160.7) feet northwest of the northernmost building corner on said TMS #25800-07-09; thence terminating.

Be all measurements a little more or less.

The Grantor hereby agrees to be responsible for repairs of all damage to water lines, sanitary sewer lines, curb cocks, meter boxes, all fittings and fire hydrants hereby conveyed which arise out of the operation of any equipment or vehicles under control of the Grantor, Grantor's contractor, agent, or any other party acting on behalf of Grantor in connection with the initial installation of streets, paving, curbs and gutters, storm drainage lines, sanitary sewer lines, utility lines, final grading or improvements in development of property served by said water lines, and the Grantor shall either effect necessary repairs or reimburse the City for the cost of repairs at the option of the City. This paragraph is null and void upon completion of the Clemson Road Widening Project.

These water lines are more clearly delineated on a set of record drawings for Clemson Road Widening 12" Water Line Relocation, in Richland County and near the City of Columbia, South Carolina, dated May 5, 2020, last revised May 21, 2020, prepared for Richland County, prepared by Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers of SC, Ryan Todd Carwell, S.C.P.E. 34442, and being on file in the Office of the Department of Engineering, City of Columbia, South Carolina under City file reference #346-15.

HMG

**(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

TO HAVE AND TO HOLD the aforesaid rights to the Grantee, its successors and assigns, as aforesaid, forever.

And the Grantor does hereby bind the Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the said premises unto the Grantee, its successors and assigns against the Grantor and Grantor's successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

And Grantor warrants that Grantor is the lawful owner of said property and has the right to convey same; and that the property is free and clear of any and all mortgages, liens and encumbrances, except those set-forth hereinabove.

WITNESS the hand and seal of the Grantor by the undersigned this \_\_\_\_\_ day \_\_\_\_\_, 2020.

**WITNESSES:**

**RICHLAND COUNTY**

\_\_\_\_\_  
(1<sup>ST</sup> Witness Signature)

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

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

\_\_\_\_\_  
(2<sup>nd</sup> Witness Signature)

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_)

**ACKNOWLEDGMENT**

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_  
(Name & Title of Officer)

of \_\_\_\_\_ on behalf of the within named Grantor.  
(City & State)

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
(State)

My Commission Expires: \_\_\_\_\_  
(Date)

I, \_\_\_\_\_, an attorney licensed to practice in the State of \_\_\_\_\_ do hereby certify that I supervised the execution of the attached Deed to Water Lines for Clemson Road Winding with Richland County as Grantor and the City of Columbia, as Grantee this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
State Bar Number: \_\_\_\_\_



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

AN ORDINANCE AUTHORIZING DEED TO THE CITY OF COLUMBIA  
FOR CLEMSON ROAD WIDENING 12” WATER LINE RELOCATION;  
RICHLAND COUNTY TMS#s 25700 AND 25800 (PORTION).

Pursuant to the authority 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 County of Richland and its employees and agents are hereby authorized to grant a deed to certain water lines to The City of Columbia, as specifically described in the attached DEED TO THE CITY OF COLUMBIA FOR CLEMSON ROAD WIDENING 12” WATER LINE RELOCATION; RICHLAND COUNTY TMS#s 25700 AND 25800 (PORTION); CF#346-15, which is attached hereto and incorporated herein.

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

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

SECTION IV. Effective Date. This ordinance shall be enforced from and after \_\_\_\_\_.

RICHLAND COUNTY COUNCIL

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

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

\_\_\_\_\_  
Interim Clerk of Council

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

## Richland County Council Request for Action

**Subject:**

Authorizing the issuance of General Obligation Bonds in one or more series, tax-exempt or taxable, in an amount not to exceed \$30,000,000, for the purpose of acquiring, constructing, equipping, rehabilitating and improving various capital projects; authorizing the County Administrator to prescribe the details of the issuance and sale of the bonds and the form and details of the bonds; providing for the disposition of the proceeds of the bonds and the payment of the bonds; and other related matters

**Notes:**

First Reading: September 15, 2020

Second Reading: October 6, 2020 {Tentative}

Third Reading: October 20, 2020 {Tentative}

Public Hearing:

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**RICHLAND COUNTY, SOUTH CAROLINA**

**ORDINANCE NO. \_\_\_\_\_**

**AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$30,000,000, FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, EQUIPPING, REHABILITATING AND IMPROVING VARIOUS CAPITAL PROJECTS; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE DETAILS OF THE ISSUANCE AND SALE OF THE BONDS AND THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE BONDS AND THE PAYMENT OF THE BONDS; AND OTHER RELATED MATTERS.**

**ADOPTED: [ ], 2020**

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**ORDINANCE NO. \_\_\_\_\_**

**AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$30,000,000, FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, EQUIPPING, REHABILITATING AND IMPROVING VARIOUS CAPITAL PROJECTS; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE DETAILS OF THE ISSUANCE AND SALE OF THE BONDS AND THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE BONDS AND THE PAYMENT OF THE BONDS; AND OTHER RELATED MATTERS.**

**THE RICHLAND COUNTY, SOUTH CAROLINA, COUNTY COUNCIL ORDAINS:**

**SECTION 1. Findings.** The County Council (“Council”) of Richland County, South Carolina (“County”), finds and determines:

(a) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended, and Title 4, Chapter 15, and Title 11, Chapter 27 of the Code of Laws of South Carolina, 1976, as amended (collectively, “County Bond Act”), provides that each county may incur general obligation bonded indebtedness upon such terms and conditions as the General Assembly may prescribe by general law subject to the following limitations: (i) such debt must be incurred only for a purpose which is a public purpose and a corporate purpose for a county, and (ii) unless excepted therefrom, such debt may be issued in an amount not exceeding eight percent of the assessed value of all taxable property of such county (“Bonded Debt Limit”).

(b) The County has determined that it is in the best interest of the County to acquire, construct, equip, rehabilitate and improve certain capital projects and assets in the County (“Capital Projects”), as more particularly described on Schedule I.

(c) The assessed valuation of all property in the County as of ~~June 30~~, 2020 (unaudited), for purposes of determining the Bonded Debt Limit of the County is not less than ~~\$1,748,387,340~~. Eight percent of this assessed value is ~~\$139,870,987~~ (“County’s Bonded Debt Limit”). As of the date of this Ordinance, the County has outstanding no more than \$33,165,000 of general obligation indebtedness which count against the County’s Bonded Debt Limit (“Outstanding Eight Percent Debt”). As of the date of this Ordinance, the difference between the County’s Bonded Debt Limit and its Outstanding Eight Percent Debt is ~~\$106,705,987~~, which amount is the not exceeding amount of general obligation indebtedness that the County may incur without a referendum.

(d) The County desires to fund the Capital Projects through the issuance and sale of its general obligation bonds pursuant to the County Bond Act in an amount not to exceed \$30,000,000.

**SECTION 2. Authorization and Details of the Bonds.** Pursuant to the County Bond Act, the County is authorized to issue not exceeding \$30,000,000 in general obligation bonds of the County to be designated “General Obligation Bonds of Richland County, South Carolina” (“Bonds”) for the purposes of funding the Capital Projects and paying the costs of issuing the Bonds. The Bonds also may be issued in one or more series, taxable or tax-exempt, from time to time as may be determined in the manner provided below with such further designation of each series to identify the year in which such bonds are issued.

The Bonds may be issued as fully registered bonds; dated the date of their delivery or such other date as may be selected by the County Administrator; may be in any whole dollar denomination or denominations of \$5,000 or any whole multiple thereof not exceeding the principal amount of the Bonds maturing in each year; shall be numbered from R-1 upward; shall bear interest from their date of issuance as may be determined by the County Administrator; and shall mature in such amounts and at such times as determined by the County Administrator.

**SECTION 3. *Delegation of Certain Details of the Bonds to the County Administrator.*** The Council delegates to the County Administrator all determinations regarding the sale and issuance of the Bonds and the form and details of the Bonds. The County Administrator is directed to consult with the County's bond counsel and financial advisor in making any such determinations. The County Administrator shall keep Council advised of the status of the sale and issuance of the Bonds.

**SECTION 4. *Registrar/Paying Agent.*** Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. As determined by the County Administrator, the County Treasurer or a qualified financial institution shall serve as the registrar/paying agent for the Bonds ("Registrar/Paying Agent") and shall fulfill all functions of the Registrar/Paying Agent enumerated herein.

**SECTION 5. *Registration and Transfer.*** The County shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Bonds, the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee new fully registered Bonds, of the same aggregate principal amount, interest rate and maturity as the surrendered Bonds. Any Bond surrendered in exchange for a new registered Bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name the Bonds shall be registered upon the registry books as the absolute owner of such Bonds, whether such Bonds shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring the Bonds is exercised, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of the Bonds during the period beginning on the Record Date (as defined in Section 6 hereof) and ending on an interest payment date.

**SECTION 6. *Record Date.*** The County establishes a record date ("Record Date") for the payment of interest or for the giving of notice of any proposed redemption of the Bonds, and such Record Date shall be the 15th day of the calendar month next preceding an interest payment date on the Bonds or, in the case

of any proposed redemption of the Bonds, such Record Date shall not be more than 15 days prior to the mailing of notice of redemption of the Bonds.

**SECTION 7. *Lost, Stolen, Destroyed or Defaced Bonds.*** In case any Bond, at any time, is mutilated in whole or in part, or lost, stolen or destroyed, or defaced as to impair the value thereof to the owner, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver at the principal office of the Registrar/Paying Agent, or send by registered mail to the owner thereof at his request, risk and expense, a new bond of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute bond shall furnish the County and the Registrar/Paying Agent evidence or proof satisfactory to the County and the Registrar/Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in such amount as may be required by the laws of the State of South Carolina or such greater amount as may be required by the County and the Registrar/Paying Agent. Any bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such substitute bond is issued.

All expenses necessary for the providing of any substitute bond shall be borne by the applicant therefor.

**SECTION 8. *Book-Entry System.***

(a) Notwithstanding anything to the contrary herein, so long as the Bonds are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds will be affected pursuant to rules and procedures established by such securities depository. The initial securities depository for the Bonds will be The Depository Trust Company (“DTC”), New York, New York. DTC and any successor securities depositories are hereinafter referred to as the “Securities Depository.” The Bonds shall be registered in the name of Cede & Co., as the initial Securities Depository nominee for the Bond. Cede & Co. and successor Securities Depository nominees are hereinafter referred to as the “Securities Depository Nominee.”

(b) As long as the Bonds are being held under a book-entry system, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the principal, interest and premium, if any, on such Bonds, (ii) selecting the portions of the Bonds to be redeemed if the Bonds are to be redeemed in part, (iii) giving any notice permitted or required to be given to bondholders under this Ordinance, (iv) registering the transfer of the Bonds, and (v) requesting any consent or other action to be taken by the holder of such Bonds, and for all other purposes whatsoever, and the County shall not be affected by any notice to the contrary.

(c) The County shall not have any responsibility or obligation to any participant, beneficial owner or other person claiming a beneficial ownership in the Bonds which is registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of the Bonds.

(d) The County shall pay all principal, interest and premium, if any, on the Bonds issued under a book-entry system only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal, interest and premium, if any, on such Bonds.

(e) In the event that the County determines that it is in the best interest of the County to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds may be adversely affected if the book-entry system is continued, then the County shall notify the Securities Depository of such determination. In such event, the County shall execute and the Registrar/Paying Agent shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the County shall either engage the services of another Securities Depository or arrange with the Registrar/Paying Agent for the authentication, registration and delivery of physical certificates in the manner described in (e) above.

(g) In connection with any notice or other communication to be provided to the holder of the Bonds by the County or by the Registrar/Paying Agent with respect to any consent or other action to be taken by the holder of the Bonds, the County or the Registrar/Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

**SECTION 9. Execution of Bonds.** The Bonds shall be executed in the name of the County with the manual, facsimile, or electronic signature of the Chairman of Council (“Chair”) and attested by the manual, facsimile, or electronic signature of the Clerk to Council under the seal of the County which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication in substantially the form set forth in Exhibit A executed by the manual, facsimile or electronic signature of an authorized representative of the Registrar/Paying Agent.

**SECTION 10. Form of Bonds.** The Bonds shall be in the form set forth in Exhibit A as determined by the County Administrator under Section 3.

**SECTION 11. Security for Bonds.** The full faith, credit and taxing power of the County are irrevocably pledged for the payment of the principal and interest of the Bonds as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County an *ad valorem* tax, without limitation as to rate or amount, sufficient for such purposes.

**SECTION 12. Exemption from State Taxation.** Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all South Carolina, county, municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest thereon may be includable in certain franchise fees or taxes.

**SECTION 13. Sale of Bonds, Form of Notice of Sale.** The Bonds may be sold at a public or private sale, as authorized by Section 11-27-40(4) of the Code of Laws of South Carolina, 1976, as amended, as the County Administrator may determine, using a notice of sale or other similar method to solicit offers for the purchase of the Bonds, as the County Administrator may determine.



**SECTION 14. *Deposit and Application of Bond Proceeds.*** The proceeds derived from the sale of the Bonds are to be used for the purposes set forth herein and shall be applied by the County solely to the purposes for which the Bonds have been issued.

**SECTION 15. *Preliminary and Final Official Statement.*** If required to sell the Bonds, the County authorizes and directs the County Administrator to prepare, or cause to be prepared, and use, or cause to be used, a preliminary Official Statement and a final Official Statement according to Rule 15c2-12 promulgated by the Securities Exchange Commission (“Rule 15c2-12”), and further authorizes and directs such other appropriate County staff to prepare and provide such information as may be necessary for the County Administrator to so prepare and use such preliminary Official Statement and final Official Statement in connection with the sale of the Bonds. The County Administrator is further authorized to “deem final” the preliminary Official Statement on behalf of the County in accordance with Rule 15c-12.

**SECTION 16. *Defeasance.***

(a) If any Bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the Ordinance hereunder, and all other rights granted thereby shall cease and determine with respect to such Bonds. A Bond shall be deemed to have been paid and discharged within the meaning of this Section under any of the following circumstances:

(i) If a bank or other institution serving in a fiduciary capacity, which may be the Registrar/Paying Agent (“Escrow Agent”), shall hold, at the stated maturities of the Bond, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or

(ii) If default in the payment of the principal of such Bond or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Escrow Agent shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of payment; or

(iii) If the County shall have deposited with the Escrow Agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity thereof, as the case may be, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium, if any, due and to become due on such Bonds and prior to the maturity date or dates of such Bonds, or, if the County shall elect to redeem such series Bond prior to its stated maturity, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided in the Bond, on and prior to the redemption date of such Bonds, as the case may be; or

(iv) If there shall have been deposited with the Escrow Agent either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on such Bond on the maturity thereof.

(b) In addition to the above requirements of paragraph (a), in order for this Ordinance to be discharged with respect to any Bond, all other fees, expenses and charges of the Escrow Agent have been paid in full at that time.

(c) Notwithstanding the satisfaction and discharge of this Ordinance with respect to a Bond, the Escrow Agent shall continue to be obligated to hold in trust any moneys or investments then held by the Escrow Agent for the payment of the principal of, premium, if any, and interest on, such Bond, to pay to the owners of such Bond the funds so held by the Escrow Agent as and when payment becomes due.

(d) Any release under this Section shall be without prejudice to the rights of the Escrow Agent to be paid reasonable compensation for all services rendered under this Ordinance and all reasonable expenses, charges, and other disbursements and those of their respective attorneys, agents, and employees, incurred on and about the performance of the powers and duties under this Ordinance.

(e) Any moneys which at any time shall be deposited with the Escrow Agent by or on behalf of the County for the purpose of paying and discharging any Bonds shall be and are assigned, transferred, and set over to the Escrow Agent in trust for the respective holders of such Bonds, and the moneys shall be and are irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the holders of such Bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Escrow Agent to transfer the funds to the County.

(f) In the event any Bonds are not to be redeemed within the 60 days next succeeding the date the deposit required by Section 16(a)(iii) or (iv) is made, the County shall give the Escrow Agent irrevocable instructions to mail, as soon as practicable by registered or certified mail, a notice to the owners of the Bonds at the addresses shown on the registry books that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of this Section 16 has been made with the Escrow Agent, (ii) the Bonds are deemed to have been paid in accordance with this Section and stating the maturity or redemption dates upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on, the Bonds, and (iii) stating whether the County has irrevocably waived any rights to redeem the Bonds, or any of them, prior to the maturity or redemption dates set forth in the preceding clause (ii).

(g) The County covenants and agrees that any moneys which it shall deposit with the Escrow Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Section, and whenever it shall have elected to redeem Bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Escrow Agent to cause notice of redemption to be given in its name and on its behalf.

**SECTION 17. *Authority to Issue Bond Anticipation Notes.*** If the County Administrator or Chair, after consultation with the County's financial advisor or bond counsel, should determine that issuance of bond anticipation notes ("BANs") pursuant to Chapter 17 of Title 11 of the Code of Laws of South Carolina, 1976, as amended (the "BAN Act") rather than Bonds would result in a substantial savings in interest under prevailing market conditions or for other reasons would be in the best interest of the County, the County Administrator or Chair is hereby further requested and authorized to effect the issuance of BANs pursuant to the BAN Act. If BANs are issued and if, upon the maturity thereof the County Administrator and Chair should determine that further issuance of BANs rather than Bonds would result in a substantial savings in interest under then prevailing market conditions or for other reasons would be in the best interest of the County, the County Administrator and Chair are requested to continue the issuance of BANs until the County Administrator and Chair determine to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

**SECTION 18. *Details of Bond Anticipation Notes.*** Subject to changes in terms required for any particular issue of BANs, the BANs shall be subject to the following particulars:

(a) The BANs shall be dated and bear interest either from the date of delivery thereof or, if the BAN is issued on a draw-down basis, from the date of each such advance, payable upon the stated maturity thereof, at the rate determined or accepted by the County Administrator and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the County Administrator.

(b) The BANs shall be numbered from one upwards for each issue and shall be in any whole dollar denomination or in the denomination of \$5,000 or any integral multiple thereof requested by the purchaser thereof. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of the Registrar/Paying Agent or, at the option of the County, by the purchaser thereof.

(c) The County Administrator and Chair are authorized to carry out the sale of the BANs and to fix the rate of interest to be borne thereby.

(d) The BANs shall be in substantially the form attached hereto as Exhibit B.

(e) The BANs shall be issued in fully registered or bearer form or a book-entry-eligible form as specified by the County, or at the option of the County, by the purchaser thereof; provided that once issued, the BANs of any particular issue shall not be reissued in any other form and no exchange shall be made from one form to the other.

(f) In the event any BAN is mutilated, lost, stolen or destroyed, the County may execute a new note of like date and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated BAN, such mutilated BAN shall first be surrendered to the County, and in the case of any lost, stolen or destroyed BAN, there shall be first furnished to the County evidence of such loss, theft or destruction satisfactory to the County, together with indemnity satisfactory to it; provided that, in the case of a holder which is a bank or insurance company, the agreement of such bank or insurance company to indemnify shall be sufficient. In the event any such BAN shall have matured, instead of issuing a substitute note, the County may pay the same without surrender thereof. The County may charge the holder of such BAN with its reasonable fees and expenses in this connection.

(g) Any BAN issued in fully-registered form shall be transferable only upon the books of registry of the County, which shall be kept for that purpose at the office of the County as note registrar (or its duly authorized designee), by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the County as note registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any BAN, the County shall issue, subject to the provisions of paragraph (h) below, in the name of the transferee, a new note or notes of the same aggregate principal amount as the unpaid principal amount of the surrendered BAN. Any holder of a BAN in fully registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any BAN in fully-registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and interest of any BAN in fully-registered form shall be made only to or upon the order of the registered holder thereof, or his duly authorized attorney, and the County shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such BAN to the extent of the sum or sums so paid.

(h) BANs issued in fully registered form, upon surrender thereof at the office of the County (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer

satisfactory to the County, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the County may make as provided in paragraph (i), be exchanged for a principal amount of notes in fully registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

(i) In all cases in which the privilege of exchanging or transferring BANs in fully registered form is exercised, the County shall execute and deliver notes in accordance with the provisions of this Ordinance. All BANs in fully registered form surrendered in any such exchanges or transfers shall forthwith be canceled by the County. There shall be no charge to the holder of such BAN for such exchange or transfer of BANs in fully-registered form except that the County may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

**SECTION 19. *Security for Bond Anticipation Notes.*** For the payment of the principal of and interest on the BANs as the same shall fall due, the full faith, credit and taxing power of the County shall be pledged. In addition thereto, so much of the principal proceeds of the Bonds when issued shall and is hereby directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the County covenants and agrees to effect the issuance of sufficient BANs or Bonds in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

**SECTION 20. *Tax and Securities Laws Covenants.***

(a) The following covenants shall be applicable to any series of Bonds or BANs that are sold on a tax-exempt basis:

(i) The County covenants that no use of the proceeds of the sale of the Bonds or BANs authorized hereunder shall be made which, if such use had been reasonably expected on the date of issue of such Bonds or BANs would have caused the Bonds or BANs to be “arbitrage bonds,” as defined in the Internal Revenue Code of 1986, as amended (“Code”), and to that end the County shall comply with all applicable regulations of the Treasury Department previously promulgated under the Code so long as the Bond is outstanding.

(ii) The County further covenants to take all action necessary, including the payment of any rebate amount, to comply with Section 148(f) of the Code and any regulations promulgated thereunder.

(iii) The County covenants to file IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

(b) The County covenants and agrees that it will comply with and carry out all of the provisions of a continuing disclosure agreement, dated the date of delivery of the Bonds, which will meet the requirements of (i) Rule 15c2-12 and (ii) Section 11-1-85, Code of Laws of South Carolina, 1976, as amended.

**SECTION 21. *Authorization for County Officials to Execute Documents; Ratification of Prior Acts.*** The Council authorizes the Chair, County Administrator, Clerk to Council and other county officials or their designees (collectively, “Authorized Representatives”) to execute and consent to such documents and instruments as may be necessary to effect the intent of this Ordinance. Except as otherwise specifically stated in this Ordinance, any actions taken by any Authorized Representatives prior to the date of this Ordinance in furtherance of the issuance and sale of the Bonds or the financing of the Capital Projects, including the expenditure of funds and the execution of documents, are hereby approved, ratified and confirmed in all respects.

**SECTION 22. *Publication of Notice of Adoption of Ordinance.*** Pursuant to the provisions of Section 11-27-40 of the Code, the County Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

**SECTION 23. *Retention of Bond Counsel and Other Professionals.*** The Council authorizes the County Administrator to retain the law firm of Parker Poe Adams & Bernstein LLP as its bond counsel, and the firm of First Tryon Advisors, as its financial advisor, in connection with the issuance of the Bonds.

The Council further authorizes the County Administrator to enter into such other contractual arrangements and hire such other professionals as may be necessary to effect the issuance, sale, execution and delivery of the Bonds, and the other transactions contemplated by this Ordinance.

**SECTION 24. *Reimbursement from Bond Proceeds.***

(a) This Ordinance is the County's official declaration of intent pursuant to Treasury Regulation §1.150-2 to reimburse the County for expenditures incurred and paid in connection with the Capital Projects on or after the date occurring 60 days prior to the date of adoption of this Ordinance from the proceeds of the Bonds or an authorized BAN ("Expenditures").

(b) The County acknowledges that Expenditures which may be reimbursed are limited to Expenditures which are (i) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of "placed in service" under Treasury Regulation §1.150-2) under general federal income tax principles, or (ii) certain *de minimis* or preliminary expenditures satisfying the requirements of Treasury Regulation §1.150-2(f).

(c) The source of funds for the Expenditures with respect to the Capital Projects will be the County's [general fund or capital projects fund].

(d) The County acknowledges that to be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (i) the date on which the Expenditures were paid, or (ii) the date the Capital Projects are placed in service, but in no event more than three years after the County made the original Expenditures.

**SECTION 25. *General Repealer.*** All ordinances, rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bonds are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

**SECTION 26. *No Personal Liability.*** No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the County contained herein or in the Bonds or BANs, and any other incorporated or referenced documents against any elected official of the County or any officer or employee of the County, as such, in his or her individual or personal capacity, past, present or future, either directly or through the County, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Ordinance, the Bonds and BANs are solely governmental obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, officer or employee, as such, past, present or future, of the County, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the County and the owners of the Bonds or BANs or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such elected official, officer and employee is, by the enactment of this Ordinance and the execution

of the Bonds and BANs, and as a condition of, and as a part of the consideration for, the enactment of this Ordinance and the execution of the Bonds and BANs, expressly waived and released. The immunity of elected officials, officers and employees of the County and waiver and release of personal liability under the provisions contained in this Section shall survive the termination of this Ordinance and maturity of the Bonds or BANs issued hereunder.

*[Signature page follows]*

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, County Council  
Richland County, South Carolina

*(SEAL)*  
ATTEST:

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Clerk to County Council  
Richland County, South Carolina

READINGS:  
First Reading: September 15, 2020  
Second Reading:  
Public Hearing:  
Third Reading:

## SCHEDULE I

### LIST OF CAPITAL PROJECTS

<a href="#">Phase 5 Sprinkler Upgrade</a>
<a href="#">Dormitory Shower Upgrade</a>
<a href="#">Security Camera Upgrade</a>
<a href="#">Laundry Upgrade</a>
<a href="#">Roadway Repair - Design</a>
<a href="#">Roadway Repair - Construction</a>
<a href="#">Landfill Gas System</a>
<a href="#">Excavator</a>
<a href="#">Security Fencing, Cameras and Gates - Powell Road</a>
<a href="#">Aviation Unit End of Life Cycle Replacements</a>
<a href="#">Security Fencing and Lighting - Region Seven Substation</a>
<a href="#">RCSD Additional Equipment and Vehicles</a>
<a href="#">Coroner Equipment</a>
<a href="#">New Ambulances</a>
<a href="#">Replace EKG Monitor / Defibrillator / Pacers</a>
<a href="#">Replace Recorders</a>
<a href="#">Backup Device Replacement - Disk-based Option</a>
<a href="#">Administration &amp; Health Chiller, Cooling Tower &amp; Rooftop</a>
<a href="#">Security Upgrade Project</a>
<a href="#">Township Parking Lot</a>
<a href="#">Countywide Orthoimagery (flight)</a>
<a href="#">Eastover (Magistrate/RCSD Region 8 Substation)</a>
<a href="#">CAMA System</a>



**EXHIBIT A**  
**FORM OF BOND**

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (“SECURITIES DEPOSITORY”), TO RICHLAND COUNTY, SOUTH CAROLINA, OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE SECURITIES DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
RICHLAND COUNTY  
GENERAL OBLIGATION BONDS  
[TAXABLE/TAX-EXEMPT] SERIES 2020

No. R-[]

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Issue Date</u>	<u>CUSIP</u>
[] %	[]	[]	[]

REGISTERED OWNER: []

PRINCIPAL AMOUNT: [] DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that Richland County, South Carolina (the “County”), is justly indebted and, for value received, hereby promises to pay to the Registered Owner named above, its successors or registered assigns, the principal amount shown above on the maturity date shown above, and to pay interest on such principal sum from the date hereof at the interest rate per annum shown above until the County’s obligation with respect to the payment of such principal sum shall be discharged.

[Principal and interest on this bond are payable at maturity on [ ], and will be payable by check or draft mailed to the person in whose name this bond is registered on the registration books of the County maintained by the [ ], as registrar/paying agent (the “Registrar/Paying Agent”). The principal of and interest on this bond is payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts, provided, however, that the interest on this fully registered bond will be paid by check or draft as set forth above.]

[Interest on this bond is payable semiannually on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year commencing \_\_\_\_\_ 1, 20[], until this bond matures, and shall be payable by check or draft mailed to the person in whose name this bond is registered on the registration books of the County maintained by the

Registrar/Paying Agent, at the close of business on the 15th day of the calendar month next preceding each semiannual interest payment date. The principal and interest on this bond are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts, provided, however, that interest on this fully registered bond shall be paid by check or draft as set forth above.]

This bond is [one of an issue of bonds (the “Bonds”) of like date, of original issue, tenor and effect, except as to number, date of maturity, denomination and rate of interest, issued in an original aggregate principal amount of \_\_\_\_\_,] issued pursuant to and in accordance with the Constitution and laws of the State of South Carolina, including Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended; Chapter 15, Title 4 and Chapters 27, Title 11, Code of Laws of South Carolina, 1976, as amended; and an Ordinance duly adopted by the Richland County Council on [ ], 2020 (the “Ordinance”). All capitalized terms used but not defined in this bond will have the meanings given in the Ordinance.

This bond shall not be valid or obligatory for any purpose, until the Certificate of Authentication hereon shall have been duly executed by the Registrar/Paying Agent.

For the payment of the principal of and interest on this bond as it matures and for the creation of such sinking fund as may be necessary therefor, the full faith, credit, resources and taxing power of the County are hereby irrevocably pledged, and there shall be levied annually by the County Auditor and collected by the County Treasurer in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the County sufficient to pay the principal of and interest on this bond as it matures and to create such sinking fund as may be necessary therefor.

[The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Ordinance. One bond certificate with respect to each date on which the Bonds are stated to mature, registered in the name of the Securities Depository Nominee, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by participants in the Securities Depository (“Participants”), with beneficial ownership of the Bonds in the principal amount of \$5,000 or any multiple thereof being evidenced in the records of such Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Participants pursuant to rules and procedures established by the Securities Depository and its Participants. The County and the Registrar/Paying Agent will recognize the Securities Depository Nominee, while the registered owner of this bond, as the owner of this bond for all purposes, including payments of principal of and redemption premium, if any, and interest on this bond, notices and voting. Transfer of principal and interest payments to Participants of the Securities Depository will be the responsibility of the Securities Depository, and transfer of principal, redemption premium, if any, and interest payments to beneficial owners of the Bonds by Participants will be the responsibility of such Participants and other nominees of such beneficial owners. The County will not be responsible or liable for such transfers of payments or for maintaining, supervision or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, its Participants or persons acting through such Participants. While the Securities Depository Nominee is the owner of this bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this bond shall be made in accordance with existing arrangements between the Registrar/Paying Agent or its successors under the Ordinance and the Securities Depository.

The Bonds maturing on or prior to \_\_\_\_\_ 1, \_\_\_\_\_, shall not be subject to redemption prior to their stated maturities. The Bonds maturing on or after \_\_\_\_\_ 1, \_\_\_\_\_, shall be subject to redemption at the

option of the County on or after \_\_\_\_\_ 1, \_\_\_\_\_, as a whole or in part at any time, and if in part in such order of maturities as shall be determined by the County, at the redemption prices with respect to each Bond, expressed as a percentage of the principal amount of the Bonds to be redeemed, set forth below, together with the interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed  
(both dates inclusive)

Redemption Price

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected by lot by the Registrar/Paying Agent or by the Securities Depository in accordance with its procedures. In the event this bond is redeemable as aforesaid, and shall be called for redemption, notice of the redemption hereof, describing this bond and specifying the redemption date and the redemption price payable upon such redemption, shall be mailed by the Registrar/Paying Agent by first-class mail, postage prepaid, to the registered owner hereof not less than 30 days and not more than 60 days prior to the redemption date at such owner's address as it appears upon the registration books of the County. If this bond is redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment hereof shall be duly made or provided for, interest hereon shall cease to accrue from and after the redemption date hereof.]

This bond is transferable only upon the books of the County kept for that purpose at the principal office of the Registrar/Paying Agent by the Registered Owner hereof in person or by his duly authorized attorney upon surrender of this bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney. Thereupon a new fully registered bond or bonds of the same series, aggregate principal amount, interest rate, and maturity shall be issued to the transferee in exchange herefor as provided in the Ordinance. The County and the Registrar/Paying Agent may deem and treat the person in whose name the bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

Under the laws of the State of South Carolina, this bond and the interest hereon are exempt from all State, county, municipal, school district and other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest hereon may be included for certain franchise fees or taxes.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of South Carolina to exist, to happen and to be performed precedent to or in the issuance of this bond exist, have happened and have been performed in regular and due time, form and manner as required by law; that the amount of this bond, together with all other general obligation and bonded indebtedness of the County, does not exceed the applicable limitation of indebtedness under the laws of the State of South Carolina; and that provision has been made for the levy and collection of a tax, without limit, on all taxable property in the County sufficient to pay the principal and interest of this bond as they respectively become due and to create such sinking fund as may be necessary therefor.

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA, has caused this bond to be signed with the manual, facsimile or electronic signature of the Chair, attested by the manual, facsimile or electronic signature of the Clerk to County Council and the seal of the County impressed, imprinted or reproduced hereon.

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chair, County Council

ATTEST:

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

**FORM OF CERTIFICATE OF AUTHENTICATION**

Date of Authentication: [], 2020

This bond is one of the Bonds described in the within-defined Ordinance of Richland County, South Carolina.

\_\_\_\_\_ as Registrar/Paying Agent

By: \_\_\_\_\_  
Authorized Officer

\_\_\_\_\_

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants in entireties  
JT TEN - as joint tenants with right of survivorship  
and not as tenants in common

UNIF GIFT MIN ACT - \_\_\_\_\_  
(Cust)

Custodian \_\_\_\_\_  
(Minor)

under Uniform Gifts to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used, though not in the above list.

**FORM OF ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Social Security No. or other Identifying Number of Assignee \_\_\_\_\_) the within Bond of Richland County, South Carolina, and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature must be guaranteed by an institution who is a participant in the Securities Transfer Agents Medallion Program ("**STAMP**") or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**EXHIBIT B**  
**FORM OF BAN**

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
RICHLAND COUNTY  
GENERAL OBLIGATION BOND ANTICIPATION NOTE,  
[TAXABLE/TAX-EXEMPT] SERIES 2020

KNOW ALL MEN BY THESE PRESENTS that Richland County, South Carolina (the "County") hereby acknowledges itself indebted, and for value received promises to pay to the [bearer] [registered owner] hereof, the principal sum of

\_\_\_\_\_

at the principal office of \_\_\_\_\_, in the City [ ], State of [ ], on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and to pay interest (calculated on the basis of a 360-day year consisting of twelve 30-day months) on said principal sum from the date hereof [from the date of each advance], at the rate of \_\_%, payable upon the maturity of this note. This note is [is not] subject to prepayment prior to its maturity.

Both the principal of and interest on this note are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

This note is one of an issue of Bond Anticipation Notes, of like date, tenor and effect, except as to numbering and denomination, aggregating \$ \_\_\_\_\_ (the "Notes"), issued by the County, pursuant to the authorization of Title 11, Chapter 17, Code of Laws of South Carolina, 1976, as amended, in anticipation of the receipt of the proceeds to be derived from the general obligation bonds of the County ("Bonds") to be issued pursuant to and in accordance with the provisions of the Constitution and Laws of the State of South Carolina including Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended and Title 4, Chapter 15, and Title 11, Chapter 27 of the Code of Laws of South Carolina, 1976, as amended, and Ordinance No. [ ] duly adopted by the County Council of the County on [ ], 2020. The full faith, credit and taxing power of the County and the proceeds to be derived from the sale of the Bonds are pledged for the payment of the principal of and interest on the Notes.

This note and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest hereon may be included in certain franchise fees or taxes.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and Laws of the State of South Carolina to exist, to happen, or to be performed precedent to or in the issuance of this note, do exist, have happened, and have been performed in regular and due time, form and manner, and the amount of this note, and the issue of which this note is one, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA, has caused this note to be signed by the manual, facsimile or electronic signature of the Chair of the County, attested by the manual, facsimile or electronic signature of the Clerk to County Council, the seal of the County impressed, imprinted or reproduced thereon and this note to be dated the \_\_\_\_ day of \_\_\_\_\_, 2020.

RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, County Council

(SEAL)

ATTEST:

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



## Richland County Council Request for Action

**Subject:**

Authorizing the issuance of Fire Protection Service General Obligation Bonds in one or more series, tax-exempt or taxable, in an amount not to exceed \$8,000,000 for the purpose of acquiring and constructing fire stations and acquiring fire protection equipment; authorizing the County Administrator to prescribe the details of the issuance and sale of the bonds and the form and details of the bonds; providing for the disposition of the proceeds of the bonds and the payment of the bonds; and other related matters

**Notes:**

First Reading: September 15, 2020

Second Reading: October 6, 2020 {Tentative}

Third Reading: October 20, 2020 {Tentative}

Public Hearing:

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**RICHLAND COUNTY, SOUTH CAROLINA**

**ORDINANCE NO. \_\_\_\_\_**

**AUTHORIZING THE ISSUANCE OF FIRE PROTECTION SERVICE GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$8,000,000, FOR THE PURPOSE OF ACQUIRING AND CONSTRUCTING FIRE STATIONS AND ACQUIRING FIRE PROTECTION EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE DETAILS OF THE ISSUANCE AND SALE OF THE BONDS AND THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE BONDS AND THE PAYMENT OF THE BONDS; AND OTHER RELATED MATTERS.**

**ADOPTED: [ ], 2020**

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ORDINANCE NO. \_\_\_\_\_

**AUTHORIZING THE ISSUANCE OF FIRE PROTECTION SERVICE GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES, TAX-EXEMPT OR TAXABLE, IN AN AMOUNT NOT TO EXCEED \$8,000,000, FOR THE PURPOSE OF ACQUIRING AND CONSTRUCTING FIRE STATIONS AND ACQUIRING FIRE PROTECTION EQUIPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE THE DETAILS OF THE ISSUANCE AND SALE OF THE BONDS AND THE FORM AND DETAILS OF THE BONDS; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE BONDS AND THE PAYMENT OF THE BONDS; AND OTHER RELATED MATTERS.**

**THE RICHLAND COUNTY, SOUTH CAROLINA, COUNTY COUNCIL ORDAINS:**

**SECTION 1. Findings.** The County Council (“Council”) of Richland County, South Carolina (“County”), finds and determines:

(a) Pursuant to Title 4, Chapter 19 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Fire Protection Services Act”), the County previously determined to establish, operate and maintain a system of fire protection in the unincorporated area of the County and in the incorporated limits of the Town of Forest Acres, the Town of Blythewood, and the Town of Eastover and within the Capital View Fire District (collectively, “Service Areas”).

(b) The Fire Protection Services Act authorizes the County to issue general obligation bonds of the County for the purposes of providing funds to (i) purchase and acquire all fire-fighting equipment and the sites of the fire stations necessary to provide an adequate fire protection system and (ii) construct fire stations and such other necessary buildings to house the fire-fighting equipment.

(c) Subject to the limitations of Article X, Section 12 of the Constitution of the State of South Carolina, 1895, as amended (“Constitution”), the Fire Protection Services Act further authorizes the County to effect the levy and collection of *ad valorem* taxes without limit as to rate or amount upon all taxable property in each Service Area where fire protection services are furnished to effect the payment of principal and interest of all bonds issued pursuant to the Fire Protection Services Act.

(d) The County has determined that it is in the best interest of the County to acquire and construct, certain fire stations within the Service Areas and acquire certain fire protection equipment, as more particularly described on Schedule I (“Fire Projects”), for the purpose of providing an adequate fire protection system in the Service Areas.

~~(e) The assessed valuation of all property in the County as of [June 30], 2020 (unaudited), for purposes of determining the Bonded Debt Limit of the County is not less than \$[ ]. Eight percent of this assessed value is \$[ ] (“County’s Bonded Debt Limit”). As of the date of this Ordinance, the County has outstanding no more than \$33,165,000 of general obligation indebtedness which count against the County’s Bonded Debt Limit (“Outstanding Eight Percent Debt”). As of the date of this Ordinance, the difference between the County’s Bonded Debt Limit and its Outstanding Eight Percent Debt is \$[ ], which amount is the not exceeding amount of general obligation indebtedness that the County may incur without a referendum.~~

~~(c)~~ The County desires to fund the Fire Projects through the issuance and sale of its general obligation bonds pursuant to the Fire Protection Services Act in an amount not to exceed \$8,000,000.

**SECTION 2. *Authorization and Details of the Bonds.*** Pursuant to the Constitution and the Fire Protection Services Act, the County is authorized to issue not exceeding \$8,000,000 in general obligation bonds of the County to be designated “Fire Protection Service General Obligation Bonds of Richland County, South Carolina” (“Bonds”) for the purposes of funding the Fire Projects and paying the costs of issuing the Bonds. The Bonds also may be issued in one or more series, taxable or tax-exempt, from time to time as may be determined in the manner provided below with such further designation of each series to identify the year in which such bonds are issued.

The Bonds may be issued as fully registered bonds; dated the date of their delivery or such other date as may be selected by the County Administrator; may be in any whole dollar denomination or denominations of \$5,000 or any whole multiple thereof not exceeding the principal amount of the Bonds maturing in each year; shall be numbered from R-1 upward; shall bear interest from their date of issuance as may be determined by the County Administrator; and shall mature in such amounts and at such times as determined by the County Administrator.

**SECTION 3. *Delegation of Certain Details of the Bonds to the County Administrator.*** The Council delegates to the County Administrator all determinations regarding the sale and issuance of the Bonds and the form and details of the Bonds. The County Administrator is directed to consult with the County’s bond counsel and financial advisor in making any such determinations. The County Administrator shall keep Council advised of the status of the sale and issuance of the Bonds.

**SECTION 4. *Registrar/Paying Agent.*** Both the principal installments of and interest on the Bonds shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. As determined by the County Administrator, the County Treasurer or a qualified financial institution shall serve as the registrar/paying agent for the Bonds (“Registrar/Paying Agent”) and shall fulfill all functions of the Registrar/Paying Agent enumerated herein.

**SECTION 5. *Registration and Transfer.*** The County shall cause books (herein referred to as the “registry books”) to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose, the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

The Bonds shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Bonds, the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee new fully registered Bonds, of the same aggregate principal amount, interest rate and maturity as the surrendered Bonds. Any Bond surrendered in exchange for a new registered Bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name the Bonds shall be registered upon the registry books as the absolute owner of such Bonds, whether such Bonds shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bonds and for all other purposes, and all such payments so made to any such registered owner or upon his order shall

be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring the Bonds is exercised, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver the Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of the Bonds during the period beginning on the Record Date (as defined in Section 6 hereof) and ending on an interest payment date.

**SECTION 6. *Record Date.*** The County establishes a record date (“Record Date”) for the payment of interest or for the giving of notice of any proposed redemption of the Bonds, and such Record Date shall be the 15th day of the calendar month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of the Bonds, such Record Date shall not be more than 15 days prior to the mailing of notice of redemption of the Bonds.

**SECTION 7. *Lost, Stolen, Destroyed or Defaced Bonds.*** In case any Bond, at any time, is mutilated in whole or in part, or lost, stolen or destroyed, or defaced as to impair the value thereof to the owner, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver at the principal office of the Registrar/Paying Agent, or send by registered mail to the owner thereof at his request, risk and expense, a new bond of the same interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute bond shall furnish the County and the Registrar/Paying Agent evidence or proof satisfactory to the County and the Registrar/Paying Agent of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in such amount as may be required by the laws of the State of South Carolina or such greater amount as may be required by the County and the Registrar/Paying Agent. Any bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such substitute bond is issued.

All expenses necessary for the providing of any substitute bond shall be borne by the applicant therefor.

**SECTION 8. *Book-Entry System.***

(a) Notwithstanding anything to the contrary herein, so long as the Bonds are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds will be affected pursuant to rules and procedures established by such securities depository. The initial securities depository for the Bonds will be The Depository Trust Company (“DTC”), New York, New York. DTC and any successor securities depositories are hereinafter referred to as the “Securities Depository.” The Bonds shall be registered in the name of Cede & Co., as the initial Securities Depository nominee for the Bond. Cede & Co. and successor Securities Depository nominees are hereinafter referred to as the “Securities Depository Nominee.”

(b) As long as the Bonds are being held under a book-entry system, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the principal, interest and premium, if any, on such Bonds, (ii) selecting the portions of the Bonds to be redeemed if the Bonds are to be redeemed in part, (iii) giving any notice permitted or required to be given to bondholders under this Ordinance, (iv) registering the transfer of the Bonds, and (v) requesting any consent or other action to be

taken by the holder of such Bonds, and for all other purposes whatsoever, and the County shall not be affected by any notice to the contrary.

(c) The County shall not have any responsibility or obligation to any participant, beneficial owner or other person claiming a beneficial ownership in the Bonds which is registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of the Bonds.

(d) The County shall pay all principal, interest and premium, if any, on the Bonds issued under a book-entry system only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the principal, interest and premium, if any, on such Bonds.

(e) In the event that the County determines that it is in the best interest of the County to discontinue the book-entry system of transfer for the Bonds, or that the interests of the beneficial owners of the Bonds may be adversely affected if the book-entry system is continued, then the County shall notify the Securities Depository of such determination. In such event, the County shall execute and the Registrar/Paying Agent shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In the event that the Securities Depository for the Bonds discontinues providing its services, the County shall either engage the services of another Securities Depository or arrange with the Registrar/Paying Agent for the authentication, registration and delivery of physical certificates in the manner described in (e) above.

(g) In connection with any notice or other communication to be provided to the holder of the Bonds by the County or by the Registrar/Paying Agent with respect to any consent or other action to be taken by the holder of the Bonds, the County or the Registrar/Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

**SECTION 9. Execution of Bonds.** The Bonds shall be executed in the name of the County with the manual, facsimile, or electronic signature of the Chairman of Council (“Chair”) and attested by the manual, facsimile, or electronic signature of the Clerk to Council under the seal of the County which shall be impressed, imprinted or reproduced thereon. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. The Bonds shall bear a certificate of authentication in substantially the form set forth in Exhibit A executed by the manual, facsimile or electronic signature of an authorized representative of the Registrar/Paying Agent.

**SECTION 10. Form of Bonds.** The Bonds shall be in the form set forth in Exhibit A as determined by the County Administrator under Section 3.

**SECTION 11. Security for Bonds.** The full faith, credit and taxing power of the County are irrevocably pledged for the payment of the principal and interest of the Bonds as they mature and to create a sinking fund to aid in the retirement and payment thereof. There shall be levied and collected annually upon all taxable property in the County an *ad valorem* tax, without limitation as to rate or amount, sufficient for such purposes. Provided, however, that pursuant to Section 4-19-140 of the Fire Protection Services Act, there shall be levied and collected annually service charges, assessments or *ad valorem* taxes upon all taxable property in the Service Areas. The Bonds are the primary obligation of the Service Areas and

revenues from the *ad valorem* tax levied in the Service Areas or from the rates and charges for fire protection services must be available for the payment of debt service on the Bonds (whether or not such revenues have been pledged for that purpose), and must be delivered to the County Treasurer for the payment of such principal and interest and for no other purpose, prior to the occasion when the County Auditor fixes the annual tax levy, an annual *ad valorem* tax to be levied for the payment of the principal and interest on the Bonds may be reduced in each year by the amount of such revenues derived from such taxes levied in the Service Areas or from such rates and charges which are actually in the hands of the County Treasurer at the time the tax for the year is required to be levied.

Only in the event *ad valorem* taxes levied and collected in the Service Areas are insufficient to pay the principal and interest on the Bonds shall the County be obligated to levy and collect a tax on all taxable property within the County sufficient to pay the principal and interest on the Bonds as they mature and to create such sinking fund as may be necessary therefor.

**SECTION 12. *Exemption from State Taxation.*** Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the Code of Laws of South Carolina, 1976, as amended, from all South Carolina, county, municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest thereon may be includable in certain franchise fees or taxes.

**SECTION 13. *Sale of Bonds, Form of Notice of Sale.*** The Bonds may be sold as the County Administrator may determine, after public advertisement of their sale in a newspaper of general circulation in the State of South Carolina or in a financial journal published in the city of New York not less than seven days prior to the sale.

**SECTION 14. *Deposit and Application of Bond Proceeds.*** The proceeds derived from the sale of the Bonds are to be used for the purposes set forth herein and shall be applied by the County solely to the purposes for which the Bonds have been issued.

**SECTION 15. *Preliminary and Final Official Statement.*** If required to sell the Bonds, the County authorizes and directs the County Administrator to prepare, or cause to be prepared, and use, or cause to be used, a preliminary Official Statement and a final Official Statement according to Rule 15c2-12 promulgated by the Securities Exchange Commission (“Rule 15c2-12”), and further authorizes and directs such other appropriate County staff to prepare and provide such information as may be necessary for the County Administrator to so prepare and use such preliminary Official Statement and final Official Statement in connection with the sale of the Bonds. The County Administrator is further authorized to “deem final” the preliminary Official Statement on behalf of the County in accordance with Rule 15c-12.

**SECTION 16. *Defeasance.***

(a) If any Bonds issued pursuant to this Ordinance shall have been paid and discharged, then the obligations of the Ordinance hereunder, and all other rights granted thereby shall cease and determine with respect to such Bonds. A Bond shall be deemed to have been paid and discharged within the meaning of this Section under any of the following circumstances:

(i) If a bank or other institution serving in a fiduciary capacity, which may be the Registrar/Paying Agent, (“Escrow Agent”) shall hold, at the stated maturities of the Bond, in trust and irrevocably appropriated thereto, moneys for the full payment thereof; or



(ii) If default in the payment of the principal of such Bond or the interest thereon shall have occurred, and thereafter tender of payment shall have been made, and the Escrow Agent shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of payment; or

(iii) If the County shall have deposited with the Escrow Agent, in an irrevocable trust, either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America, which are not subject to redemption by the issuer prior to the date of maturity thereof, as the case may be, the principal of and interest on which, when due, and without reinvestment thereof, will provide moneys, which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal, interest, and redemption premium, if any, due and to become due on such Bonds and prior to the maturity date or dates of such Bonds, or, if the County shall elect to redeem such series Bond prior to its stated maturity, and shall have irrevocably bound and obligated itself to give notice of redemption thereof in the manner provided in the Bond, on and prior to the redemption date of such Bonds, as the case may be; or

(iv) If there shall have been deposited with the Escrow Agent either moneys in an amount which shall be sufficient, or direct general obligations of the United States of America the principal of and interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on such Bond on the maturity thereof.

(b) In addition to the above requirements of paragraph (a), in order for this Ordinance to be discharged with respect to any Bond, all other fees, expenses and charges of the Escrow Agent have been paid in full at that time.

(c) Notwithstanding the satisfaction and discharge of this Ordinance with respect to a Bond, the Escrow Agent shall continue to be obligated to hold in trust any moneys or investments then held by the Escrow Agent for the payment of the principal of, premium, if any, and interest on, such Bond, to pay to the owners of such Bond the funds so held by the Escrow Agent as and when payment becomes due.

(d) Any release under this Section shall be without prejudice to the rights of the Escrow Agent to be paid reasonable compensation for all services rendered under this Ordinance and all reasonable expenses, charges, and other disbursements and those of their respective attorneys, agents, and employees, incurred on and about the performance of the powers and duties under this Ordinance.

(e) Any moneys which at any time shall be deposited with the Escrow Agent by or on behalf of the County for the purpose of paying and discharging any Bonds shall be and are assigned, transferred, and set over to the Escrow Agent in trust for the respective holders of such Bonds, and the moneys shall be and are irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the holders of such Bonds shall no longer be entitled to enforce payment of their obligations, then, in that event, it shall be the duty of the Escrow Agent to transfer the funds to the County.

(f) In the event any Bonds are not to be redeemed within the 60 days next succeeding the date the deposit required by Section 16(a)(iii) or (iv) is made, the County shall give the Escrow Agent irrevocable instructions to mail, as soon as practicable by registered or certified mail, a notice to the owners of the Bonds at the addresses shown on the registry books that (i) the deposit required by subparagraph (a)(iii) or (a)(iv) of this Section 16 has been made with the Escrow Agent, (ii) the Bonds are deemed to have been paid in accordance with this Section and stating the maturity or redemption dates upon which moneys are

to be available for the payment of the principal of, premium, if any, and interest on, the Bonds, and (iii) stating whether the County has irrevocably waived any rights to redeem the Bonds, or any of them, prior to the maturity or redemption dates set forth in the preceding clause (ii).

(g) The County covenants and agrees that any moneys which it shall deposit with the Escrow Agent shall be deemed to be deposited in accordance with, and subject to, the applicable provisions of this Section, and whenever it shall have elected to redeem Bonds, it will irrevocably bind and obligate itself to give notice of redemption thereof, and will further authorize and empower the Escrow Agent to cause notice of redemption to be given in its name and on its behalf.

**SECTION 17. Authority to Issue Bond Anticipation Notes.** If the County Administrator or Chair, after consultation with the County's financial advisor or bond counsel, should determine that issuance of bond anticipation notes ("BANs") pursuant to Chapter 17 of Title 11 of the Code of Laws of South Carolina, 1976, as amended (the "BAN Act") rather than Bonds would result in a substantial savings in interest under prevailing market conditions or for other reasons would be in the best interest of the County, the County Administrator or Chair is hereby further requested and authorized to effect the issuance of BANs pursuant to the BAN Act. If BANs are issued and if, upon the maturity thereof the County Administrator and Chair should determine that further issuance of BANs rather than Bonds would result in a substantial savings in interest under then prevailing market conditions or for other reasons would be in the best interest of the County, the County Administrator and Chair are requested to continue the issuance of BANs until the County Administrator and Chair determine to issue the Bonds on the basis as aforesaid, and the Bonds are issued.

**SECTION 18. Details of Bond Anticipation Notes.** Subject to changes in terms required for any particular issue of BANs, the BANs shall be subject to the following particulars:

(a) The BANs shall be dated and bear interest either from the date of delivery thereof or, if the BAN is issued on a draw-down basis, from the date of each such advance, payable upon the stated maturity thereof, at the rate determined or accepted by the County Administrator and shall mature on such date, not to exceed one year from the issue date thereof, as shall be determined by the County Administrator.

(b) The BANs shall be numbered from one upwards for each issue and shall be in any whole dollar denomination or in the denomination of \$5,000 or any integral multiple thereof requested by the purchaser thereof. The BANs shall be payable, both as to principal and interest, in legal tender upon maturity, at the principal office of the Registrar/Paying Agent or, at the option of the County, by the purchaser thereof.

(c) The County Administrator and Chair are authorized to carry out the sale of the BANs and to fix the rate of interest to be borne thereby.

(d) The BANs shall be in substantially the form attached hereto as Exhibit B.

(e) The BANs shall be issued in fully registered or bearer form or a book-entry-eligible form as specified by the County, or at the option of the County, by the purchaser thereof; provided that once issued, the BANs of any particular issue shall not be reissued in any other form and no exchange shall be made from one form to the other.

(f) In the event any BAN is mutilated, lost, stolen or destroyed, the County may execute a new note of like date and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated BAN, such mutilated BAN shall first be surrendered to the County, and in the case of any lost,

stolen or destroyed BAN, there shall be first furnished to the County evidence of such loss, theft or destruction satisfactory to the County, together with indemnity satisfactory to it; provided that, in the case of a holder which is a bank or insurance company, the agreement of such bank or insurance company to indemnify shall be sufficient. In the event any such BAN shall have matured, instead of issuing a substitute note, the County may pay the same without surrender thereof. The County may charge the holder of such BAN with its reasonable fees and expenses in this connection.

(g) Any BAN issued in fully-registered form shall be transferable only upon the books of registry of the County, which shall be kept for that purpose at the office of the County as note registrar (or its duly authorized designee), by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the County as note registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any BAN, the County shall issue, subject to the provisions of paragraph (h) below, in the name of the transferee, a new note or notes of the same aggregate principal amount as the unpaid principal amount of the surrendered BAN. Any holder of a BAN in fully registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any BAN in fully-registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal and interest of any BAN in fully-registered form shall be made only to or upon the order of the registered holder thereof, or his duly authorized attorney, and the County shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such BAN to the extent of the sum or sums so paid.

(h) BANs issued in fully registered form, upon surrender thereof at the office of the County (or at such office as may be designated by its designee) as note registrar, with a written instrument of transfer satisfactory to the County, duly executed by the holder of the BAN or his duly authorized attorney, may, at the option of the holder of the BAN, and upon payment by such holder of any charges which the County may make as provided in paragraph (i), be exchanged for a principal amount of notes in fully registered form of any other authorized denomination equal to the unpaid principal amount of surrendered BANs.

(i) In all cases in which the privilege of exchanging or transferring BANs in fully registered form is exercised, the County shall execute and deliver notes in accordance with the provisions of this Ordinance. All BANs in fully registered form surrendered in any such exchanges or transfers shall forthwith be canceled by the County. There shall be no charge to the holder of such BAN for such exchange or transfer of BANs in fully-registered form except that the County may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer.

**SECTION 19. *Security for Bond Anticipation Notes.*** For the payment of the principal of and interest on the BANs as the same shall fall due, the full faith, credit and taxing power of the County shall be pledged. In addition thereto, so much of the principal proceeds of the Bonds when issued shall and is hereby directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the County covenants and agrees to effect the issuance of sufficient BANs or Bonds in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

**SECTION 20. *Tax and Securities Laws Covenants.***

(a) The following covenants shall be applicable to any series of Bonds or BANs that are sold on a tax-exempt basis:

(i) The County covenants that no use of the proceeds of the sale of the Bonds or BANs authorized hereunder shall be made which, if such use had been reasonably expected on the date of issue of such Bonds or BANs would have caused the Bonds or BANs to be “arbitrage bonds,” as defined in the Internal Revenue Code of 1986, as amended (“Code”), and to that end the County shall comply with all applicable regulations of the Treasury Department previously promulgated under the Code so long as the Bond is outstanding.

(ii) The County further covenants to take all action necessary, including the payment of any rebate amount, to comply with Section 148(f) of the Code and any regulations promulgated thereunder.

(iii) The County covenants to file IRS form 8038, if the Code so requires, at the time and in the place required therefore under the Code.

(b) The County covenants and agrees that it will comply with and carry out all of the provisions of a continuing disclosure agreement, dated the date of delivery of the Bonds, which will meet the requirements of (i) Rule 15c2-12 and (ii) Section 11-1-85, Code of Laws of South Carolina, 1976, as amended.

**SECTION 21. *Authorization for County Officials to Execute Documents; Ratification of Prior Acts.*** The Council authorizes the Chair, County Administrator, Clerk to Council and other county officials or their designees (collectively, “Authorized Representatives”) to execute and consent to such documents and instruments as may be necessary to effect the intent of this Ordinance. Except as otherwise specifically stated in this Ordinance, any actions taken by any Authorized Representatives prior to the date of this Ordinance in furtherance of the issuance and sale of the Bonds or the financing of the Fire Projects, including the expenditure of funds and the execution of documents, are hereby approved, ratified and confirmed in all respects.

**SECTION 22. *Publication of Notice of Adoption of Ordinance.*** Pursuant to the provisions of Section 11-27-40 of the Code, the County Administrator, at his option, is authorized to arrange to publish a notice of adoption of this Ordinance.

**SECTION 23. *Retention of Bond Counsel and Other Professionals.*** The Council authorizes the County Administrator to retain the law firm of Parker Poe Adams & Bernstein LLP as its bond counsel, and the firm of First Tryon Advisors, as its financial advisor, in connection with the issuance of the Bonds.

The Council further authorizes the County Administrator to enter into such other contractual arrangements and hire such other professionals as may be necessary to effect the issuance, sale, execution and delivery of the Bonds, and the other transactions contemplated by this Ordinance.

**SECTION 24. *Reimbursement from Bond Proceeds.***

(a) This Ordinance is the County’s official declaration of intent pursuant to Treasury Regulation §1.150-2 to reimburse the County for expenditures incurred and paid in connection with the Fire Projects on or after the date occurring 60 days prior to the date of adoption of this Ordinance from the proceeds of the Bonds or an authorized BAN (“Expenditures”).

(b) The County acknowledges that Expenditures which may be reimbursed are limited to Expenditures which are (i) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Treasury Regulation §1.150-2) under general federal income tax principles, or (ii) certain *de minimis* or preliminary expenditures satisfying the requirements of Treasury Regulation §1.150-2(f).

(c) The source of funds for the Expenditures with respect to the Fire Project will be the County's [general fund or capital projects fund].

(d) The County acknowledges that to be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (i) the date on which the Expenditures were paid, or (ii) the date the Fire Projects are placed in service, but in no event more than three years after the County made the original Expenditures.

**SECTION 25. General Repealer.** All ordinances, rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bonds are, to the extent of such conflict, repealed and this Ordinance shall take effect and be in full force from and after its adoption.

**SECTION 26. No Personal Liability.** No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the County contained herein or in the Bonds or BANs, and any other incorporated or referenced documents against any elected official of the County or any officer or employee of the County, as such, in his or her individual or personal capacity, past, present or future, either directly or through the County, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Ordinance, the Bonds and BANs are solely governmental obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, officer or employee, as such, past, present or future, of the County, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the County and the owners of the Bonds or BANs or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such elected official, officer and employee is, by the enactment of this Ordinance and the execution of the Bonds and BANs, and as a condition of, and as a part of the consideration for, the enactment of this Ordinance and the execution of the Bonds and BANs, expressly waived and released. The immunity of elected officials, officers and employees of the County and waiver and release of personal liability under the provisions contained in this Section shall survive the termination of this Ordinance and maturity of the Bonds or BANs issued hereunder.

*[Signature page follows]*

RICHLAND COUNTY, SOUTH CAROLINA

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Chair, County Council  
Richland County, South Carolina

*(SEAL)*  
ATTEST:

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Clerk to County Council  
Richland County, South Carolina

READINGS:  
First Reading: September 15, 2020  
Second Reading:  
Public Hearing:  
Third Reading:

**SCHEDULE I**

**LIST OF FIRE PROJECTS**

[Acquire and Construct New Stations - Ballentine, White Rock, and Bluff Road](#)

[Acquire and Equip a Ladder Truck](#)

**EXHIBIT A**  
**FORM OF BOND**

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (“SECURITIES DEPOSITORY”), TO RICHLAND COUNTY, SOUTH CAROLINA, OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE SECURITIES DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE SECURITIES DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
RICHLAND COUNTY  
FIRE PROTECTION SERVICE GENERAL OBLIGATION BONDS  
[TAXABLE/TAX-EXEMPT] SERIES 2020

No. R-[]

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Issue Date</u>	<u>CUSIP</u>
[] %	[]	[]	[]

REGISTERED OWNER: []

PRINCIPAL AMOUNT: [] DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that Richland County, South Carolina (the “County”), is justly indebted and, for value received, hereby promises to pay to the Registered Owner named above, its successors or registered assigns, the principal amount shown above on the maturity date shown above, and to pay interest on such principal sum from the date hereof at the interest rate per annum shown above until the County’s obligation with respect to the payment of such principal sum shall be discharged.

[Principal and interest on this bond are payable at maturity on [ ], and will be payable by check or draft mailed to the person in whose name this bond is registered on the registration books of the County maintained by the [ ], as registrar/paying agent (the “Registrar/Paying Agent”). The principal of and interest on this bond is payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts, provided, however, that the interest on this fully registered bond will be paid by check or draft as set forth above.]

[Interest on this bond is payable semiannually on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year commencing \_\_\_\_\_ 1, 20[], until this bond matures, and shall be payable by check or draft mailed to the person in whose name this bond is registered on the registration books of the County maintained by the



Registrar/Paying Agent, at the close of business on the 15th day of the calendar month next preceding each semiannual interest payment date. The principal and interest on this bond are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts, provided, however, that interest on this fully registered bond shall be paid by check or draft as set forth above.]

This bond is [one of an issue of bonds (the “Bonds”) of like date, of original issue, tenor and effect, except as to number, date of maturity, denomination and rate of interest, issued in an original aggregate principal amount of \_\_\_\_\_,] issued pursuant to and in accordance with the Constitution and laws of the State of South Carolina, including the Constitution of the State of South Carolina, 1895, as amended; Chapter 19, Title 4, Code of Laws of South Carolina, 1976, as amended; and an Ordinance duly adopted by the Richland County Council on [ ], 2020 (the “Ordinance”). All capitalized terms used but not defined in this bond will have the meanings given in the Ordinance.

This bond shall not be valid or obligatory for any purpose, until the Certificate of Authentication hereon shall have been duly executed by the Registrar/Paying Agent.

For the payment of the principal of and interest on this bond as it matures and for the creation of such sinking fund as may be necessary therefor, the full faith, credit, resources and taxing power of the County are hereby irrevocably pledged, and there shall be levied annually by the County Auditor and collected by the County Treasurer in the same manner as other county taxes are levied and collected, an *ad valorem* tax, without limit, on all taxable property in the Service Areas sufficient to pay the principal of and interest on this bond as it matures and to create such sinking fund as may be necessary therefor. The Bonds are the primary obligation of the Service Areas and only in the event the *ad valorem* taxes levied and collected in the Service Areas are insufficient to pay the principal and interest on the Bonds shall the County be obligated to levy and collect a tax on all taxable property within the County sufficient to pay the principal and interest on the Bonds as they mature and to create such sinking fund as may be necessary therefor.

[The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Ordinance. One bond certificate with respect to each date on which the Bonds are stated to mature, registered in the name of the Securities Depository Nominee, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by participants in the Securities Depository (“Participants”), with beneficial ownership of the Bonds in the principal amount of \$5,000 or any multiple thereof being evidenced in the records of such Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Participants pursuant to rules and procedures established by the Securities Depository and its Participants. The County and the Registrar/Paying Agent will recognize the Securities Depository Nominee, while the registered owner of this bond, as the owner of this bond for all purposes, including payments of principal of and redemption premium, if any, and interest on this bond, notices and voting. Transfer of principal and interest payments to Participants of the Securities Depository will be the responsibility of the Securities Depository, and transfer of principal, redemption premium, if any, and interest payments to beneficial owners of the Bonds by Participants will be the responsibility of such Participants and other nominees of such beneficial owners. The County will not be responsible or liable for such transfers of payments or for maintaining, supervision or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, its Participants or persons acting through such Participants. While the Securities Depository Nominee is the owner of this bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this bond shall be made in accordance with existing arrangements between the Registrar/Paying Agent or its successors under the Ordinance and the Securities Depository.]

The Bonds maturing on or prior to \_\_\_\_\_ 1, \_\_\_\_\_, shall not be subject to redemption prior to their stated maturities. The Bonds maturing on or after \_\_\_\_\_ 1, \_\_\_\_\_, shall be subject to redemption at the option of the County on or after \_\_\_\_\_ 1, \_\_\_\_\_, as a whole or in part at any time, and if in part in such order of maturities as shall be determined by the County, at the redemption prices with respect to each Bond, expressed as a percentage of the principal amount of the Bonds to be redeemed, set forth below, together with the interest accrued thereon to the date fixed for redemption:

Period During Which Redeemed <u>(both dates inclusive)</u>	<u>Redemption Price</u>
---------------------------------------------------------------	-------------------------

If less than all the Bonds of any maturity are called for redemption, the Bonds of such maturity to be redeemed shall be selected by lot by the Registrar/Paying Agent or by the Securities Depository in accordance with its procedures. In the event this bond is redeemable as aforesaid, and shall be called for redemption, notice of the redemption hereof, describing this bond and specifying the redemption date and the redemption price payable upon such redemption, shall be mailed by the Registrar/Paying Agent by first-class mail, postage prepaid, to the registered owner hereof not less than 30 days and not more than 60 days prior to the redemption date at such owner's address as it appears upon the registration books of the County. If this bond is redeemable and shall have been duly called for redemption and notice of the redemption hereof mailed as aforesaid, and if on or before the date fixed for such redemption, payment hereof shall be duly made or provided for, interest hereon shall cease to accrue from and after the redemption date hereof.]

This bond is transferable only upon the books of the County kept for that purpose at the principal office of the Registrar/Paying Agent by the Registered Owner hereof in person or by his duly authorized attorney upon surrender of this bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney. Thereupon a new fully registered bond or bonds of the same series, aggregate principal amount, interest rate, and maturity shall be issued to the transferee in exchange herefor as provided in the Ordinance. The County and the Registrar/Paying Agent may deem and treat the person in whose name the bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

Under the laws of the State of South Carolina, this bond and the interest hereon are exempt from all State, county, municipal, school district and other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest hereon may be included for certain franchise fees or taxes.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of South Carolina to exist, to happen and to be performed precedent to or in the issuance of this bond exist, have happened and have been performed in regular and due time, form and manner as required by law; that the amount of this bond, together with all other general obligation and bonded indebtedness of the County, does not exceed the applicable limitation of indebtedness under the laws of the State of South Carolina; and that provision has been made for the levy and collection of a tax, without limit, on all taxable property in the County sufficient to pay the principal and interest of this bond as they respectively become due and to create such sinking fund as may be necessary therefor.

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA, has caused this bond to be signed with the manual, facsimile or electronic signature of the Chair, attested by the manual, facsimile or electronic signature of the Clerk to County Council and the seal of the County impressed, imprinted or reproduced hereon.

RICHLAND COUNTY, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chair, County Council

ATTEST:

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

**FORM OF CERTIFICATE OF AUTHENTICATION**

Date of Authentication: [], 2020

This bond is one of the Bonds described in the within-defined Ordinance of Richland County, South Carolina.

\_\_\_\_\_ as Registrar/Paying Agent

By: \_\_\_\_\_  
Authorized Officer

\_\_\_\_\_

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants in entireties  
JT TEN - as joint tenants with right of survivorship  
and not as tenants in common

UNIF GIFT MIN ACT - \_\_\_\_\_  
(Cust)

Custodian \_\_\_\_\_  
(Minor)

under Uniform Gifts to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used, though not in the above list.

**FORM OF ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Social Security No. or other Identifying Number of Assignee \_\_\_\_\_) the within Bond of Richland County, South Carolina, and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature must be guaranteed by an institution who is a participant in the Securities Transfer Agents Medallion Program ("**STAMP**") or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**EXHIBIT B**  
**FORM OF BAN**

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
RICHLAND COUNTY  
FIRE PROTECTION SERVICE  
GENERAL OBLIGATION BOND ANTICIPATION NOTE,  
[TAXABLE/TAX-EXEMPT] SERIES 2020

KNOW ALL MEN BY THESE PRESENTS that Richland County, South Carolina (the “County”) hereby acknowledges itself indebted, and for value received promises to pay to the [bearer] [registered owner] hereof, the principal sum of

\_\_\_\_\_

at the principal office of \_\_\_\_\_, in the City [ ], State of [ ], on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and to pay interest (calculated on the basis of a 360-day year consisting of twelve 30-day months) on said principal sum from the date hereof [from the date of each advance], at the rate of \_\_%, payable upon the maturity of this note. This note is [is not] subject to prepayment prior to its maturity.

Both the principal of and interest on this note are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

This note is one of an issue of Bond Anticipation Notes, of like date, tenor and effect, except as to numbering and denomination, aggregating \$ \_\_\_\_\_ (the “Notes”), issued by the County, pursuant to the authorization of Title 11, Chapter 17, Code of Laws of South Carolina, 1976, as amended, in anticipation of the receipt of the proceeds to be derived from the general obligation bonds of the County (“Bonds”) to be issued pursuant to and in accordance with the provisions of the Constitution and Laws of the State of South Carolina including the Constitution of the State of South Carolina, 1895, as amended and Title 4, Chapter 19, and Ordinance No. [ ] duly adopted by the County Council of the County on [ ], 2020. The full faith, credit and taxing power of the County and the proceeds to be derived from the sale of the Bonds are pledged for the payment of the principal of and interest on the Notes.

This note and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate and transfer taxes, but the interest hereon may be included in certain franchise fees or taxes.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and Laws of the State of South Carolina to exist, to happen, or to be performed precedent to or in the issuance of this note, do exist, have happened, and have been performed in regular and due time, form and manner, and the amount of this note, and the issue of which this note is one, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, RICHLAND COUNTY, SOUTH CAROLINA, has caused this note to be signed by the manual, facsimile or electronic signature of the Chair of the County, attested by the manual, facsimile or electronic signature of the Clerk to County Council, the seal of the County impressed, imprinted or reproduced thereon and this note to be dated the \_\_\_\_ day of \_\_\_\_\_, 2020.

RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, County Council

(SEAL)

ATTEST:

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

# Richland County Council Request for Action

**Subject:**

Home Detention/Electronic Monitoring Services

**Notes:**

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





**Agenda Briefing**

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

**Department:** Finance

**Date Prepared:** July 14, 2020

**Meeting Date:** July 28, 2020

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

**Recommended Action:**

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

**Motion Requested:**

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

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

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

**Motion of Origin:**

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

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

### Discussion:

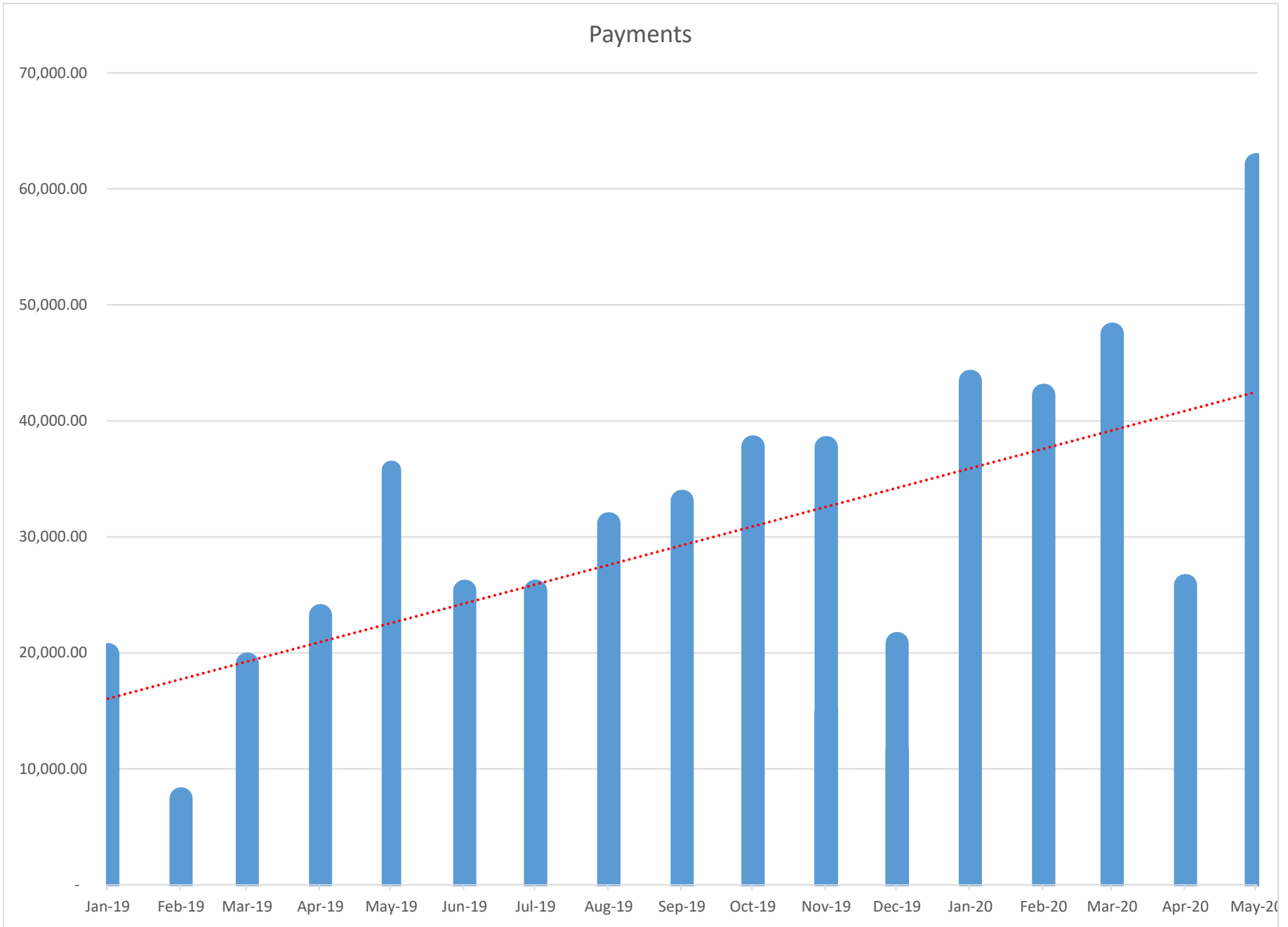
The Alvin S. Glenn Detention Center (ASGDC) is an essential part of the criminal justice system in Richland County. ASGDC serves as the intake center for unsentenced misdemeanor and/or felony detainees/inmates and as an incarceration facility for sentenced offenders. It provides facilities for the detention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

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

### Attachments:

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

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



**RICHLAND COUNTY  
ADMINISTRATION**

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



**Agenda Briefing**

**To:** Chair of the Committee and the Honorable Members of the Committee  
**Prepared by:** Jeff Ruble  
**Department:** Economic Development

**Date Prepared:** July 17, 2020

**Meeting Date:**  
**July 21, 2020**

<b>Legal Review</b>		<b>Date:</b>	
<b>Budget Review</b>		<b>Date:</b>	
<b>Finance Review</b>		<b>Date:</b>	
<b>Other Review:</b>		<b>Date:</b>	
<b>Approved for Council consideration:</b>		Assistant County Administrator	

**Committee**

**Subject:** Award of Engineering Services contract for a cleared site at the Blythewood Business Park

**Recommended Action:**

Approval (from 7/14 EDC Meeting)

**Motion Requested:**

Approve entering into a contract for an amount not to exceed \$289,475 with Thomas & Hutton for engineering, due diligence, bidding and award, and construction administration services for clearing, grubbing and grading “Parcel 29” at the Blythewood Business Park.

**Request for Council Reconsideration:** X Yes

**Fiscal Impact:**

Engineering services and construction costs associated with this project are funded 100% by grants from our partners at Fairfield Electric Cooperative, SC Department of Commerce and the SC PowerTeam. The county will pay for the services – from the ED fund- and then will be reimbursed by the respective grants. Funds have been budgeted and are available for this project.

**Motion of Origin:**

**Forwarded for approval from EDC at July 14, 2020 meeting**

Council Member	EDC
Meeting	EDC Committee Meeting
Date	7/14/2020

**Discussion:**

RCEDO received funding commitments in the amount of \$2,370,272 to design, clear, grub and grade a site in Fairfield Electric Cooperative’s territory at the Blythewood Business Park.

Staff took the grant commitments to Council at its December 17, 2019 meeting and received approval to accept the grants and proceed with issuing a Request for Proposals for engineering services on the site (see attached Agenda Briefing packet for details).

Procurement issued a solicitation in March 2020 and 7 firms submitted by the April 2020 deadline. The submissions were graded by the selection committee, and Thomas & Hutton was selected as the top ranked offeror (see attached Notice of Ranking memo).

Thomas & Hutton proposes to complete the full scope of services for \$289,485, which is within the original project budget (see Cost Estimates included in Agenda Briefing Packet).

Engineering services and construction costs associated with this project are funded 100% by grants from our partners at Fairfield Electric Cooperative, SC Department of Commerce and the SC PowerTeam.

Once the design and due diligence activities have been completed, the engineering team will work with procurement to prepare and issue a solicitation package for construction activities. Proposals will be ranked and awarded, according to established procurement policies, and the recommendation will be brought to EDC and full Council for approval.

**Attachments:**

**ED Briefing Summary**

**Agenda Briefing Packet from 12/17/19 Council Meeting**

**Notice of Ranking Memo**

**Summary**  
**Engineering Services at Blythewood**  
**Design and Construction Administration for Clearing a ~320,000 SF**  
**Building Pad**  
**July 14, 2020**

**Overview**

RCEDO received funding commitments in the amount of \$2,370,272 to design, clear, grub and grade a site in Fairfield Electric Cooperative's territory at the Blythewood BusinessPark.

Staff took the grant commitments to Council at its December 17, 2019 meeting and received approval to accept the grants and proceed with issuing a Request for Proposals for engineering services on the site (see attached Agenda Briefing packet for details).

Procurement issued a solicitation in March 2020 and 7 firms submitted by the April 2020 deadline. The submissions were graded by the selection committee, and Thomas & Hutton was selected as the top ranked offeror (see attached Notice of Ranking memo).

Thomas & Hutton proposes to complete the full scope of services for \$289,485, which is within the original project budget (see Cost Estimates included in Agenda Briefing Packet).

Engineering services and construction costs associated with this project are funded 100% by grants from our partners at Fairfield Electric Cooperative, SC Department of Commerce and the SC PowerTeam.

Once the design and due diligence activities have been completed, the engineering team will work with procurement to prepare and issue a solicitation package for construction activities. Proposals will be ranked and awarded, according to established procurement policies, and the recommendation will be brought to EDC and full Council for approval.

**Recommendation**

Recommend that Council approve entering into a contract for an amount not to exceed \$289,475 with Thomas & Hutton for engineering, due diligence, bidding and award, and construction administration services for clearing, grubbing and grading "Parcel 29" at the Blythewood Business Park.



**Agenda Briefing**

**To:** Chair of the Committee and the Honorable Members of the Committee  
**Prepared by:** Jeff Ruble  
**Department:** Economic Development  
**Date Prepared:** 12/13/19 **Meeting Date:** 12/17/19

<b>Legal Review</b>		<b>Date:</b>	
<b>Budget Review</b>		<b>Date:</b>	
<b>Finance Review</b>		<b>Date:</b>	
<b>Other Review:</b>		<b>Date:</b>	
<b>Approved for Council consideration:</b>		Assistant County Administrator	

**Committee**

**Subject:** Approval of Grants for Blythewood Industrial Park

**Recommended Action:** Approval

**Motion Requested:** Authorize the Administrator to sign documents to accept grants from the SC Powerteam , Fairfield Electric Cooperative, the SC Department of Commerce and others to prepare a graded site at the Blythewood Industrial Park, and take the necessary steps to proceed with the project.

**Request for Council Reconsideration:** Yes

**Fiscal Impact:** This is a net gain for the County. The County is being awarded \$2,370,272 in funding to clear, grub and grade a site at the Blythewood Industrial Park. The funding commitments equal the project cost, therefore, there will be no out of pocket costs for the County. However, the County will benefit greatly from having marketable economic development product that will enhance the competitiveness of the industrial park.

**Motion of Origin:** n/a

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

**Discussion:**

RCEDO has received funding commitments in the amount of \$2,370,272 to clear, grub and grade a site in Fairfield Electric Cooperative’s territory at the Blythewood Industrial Park. The grant commitments have an 18-month window, and there are two public procurement processes that will need to occur during that timeframe. Therefore, to ensure that the project can be completed within the deadline, RCEDO will need to begin the process with budget, finance and procurement in January 2020. Since Council will not



meet in January and this is a time sensitive matter, RCEDO is respectfully requesting that Council review and approve the request to accept grant funds at its 12/17/19 special called meeting.

**Background**

In March 2019, with recommendations from the SC Department of Commerce, independent site selection consultants and RCEDO staff, Richland County Council made a decision to proceed with purchasing approximately 1,349 acres to develop as a business and industrial park. After months of financial modeling, rezoning and other due diligence, the County closed on the property on November 1, 2019. The 1,349-acre site is divided into two electric service territories: Dominion Energy serves the ~ 339 acres to the south and Fairfield Electric Cooperative serves the ~ 1,010 acres on the north.

This is the first significant sized industrial property that Richland County has in electric cooperative service territory, and when it became clear that the County intended to purchase the property, RCEDO began conversations with Fairfield Electric’s President to discuss opportunities to partner on developing properties in their section of the park. He encouraged the RCEDO team to work with the SC PowerTeam (the statewide marketing entity for the electric cooperatives) to develop a high impact project for the Site Readiness program. The SC PowerTeam recognized that grading a site would set the park up for quick success, and was extremely supportive of developing a site. The SC PowerTeam’s engineers worked closely with RCEDO and the County’s engineering consultant to identify a project location.

During the same time, the SC Department of Commerce announced that it opened a new funding round for its Site Enhancement Program. The PowerTeam and RCEDO discussed the proposed project with the DOC and were encouraged to submit a request for funding. On August 29, 2019 the SCDOC review committee recommended approval of a \$500,000 grant for the project with the contingency that the property be rezoned to industrial.

PowerTeam staff vetted the project with Fairfield Electric and after approval, planned to recommend funding for the project to its board. Once the County closed on the property, staff was in a position to present the project to its board at its next meeting. On December 11, 2019 the SC PowerTeam board met and approved their staff’s recommendation to provide a \$1,420,272 grant to Richland County to design and clear, grub and grade Parcel 29 at the Blythewood Industrial Park.

In addition to these two grant commitments, Fairfield Electric Cooperative has committed \$450,000 to assist with this project - \$300,000 was deposited – and set aside in the economic development fund - earlier in 2019 to assist with an economic development project at this park, and \$150,000 has been committed from the License Fee program.

The estimated cost of the grading project and funding commitments is as follows:

<b>Parcel 29 - Clear, Grubbing and Grading Cost Estimate</b>	<b>\$2,370,000</b>
<b>Funding Commitments</b>	
PowerTeam Site Readiness Grant	\$1,420,272
SC Commerce Site Enhancement Grant	\$500,000
Fairfield Electric Funds Deposited in 2019	\$300,000
Fairfield Electric License Fee Grant	\$150,000
<b>Total</b>	<b>\$2,370,272</b>

The pledge of this \$2.37 million is proof of our economic development partners' commitment to the success of the Blythewood Industrial Park, and ensures that this site will compete on an international level.

The SC DOC and SC PowerTeam grants are reimbursable. The County will competitively select an engineering firm to design and oversee construction activities for this project. Once designed, the county will undergo another competitive selection process to select a contractor to complete construction activities.

Upon completion of the project, the County will be reimbursed for its expenditures. RCEDO will work with grants and budget to account for this project, and RCEDO will be responsible for managing the project and the grants. The \$450,000 from Fairfield Electric Cooperative will be available to use on the project as needed and RCEDO will provide proof that funds were used for the intended purpose.

**Attachments:**

- Site location map
- Project Cost Estimate
- SC DOC Funding Commitment Letter
- SCPowerTeam Funding Commitment Letter
- Proof of \$300,000 Fairfield Electric Cooperative Deposit
- \$150,000 Fairfield Electric Funding Commitment Letter

Z:\27015\27015.0000\Engineering\Drawings\Exhibits\27015.0000 - 320K SF Pad and Road Ext option 2.dwg - Jul 9, 2019 - 15:24:48 PM



**ACCESS ROADWAY AND MASS GRADING EXHIBIT**  
 FOR PARCEL 29 AT THE  
**BLYTHEWOOD INDUSTRIAL SITES**  
 CLIENT:  
 RICHLAND COUNTY ECONOMIC DEVELOPMENT  
 LOCATION: RICHLAND COUNTY, SC  
 DATE: 7/9/19 DRAWN BY: CGW SHEET: 1 OF 1  
 JOB NUMBER: J-27015.0000 REVIEWED BY: RSO SCALE: 1" = 400'

**THOMAS & HUTTON**  
 1501 Main Street • Suite 760  
 Columbia, SC 29201 • 803.451.6789  
 www.thomasandhutton.com

**Conceptual Cost Estimate****Blythewood Industrial Sites  
Parcel 29  
Mass Grading Improvements****Mass Grading Improvements for a 320,000 SF Building Pad (±52 Acres) on Parcel 29**

<u>Item</u>	<u>Quantity</u>	<u>Unit</u>	<u>Item</u>	<u>Unit Price</u>	<u>Total</u>
1	1	LS	Mobilization / Demobilization	\$ 54,000	\$ 54,000
2	50	AC	Clearing & Grubbing	\$ 4,500	\$ 225,000
3	1	EA	Construction Entrance	\$ 5,000	\$ 5,000
4	5,000	LF	Silt Fence	\$ 4.00	\$ 20,000
5	190,000	CY	Earthwork (Onsite Cut/Fill/Compaction)	\$ 6.00	\$ 1,140,000
6	2	EA	Sediment Marker	\$ 500	\$ 1,000
7	2	EA	Temporary Skimmer with Horeshoe Berm (complete configuration)	\$ 7,500	\$ 15,000
8	2	LS	Forebay Berm (Within Detention Basin)	\$ 7,500	\$ 15,000
9	990	LF	Porous Baffles (Within Detention Basin)	\$ 15.00	\$ 14,850
10	2	EA	Emergency Spillway	\$ 10,000	\$ 20,000
11	15	EA	Stone Check Dams	\$ 500	\$ 7,500
12	2	EA	Outlet Structure w/Filter Berm	\$ 25,000	\$ 50,000
13	96	LF	Storm Drainage Piping	\$ 75.00	\$ 7,200
14	100	SY	Rip Rap with Filter Fabric	\$ 85.00	\$ 8,500
15	9,000	SY	Erosion Control Blanket	\$ 3.00	\$ 27,000
16	50	AC	Grassing	\$ 4,500	\$ 225,000

**Mass Grading Improvements Subtotal: \$ 1,835,050**

**Contingency: \$ 182,950**

**Topographic Survey: \$ 24,000**

**Subsurface Geotechnical Exploration: \$ 19,500**

**Engineering, Landscaping, Design & Permitting: \$ 140,000**

**Bidding & Award: \$ 9,500**

**Construction Observation/Administration/SCDHEC Inspections: \$ 105,000**

**Construction Materials Testing: \$ 54,000**

**Mass Grading Improvements Total: \$ 2,370,000**

## Notes:

1. Cost Estimate based on the Access Roadway & Mass Grading Exhibit dated 2/28/19.
2. Grassing includes all areas to be cleared.
3. Rip-rap placed at end of storm drainage pipes to act as an energy dissipater and provide erosion control.
4. A Geotechnical Exploration will be required before construction.
5. Construction Materials Testing by geotechnical firm will be necessary during construction.
6. Preliminary Estimate above is based on opinion and experience and subject to change pending Richland County & SCDHEC requirements at time of submittal and actual field conditions.
7. Cost estimate does not include property acquisition.



**Henry McMaster**  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

**Robert M. Hitt III**  
Secretary

August 29, 2019

Jeff Ruble  
Director  
Richland County Economic Development Office  
1201 Main Street, Suite 910  
Columbia, SC 29201

RE: SCDOC Site Enhancement Initiative – Richland County

Dear Jeff:

Congratulations on your successful application for funding from the South Carolina LocateSC Site Enhancement Initiative. I am pleased to inform you that \$500,000 has been approved to assist Richland County with road improvements and pad construction at the Blythewood Industrial Site.

However, before we are able to issue a grant award, the following requirements must be met and approved by our office:

1. Proof of the property rezoning to Limited Industrial 2 (LI-2) on the 163-acres in the Town of Blythewood

Commerce appreciates the opportunity to serve the citizens of Richland County and we look forward to working with you to ensure the success of this project. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer R. Druce".

Jennifer R. Druce, SCCED  
Program Director, Product Development

**From:** [Jamie W. Frost](#)  
**To:** [TIFFANY HARRISON](#)  
**Cc:** [JEFF RUBLE](#); [James Chavez](#); [Rebecca Breland](#)  
**Subject:** Blythewood Industrial Site - Richland County, SC - SC Power Team Site Readiness Fund  
**Date:** Friday, December 13, 2019 8:28:23 AM

---

Tiffany,

The SC Power Team is happy to announce that our Board met on December 11, 2019 and approved \$1,420,272 from the 2019 Site Readiness Fund for the Site Improvements associated with Parcel 29 at the Blythewood Industrial Site. As previously discussed this is a reimbursable grant and we will provide you, in the near future, a Site Readiness Fund Grant Agreement for your review and County signature. We are excited to work with Richland County on this project and based on a review of the Master Plan and Conceptual Layout we believe the \$1,424,272 in addition to the Funding provided by SC Department of Commerce, and Fairfield Electric, matched by the major commitment to purchase the property by Richland County, will provide ample resources to assist in the development of the property while maximizing flexibility to a prospective industry.

We look forward to getting started. Please do not hesitate to contact me at any time.

Sincerely,

Jamie

**James (Jamie) W. Frost, II, P.E.**  
**Senior Vice President Community Preparedness**

**Office:** [803-978-7654](tel:803-978-7654) | **Mobile:** [803-600-6008](tel:803-600-6008)  
**E:** [jfrost@scpowerteam.com](mailto:jfrost@scpowerteam.com) | **W:** [www.SCpowerteam.com](http://www.SCpowerteam.com)  
[1201 Main Street, Suite 1710](#); Columbia, SC 29201





santee cooper

PO Box 2946101  
Moncks Corner, SC 29461-2901  
(843) 761-8000

OPERATING

Wells Fargo Bank, N.A.

DATE  
12-19-2018

66-156  
531

CHECK NO.  
796381

VENDOR NUMBER  
521068

PAY THIS AMOUNT

\$\*\*\*\*\* 300,000.00

Three Hundred Thousand Dollars And Zero Cents\*\*\*\*\*

VOID AFTER SIX MONTHS

PAY TO THE  
ORDER OF

THE COUNTY OF RICHLAND  
2020 HAMPTON STREET  
COLUMBIA, SC 29202

*B. Shanon Williams*  
*James B. ...*

THE FACE OF THIS DOCUMENT HAS A MULTI COLORED BACKGROUND ON WHITE PAPER WITH A VOID FEATURE & AN ENDORSEMENT BACKER

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521068

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12-19-2018

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DATE

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DESCRIPTION

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12-18-2018

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Fairfield Electric UTC funds to Richland Cou

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JL 1/10/19

300,000.00

Mccall, William D - 32684 - A201

\*\*\*\* NOTICE TO VENDORS/CUSTOMERS \*\*\*\*  
If You Have Any Questions  
Concerning This Check  
Please Call (843) 761-4055



Your Touchstone Energy® Partner



December 12, 2019

Jeff Ruble  
Richland County Economic Development  
1201 Main Street, Suite 910  
Columbia, SC 29201

Dear Jeff,

As I recently discussed with you, Fairfield Electric Cooperative will designate \$150,000 of our RDA funds for 2019 for the Blythewood Business Park. We have an agreement in place with the South Carolina I-77 Alliance and they will hold the funds in their restricted account for infrastructure assistance and development of the park. I have enclosed a copy of the agreement.

We look forward to working with you and the county as the park develops.

Sincerely,

A handwritten signature in black ink, appearing to read 'Douglas Payne', is written over a light blue circular stamp.

Douglas Payne  
Vice President, Member and Strategic Services





Your Touchstone Energy<sup>®</sup> Partner



December 12, 2019

Jeff Ruble  
Richland County Economic Development  
1201 Main Street, Suite 910  
Columbia, SC 29201

Dear Jeff,

As I recently discussed with you, Fairfield Electric Cooperative will designate \$150,000 of our RDA funds for 2019 for the Blythewood Business Park. We have an agreement in place with the South Carolina I-77 Alliance and they will hold the funds in their restricted account for infrastructure assistance and development of the park. I have enclosed a copy of the agreement.

We look forward to working with you and the county as the park develops.

Sincerely,

A handwritten signature in black ink that reads 'Douglas Payne'.

Douglas Payne  
Vice President, Member and Strategic Services

**RICHLAND COUNTY FINANCE DEPARTMENT  
PROCUREMENT DIVISION**

2020 Hampton Street, Suite 3064  
Columbia, SC 29201  
803-576-2130



Date: July 1, 2020  
To: Mr. Leonardo Brown, County Administrator  
From: Jennifer Wladischkin, Procurement Manager  
Subject: Ranking Report for RC-340-P-2020, Blythewood Parcel Engineering Services

---

This memorandum is to provide a written report of the selection committee's ranking of the submittals for RC-340-P-2020, Blythewood Parcel Engineering Services. After a thorough evaluation of the submittals for the above named Request for Proposal, the evaluation team has ranked the firms in the following order:

1. Thomas & Hutton
2. Alliance Consulting
3. Davis & Floyd
4. Carlisle & Associates
5. EL Robinson
6. Chao & Associates
7. CES

Due to the award being in excess of \$100,000, County Council Approval will be sought.

*Leonardo Brown*

County Administrator

*7/8/2020*

Date

**A RESOLUTION**

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

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

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

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

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

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

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

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

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

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

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

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have meanings defined in the Fee Agreement.

ADOPTED the \_\_\_\_\_ day of September, 2020

RICHLAND COUNTY, SOUTH CAROLINA

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

(SEAL)

ATTEST:

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

**EXHIBIT A**

**FEE IN LIEU OF TAX AGREEMENT**

[see attached]

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**FEE IN LIEU OF TAX AGREEMENT**

**between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**CAROLINA CERAMICS, LLC**

**Dated as of September 1, 1999**

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## FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT (this "Agreement") dated as of September 1, 1999, by and between RICHLAND COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and CAROLINA CERAMICS, LLC (the "Company"), a limited liability company organized and existing under the laws of the State of South Carolina.

### WITNESSETH:

WHEREAS, the Code of Laws of South Carolina, 1976 (the "Code"), and particularly Title 12, Chapter 44 thereof (as amended through the date hereof, the "Act") and Title 4, Chapter 1 (as amended through the date hereof, the "Multi-County Park Act"), in order to create jobs and promote prosperity within the State of South Carolina, empowers the several counties of the State of South Carolina to induce investors ("Project Sponsors") to acquire, enlarge, improve, and expand certain types of industrial and commercial property ("Economic Development Property") within their jurisdictional limits by: (i) entering into agreements with such Project Sponsors to provide that such Project Sponsors may make payments in lieu of *ad valorem* taxes ("FILOT Payments") with respect to Economic Development Property; and (ii) creating, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such Project Sponsor.

WHEREAS, the Company proposes to construct an expansion to its existing facilities for manufacturing bricks and other related products (the "Project"), which Project is to be owned and operated by the Company pursuant to this Agreement; and

WHEREAS, the parties have determined that the Company is a Project Sponsor and the Project constitutes Economic Development Property within the meaning of the Act; and

WHEREAS, to induce the Company to locate the Project in the County, the County heretofore entered into an Inducement and Millage Rate Agreement (the "Inducement Agreement") with the Company wherein the County approved FILOT Payments by the Company under the provisions of the Act; and

WHEREAS, the County authorized the foregoing actions to be taken on behalf of the Company pursuant to that certain Ordinance enacted by the County Council of the County with respect to the Project on September 7, 1999; and

WHEREAS, for the purposes set forth above, the County has determined that it is in the best interest of the County to enter into this Agreement with the Company subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

[Article I follows on next page]

ARTICLE I  
DEFINITIONS

**SECTION 1.01. Definitions.** In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

*"Act"* shall mean the FILOT Simplification Act, as amended through the date hereof.

*"Administration Expenses"* shall mean the reasonable and necessary expenses including attorneys' fees, incurred by the County with respect to the Project and this Agreement; provided, however, that no such expense shall be considered an Administration Expense unless the County has furnished to the Company prior to incurring such expense a statement in writing indicating the reason such expense has been or will be incurred and either estimating the amount of such expense or stating the basis on which the expense will be computed.

*"Agreement"* shall mean this Agreement as originally executed and from time to time supplemented or amended as permitted herein.

*"Authorized Company Representative"* shall mean any person or persons at the time designated to act on behalf of the Company by a written certificate furnished to the County containing the specimen signature of each such person and signed on behalf of the Company by its President, any Vice President or by any other officer to whom the Company has delegated authority to administer this Agreement.

*"Code"* shall mean the Code of Laws of South Carolina, 1976, as amended through the date hereof unless the context clearly requires otherwise.

*"Company"* shall mean Carolina Ceramics, LLC, a South Carolina limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets permitted under Section 8.04 or Article IX hereof; or any assignee hereunder which is designated by the Company and approved by the County. The County's subsequent approval of an assignee hereunder shall not be required if the subsequent Assignee is a member of the Controlled Group.

*"Controlled Group"* shall mean the Company and any affiliate of the Company which would qualify as member of the same controlled group within the meaning of that term as defined and used in Section 12-44-30(3) of the Code; provided, however, that such affiliate must be specifically approved by the County as a member of the Controlled Group and must agree in writing to be bound by this Agreement as to any investment by such affiliate to be subject to FILOT Payments hereunder and provided further that the Company must notify the County and the Department of Revenue in writing of the addition of such affiliate as a member of the Controlled Group within 30 days following the execution of such agreement by such affiliate. Currently, there are no members of the Controlled Group other than the Company.

"Cost" shall mean the cost of acquiring, by construction and purchase, the Project and shall be deemed to include, whether incurred (a) obligations incurred for labor, materials, and other expenses to contractors, builders, and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications, and preliminary investigations therefor, and for supervising construction as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Project; (d) compensation of legal, accounting, financial, and printing expenses, fees, and all other expenses incurred in connection with the Project; (e) all other costs which the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction, and installation of the Project, including (except, for purposes of Section 5.01(g) hereof, to the extent not permitted by §12-44-110 of the Code) the value of any Equipment leased by the Company in connection with the Project; (f) costs incurred by the Company for the acquisition of the Land or for the acquisition of a leasehold interest in the Land; and (g) any sums required to reimburse the Company for advances made for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project; provided, however, such term shall include expenditures by the Company with respect to the Project only to the extent made during the Investment Period.

"County" shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"County Council" shall mean the governing body of the County and its successors.

"Department of Revenue" shall mean the South Carolina Department of Revenue.

"Economic Development Property" shall mean each item of real and tangible personal property comprising a project within the meaning of Sections 12-44-30(7) and 12-44-40(C) of the Code.

"Equipment" shall mean all machinery, equipment, furnishings, and other personal property acquired by the Company and installed as part of the Project during the Investment Period in accordance with this Agreement.

"Event of Default" shall mean an Event of Default as defined in Section 11.01 hereof.

"Existing Property" shall mean property proscribed from becoming Economic Development Property pursuant to Section 12-44-110 of the Code, *i.e.*, property which has been subject to *ad valorem* taxes in the State prior to the execution and delivery of this Agreement and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by the Company or members of the Controlled Group during the Investment

Period which has not been placed in service prior to the execution and delivery of this Agreement notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; (c) property purchased by the Company or a member of the Controlled Group during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company and members of the Controlled Group invest at least an additional forty-five million dollars (\$45,000,000.00) in the Project; or (d) modifications which constitute an expansion of Existing Property.

"*FILOT*" shall mean the fee in lieu of taxes which the Company is obligated to pay to the County pursuant to Section 5.01 hereof.

"*FILOT Payments*" shall mean the payments to be made by the Company pursuant to Section 5.01 hereof.

"*FILOT Revenues*" shall mean the revenues received by the County from the Company's payment of the FILOT.

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

"*Investment Period*" shall mean the period from April 23, 1999 through December 31, 2007 as specified herein in accordance with Section 12-44-30(13) of the Code.

"*Land*" shall mean the real estate upon which the Project is to be constructed, as described in *Exhibit A* attached hereto, as *Exhibit A* may be supplemented from time to time in accordance with the provisions hereof.

"*Multi-County Fee*" shall mean the fee payable by the County to Fairfield County, South Carolina or any successor thereto under the Multi-County Park Agreement.

"*Multi-County Industrial Park*" shall mean the multi-county industrial/business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which includes the Project and which is designated by the County as such pursuant to any agreement which supersedes or replaces the Multi-County Park Agreement.

"*Multi-County Park Act*" shall mean Title 4, Chapter 1, of the Code, as amended through the date hereof unless the context clearly requires otherwise.

"*Multi-County Park Agreement*" shall mean the agreement to establish a joint county industrial park by and between the County and Fairfield County to be entered into with respect to the Project site, as amended, supplemented, or replaced from time to time.

*"Negotiated FILOT Payment"* shall mean the FILOT due pursuant to Section 5.01(b)(ii) hereof with respect to that portion of the Project qualifying for the 6% assessment ratio and fixed millage rate described in Section 5.01(c) of this Agreement.

*"Non-Economic Development Property"* shall mean that portion of the Project consisting of: (i) property as to which the Company or any members of the Controlled Group incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) property not placed in service during the Investment Period; (iii) Existing Property; and (iv) any other property which fails or ceases to qualify for Negotiated FILOT Payments.

*"Person"* shall mean and include any individual, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

*"Project"* shall mean: (i) the Land and all buildings, structures, fixtures, and appurtenances which now exist or which are now under construction or are to be constructed on the Land in whole or in part during the Investment Period, including any air conditioning and heating systems (which shall be deemed fixtures); (ii) the Equipment; and (iii) any Replacement Property.

*"Released Property"* shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation, or eminent domain proceedings as described in Article VII hereof and any infrastructure which the Company dedicates to the public use (within the meaning of that phrase as used in Section 12-7-1250(B) of the Code).

*"Replaced Property"* shall mean any Released Property for which the Company has substituted Replacement Property during the term hereof pursuant to Section 5.01(e) hereof.

*"Replacement Property"* shall mean all property installed in or on the Land in substitution of, or as replacement for, any portion of the Project, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to Section 5.01(e) hereof and Section 12-44-60 of the Code.

*"School District"* shall mean the school district and its successors within which the Project is located at any given point of time.

*"State"* shall mean the State of South Carolina.

*"Streamlined FILOT Act"* shall mean Title 4, Chapter 12 of the Code, as amended through the date hereof.

*"Term"* shall mean the term of this Agreement, as set forth in Section 10.01 hereof.

*"Threshold Date"* shall mean December 31, 2005, the last day of the five-year period commencing at the end of the property tax year in which the Company places in service the initial phase of the Project, *i.e.* December 31, 2000 through December 31, 2005.



*"Transfer Provisions"* shall mean the provisions of Section 12-44-120 of the Code, as amended through the date hereof.

SECTION 1.02. References to Agreement. The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

[End of Article I]

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.01. Representations and Warranties by County.** The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The County has determined that the Project will subserve the purposes of the Act, and has made all other findings of fact required by the Act in connection with the undertaking of the Project.

(c) By proper action by the County Council, the County has duly authorized the execution and delivery of this Agreement and any and all actions necessary and appropriate to consummate the transactions contemplated hereby.

(d) This Agreement has been duly executed and delivered on behalf of the County.

(e) By the end of this calendar year, the Land will be located within the Multi-County Industrial Park, and the County will use its best efforts to ensure that such property remains in a multi-county industrial park for at least as long as necessary for the Company to benefit from the maximum jobs tax credit available under Section 12-6-3360(E) of the Code for all jobs created prior to the end of the Investment Period.

(f) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the County are pending or threatened against or affecting the County in any court or before any governmental authority which would materially adversely affect the validity or enforceability of this Agreement.

No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating (i) the construction or acquisition of the Project, (ii) environmental matters pertaining to the Project, (iii) the offer or sale of any securities, or (iv) the marketability of title to any property.

**SECTION 2.02. Representations and Warranties by Company.** The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State; has all requisite corporate power to enter into this Agreement; and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) The Company intends to operate the Project for the purposes of manufacturing bricks and other products.

(c) The agreements of the County with respect to the FILOT have been instrumental in inducing the Company to locate the Project within the County and the State.

(d) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Company are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(e) The Company expects to place in service the first phase of the Project during calendar year 2000, to expend approximately \$8,000,000 for Costs of the Project on or before the Threshold Date, and to hire approximately 15-30 people on or before the Threshold Date.

[End of Article II]

## ARTICLE III

### UNDERTAKINGS OF COUNTY

**SECTION 3.01. Agreement to Accept FILOT Payments.** The County hereby agrees to accept FILOT Payments made by the Company in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

**SECTION 3.02. No Warranties by County.** The Company acknowledges that the County has made no warranties or representations, either express or implied, as to the condition or state of the Project or as to the design or capabilities, of the Project or that it will be suitable for the Company's purposes or needs.

**SECTION 3.03. Execution of Lease.** The parties acknowledge that the intent of this Agreement is to afford the Company the benefits of the Negotiated FILOT Payments in consideration of the Company's decision to locate the Project within the County and that this Agreement has been entered into in reliance upon the enactment of the FILOT Simplification Act. In the event that a court of competent jurisdiction holds that the FILOT Simplification Act is unconstitutional or that this Agreement or agreements similar in nature to this Agreement are invalid or unenforceable in any material respect or should the parties determine that there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then the County, upon the conveyance of title to the Project to the County at the expense of the Company, agrees to lease the Project to the Company pursuant to the Streamlined FILOT Act. The Company acknowledges that any such sale/leaseback arrangement may not preserve the benefits of the Streamlined FILOT Act with respect to all or part of the Project.

[End of Article III]

## ARTICLE IV

### INVESTMENT BY COMPANY IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

**SECTION 4.01. Acquisition by Construction and Purchase of Project.** (a) The Company hereby agrees to acquire the Project by construction and purchase and to expend upon the Cost of the Project prior to the Threshold Date the sum of not less than \$8,000,000. The Company shall use its best efforts to cause such acquisition as promptly as is, in the Company's sole judgment, practicable.

(b) The Company shall retain title to the Project throughout the Term of this Agreement, subject to the Company's rights hereunder to mortgage or encumber the Project as it deems suitable.

**SECTION 4.02. Maintenance of Project.** During the Term of this Agreement the Company at its own expense will keep and maintain the Project in good operating condition. The Company will promptly make, or cause to be made, all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary to keep the Project in good and lawful order and in good operating condition (wear and tear from reasonable use excepted) whether or not such repairs are due to any laws, rules, regulations, or ordinances hereafter enacted which involve a change of policy on the part of the government body enacting the same.

**SECTION 4.03. Modification of Project.** (a) As long as no event of default exists hereunder, the Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may, at its own expense, add to the Project all such real and personal property as the Company in its discretion deems useful or desirable.

(ii) In any instance where the Company in its discretion determines that any items included in the Project or any portion of the Land have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County. If the Company sells, leases, or otherwise disposes of any portion of the Land, the Company shall deliver to the County, within 30 days thereafter, a new *Exhibit A* to this Agreement.

(b) No release of Project property effected under the provisions of Section 7.01 hereof or of this Section 4.03 shall entitle the Company to any abatement or diminution of the amounts payable by the Company hereunder except the FILOT as specified in Section 5.01(d) hereof.

**SECTION 4.04. Records and Reports.** The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment

with respect thereto, and its computations of all FILOT Payments made hereunder and as will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including without limitation the reports required by Section 12-44-90 of the Code (collectively, "Filings").

Notwithstanding any other provision of this Section 4.04, the Company may designate with respect to any Filings delivered to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall conform with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments.

[End of Article IV]

## ARTICLE V

### PAYMENTS IN LIEU OF TAXES; FUNDING FOR INFRASTRUCTURE PROJECT

SECTION 5.01. Payments in Lieu of Taxes. (a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Company shall pay annually with respect to the Project a FILOT in the amount calculated as set forth in this Section 5.01, on or before January 15 of each year commencing on January 15, 2002, and at the places, in the manner, and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes.

(b) The FILOT Payment due with respect to each property tax year shall equal the sum of (i) with respect to any portion of the Project consisting of undeveloped Land or Non-Economic Development Property, a payment equal to the taxes that would otherwise be due on such undeveloped Land or Non-Economic Development Property were it taxable; (ii) with respect to those portions of the Project (other than undeveloped Land and Non-Economic Development Property) placed in service during the Investment Period, for each of the 20 consecutive years following the year in which such portion of the Project is placed in service, a payment calculated each year as set forth in paragraphs (c) through (e) below (a "Negotiated FILOT"); and (iii) with respect to increments of the Project constituting Economic Development Property after such 20-year period, a payment equal to the *ad valorem* taxes that would otherwise be due on such property were it taxable, with appropriate reductions with respect to the property described in clauses (i) and (ii) above, similar to the tax exemption, if any, which would be afforded to the Company if *ad valorem* taxes were paid. For the purposes of clause (ii) above, there shall be excluded any Released Property and any other portion of the Project which ceases to qualify for a FILOT hereunder or under the Act.

(c) (i) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on (1) the fair market value of the improvements to real property and Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes as provided in Section 12-44-50(A)(1)(c) of the Code), (2) a fixed millage rate of 294.7 mills for the entire term of this Agreement, and (3) an assessment ratio of 6%. All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemption allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(ii) The table in Schedule A attached hereto sets forth sample schedules of the annual Negotiated FILOT Payments, assuming an investment of approximately \$8,000,000.

(d) The FILOT Payments are to be recalculated (i) to reduce such payments in the event the Company disposes of any part of the Project within the meaning of Section 12-44-50(B) of the Code, as provided in Sections 4.03, by the amount thereof applicable to the Released Property; or (ii) to

increase such payments in the event the Company adds property (other than Replacement Property) to the Project.

(e) Upon the Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, such Replacement Property shall become subject to FILOT Payments, subject to the following rules:

(i) Such Replacement Property is not required to serve the same function as the Replaced Property it replaces, and more than one item of Replacement Property may replace a single item of Replaced Property.

(ii) Replacement Property shall qualify for the Negotiated FILOT Payments only to the extent that its basis does not exceed the original income tax basis of the corresponding Replaced Property which is being disposed of in the same property tax year. To the extent that the income tax basis of Replacement Property exceeds the original income tax basis of such corresponding Replaced Property, the excess amount is subject to a FILOT as provided in Section 5.01(b)(iii) hereof. Replacement Property is entitled to inclusion in the Negotiated FILOT for the balance of the 20 years of the Negotiated FILOT applicable to the Replaced Property under Section 5.01(b)(ii) hereof; provided that where a single piece of property replaces two or more pieces of property, the Negotiated FILOT period shall be measured from the earliest of the dates on which the Replaced Property was placed in service.

(iii) Replacement Property shall be recorded on the Company's books using its income tax basis.

(f) In the event that the Act and/or the FILOT or any portion thereof, are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company the maximum benefit then permitted by law, including without limitation the benefits afforded under Section 12-44-50 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County agree that the Company shall pay an alternate fee in lieu of tax calculated in the manner set forth in Section 5.01(b)(iii) hereof. In such event, the Company shall be entitled (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive credit, if any there be and to the extent permitted by law by reason of the fact that the School District received larger allocations of funds under the Education Finance Act of 1977 (Sections 59-20-10 to 59-20-80 of the Code) than it would have received if the Project had theretofore been taxed at the assessment ratio of 10.5% of fair market value, provided that such credit shall be adjusted to take into account any amounts which the School District is required to pay under the Education Finance Act as a result of the Project becoming subject to *ad valorem* taxation.



(g) In the event that the Company and other members of the Controlled Group have not invested \$5,000,000 in the Project on or before the Threshold Date as required by §12-44-30 (13), (14) and §12-44-40(F) of the Code, the portions of the Project previously subject to Negotiated FILOT shall revert retroactively to treatment required pursuant to Section 5.01(f) hereof, calculated as set forth therein, and the unpaid fees due thereby, if any (a "Deficiency"), shall be subject to interest as provided in § 12-43-305 of the Code. In the event that the Company's investment in the Project based on an income tax basis without regard to depreciation falls below \$5,000,000, the Project shall thereafter be subject to the tax treatment required pursuant to Section 5.01(b)(iii) hereof, calculated as set forth in Section 5.01(f). If the Project or any portion thereof becomes ineligible for Negotiated FILOT Payments pursuant to the Act, due to a transfer of an equity interest in the Company or of the Company's rights hereunder or under any fee agreement related hereto which does not comply with the Transfer Provisions, the Project, or such portion thereof, shall thereafter be subject to the tax treatment required pursuant to Section 5.01(b)(iii) hereof, calculated as set forth in Section 5.01(f).

(h) Any amounts due to the County under this Section 5.01 by virtue of the retroactive application of Section 5.01(f) or (g) hereof shall be paid within 30 days following written notice thereof from the County to the Company or, at the election of the Company, in five equal annual installments commencing within 30 days following such notice.

SECTION 5.02. Application of FILOT Revenues By County. All FILOT Revenues shall be used by the County, first, to satisfy obligations of the County to pay the Multi-County Fee at the times and in the manner provided in the Multi-County Park Agreement and, second, as the County deems appropriate; subject however, to the County's obligations with respect to distributions under agreements applicable to the Multi-County Park Agreement.

[End of Article V]

## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

SECTION 6.01. Payment of Administration Expenses. The Company will pay to the County from time to time amounts equal to the Administration Expenses of the County promptly upon written request therefor, but in no event later than 45 days after receiving written notice from the County specifying the nature of such expense and requesting payment of the same.

SECTION 6.02. Insurance. The Company shall maintain public liability insurance with specific reference to the Project and shall otherwise keep the Project continuously insured against such risks as are customarily insured against by businesses of like size and type, paying as the same become due and payable all premiums with respect thereto. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies. Insurance policies may be written with deductible amounts and exceptions and exclusions comparable to those of businesses of like size and type. The insurance requirements hereunder may be satisfied by the Company providing self-insurance.

All proceeds of insurance against property damage to the Project shall be made payable as the Company shall specify, and such proceeds shall be collected and applied as provided in Section 7.01 hereof and all claims under any insurance policy referred to in this Agreement may be settled by the Company.

SECTION 6.03. Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments or Administration Expenses hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes.

[End of Article VI]

## ARTICLE VII

### CASUALTY AND CONDEMNATION

**SECTION 7.01. Damage and Destruction.** If all or any part of the Project shall be lost, stolen, destroyed, or damaged, the Company in its discretion may repair or replace the same. If the Company shall determine to repair or replace the Project, the Company shall forthwith proceed with such rebuilding, repairing, or restoring and shall notify the County upon the completion thereof. In the event any insurance proceeds are not sufficient to pay in full the costs of such rebuilding, repair, or restoration, the County shall not have any responsibility to complete the work thereof or pay that portion of the costs thereof in excess of the amount of said proceeds. Except as set forth in Section 7.03 hereof, the Company shall not by reason of any such damage or destruction or the payment of any excess costs be entitled to any reimbursement from the County or any abatement or diminution of the amounts payable hereunder.

**SECTION 7.02. Condemnation.** In the event that title to or the temporary use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain, there shall be no abatement or reduction in the payments required to be made by the Company hereunder except as set forth in Section 7.03 hereof. The Company shall promptly notify the County, as to the nature and extent of such taking and, as soon as practicable thereafter, notify the County whether it has elected to restore the Project. If it shall be determined to restore the Project, the Company shall forthwith proceed with such restoration, and shall notify the County, upon the completion thereof.

**SECTION 7.03. Adjustments in the Event of Damage and Destruction or Condemnation.** In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the operating ability of the Project or such portion thereof, the parties hereto agree that the FILOT required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project. Except as otherwise expressly provided herein, including without limitation the circumstances described in the preceding sentence, this Agreement shall not terminate, nor shall the Company have any right to terminate this Agreement or be entitled to the abatement of any amounts payable hereunder or any reduction thereof, nor shall the obligations hereunder of the Company be otherwise affected, by reason of any damage to or the destruction of all or any part of the Project from whatever cause, the loss or theft of the Project or any part thereof, the taking of the Project or any portion thereof by condemnation or otherwise, the prohibition, limitation, or restriction of the Company's use of the Project or the interference with such use by any Person, or by reason of any eviction by paramount title or otherwise, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the FILOT Payments and Administration Expenses payable hereunder shall continue to be payable in all events and the obligations of the Company hereunder shall be terminated only pursuant to an express provision of this Agreement.

[End of Article VII]

## ARTICLE VIII

### PARTICULAR COVENANTS AND AGREEMENTS

**SECTION 8.01. Use of Project for Lawful Activities.** During the Term of this Agreement, the Company shall use the Project for any lawful purpose authorized pursuant to the Act. Insofar as it is practicable under existing conditions from time to time during the Term of this Agreement, the Project shall be used primarily as a facility for the manufacture of bricks.

**SECTION 8.02. Maintenance of Existence.** Unless the County shall consent otherwise, which consent shall not be unreasonably withheld, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into, or transfer or otherwise dispose of substantially all of its assets to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its assets (except, in either case, where the resulting, surviving, or transferee entity is the Company or another member of the Controlled Group as to which such consolidation, merger, or transfer the County hereby consents). The Company acknowledges that certain of such events may subject the Project to certain penalties under the Act or cause the Project to become ineligible for the Negotiated FILOT under the Act absent compliance by the Company with the Transfer Provisions.

**SECTION 8.03. Indemnification.** The Company releases the County including the members of the governing body of the County, and the employees, officers, and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that Indemnified Parties shall not be liable for, and agrees to hold Indemnified Parties harmless against, any loss or damage pertaining to this Agreement, except for that occasioned by negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims arising from the performance by an Indemnified Party of any obligations of the County under this Agreement or any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or failure to act by, the Company, or any of its agents, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and not of any member of the County Council or any officer, agent, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of

any act requested of the County by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing; nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, or corporation or other legal entity arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon. If any action, suit, or proceeding is brought against any Indemnified Party, such Indemnified Party shall promptly notify the Company and the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Company shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company shall be liable for the cost of such counsel.

The indemnity specified in this Section 8.03 shall be in addition to any heretofore extended by the Company to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

[End of Article VIII]

## ARTICLE IX

### FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

**SECTION 9.01. Conveyance of Liens and Interests: Assignment.** The Company may at any time (a) sublet the Project or any part thereof and may sell, mortgage, encumber, assign, or otherwise transfer all or any of its rights and interests hereunder or with respect to the Project to any Person; or (b) enter into any lending, financing, security, or similar arrangement or succession of such arrangements with any financing entity with respect to the Agreement or the Project, including without limitation any sale, leaseback, or other financing lease arrangement; provided that, in connection with any of the foregoing transfers: (i) except in connection with any transfers to another member of the Controlled Group or pursuant to clause (b) above, the Company shall first obtain the prior written consent of the County; (ii) except where a financing entity, which is the income tax owner of all or part of the Project, is the transferee pursuant to clause (b) above and such transferee or financing entity assumes in writing the obligations of the Company hereunder, no such assignment, transfer, or sublease shall affect or reduce any of the obligations of the Company hereunder, but all obligations of the Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such sublease, assignment, or other transfer agreement; and (iv) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that certain transfers of an interest under this Agreement or in the Project may cause the Project to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

**SECTION 9.02. Access.** In lieu of and/or in addition to any subleasing by the Company pursuant to Section 9.01, the Company may, without any approval by the County, grant such rights of access to the Project and the buildings thereon as the Company may decide in its sole discretion.

**SECTION 9.03. Relative Rights of County and Financing Entities as Secured Parties.** The parties acknowledge that the County's right to receive FILOT Revenues hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Code, and Chapters 4 and 54 of Title 12 of the Code. The County's rights under this Agreement, except for its rights to receive FILOT Revenues and Administration Expenses, shall be subordinate to the rights of any secured party or parties under any financing arrangements undertaken by the Company with respect to the Project pursuant to Section 9.01 hereof, such subordination to be effective without any additional action on the part of the County; provided, however, that the County hereby agrees to execute such agreements, documents, and instruments as may be reasonably required by such secured party or parties to effectuate or document such subordination.

[End of Article IX]

## ARTICLE X

### TERM; TERMINATION

SECTION 10.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder. The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

SECTION 10.02. Termination. The County and the Company may agree to terminate this Agreement at any time, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. This Agreement shall automatically terminate if the Company fails to invest at least \$5,000,000 in the Project as required by §12-44-30(13), (14) and §12-44-40(F) of the Code on or before the Threshold Date, in which event the Project shall be subject retroactively to *ad valorem* taxes as provided in Section 5.01(g)-(h) hereof and any amounts due to the County as a result thereof shall be due and payable as provided in Section 5.01(f)-(h) hereof. The County's rights to receive payment for such retroactive *ad valorem* taxes and its rights to enforce the terms of this Agreement shall survive termination of this Agreement.

[End of Article X]

## ARTICLE XI

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 11.01. Events of Default by Company.** Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company:

(a) if default shall be made in the due and punctual payment of any FILOT Payments or Administration Expenses, which default shall not have been cured within 30 days following receipt of written notice thereof from the County; or

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for 90 days after the County shall have given the Company written notice of such default, provided, the Company shall have such longer period of time as necessary to cure such default if the Company proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence.

**SECTION 11.02. Remedies on Event of Default by Company.** Upon the occurrence of any Event of Default, the County may exercise any of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(i) declare immediately due and payable FILOT Payments or Administration Expenses due hereunder;

(ii) terminate this Agreement by delivery of written notice to the Company not less than 30 days prior to the termination date specified therein;

(iii) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project; or

(iv) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Company under this Agreement.

**SECTION 11.03. Application of Moneys Upon Enforcement of Remedies.** Any moneys received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings; second, to pay Administration Expenses; and third, to pay the FILOT in accordance with Section 5.02 hereof.



**SECTION 11.04. Default by County.** Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

[End of Article XI]

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced, and the exercise by the County or by the Company of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers, or remedies.

SECTION 12.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

SECTION 12.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, addressed as follows or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Richland County Administration Building  
Attn: Richland County Chairman  
2020 Hampton Street  
Columbia, South Carolina 29201

(b) As to the Company:

Mr. Michael W. Borden  
c/o Carolina Ceramics, LLC  
9931 Two Notch Road  
Columbia, South Carolina 29223

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

April C. Lucas, Esquire  
Nexsen Pruet Jacobs & Pollard, LLP  
P.O. Drawer 2426  
Columbia, SC 29202

SECTION 12.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 12.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

SECTION 12.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

SECTION 12.07. Headings and Table of Contents: References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular Articles or Sections or subdivisions of this Agreement are references to the designated Articles or Sections or subdivision of this Agreement.

SECTION 12.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

SECTION 12.09. Amendments. Subject to the limitations set forth in Section 12-44-40(L)(2) of the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

SECTION 12.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

[End of Article XII]

IN WITNESS WHEREOF, the parties have executed this Fee in Lieu of Tax Agreement as of the date first above written.

RICHLAND COUNTY, SOUTH CAROLINA

By: Paul Livingston  
Paul Livingston, Richland County Council Chairman

(SEAL)


ATTEST:

Michelle Cannon-Finch  
Michelle Cannon-Finch,  
Clerk to Richland County Council

APPROVED AS TO FORM:

Larry Smith  
Larry Smith, Esquire  
Richland County Attorney

CAROLINA CERAMICS, LLC,  
a South Carolina limited liability company

By:   
Name: Michael W. Borden  
Title: President/Member

**EXHIBIT A**

**LAND DESCRIPTION**

All that certain piece, parcel, or tract of land, with any improvements thereon, situate, lying, and being in Richland County, South Carolina, near U.S. Highway 1 and Brickyard Road, containing 24.29 acres as shown on a plat prepared for MKB Acquisitions, LLC by Whitworth & Associates, Inc., dated April 28, 1997 and recorded in the Office of the Clerk of Court for Richland County on September 7, 1999 in Book 342 at Page 1069.

TMS No.: 22804-5-4, 22804-5-5, 22804-5-6

**SCHEDULE A**  
**ANTICIPATED PILOT PAYMENTS**

**[ATTACHED]**

CAROLINA CERAMICS, LLC PROJECT  
 ESTIMATE AND COMPARISON OF SOUTH CAROLINA PROPERTY TAX OPTIONS  
 RICHLAND COUNTY (\$8,000,000 TOTAL INVESTMENT - 6% ASSESSMENT RATIO)  
 REPORT DATE 7/13/99

CC.WK1  
 PAGE 1

999

ASSUMPTIONS:

<b>LAND AND BUILDING</b>			
Land	2,400,000		
Building	500,000		
<b>TOTAL</b>		<b>2,900,000</b>	
<b>MACHINERY &amp; EQUIPMENT</b>			
On Site	5,100,000		
<b>TOTAL</b>		<b>5,100,000</b>	
<b>TOTAL PROPERTY</b>		<b>8,000,000</b>	<b>8,000,000</b>
<b>TIMES ASSESSMENT RATIO - FILOT</b>		<b>0.06</b>	
<b>TIMES ASSESSMENT RATIO - STANDARD</b>			<b>0.105</b>
<b>ASSESSED VALUE BEFORE DEPRECIATION</b>		<b>480,000</b>	<b>840,000</b>

**RATES**

Discount Rate	6.67%
Millage Rate	0.2947
Year Millage Rate Inflation Factor	0
Ad Tax Rate	0.0406

	STANDARD PROPERTY TAXES	STANDARD TAX ABATEMENT	NET / STD PROPERTY TAX	STANDARD FILOT	1% STANDARD FILOT	NET TO COUNTY
EAR 1	230,189	31,712	198,476	131,536	1,315	130,221
EAR 2	212,829	29,321	183,508	121,617	1,216	120,401
EAR 3	195,470	26,929	168,541	111,697	1,117	110,580
EAR 4	178,111	24,538	153,573	101,778	1,018	100,760
EAR 5	160,751	22,146	138,605	91,858	919	90,939
EAR 6	143,392		143,392	81,938	819	81,119
EAR 7	126,033		126,033	72,019	720	71,299
EAR 8	108,674		108,674	62,099	621	61,478
EAR 9	105,517		105,517	60,296	603	59,693
EAR 10	105,517		105,517	60,296	603	59,693
EAR 11	105,517		105,517	60,296	603	59,693
EAR 12	105,517		105,517	60,296	603	59,693
EAR 13	105,517		105,517	60,296	603	59,693
EAR 14	105,517		105,517	60,296	603	59,693
EAR 15	105,517		105,517	60,296	603	59,693
EAR 16	105,517		105,517	60,296	603	59,693
EAR 17	105,517		105,517	60,296	603	59,693
EAR 18	105,517		105,517	60,296	603	59,693
EAR 19	105,517		105,517	60,296	603	59,693
EAR 20	105,517		105,517	60,296*c92B	603	59,693
<b>OT</b>	<b>2,621,657</b>	<b>134,647</b>	<b>2,487,010</b>	<b>1,498,090</b>	<b>14,981</b>	<b>1,483,109</b>
<b>PV</b>	<b>1,569,117</b>		<b>1,456,444</b>	<b>896,638</b>		



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

**CONSENTING TO AND RATIFYING THE PARTIAL ASSIGNMENT  
AND ASSUMPTION OF A FEE IN LIEU OF TAX AND INCENTIVE  
AGREEMENT FROM PPT REAL ESTATE ENTERPRISES, L.P. TO NL  
VENTURES XI NORTHPOINT, L.L.C.; AND OTHER RELATED  
MATTERS.**

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

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

WHEREAS, pursuant to the FILOT and MCIP Acts, the County and Pure Power Technologies, Inc. (as successor in interest to Pure Power Technologies, LLC, as consented to by the County pursuant to a resolution adopted by the County dated June 21, 2016) (“PPT Inc.”) negotiated a Fee in Lieu of Tax and Incentive Agreement dated as of October 30, 2011 (as amended, restated, supplemented, modified and assigned, the “FILOT Agreement”), pursuant to which PPT Inc. committed to the acquisition, construction, and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute an industrial development project in the County (collectively, the “Project”);

WHEREAS, PPT Inc. conveyed a portion of the Project comprised solely of the land and buildings located at the Project to PPT Real Estate Enterprises, L.P. (as partial successor in interest to PPT Inc.) (the “Company”) effective April 11, 2019, and the Company became successor-in-interest to PPT Inc. under the FILOT Agreement solely with respect to such conveyed property pursuant to a Partial Assignment and Assumption of Fee in Lieu of Tax and Incentive Agreement between PPT Inc. and the Company (the “2019 Assignment”);

WHEREAS, the Company has conveyed to NL Ventures XI Northpoint, L.L.C. a Delaware limited liability company (or to one or more Affiliates, as defined below) (the “Transferee”) the land and buildings owned by the Company comprising the Project (the “Transferred Property”), subject to the FILOT Agreement;

WHEREAS, the Company, the Transferee and the County with the signed acknowledgment of PPT Inc. desire to enter into that certain Partial Assignment and Assumption of FILOT Agreement (the “Assignment”), the form of which is attached as Exhibit A (the “2020 Assignment”), wherein and whereby the Company will assign all of its right, title, interest and obligations under the FILOT Agreement to the Transferee (or to one or more Affiliates, as defined below), as they relate to the Transferred Property, and

the Transferee (or one or more Affiliates) will assume such right, title, interest and obligations under the FILOT Agreement from the Company, subject to the terms of such Assignment, as they relate to the Transferred Property;

WHEREAS, the Company and the Transferee have requested that the County authorize, approve, ratify and consent to such conveyance of the Transferred Property and the 2020 Assignment in accordance with the provisions of the FILOT Agreement and Section 12-44-120 of the Code, including the transfer of the Transferred Property to Transferee (or to one or more Affiliates).

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

**Section 1. *Definitions.*** For purposes of this Resolution, the term “Affiliate(s)” shall mean, with respect to any entity, an entity that is controlled by, owned directly or indirectly and in whole or in part by, or under common control with, such entity.

**Section 2. *Statutory Findings.*** Based on information supplied to the County by the Company, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to continue to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) The Project continues to give rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

(c) The purposes to be accomplished by the Project continue to be proper governmental and public purposes and the benefits of the Project are greater than the costs.

**Section 3. *Approval of the Assignment; Authorization to Execute and Deliver the Assignment; Ratification of FILOT Agreement.*** The form, terms and provisions of the 2020 Assignment that is before this meeting are approved and all of the Assignment’s terms and conditions are incorporated in this resolution (“Resolution”) by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Assignment in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Assignment and to deliver the Assignment to the Company and the Transferee. To the best knowledge of the County, based solely on information provided by the Company and the Transferee and without independent investigation, the County acknowledges and agrees that, as of the time immediately prior to the effectiveness of the 2020 Assignment, the FILOT Agreement is in full force and effect, there are no existing defaults under the FILOT Agreement, and the FILOT Agreement and the 2019 Assignment are hereby ratified by the County in all respects.

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

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

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

**Section 7. *Effectiveness.*** This Resolution is effective immediately upon approval by the Council following reading before Council.

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

RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, Richland County Council

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk of Council, Richland County Council

**Exhibit A**  
**Form of 2020 Assignment**

**[See attached]**

**PARTIAL ASSIGNMENT AND ASSUMPTION  
OF FILOT AGREEMENT**

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF FILOT AGREEMENT** (this “**Assignment Agreement**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and among PPT Real Estate Enterprises, L.P., a Delaware limited partnership (“**Assignor**”), NL Ventures XI Northpoint, L.L.C., a Delaware limited liability company (“**Assignee**”), and Richland County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina (the “**County**”).

**WITNESSETH:**

WHEREAS, Pure Power Technologies, LLC, a Delaware limited liability company (“**PPT LLC**”), and the County entered into that certain Fee in Lieu of Tax and Incentive Agreement dated as of October 30, 2011 (as amended, restated, supplemented, modified and assigned, the “**FILOT Agreement**”), a true and correct copy of which is attached as Exhibit A hereto and incorporated herein by reference; and

WHEREAS, PPT LLC’s right, title and interest in the FILOT Agreement were assigned to Pure Power Technologies, Inc. (“**PPT Inc.**”) in connection with the sale of substantially all of PPT LLC’s assets to PPT Inc., which assignment was ratified by the County by a Resolution of County Council dated June 21, 2016; and

WHEREAS, PPT Inc.’s right title and interest in the FILOT Agreement solely with respect to the land and buildings located at the Project (as defined in the FILOT Agreement) were assigned to Assignor effective April 11, 2019; and

WHEREAS, Assignor has conveyed or will convey a portion of the Project (as defined in the FILOT Agreement) consisting of land and buildings located at the Project to Assignee (collectively, the “**Transferred Property**”); and

WHEREAS, Assignor desires to assign to Assignee all of its obligations, rights, title and interest in and to the FILOT Agreement, a true and correct copy of such FILOT Agreement having been provided to Assignee, with respect to the Transferred Property, and Assignee desires to assume all obligations, rights, title and interest of Assignor thereunder, with respect to the Transferred Property; and

WHEREAS, the County authorized, approved and consented to (or will authorize, approve and consent to) the assignment of the FILOT Agreement via Resolution of its County Council.

NOW, THEREFORE, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption of FILOT Agreement. Assignor does hereby sell, assign, transfer and set over to Assignee all of Assignor’s right, title, interest and obligations under the FILOT Agreement, solely with respect to the Transferred Property, and Assignee hereby accepts such assignment and assumes all of Assignor’s duties and obligations under the FILOT Agreement, solely with respect to the Transferred Property (“**Assignment and Assumption of FILOT Agreement**”).

2. Consent to Assignment and Assumption of FILOT Agreement. Such Assignment and Assumption of FILOT Agreement is made subject to and is conditioned upon obtaining the consent or ratification from the County as required by Section 12-44-120 of the South Carolina Code, as amended,

and the terms of the FILOT Agreement, and following receipt of such consent or ratification, shall be deemed effective as of the Effective Date.

3. Mutual Indemnities. Assignor agrees to indemnify, defend and hold Assignee, its affiliates, successors and assigns, harmless from and against any and all claims, actions, charges, fees and expenses (including, without limitation, reasonable attorneys' fees and court costs) and liabilities (collectively, “**Claims**”) that result directly from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the FILOT Agreement (as such relate to the Transferred Property), provided that any such obligation accrued and that such failure occurred prior to the Effective Date. Assignee agrees to indemnify, defend and hold Assignor, its affiliates, successors and assigns, harmless from and against any and all Claims that: (a) result directly from the failure of Assignee to perform its obligations under, or to observe the covenants and conditions in, the FILOT Agreement, provided that any such obligation accrued and that such failure occurred on or after the Effective Date; or (b) arise from any modification or amendment to the FILOT Agreement on or after the Effective Date (in each case, as such relate to the Transferred Property). Notwithstanding the foregoing, unless such Claim against Assignor results solely from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the FILOT Agreement during the period that Assignor was a party to the FILOT Agreement, Assignee shall pursue such Claim exclusively from PPT Inc. pursuant to the terms of that certain Lease Agreement by and between Assignee and PPT Inc.

4. Representations and Warranties by Assignor and County.

- (a) Assignor hereby represents and warrants to Assignee that, to the best of Assignor’s knowledge, neither the Assignor nor the Transferred Property is in default under the FILOT Agreement and that all requirements of Assignor under the FILOT Agreement (including any requirements to make and maintain investment at the Project) have been satisfied as of the Effective Date.
- (b) The County hereby represents that, to the best of the County’s knowledge based solely on information Assignor and Assignee have provided to the County without further independent investigation, neither Assignor nor the Transferred Property is in default under the FILOT Agreement.

5. Release. Effective and contingent upon the County’s consent to the Assignment and Assumption of FILOT Agreement, the County releases Assignor from any breach by Assignee of Assignee's duties, obligations, and liabilities under the FILOT Agreement with respect to the Transferred Property, accruing on or after 12:00 a.m. on the Effective Date, except with respect to the payment of Negotiated FILOT payments (as defined in the FILOT Agreement), payments in lieu of taxes *ad valorem* taxes or other amounts due with respect to the Transferred Property (collectively, “**Amounts**”), which the County specifically does not release Assignor from the obligation for the payment thereof until the County has received such Amounts due through the Effective Date or for the property tax year in which the Assignment and Assumption of FILOT Agreement occurs. Nothing contained in this Section 5 shall release Assignor from any other duties, obligations, or liabilities under the FILOT Agreement.

6. Notices. From and after the Effective Date, all notices delivered pursuant to the FILOT Agreement shall also be delivered to Assignee at the following addresses:

NL Ventures XI Northpoint, L.L.C.  
c/o AIC Ventures, L.P.  
2600 Via Fortuna, Suite 260  
Austin, TX 78746  
Attention: Heath D. Esterak, Managing Director – Legal

7. Amendment. This Assignment Agreement may be amended, modified or supplemented, and any provision hereof may be waived, only by written agreement of the parties hereto.

8. Governing Law. This Assignment Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of South Carolina.

9. Successors and Assigns. This Assignment Agreement shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment Agreement is not intended and shall not be deemed to confer upon or give any person except the parties hereto and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Assignment Agreement.

10. Counterparts. This Assignment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become binding when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment Agreement to be executed as of the Effective Date.

**ASSIGNOR:**

PPT REAL ESTATE ENTERPRISES, L.P., a  
Delaware limited partnership

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

**ASSIGNEE:**

NL VENTURES XI NORTHPOINT, L.L.C.,  
a Delaware limited liability company

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



IN WITNESS WHEREOF, the County has consented to the Assignment and Assumption of FILOT Agreement and this Assignment Agreement by the signature of its authorized representative below.

**RICHLAND COUNTY, SOUTH CAROLINA**

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

ATTEST:

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

IN WITNESS WHEREOF, PPT Inc. acknowledges the foregoing Assignment and Assumption of FILOT Agreement and agrees that nothing in this Assignment Agreement terminates or limits the obligations of PPT Inc. with respect to property subject to the FILOT Agreement other than the Transferred Property.

PURE POWER TECHNOLOGIES, INC., a  
Delaware corporation

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

**Exhibit A to Partial Assignment and Assumption of FILOT Agreement**

**Copy of FILOT Agreement**

[to be attached]

EXECUTION COPY

---

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

PURE POWER TECHNOLOGIES, LLC

Dated as of October 30, 2011

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NPCOL1:2559706.4-AGR-(SIN) 045392-00001

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of October 30, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and PURE POWER TECHNOLOGIES, LLC, a limited liability company organized and existing under the laws of the State of Delaware, acting for itself, one or more affiliates or other project sponsors (the "Company");

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and Section 4-29-68 of the Code by incorporation, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for certain expenditures including, without limitation, those incurred in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and facilitate the grant of Special Source Credits; and

WHEREAS, the Company proposes to establish and/or expand certain manufacturing, research and development, and related facilities at multiple sites in the County (the "Expansion Project"), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$25,000,000 in the Expansion Project and will create, or cause to be created, at least 150 new jobs in the County, by the end of the Compliance Period (as defined below); and

WHEREAS, the County has determined the Expansion Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Expansion Project in the County, the County Council adopted a Resolution on October 4, 2011 (the "Inducement Resolution"), whereby the County agreed to

provide FILOT, multi-county industrial or business park and Special Source Credits benefits, which are set forth in greater detail herein; and

WHEREAS, the County has determined it is in the best interest of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by an Ordinance enacted by the Council on November 1, 2011, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Expansion Project.

NOW, THEREFORE, in consideration of the premises; the potential investment and jobs to be created, or caused to be created, by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

*"Act"* shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act, including, without limitation, the Special Source Act.

*"Administration Expenses"* shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable attorneys' fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and that the County shall have furnished to the Company, an itemized statement of all expenses incurred and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

*"Affiliate"* shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of the Company or any other Co-Investor, as the case may be, or which is owned in whole or in part by the Company or any other Co-Investor, as the case may be, or by any partner, shareholder or owner of the Company or any other Co-Investor, as the case may be.



*"Agreement"* shall mean this Fee In Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

*"Code"* shall mean the Code of Laws of South Carolina 1976, as amended through the date hereof, unless the context clearly requires otherwise.

*"Co-Investor"* shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Expansion Project, any lessor of equipment or other property comprising a part of the Expansion Project, and any financing entity or other third party investing in or providing funds for the Expansion Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, the Company and Navistar, Inc., a Delaware corporation, ("Navistar") are the only Co-Investors.

*"Company"* shall mean Pure Power Technologies, LLC, a Delaware limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.07** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

*"Compliance Period"* shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Expansion Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. The parties anticipate that the initial Negotiated FILOT Property comprising the Expansion Project will be placed in service in the Property Tax Year ending on October 31, 2011 and that in such event, the Compliance Period will end on October 31, 2016.

*"County"* shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

*"Council"* shall mean the governing body of the County and its successors.

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

*"Department of Revenue"* shall mean the South Carolina Department of Revenue.

*"Event of Default"* shall mean an Event of Default, as set forth in **Section 8.01** hereof.

*"Existing Property"* shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the

Investment Period and property included in the Expansion Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests, or causes to be invested, at least an additional \$45,000,000 in the Expansion Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Negotiated FILOT Act.

*"Expansion Project"* shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (ii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company or any Co-Investors for use on or about the Land; and (iii) any Replacement Property; provided, however, except as to Replacement Property, the term Expansion Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

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

*"FILOT Payments"* shall mean the FILOT payments to be made by the Company or any other Co-Investor with respect to the Expansion Project whether made as Negotiated FILOT Payments pursuant to the Negotiated FILOT Act or as FILOT payments pursuant to the Multi-County Park Act.

*"Inducement Resolution"* shall mean the Resolution approved by the County on October 4, 2011 in connection with the Expansion Project.

*"Investment Period"* shall mean the period for completion of the Expansion Project, which shall be initially equal to the Compliance Period; provided, however, that, the Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for up to a five-year extension to the Investment Period beyond the Compliance Period up to the tenth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Expansion Project is placed in service, as permitted by the Negotiated FILOT Act, and the County may approve of such extension, in its sole discretion; provided further that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act.

“*Land*” shall mean the land upon which the Expansion Project has been or will be located, acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

“*Minimum Contractual Investment Requirement*” shall mean investment of at least \$25,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors, in the aggregate in the Expansion Project during the period commencing with the date of the initial expenditure with respect to the Expansion Project, whether before or after the date of this Agreement, and ending at the end of the Compliance Period.

“*Minimum Jobs Requirement*” shall mean the creation of at least 150 new jobs (without regard to jobs maintained) in the County by the Company and all Co-Investors, in the aggregate, during the period commencing on January 1, 2011 and ending at the end of the Compliance Period.

“*Minimum Statutory Investment Requirement*” shall mean investment in the Expansion Project of not less than \$2,500,000 during the Compliance Period, as required by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof in determining whether the Company or any other Sponsor or Sponsor Affiliate qualifies for the Negotiated FILOT.

“*Minimum Threshold Investment Requirement*” shall mean investment in the Expansion Project of at least \$10,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors, in the aggregate during the period commencing with the date of the initial expenditure with respect to the Expansion Project, whether before or after the date of this Agreement, and ending at the end of the Compliance Period.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Expansion Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

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

“*Multi-County Park Agreement*” shall mean that certain Master Agreement Governing the I-77 Corridor Regional Industrial Park between the County and Fairfield County, South Carolina dated as of April 15, 2003, as amended, supplemented, or modified through the date hereof and as such agreement may be further amended, supplemented, or replaced from time to time.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Expansion Project

consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate described in **Section 5.01(b)(ii)** hereof.

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

*"Negotiated FILOT Property"* shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Expansion Project which is placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

*"Non-Qualifying Property"* shall mean that portion of the facilities located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act, including, without limitation, property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.02(e)(iii)** hereof.

*"Person"* shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

*"Property Tax Year"* shall mean the annual period which is equal to the fiscal year of the Company or any other Co-Investor, as the case may be, *i.e.*, with respect to the Company, the period ending on October 31 of each year.

*"Released Property"* shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.02(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act; which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; or which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

*"Replacement Property"* shall mean all property installed in or on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Negotiated FILOT Property, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

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

"*Special Source Credits*" shall mean the special source revenue credits described in **Section 3.02** hereof.

"*Special Source Improvements*" shall mean, to the extent paid for by the Company or any Co-Investor, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Expansion Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and any additions or improvements to any of the foregoing, whether paid for by the Company or any other Co-Investors directly or through lease payments. At the request of the Company, the County hereby agrees to hereafter consider inclusion of personal property, including machinery and equipment, as Special Source Improvements hereunder in accordance with Section 4-29-68(A)(2)(i) of the Code, which inclusion may be approved by a resolution of the Council.

"*Sponsor*" and "*Sponsor Affiliate*" shall mean an entity whose investment with respect to the Expansion Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. Initially, the Company and Navistar are the only Sponsors or Sponsor Affiliates.

"*State*" shall mean the State of South Carolina.

"*Term*" shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

"*Transfer Provisions*" shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act, as amended through the date hereof.

Section 1.02. References to Agreement. The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into

the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and the Negotiated FILOT Payments and Special Source Credits as set forth herein, the inclusion and maintenance of the Expansion Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) The County has determined the Expansion Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 2.02. Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is October 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company presently intends to operate the Expansion Project as facilities primarily for manufacturing, research and development, and/or related activities.

(c) The agreements with the County with respect to the Negotiated FILOT, Special Source Credits and the Multi-County Park were factors in inducing the Company to locate the Expansion Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

### ARTICLE III

#### COVENANTS OF COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Expansion Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Special Source Credits.

(a) The County, as an additional incentive to induce the Company to locate the Expansion Project within the County and as reimbursement for investment in certain Special Source Improvements, and subject to the requirements of the Special Source Act, does hereby agree that the Company and each Co-Investor (each a "Claiming Entity") shall be entitled to receive, and the County shall provide, Special Source Credits in a maximum aggregate amount of \$500,000 (the "Aggregate Available Credits") and each Claiming Entity shall be entitled to receive Special Source Credits against each FILOT Payment made by such Claiming Entity with respect to the Expansion Project in an amount equal to fifty percent (50%) of each such FILOT Payment, for a period of up to five (5) years, commencing with the year for which the initial Negotiated FILOT payment is due hereunder, until the Aggregate Available Credits have been fully provided by the County; provided, however, that in determining the Special Source Credits with respect to the final year for which each Claiming Entity is entitled to receive the Special Source Credits hereunder, the applicable percentage shall be the highest percentage required, up to fifty percent (50%), for the County to fully provide all remaining Aggregate Available Credits. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Expansion Project.

(b) The Special Source Credits shall be reflected by the County on each bill to a Claiming Entity for FILOT Payments due with respect to the Expansion Project, by reducing the total original FILOT Payment otherwise due with respect to such property by the amount of such Special Source Credits.

(c) THE COUNTY SHALL HAVE NO FINANCIAL OBLIGATION OF ANY KIND RELATING TO THE SPECIAL SOURCE CREDITS EXCEPT TO THE EXTENT THE FILOT PAYMENTS ARE PAID BY THE CLAIMING ENTITY AND RECEIVED BY THE COUNTY WITH RESPECT TO THE EXPANSION PROJECT.

Section 3.03. Multi-County Park Designation. The County will take all acts to insure that the Expansion Project including, without limitation, Parcel I and Parcel II of the Land will be included within the boundaries of the Multi-County Park, if not already so included, and that the Expansion Project, including without limitation, Parcel I and Parcel II of the Land, will remain within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution on terms which provide for all jobs created at the Expansion Project from January 1, 2011, through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits set forth herein.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and any other Co-Investor the benefits specified in this Article III in consideration of the Company's decision to locate the Expansion Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that the Department of Revenue or a court or other entity of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts to extend to the Company and any other Co-Investor the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT and the Special Source Credits, and agrees, if requested, to enter into a lease purchase agreement with the Company and any other Co-Investor pursuant to Section 12-44-160; Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and any other Co-Investor the intended benefits of this Agreement. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and any other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and any other Co-Investor must transfer the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply. In such lease purchase agreement, the County, upon the conveyance of title to the Expansion Project to the County at the expense of the Company or any such other Co-Investor, as the case may be, agrees to lease the Expansion Project to the Company or any such other Co-Investor, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company or any such other Co-Investor shall have the option to purchase its respective portion of the Expansion Project for Ten Dollars (\$10.00).



Section 3.05. Additional Commitment of the County. The County will use its best efforts to assist the Company and each other Co-Investor in securing and processing grants and other funding for the infrastructure and other qualifying expenditures in connection with the Expansion Project. The County and the Company are currently pursuing a grant from the South of \$250,000 to reimburse the Company for certain costs required for the Expansion Project.

## ARTICLE IV

### COVENANTS OF COMPANY

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

Section 4.02. Investment in Expansion Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Expansion Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Expansion Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on October 31, 2014.

(b) Expenditures by Co-Investors shall, together with expenditures by the Company, count toward all investment requirements set forth in this Agreement, including the Minimum Contractual Investment Requirement, the Minimum Threshold Requirement, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and all Co-Investors filed with respect to the Expansion Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act and filed with respect to each Property Tax Year during the Investment Period, without regard to depreciation.

(c) The Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for up to a five-year extension to the Investment Period beyond the Compliance Period, as permitted by the Negotiated FILOT Act, and the County may approve such extension in its sole discretion. There shall be no extension, however, beyond the Compliance Period of the period for meeting the Minimum Statutory Investment Requirement.

(d) The Company and each of its designated Co-Investors shall retain title, or other property rights, to its respective portion of the Expansion Project throughout the Term of this Agreement, and the Company and each Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Expansion Project, including,

without limitation, in connection with any financing transactions, without the consent of the County.

(e) The Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company and each other Co-Investor may, at its own expense, add to the Expansion Project all such real and personal property as the Company, or such Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when the Company or any other Co-Investor in its discretion determines any of its items included in the Expansion Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Expansion Project, the Company, or such Co-Investor, may remove such items or portions of the Land from the Expansion Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT Property, real or personal, from the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Expansion Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

(iv) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, the Company, or such Co-Investor, shall deliver to the County a new **Exhibit A** to this Agreement or schedules or supplements to **Exhibit A**; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Expansion Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 4.03. Funding for Special Source Improvements. The Company agrees that it will provide, or cause Co-Investors to provide, funding for the Special Source Improvements related to the establishment of the Expansion Project.

Section 4.04. Failure to Comply with Minimum Contractual Investment Requirement and/or Minimum Jobs Requirement. If either or both of the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement are not complied with by the end of the Compliance Period:

(a) the Company and each other Co-Investor shall continue to be eligible to take advantage of the Negotiated FILOT hereof, in the event that the Minimum Threshold Investment Requirement is nevertheless satisfied by the end of the Compliance Period; and

(b) the Company and each other Co-Investor shall no longer be entitled to receive the Special Source Credits beginning with any FILOT Payment due with respect to Expansion Project property placed in service as of the end of the first Property Tax Year following the Compliance Period; and

(c) the Company and each other Co-Investor shall repay, or cause repayment to, the County of an amount equal to a portion of the Special Source Credits theretofore received by such entity, and, upon receipt by such entity, a portion of any additional Special Source Credits to which such entity is entitled to receive hereunder, (collectively, the "Aggregate Received Credits"), based upon the highest degree of satisfaction of the Minimum Contractual Investment Requirement (without regard to depreciation, disposals, or other diminution in value) and the Minimum Jobs Requirement (without regard to jobs maintained) prior to the end of the Compliance Period (the "Repayment"). In calculating any Repayment, the degree of satisfaction shall be measured against each of the Minimum Contractual Investment Requirement (\$25,000,000) and the Minimum Jobs Requirement (150 new jobs), and shall be weighted 50% investment / 50% jobs times the Aggregate Received Credits and any such Repayment shall be calculated according to the following formula:

1. 
$$\frac{\text{Actual Investment}}{\$25,000,000} \times 100 = \text{Investment Achievement Percentage [IAP]}$$
2. 
$$100\% - \text{IAP} = \text{Investment Alteration Factor [IAF]}$$
3. 
$$\frac{\text{Actual Employees Hired}}{150} \times 100 = \text{Employment Achievement Percentage [EAP]}$$
4. 
$$100\% - \text{EAP} = \text{Employment Alteration Factor [EAF]}$$
5. 
$$\frac{\text{IAF} + \text{EAF}}{2} = \text{Final Alteration Factor [FAF]}$$

6. FAF x Aggregate Received Credits = Repayment due to be paid to the County within one hundred eighty (180) days of the later of (i) the end of the Compliance Period or (ii) the day that all Aggregate Received Credits have been received by such entity.

As an example, assuming aggregate investment in the Expansion Project prior to the end of the Compliance Period totaled \$20,000,000 and the highest job creation levels in the County prior to the end of the Compliance Period totaled 130 new jobs, and that the Company had theretofore received, or will thereafter receive, Aggregate Received Credits of \$500,000, the Repayment would be calculated as follows:

1.  $\frac{\$20,000,000}{\$25,000,000} \times 100 = 80.0\%$  [IAP]
2.  $100\% - 80.0\% = 20.0\%$  [IAF]
3.  $\frac{130}{150} \times 100 = 86.7\%$  [EAP]
4.  $100\% - 86.7\% = 13.3\%$  [EAF]
5.  $\frac{20.0\% + 13.3\%}{2} = 16.7\%$  [FAF]
6.  $16.7\% \times \$500,000 = \text{Reimbursement Payment of } \$83,500.$

As an additional example, assuming aggregate investment in the Expansion Project prior to the end of the Compliance Period totaled \$40,000,000 and the highest job creation levels in the County prior to the end of the Compliance Period totaled 120 new jobs, and that the Company had theretofore received, or will thereafter receive, Aggregate Received Credits of \$500,000, the Repayment would be calculated as follows:

1.  $\frac{\$40,000,000}{\$25,000,000} \times 100 = 160.0\%$  [IAP]
2.  $100\% - 160.0\% = (-60.0\%)$  [IAF]
3.  $\frac{120}{150} \times 100 = 80.0\%$  [EAP]
4.  $100\% - 80\% = 20\%$  [EAF]
5.  $\frac{(-60.0\%) + 20\%}{2} = (-40.0\%)$  [FAF]

6.  $(-40.0\%) \times \$500,000 = \text{No Repayment due.}$

Section 4.05. Payment of Administration Expenses. The Company will reimburse, or cause reimbursement to, the County from time to time for its Administration Expenses promptly upon written request therefor, but in no event later than sixty (60) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement or the Expansion Project, and, aside from attorneys' fees set forth below, the County anticipates no out of pocket expenses in connection with the initial approval of this Agreement and the transactions authorized hereby. The parties understand that legal counsel to the County has estimated its fees and other expenses for review of this Agreement, the Inducement Resolution, the Multi-County Park Agreement and all resolutions, ordinances, and other documentation related thereto at \$5,000.00 or less.

Section 4.06. Use of Expansion Project for Lawful Activities. During the Term of this Agreement, the Company and any other Co-Investor shall use the Expansion Project as it deems fit for any lawful purpose.

Section 4.07. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event or Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the

surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

The Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 4.08. Records and Reports. The Company and each other Co-Investor will each maintain such books and records with respect to the Expansion Project as will permit the identification of those portions of the Expansion Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, computations of all Negotiated FILOT Payments made by such entity hereunder and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Each year during the Term hereof, the Company and each other Co-Investor shall deliver to the County Auditor, the County Assessor, and the County Treasurer a copy of its most recent annual filings made with the Department of Revenue with respect to the Expansion Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county

which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Co-Investor believes contain proprietary, confidential, or trade secret matters. To the extent permitted by law, the County shall comply with all reasonable, written requests made by the Company and each other Co-Investor with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company or any other Co-Investor.

## ARTICLE V

### FEES IN LIEU OF TAXES

#### Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Expansion Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is anticipated that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2013. If the Company designates any Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if required, pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall be payable for a period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's

investment during the Investment Period shall be subject to the Negotiated FILOT for a period of twenty (20) years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) the lowest millage rate or rates allowed by the Negotiated FILOT Act, which millage rate shall be (a) 460.8 mills with respect to Parcel I of the Land and all Negotiated FILOT Property located thereon, and (b) 402.9 mills with respect to Parcel II of the Land and all Negotiated FILOT Property located thereon, which rate shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Expansion Project property owned by such entity so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

(i) to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.02(e)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Expansion Project as a result of circumstances beyond the control



of the Company or any other Sponsor or Sponsor Affiliate, as the case may be;

(iii) to increase such payments in the event the Company or any Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Expansion Project; or

(iv) to adjust such payments if the Company or any Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.02(c)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the twenty year period applicable to the Released Property.

(ii) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Expansion Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and any other Sponsor or Sponsor Affiliate benefits

commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and any other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of the Negotiated FILOT Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f)

(i) In the event that the investment in the Expansion Project is insufficient to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Expansion Project does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Expansion Project, then the Negotiated FILOT Payments with respect to that portion of the Expansion Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Expansion Project. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(ii) In the event that investment in the Expansion Project based on an income tax basis without regard to depreciation satisfies the Minimum

Statutory Investment Requirement by the end of the Compliance Period, but following the Compliance Period, subsequently falls below the Minimum Statutory Investment Requirement, without regard to depreciation, the Expansion Project shall thereafter be subject to *ad valorem* taxes, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act.

(iii) If the Minimum Contractual Investment Requirement or the Minimum Jobs Requirement is not satisfied by the end of the Compliance Period, the County shall have only the rights set forth in **Section 4.04** hereof.

(iv) If the Minimum Threshold Investment Requirement is not satisfied by the end of the Compliance Period, the Negotiated FILOT shall terminate retroactively and prospectively.

(v) In accordance with the provisions of **Sections 4.02(b)** and **6.02** hereof, except for Existing Property, the fair market value of all property utilized by the Company or any other Co-Investor at the Expansion Project site, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Co-Investor of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 5.02. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder is entitled to and shall have a statutory lien with respect to the Expansion Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Expansion Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all

or any part of the Expansion Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Expansion Project, whereby the transferee in any such arrangement leases the portion of the Expansion Project in question to the Company or any Co-Investor or any of their respective Affiliates or operates such assets for the Company or any Co-Investor or any of their respective Affiliates or is leasing portion of the Expansion Project in question from the Company or any Co-Investor or any of their respective Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to any Negotiated FILOT Property so transferred: (i) except in connection with any transfer to any Co-Investor, an Affiliate of the Company or any Co-Investor, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County, in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Negotiated FILOT Property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such Co-Investor hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.02(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such Co-Investor hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or any such Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this **Section 6.01**, and at the Company's or any such Co-Investor's expense, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or any Co-Investor under this Agreement and/or any release of the Company pursuant to this **Section 6.01**.

The Company acknowledges such a transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company or any such Co-Investor with the Transfer Provisions.

**Section 6.02. Sponsors and Sponsor Affiliates.** The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Expansion Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or

(20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Expansion Project prior to the end of the Compliance Period the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Expansion Project prior to the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Expansion Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

**Section 7.01. Term.** Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the later of (i) the day the last Negotiated FILOT Payment is made hereunder or (ii) the day the Special Source Credits have been fully provided by the County.

**Section 7.02. Termination.** In addition to the rights of the County under **Sections 5.01(f)** and **8.01**, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Expansion Project in which event the Expansion Project, or such portion of the Expansion Project, shall be subject to *ad valorem* taxes from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.01. Events of Default.** Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default

by the Company or other Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within thirty (30) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph (a)**, and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Co-Investor, as the case may be, to make certain additional payments to the County, all as set forth in **Section 4.04** and **5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies only as to the Defaulting Entity:

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

(b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Expansion Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 4.06** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Section 8.03. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with

interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

Section 8.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Co-Investor provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company or any other Co-Investor of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company or such other Co-Investor of any or all such other rights, powers, or remedies.

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investors and Sponsor or Sponsor Affiliates designated pursuant to **Section 6.02** hereof and their respective successors and assigns as permitted hereunder.

Section 9.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Richland County Administrator  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29204  
Fax: 803-576-2137

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

Parker Poe Adams & Bernstein, LLP  
Attn: Ray E. Jones, Esq.  
P.O. Box 1509

Columbia, SC 29202  
Fax: 803-255-8017

(b) if to Navistar:

Navistar, Inc.  
Attn: Houman Kashanipour  
4201 Winfield Road  
Warrenville, Illinois 60555  
Email: [Houman.kashanipour@purepowertechologies.com](mailto:Houman.kashanipour@purepowertechologies.com)

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

Navistar, Inc.  
Attn: Steve Covey, General Counsel  
4201 Winfield Road  
Warrenville, Illinois 60555  
Email: [Steven.covey@navistar.com](mailto:Steven.covey@navistar.com)

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

Nexsen Pruet, LLC  
Burnet R. Maybank, III, Esq.  
Tushar V. Chikhliker, Esq.  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Fax: 803-253-8277

(c) If to the Company:

Pure Power Technologies, LLC  
Attn: David A. Benson  
1410 Northpoint Boulevard  
Blythewood, South Carolina 29016  
Fax: 803-744-7069

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

Pure Power Technologies, LLC  
Attn: Steve Covey, General Counsel  
4201 Winfield Road  
Warrenville, Illinois 60555  
Email: [Steven.covey@navistar.com](mailto:Steven.covey@navistar.com)

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

Nexsen Pruet, LLC  
Burnet R. Maybank, III, Esq.



Tushar V. Chikhliker, Esq.  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Fax: 803-253-8277

Section 9.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 9.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 9.07. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11. Further Proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

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

RICHLAND COUNTY, SOUTH CAROLINA

By: Paul Livingston  
Paul Livingston, Chairman, County Council  
Richland County, South Carolina

[SEAL]

ATTEST:

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

PURE POWER TECHNOLOGIES, LLC

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

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

RICHLAND COUNTY, SOUTH CAROLINA

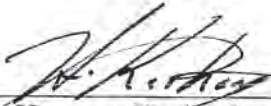
By: \_\_\_\_\_  
Paul Livingston, Chairman, County Council  
Richland County, South Carolina

[SEAL]

ATTEST:

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

PURE POWER TECHNOLOGIES, LLC

By:  \_\_\_\_\_  
Name: Houshan Kashanipour  
Title: President, Pure Power Technologies, LLC

**EXHIBIT A  
LEGAL DESCRIPTION**

**PARCEL I:**

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar at the Point of Beginning (POB-B), this #4 Rebar being a common corner of Parcel "B" and a parcel of property now or formerly of Keller Properties, Inc.; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S 30°42'38" E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road; thence proceeding along Parcel "A" the following courses: a curve to the left having a radius of 50.00 feet; an arc length of 77.93 feet; a chord bearing of N76°38'30"W and a chord length 70.28 feet to a #4 Rebar; thence proceeding S58°42'22"W for a distance of 146.06 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of S73°14'46"W and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N89°18'32"W for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 460.00 feet, an arc length of 86.99 feet, a chord bearing of S77°04'31"W a chord length of 170.96 feet to a #4 Rebar; thence proceeding S66°21'58"W for a distance of 103.97 feet to a #4 Rebar; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W for a distance of 82.78 feet to a #4 Rebar; thence proceeding along reserved property and property now or formerly of Coca-Cola Bottling Company N66°21'53"E for a distance of 756.99 feet to a 2 ½" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. S55°36'41"E for a distance of 163.06 feet to a 2" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. N23°26'37"E for a distance of 209.45 feet to a #4 Rebar and Point of Beginning (POB-B), said parcel contains an area of 3.88 acres, more or less.

**TOGETHER WITH**

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S30 42'38"E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road, the Point of Beginning (POB-A); from said point of beginning, thence along the western margin of the right-of-way of Community

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Road the following courses to the creek; proceeding along a curve to the left having a radius of 6056.40 feet, a chord bearing and distance of S32°45'25"E, 162.27 feet, an arc length of 162.28 feet to a concrete monument; thence proceeding S33°02'31"E, 10.08 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 5729.58 feet, a chord bearing and distance of S32°09'35"E, 258.44 feet, an arc length of 258.47 feet to a concrete monument; thence proceeding S31°05'41"E, 459.05 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 883.73 feet, a chord bearing and distance of S14°05'35"E, 516.67 feet, an arc length of 524.32 feet to a concrete monument; thence proceeding S02°54'14"W, 301.76 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the left having a radius of 965.22 feet, a chord bearing and distance of S05°48'06"E, 302.00 feet, an arc length of 303.25 feet to a concrete monument; thence proceeding S03°54'31"E, 162.57 feet to a concrete monument; thence proceeding S24°45'08"E, 45.78 feet to a point in the center of the creek; thence following the creek centerline S54°53'30"W, 92.85 feet to a point; thence following the creek centerline S80°29'27"W, 42.27 feet to a point; thence following the creek centerline S77°11'27"W, 45.78 feet to a point; thence following the creek centerline S85°05'49"W, 34.67 feet to a point; thence following the creek centerline S35°45'15"W, 37.68 feet to a point; thence following the creek centerline N. 79°22'15"W, 23.49 feet to a point; thence following the creek centerline S56°18'52"W, 58.20 feet to a point; thence following the creek centerline S81°54'49"W, 47.17 feet to a point; thence following the creek centerline S84°56'19"W, 26.03 feet to a point; thence following the creek centerline S79°16'52"W, 33.49 feet to a point; thence following the creek centerline N76°36'20"W, 39.05 feet to a point; thence following the creek centerline N75°36'20"W, 23.30 feet to a point; thence following the creek centerline S22°45'02"W, 36.32 feet to a point; thence following the creek centerline N80°20'08"W, 23.26 feet to a point; thence following the creek centerline N01°08'00"E, 20.82 feet to a point; thence following the creek centerline N52°59'26"W, 44.15 feet to a point; thence following the creek centerline N23°36'16"W, 39.49 feet to a point; thence following creek centerline N55°36'57"W, 48.22 feet to a point; thence following the creek centerline S71°31'34"W, 38.67 feet to a point; thence following the creek centerline S19°14'48"E, 19.57 feet to a point; thence following the creek centerline S50°35'39"W, 30.67 feet to a point; thence following the creek centerline N30°28'21"W, 16.24 feet to a point; thence following the creek centerline N36°29'39"W, 33.63 feet to a point; thence following the creek centerline N76°19'46"W, 49.29 feet to a point; thence following the creek centerline S73°49'21"W 22.68 feet to a point; thence following the creek centerline S03°18'27"W, 37.42 feet to a point; thence following the creek centerline N77°39'36"W, 41.24 feet to a point; thence following the creek centerline N77°33'40"W, 41.48 feet to a point; thence following the creek centerline N27°56'03"W, 33.98 feet to a point; thence following the creek centerline N60°27'23"W, 33.10 feet to a point; thence following the creek centerline S32°16'34"W, 24.52 feet to a point; thence following the creek centerline S89°16'56"W, 15.72 feet to a point; thence following the creek centerline N45°13'18"W, 38.26 feet to a point; thence following the creek centerline N26°17'46"E, 25.62 feet to a point; thence following the creek centerline N09°35'24"W, 25.42 feet to a point; ;thence following the creek centerline N84°41'36"W 15.32 feet to a point; thence following the creek centerline N07°53'25"E, 41.75 feet to a point; thence following the creek centerline N32°48'04"W, 25.64 feet to a point; thence following the creek centerline N71°09'43"W, 43.35 feet to a point; thence

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following the creek centerline N10°59'52"W, 28.18 feet to a point; thence following the creek centerline N64°22'23"W, 21.10 feet to a point; thence following the creek centerline S61°33'26"W, 20.51 feet to a point, thence following the creek centerline N67°57'58"W, 19.33 feet to a point; thence following the creek centerline S87°51'09"W, 26.09 feet to a point; thence following the creek centerline S44°17'45W, 42.36 feet to a point; thence following the creek centerline S85°30'34"W, 17.61 feet to a point; thence following the creek centerline N55°25'28"W, 25.30 feet to a point; thence following the creek centerline N09°20'09"W; 25.33 feet to a point; thence following the creek centerline N59°58'35"W, 51.28 feet to a point; thence following the creek centerline N29°43'27"W, 42.86 feet to a point; thence following the creek centerline N48°39'23"W, 60.79 feet to a point; thence following the creek centerline S78°10'45W, 18.08 feet to a point; thence following the creek centerline N50°00'43"W, 29.92 feet to a point; thence following the creek centerline N10°37'24"W, 25.73 feet to a point; thence following the creek centerline N35°41'36"W, 25.40 feet to a point; thence following the creek centerline S78°12'03"W, 33.67 feet to a point; thence following the creek centerline N47°42'19"W, 23.71 feet to a point; thence following the creek centerline N51°00'09" W., 43.98 feet to a point; thence following the creek centerline N79°33'04"W, 43.89 feet to a point; thence following the creek centerline S36°46'14"W, 24.19 feet to a point; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W, 1,493.05 feet to a #4 Rebar; thence along Parcel "B" the following courses: N66°21'58"E, for a distance of 103.97 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 460.00 feet; an arc length of 86.99 feet, a chord bearing of N77°04'31"E a chord length of 170.96 feet to a #4 Rebar; thence proceeding S89°18'32"E for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of N73°14'46"E and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N58°42'22"E for a distance of 146.06 feet to a #4 Rebar; thence proceeding along a curve to the right having a radius of 50.00 feet, an arc length of 77.93 feet, a chord bearing of S76°38'30"E and a chord length of 70.28 feet to a #4 Rebar at the Point of Beginning (POB-A). Said parcel contains an area of 61.09 acres, more or less.

LESS HOWEVER: All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as 1.46 acres on that certain survey title "Closing Survey for South Carolina Electric and Gas Company, Northpoint Industrial Park, 115/23kV Substation" prepared by Glenn Associates Surveying, Inc. dated August 9, 2006, and recorded in Book 1245, page 2240 in the Office of the Register of Deeds for Richland County, South Carolina, on October 27, 2006; said tract having such boundaries and measurements as shown on the Closing survey.

**PARCEL II:**

All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last

Exhibit A -3

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revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

**TOGETHER WITH**

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

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

**AUTHORIZING, APPROVING, RATIFYING AND CONSENTING TO  
THE PARTIAL ASSIGNMENT AND ASSUMPTION OF AN  
INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT FROM  
PPT REAL ESTATE ENTERPRISES, L.P. TO NL VENTURES XI  
NORTHPOINT, L.L.C.; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 4, Chapter 1, Code of Laws of South Carolina, 1976, as amended (“Act”), to provide special source revenue credits for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving or expanding the infrastructure serving the County or the project and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise to enhance the economic development of the County;

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

WHEREAS, pursuant to the Act and MCIP Act, the County and Pure Power Technologies, Inc. (as successor in interest to Pure Power Technologies, LLC and Navistar, Inc., as consented to by the County pursuant to a resolution dated June 21, 2016) (“PPT Inc.”) are parties to that certain Infrastructure Credit and Incentive Agreement effective as of July 1, 2010 (as amended, restated, supplemented, modified and assigned, the “Infrastructure Credit Agreement”), pursuant to which PPT Inc. committed to the acquisition, construction, and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute an industrial development project in the County (collectively, the “Project”);

WHEREAS, PPT Inc. conveyed a portion of the Project comprised solely of the land and buildings located at the Project to PPT Real Estate Enterprises, L.P. (as partial successor in interest to PPT Inc.) (the “Company”) effective April 11, 2019, and the Company became successor-in-interest to PPT Inc. under the Infrastructure Credit Agreement solely with respect to such conveyed property pursuant to a Partial Assignment and Assumption of Infrastructure Credit and Incentive Agreement effective April 11, 2019 between PPT Inc. and the Company (the “2019 Assignment”);

WHEREAS, the Company has conveyed to NL Ventures XI Northpoint, L.L.C., a Delaware limited liability company (or to one or more Affiliates, as defined below) (the “Transferee”), the land and buildings owned by the Company comprising the Project (the “Transferred Property”) and the Transferred Property is subject to the Infrastructure Credit Agreement;

WHEREAS, the Company, the Transferee and the County with the signed acknowledgement of PPT Inc. desire to enter into that certain Partial Assignment and Assumption of Infrastructure Credit and Incentive Agreement in the form attached hereto as Exhibit A (the “2020 Assignment”), wherein and whereby the Company shall assign all of its right, title, interest and obligations under the Infrastructure Credit Agreement to the Transferee (or to one or more Affiliates, as defined below), as they relate to the Transferred Property, and the Transferee (or one or more Affiliates) shall assume such right, title, interest



and obligations under the Infrastructure Credit Agreement from the Company, subject to the terms of such Assignment, as they relate to the Transferred Property;

WHEREAS, the Company and the Transferee have requested that the County authorize, approve, ratify and consent to the conveyance of the Transferred Property to the Transferee (or to one or more Affiliates) and the 2020 Assignment, each in accordance with the provisions of the Infrastructure Credit Agreement.

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

**Section 1. *Definitions.*** For purposes of this Resolution, the term “Affiliate(s)” shall mean, with respect to any entity, an entity that is controlled by, owned directly or indirectly and in whole or in part by, or under common control with, such entity.

**Section 2. *Statutory Findings.*** Based on information supplied to the County by the Company, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to continue to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) The Project continues to give rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

(c) The purposes to be accomplished by the Project continue to be proper governmental and public purposes and the benefits of the Project are greater than the costs.

**Section 3. *Approval of the Assignments; Authorization to Execute and Deliver the Assignments; Ratification of Infrastructure Credit Agreement.*** The form, terms and provisions of the 2020 Assignment that is before this meeting are approved and all of the 2020 Assignment’s terms and conditions are incorporated in this resolution (“Resolution”) by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the 2020 Assignment in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the 2020 Assignment and to deliver the 2020 Assignment to the respective parties thereto. The County acknowledges and agrees that, as of the time immediately prior to the effectiveness of the 2020 Assignment, the Infrastructure Credit Agreement is in full force and effect, there are no existing defaults under the Infrastructure Credit Agreement, and the Infrastructure Credit Agreement and the 2019 Assignment are hereby ratified by the County in all respects.

**Section 4. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Resolution and the 2020 Assignment.

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

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

**Section 7. Effectiveness.** This Resolution is effective immediately upon approval by the Council following reading before Council.

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

RICHLAND COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chair, Richland County Council

(SEAL)  
ATTEST:

\_\_\_\_\_  
Clerk of Council, Richland County Council

**Exhibit A**  
**Form of 2020 Assignment**

[See attached]

**PARTIAL ASSIGNMENT AND ASSUMPTION  
OF INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT**

**THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT** (this “**Assignment Agreement**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and among PPT Real Estate Enterprises, L.P., a Delaware limited partnership (“**Assignor**”), NL Ventures XI Northpoint, L.L.C., a Delaware limited liability company (“**Assignee**”), and Richland County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina (the “**County**”).

**WITNESSETH:**

WHEREAS, Pure Power Technologies, LLC, a Delaware limited liability company (“**PPT LLC**”), NAVISTAR, Inc., a Delaware corporation (“**NAVISTAR**”), and the County entered into that certain Infrastructure Credit and Incentive Agreement dated as of July 1, 2010 (as amended, restated, supplemented, modified and assigned, the “**Infrastructure Credit Agreement**”), a true and correct copy of which is attached as Exhibit A hereto and incorporated herein by reference; and

WHEREAS, PPT LLC and NAVISTAR’s right, title and interest in the Infrastructure Credit Agreement were assigned to Pure Power Technologies, Inc. (“**PPT Inc.**”) in connection with the sale of substantially all of PPT LLC’s assets to PPT Inc., which assignment was ratified by the County by a Resolution of County Council dated June 21, 2016; and

WHEREAS, PPT Inc.’s right title and interest in the Infrastructure Credit Agreement solely with respect to the land and buildings located at the Project (as defined in the Infrastructure Credit Agreement) were assigned to Assignor effective April 11, 2019; and

WHEREAS, Assignor has conveyed or will convey a portion of the Project (as defined in the Infrastructure Credit Agreement) consisting of land and buildings located at the Project to Assignee (collectively, the “**Transferred Property**”); and

WHEREAS, Assignor desires to assign to Assignee all of its obligations, rights, title and interest in and to the Infrastructure Credit Agreement, a true and correct copy of such Infrastructure Credit Agreement having been provided to Assignee, with respect to the Transferred Property, and Assignee desires to assume all obligations, rights, title and interest of Assignor thereunder, with respect to the Transferred Property; and

WHEREAS, the County authorized, approved and consented to (or will authorize, approve and consent to) the assignment of the Infrastructure Credit Agreement via Resolution of its County Council.

NOW, THEREFORE, in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption of Infrastructure Credit Agreement. Assignor does hereby sell, assign, transfer and set over to Assignee all of Assignor’s right, title, interest and obligations under the Infrastructure Credit Agreement, solely with respect to the Transferred Property, and Assignee hereby accepts such assignment and assumes all of Assignor’s duties and obligations under the Infrastructure Credit Agreement, solely with respect to the Transferred Property (“**Assignment and Assumption of Infrastructure Credit Agreement**”).

2. Consent to Assignment and Assumption of Infrastructure Credit Agreement. Such Assignment and Assumption of Infrastructure Credit Agreement is made subject to and is conditioned upon obtaining the consent or ratification from the County as required by Section 7.01 of the Infrastructure Credit Agreement, and following receipt of such consent or ratification, shall be deemed effective as of the Effective Date.

3. Mutual Indemnities. Assignor agrees to indemnify, defend and hold Assignee, its affiliates, successors and assigns, harmless from and against any and all claims, actions, charges, fees and expenses (including, without limitation, reasonable attorneys' fees and court costs) and liabilities (collectively, "Claims") that result directly from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the Infrastructure Credit Agreement (as such relate to the Transferred Property), provided that any such obligation accrued and that such failure occurred prior to the Effective Date. Assignee agrees to indemnify, defend and hold Assignor, its affiliates, successors and assigns, harmless from and against any and all Claims that: (a) result directly from the failure of Assignee to perform its obligations under, or to observe the covenants and conditions in, the Infrastructure Credit Agreement, provided that any such obligation accrued and that such failure occurred on or after the Effective Date; or (b) arise from any modification or amendment to the Infrastructure Credit Agreement on or after the Effective Date (in each case, as such relate to the Transferred Property). Notwithstanding the foregoing, unless such Claim against Assignor results solely from the failure of Assignor to perform its obligations under, or to observe the covenants and conditions in, the Infrastructure Credit Agreement during the period that Assignor was a party to the Infrastructure Credit Agreement, Assignee shall pursue such Claim exclusively from PPT Inc. pursuant to the terms of that certain Lease Agreement by and between Assignee and PPT Inc.

4. Representations and Warranties by Assignor and County.

- (a) Assignor hereby represents and warrants to Assignee that, to the best of Assignor's knowledge, neither the Assignor nor the Transferred Property is in default under the Infrastructure Credit Agreement and that all requirements of Assignor under the Infrastructure Credit Agreement have been satisfied as of the Effective Date.
- (b) The County hereby represents that, to the best of the County's knowledge based solely on information Assignor and Assignee have provided to the County without further independent investigation, neither Assignor nor the Transferred Property is in default under the Infrastructure Credit Agreement.

5. Release. Effective and contingent upon the County's consent to the Assignment and Assumption of Infrastructure Credit Agreement, the County releases Assignor from any breach by Assignee of Assignee's duties, obligations, and liabilities under the Infrastructure Credit Agreement with respect to the Transferred Property, accruing on or after 12:00 a.m. on the Effective Date, except with respect to the payment of Richland Fee Payments (as defined in the Infrastructure Credit Agreement), payments in lieu of taxes, *ad valorem* taxes or other amounts due with respect to the Transferred Property (collectively, "**Amounts**"), which the County specifically does not release Assignor from the obligation for the payment thereof until the County has received such Amounts due through the Effective Date or for the property tax year in which the Assignment and Assumption of Infrastructure Credit Agreement occurs. Nothing contained in this Section 5 shall release Assignor from any other duties, obligations, or liabilities under the Infrastructure Credit Agreement.

6. Notices. From and after the Effective Date, all notices delivered pursuant to the Infrastructure Credit Agreement shall also be delivered to Assignee at the following addresses:

NL Ventures XI Northpoint, L.L.C.  
c/o AIC Ventures, L.P.  
2600 Via Fortuna, Suite 260  
Austin, TX 78746  
Attention: Heath D. Esterak, Managing Director – Legal

7. Amendment. This Assignment Agreement may be amended, modified or supplemented, and any provision hereof may be waived, only by written agreement of the parties hereto.

8. Governing Law. This Assignment Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of South Carolina.

9. Successors and Assigns. This Assignment Agreement shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment Agreement is not intended and shall not be deemed to confer upon or give any person except the parties hereto and their respective successors and permitted assigns any remedy, claim, liability, reimbursement, cause of action or other right under or by reason of this Assignment Agreement.

10. Counterparts. This Assignment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become binding when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment Agreement to be executed as of the Effective Date.

**ASSIGNOR:**

PPT REAL ESTATE ENTERPRISES, L.P., a  
Delaware limited partnership

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

**ASSIGNEE:**

NL VENTURES XI NORTHPOINT, L.L.C.,  
a Delaware limited liability company

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

IN WITNESS WHEREOF, the County has consented to the Assignment and Assumption of Infrastructure Credit Agreement and this Assignment Agreement by the signature of its authorized representative below.

**RICHLAND COUNTY, SOUTH CAROLINA**

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

ATTEST:

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



IN WITNESS WHEREOF, PPT Inc. acknowledges the foregoing Assignment and Assumption of Infrastructure Credit Agreement and agrees that nothing in this Assignment Agreement terminates or limits the obligations of PPT Inc. with respect to property subject to the Infrastructure Credit Agreement other than the Transferred Property.

PURE POWER TECHNOLOGIES, INC., a Delaware corporation

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

**Exhibit A to Partial Assignment and Assumption of Infrastructure Credit Agreement**

**Copy of Infrastructure Credit Agreement**

[to be attached]

INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT

by and among

RICHLAND COUNTY, SOUTH CAROLINA

and

NAVISTAR, INC.

and

PURE POWER TECHNOLOGIES, LLC

Dated as of July 1, 2010

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## INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT

This INFRASTRUCTURE CREDIT AND INCENTIVE AGREEMENT, dated as of July 1, 2010 (as the same may be amended, modified or supplemented in accordance with the terms hereof, the "Agreement"), by and among RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (the "County"), NAVISTAR, INC., a Delaware corporation ("Navistar"), and PURE POWER TECHNOLOGIES, LLC, a Delaware limited liability company ("PPT").

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended, including Sections 4-1-170 and 4-1-175 thereof, Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (collectively, the "Act"), and Article VIII, Section 13 of the South Carolina Constitution (i) to provide special source revenue credits for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County or the project and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise to enhance the economic development of the County; and (ii) to create, in conjunction with one or more other counties, a joint county industrial or business park ("Park") in order to afford certain enhanced income tax credits to certain investors and to facilitate the grant of such special source revenue credits; and

WHEREAS, Navistar has made a significant investment in the County through the establishment of certain manufacturing and research and development facilities (collectively, the "Project"), including, without limitation, by its purchase of certain membership interests and assets from Continental Automotive Systems US, Inc., a Delaware corporation ("CAS"), including, among other things, (i) all of the membership interests of Continental Diesel Systems US, LLC, a Delaware limited liability company ("CDS"), which has since been renamed Pure Power Technologies, LLC, and (ii) real and personal property comprising a portion of facilities located at 1410 Northpoint Boulevard, Blythewood, South Carolina (the "Production Facility") and personal property comprising a portion of facilities located at 121 Research Drive, Columbia, South Carolina (the "R&D Facility")(the Production Facility and the R&D Facility, collectively referred to herein as, the "Facilities"); and

WHEREAS, a portion of investment in the Project consists of investment in certain real property, including, among other things, land, buildings and other improvements to land, and certain personal property including, among other things, furniture, fixtures, machinery and equipment, that were previously subject to that certain Lease Agreement dated December 30, 1999 between the County and Siemens Diesel Systems Technology, LLC (predecessor of CDS), as amended by that certain Amendment to Lease dated June 4, 2004, and terminated as of October 15, 2009 pursuant to that certain Settlement Agreement effective as of July 29, 2009 among the County, CAS, CDS, and Richland County Development Corporation (such property collectively referred to herein as the "Existing Blythewood Property"); and

WHEREAS, pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution, the County and Fairfield County, South Carolina ("Fairfield County") have established a Park (the "Richland-Fairfield Park") by entering into that certain Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of April 15, 2003, as amended or supplemented from time to

time (the "Richland-Fairfield Park Agreement"); and

WHEREAS, the Production Facility, including, without limitation, the Existing Blythewood Property, is presently located on land more fully described on the attached **Exhibit A** attached hereto and made a part hereof (the "Production Facility Land"); and

WHEREAS, the County and Fairfield County have previously amended the Richland-Fairfield Park Agreement to expand the boundaries of the Richland-Fairfield Park to include therein the Production Facility Land and the real and personal property located thereon, including, without limitation, the Existing Blythewood Property, and the County has agreed to maintain such property within the boundaries of the Richland-Fairfield Park (or a replacement or successor Park) in order to facilitate the Special Source Revenue Credits (as defined below); and

WHEREAS, in accordance with Article VIII, Section 13 of the South Carolina Constitution, real and personal property having a *situs* in the Richland-Fairfield Park (or any other Park) is exempt from all *ad valorem* taxation, however, the owners or lessees of such real and personal property are obligated to make, or cause to be made, payments in lieu of taxes to the County in the total amount equivalent to the *ad valorem* property taxes that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within such Park (each, a "Richland Fee Payment"); and

WHEREAS, the County has agreed to provide special source revenue credits against each Richland Fee Payment made by Navistar, PPT, and their Affiliates (as defined below), successors, and assigns (in each case, to the extent the County is notified of same as set forth below), with respect to the Existing Blythewood Property in an amount sufficient to reduce each such Richland Fee Payment so that the resulting net Richland Fee Payment equals the amount of such payment if calculated using an assessment ratio of 6% and a locked millage rate equal to the millage rate in effect for the Production Facility as of October 29, 2009, 460.8 mills, for a period of twenty (20) years beginning with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2011 and terminating with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2030 (the "Special Source Revenue Credits"); and

WHEREAS, the County has agreed to convey, or cause to be conveyed, by Title to Real Estate Limited Warranty Deed to PPT marketable, insurable (at standard title insurance rates), fee simple title to the land on which the R&D Facility is presently located, and more fully described on the attached **Exhibit B** attached hereto and made a part hereof (the "R&D Facility Land"), together with and including all improvements, buildings, rights, members, easements, appurtenances and hereditaments belonging or in anywise incident or appertaining to the R&D Facility Land (such improvements, buildings, rights, members, easements, appurtenances and hereditaments and the R&D Facility Land, collectively referred to herein as the "R&D Facility Real Property"); and

WHEREAS, the County Council has authorized the execution and delivery of this Agreement by Ordinance No. 047-10HR enacted by the County Council on July 20, 2010 (the "Ordinance").

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the above recitals which are incorporated herein by reference, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### ADDITIONAL DEFINITIONS

The defined terms in this Agreement shall for all purposes of this Agreement have the meanings specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

*"Affiliate"* shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of Navistar or PPT or which is owned in whole or in part by Navistar or PPT or by any partner, shareholder or owner of Navistar or PPT, the identity of which must in all cases be provided in writing to the County.

*"Cost"* or *"Cost of the Infrastructure"* means all the costs of designing, acquiring, constructing, improving, or expanding the Infrastructure, whether incurred prior to or after the date of this Agreement, and shall be deemed to include, without limitation: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefore, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; and (d) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure.

*"County"* shall mean Richland County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

*"Infrastructure"* means, to the extent paid for by Navistar, PPT, or an Affiliate, whether prior to or after the date of this Agreement, any infrastructure serving the County or the Project, any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements and any personal property, including, without limitation, machinery and equipment, to the extent now or hereafter permitted by law, used in the operation of a manufacturing or commercial enterprise, in order to enhance the economic development of the County, including, without limitation, the infrastructure of Navistar, PPT, or an Affiliate, the Production Facility Land, the buildings, fixtures and other real property improvements located on the Production Facility Land or on the R&D Facility Land, and any additions or improvements to any of the foregoing, all as defined and permitted under the Act.

*"Navistar"* shall mean Navistar, Inc., a Delaware corporation, and its successors and assigns.

*"Park Agreement"* shall mean the Richland-Fairfield Park Agreement, as amended, supplemented, replaced, or succeeded from time to time.

*"Person"* means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a joint venture, a trust, any unincorporated organization, or a

government or an agency or a political subdivision thereof.

“PPT” shall mean Pure Power Technologies, LLC, a Delaware limited liability company, and its successors and assigns.

“Richland Fee Payment” shall have the meaning ascribed thereto in the recitals of this Agreement.

“Richland Park” shall mean the Park established pursuant to the terms of the Park Agreement, and any Park which includes the Existing Blythewood Property, the Production Facility Land, and the real and personal property located on the Production Facility Land, and which is designated by the County as such pursuant to any Park Agreement which replaces or succeeds the Richland-Fairfield Park Agreement.

“R&D Facility Real Property” shall have the meaning ascribed thereto in the recitals of this Agreement.

“Special Source Revenue Credits” shall mean the special source revenue credits granted by the County described in Section 3.03 hereof.

The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

## ARTICLE II

### REPRESENTATIONS

SECTION 2.01. Representations by the County. The County makes the following representations:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into, execute, deliver, and carry out its obligations under, this Agreement;
- (c) The County has approved this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state and local law;
- (d) The County enters into this Agreement for the purpose of promoting the economic development of the County; and
- (e) No actions, suits, proceedings, inquiries, or investigations are pending or, to the best of the County’s knowledge, threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

SECTION 2.02. Representations by Navistar and PPT. Navistar and PPT, respectively, make the following representations:

(a) Navistar is a corporation duly organized, validly existing, and in good standing, under the laws of the State of Delaware, has power to enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver this Agreement;

(b) PPT is a limited liability company duly organized, validly existing, and in good standing, under the laws of the State of Delaware, has power to enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver this Agreement; and

(c) No actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting Navistar or PPT in any court or before any governmental authority or arbitration board or tribunal, any of which could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

(d) The Special Source Revenue Credits provided by the County and the conveyance by the County to PPT of marketable, insurable (at standard title insurance rates), fee simple title to the R&D Facility Real Property in the manner set forth in this Agreement have been instrumental in inducing Navistar to invest in, or cause investment in, the Project in the County.

(e) As of July 1, 2010, PPT and/or Navistar intend to utilize or operate the R&D Facility Real Property.

SECTION 2.03. Covenants by the County. The County has included and will maintain the Existing Blythewood Property, the Production Facility Land, and the real and personal property located on the Production Facility Land within the boundaries of the Richland-Fairfield Park or other Richland Park in order to facilitate the Special Source Credits described herein.

### ARTICLE III

#### SPECIAL SOURCE REVENUE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure. Navistar agrees to pay, or cause to be paid, all Costs of the Infrastructure.

SECTION 3.02. [Reserved].

SECTION 3.03. Special Source Revenue Credits.

(a) To defray the Costs of Infrastructure, the County agrees to provide Special Source Revenue Credits against each Richland Fee Payment made by Navistar, PPT, or an Affiliate (but only in the event such Affiliate is identified in writing to the County) with respect to the Existing Blythewood Property in an amount sufficient to reduce each such Richland Fee Payment so that the resulting net Richland Fee Payment equals the amount of such payment if calculated using an assessment ratio of 6% and a locked millage rate equal to the millage rate in effect for the Production Facility as of October 29, 2009, 460.8 mills, for a period of twenty (20) years beginning with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2011 and terminating with the Richland Fee Payment (or Richland Fee Payments, as the case may be) due on January 15, 2030. In order to claim



its annual Special Source Credit against each Richland Fee Payment, each claiming party must, no later than August 31 of each year (or such later date as may be agreed to by the County) beginning with August 31, 2010, submit a "Special Source Revenue Credit Certification" in the form of Exhibit D attached hereto and made a part hereof ("Annual SSRC Certification") pursuant to the instructions provided therein; provided, however, that failure to submit such Special Source Revenue Credit Certification shall not be deemed to be an event of default under this Agreement. If the Annual SSRC Certification is timely submitted as provided herein and the conditions set forth in Exhibit D have been met, the Special Source Revenue Credits shall be reflected on each tax bill of Richland Fee Payment due sent to Navistar, PPT, and other applicable Affiliate by the County Auditor, by reducing such Richland Fee Payment due by the amount set forth herein;

(b) If subsection 3.03(a), or the granting of the Special Source Credits under this Agreement, is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, the County agrees to provide Navistar, PPT, and any other applicable Affiliate, with an incentive that is valid pursuant to such court ruling and commensurate to the nature and value of the benefits provided under this Agreement. The responsibility for the preparation of documents or modification of this Agreement in connection with such incentive and the applicable and reasonable costs thereof (including any applicable and reasonable legal fees incurred by the County) shall be borne solely by Navistar, PPT, and any other applicable Affiliate.

(c) THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS GRANTED HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY TO BE CLAIMED BY NAVISTAR, PPT, OR OTHER APPLICABLE AFFILIATE SOLELY FROM THE RICHLAND FEE PAYMENTS RECEIVED BY THE COUNTY FROM NAVISTAR, PPT, OR OTHER APPLICABLE AFFILIATE, AND DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED IN CONNECTION WITH THE GRANTING OF THE SPECIAL SOURCE REVENUE CREDITS HEREUNDER.

(d) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Richland Fee Payments received from Navistar, PPT, or other applicable Affiliate. The County shall not be required to provide the Special Source Revenue Credits except with respect to the Richland Fee Payments received from Navistar, PPT, or other applicable Affiliate.

#### ARTICLE IV

#### TRANSFERS OF THE PROJECT

SECTION 4.01. Transfers of the Project. The County acknowledges and agrees that Navistar, PPT, and applicable Affiliates each may from time to time and in accordance with applicable law and without the consent of the County, sell, transfer, lease, convey, or grant its respective interest in all or any portion of the Project, including, without limitation, the Existing Blythewood Property and the R&D

Facility Real Property, to any other individual or entity. The County shall receive reasonable written notice of any such transfer, lease, conveyance or grant. Once such notice is received, and subject to Section 7.01 hereof, the County agrees that the sale, transfer, lease, conveyance or grant shall not relieve the County of the County's obligation to provide Special Source Revenue Credits to Navistar, PPT, or applicable Affiliates under this Agreement.

## ARTICLE V

### R&D FACILITY REAL PROPERTY

#### SECTION 5.01. Conveyance of Title to R&D Facility Real Property.

(a) The County agrees to convey, or cause to be conveyed, to PPT marketable, insurable (at standard title insurance rates), fee simple title to the R&D Facility Real Property on or before August 20, 2010 (or such later date as may be established by PPT in writing to the County, in PPT's sole discretion), in writing by a Title to Real Estate Limited Warranty Deed in substantially the form set forth in **Exhibit C** attached hereto and made a part hereof, for and in consideration of the sum of Five and 00/100 Dollars (\$5.00), to be paid, or caused to be paid, to the County by Navistar. The County covenants and agrees to, upon the request of PPT, take such further steps and to execute and deliver such further instruments, agreements, or other documents, in form and substance reasonably acceptable to the County, to further effectuate, evidence or confirm such conveyance, to enable PPT to acquire title insurance, to effectuate and evidence the termination of that certain Lease Agreement dated January 24, 2010 between the County, Richland County Development Corporation ("RCDC"), and PPT (as successor by assignment), as amended by that certain Settlement Agreement by and among the County, RCDC, CAS, and CDS, and as may be required by applicable federal, state, or local law. The cost of the deed recording fee and/or state or local transfer taxes, if any, and documentary stamp taxes, if any, (S.C. Code Ann. Section 12-24-10, *et. seq.*), on the limited warranty deed required hereunder shall be borne by Navistar.

(b) If Navistar, PPT, and any Affiliates fail to, collectively, hire, or cause to be hired, at least 160 full-time employees (including, without limitation, contract employees) at the Facilities and elsewhere in the County, in the aggregate (the "Minimum Employment Requirement"), or, collectively, invest, or cause to be invested, (including, without limitation, investment and acquisition costs made prior to the date of this Agreement) at least \$70,400,000 (without regard to subsequent depreciation or diminution in value) at the Facilities and elsewhere in the County, in the aggregate (the "Minimum Investment Requirement"), on or before, December 31, 2019 (the "Initial Threshold Deadline"), Navistar shall pay, or cause to be paid, to the County an amount calculated according to the formula set forth below in this subsection 5.01(b) (the "Reimbursement Payment").

The degree of compliance shall be measured against each of the Minimum Employment Requirement (160 full-time employees) and the Minimum Investment Requirement (\$70,400,000), and shall be weighted 50% employment / 50% investment times the value ascribed to the R&D Facility Real Property by the County of \$2,000,000.

1. 
$$\frac{\text{Actual Investment}}{\$70,400,000} \times 100 = \text{Investment Achievement Percentage [IAP]}$$
2. 
$$100\% - \text{IAP} = \text{Investment Alteration Factor [IAF]}$$

3.  $\frac{\text{Actual Employees Hired}}{160} \times 100 = \text{Employment Achievement Percentage [EAP]}$
4.  $100\% - \text{EAP} = \text{Employment Alteration Factor [EAF]}$
5.  $\frac{\text{IAF} + \text{EAF}}{2} = \text{Final Alteration Factor [FAF]}$
6.  $\text{FAF} \times \$2,000,000 = \text{Reimbursement Payment [To the extent this calculation yields a negative Reimbursement Payment, no party hereto shall have any payment obligation under this Section 5.01.]}$

As an example, assuming Navistar, PPT, and their Affiliates, collectively, invested \$30,000,000 and hired a maximum of 150 employees on or before the Initial Threshold Deadline, the Reimbursement Payment would be calculated as follows:

1.  $\frac{\$30,000,000}{\$70,400,000} \times 100 = 42.6\% \text{ [IAP]}$
2.  $100\% - 42.6\% = 57.4\% \text{ [IAF]}$
3.  $\frac{150}{160} \times 100 = 93.8\% \text{ [EAP]}$
4.  $100\% - 93.8\% = 6.2\% \text{ [EAF]}$
5.  $\frac{57.4\% + 6.2\%}{2} = 31.8\% \text{ [FAF]}$
6.  $31.8\% \times \$2,000,000 = \text{Reimbursement Payment of } \$636,000.$

As an additional example, assuming Navistar, PPT, and their Affiliates, collectively, invested \$60,000,000 and hired a maximum of 200 employees on or before the Initial Threshold Deadline, the Reimbursement Payment would be calculated as follows:

1.  $\frac{\$60,000,000}{\$70,400,000} \times 100 = 85.2\% \text{ [IAP]}$
2.  $100\% - 85.2\% = 14.8\% \text{ [IAF]}$
3.  $\frac{200}{160} \times 100 = 125\% \text{ [EAP]}$
4.  $100\% - 125\% = (-25\%) \text{ [EAF]}$

5.  $\frac{14.8\% + (-25\%)}{2} = (-10.2\%) \text{ [FAF]}$

6.  $(-10.2\%) \times \$2,000,000 = \text{No Reimbursement Payment due.}$

(c) The term “investment” or “invest” as used in this Section 5.01 shall include not only investments made by Navistar, PPT, and any Affiliates, but also those investments made by or for the benefit of Navistar, PPT, or such Affiliates through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxation payments, payments in lieu of taxes, or fees in lieu of tax payments by Navistar, PPT, or such applicable Affiliates.

## ARTICLE VI

### DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. If any party shall fail duly and punctually to perform any material covenant, condition, agreement or provision contained in this Agreement on the part of such party to be performed, which, except as otherwise provided in this Agreement, failure shall continue for a period of thirty (30) days after written notice by the other party specifying the failure and requesting that it be remedied is given to the defaulting party by first-class mail, then such party shall be in default under this Agreement (an “Event of Default”); provided, however, that if any such failure is not, with due diligence, susceptible of cure within such 30-day period, then such defaulting party shall have an additional period of time not to exceed thirty (30) days from the date of such written notice by the other party to remedy such failure, unless such parties shall agree in writing to an extension of such time prior to its expiration.

SECTION 6.02. Legal Proceedings by Navistar, PPT, and the County. Upon the happening of any Event of Default by a party, then and in every such case the other parties in their respective discretion may each:

- (1) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its rights and require the defaulting party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;
- (2) bring suit upon this Agreement;
- (3) exercise any or all rights and remedies in effect in the State of South Carolina, or other applicable law, as well as all other rights and remedies possessed by the County, Navistar and PPT; or
- (4) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 6.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to Navistar, PPT, or the County is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 6.04. Nonwaiver. No delay or omission of Navistar, PPT, or the County to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by this Article VI to Navistar, PPT, or the County may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VII

### MISCELLANEOUS

SECTION 7.01. Assignment; Binding Effect; Successors and Assigns. This Agreement, and the rights and obligations hereunder, may not be assigned or transferred by any party without the prior written consent or subsequent ratification of the other parties, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, except that Navistar and PPT may each assign this Agreement to an Affiliate, or in connection with the merger, consolidation, or sale or transfer of all or substantially all of their respective assets, without the prior written consent or subsequent ratification of the County. If and to the extent the prior written consent or subsequent ratification of the County is required pursuant to this Section 7.01, the County expressly agrees that, to the extent permitted by law, such prior written consent or subsequent ratification may be, but shall not be required to be, provided by a letter or other writing executed by the Chair of the County Council and the County Administrator of the County, and those two officials are hereby expressly jointly authorized to provide such consent or ratification on behalf of the County. This Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of Navistar, PPT, and the County, and their respective successors and assigns. All covenants, stipulations, promises, and agreements contained in this Agreement, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 7.02. Provisions of Agreement for Sole Benefit of Navistar, PPT, and the County. Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person other than Navistar, PPT, and the County any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be, except as otherwise specifically provided in this Agreement, for the sole and exclusive benefit of Navistar, PPT, and the County.

SECTION 7.03. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, the illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement and the Special Source Revenue Credits shall be construed and enforced as if the illegal, invalid or unenforceable provisions had not been contained herein or therein so as to most closely effectuate the legal, valid and enforceable intent hereof or thereof and so as to afford Navistar, PPT, and applicable Affiliates with the maximum benefits to be derived herefrom or therefrom.

SECTION 7.04. No Liability for Personnel of the County, Navistar or PPT. No covenant or agreement contained in this Agreement is deemed to be a covenant or agreement of any member, agent, or employee of the County or its governing body or Navistar or PPT or any of their respective officers,



Columbia, SC 29202

The County, Navistar, and PPT may, by notice given under this Section 7.05, each designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 7.06. Administrative Fees. Navistar shall reimburse, or cause reimbursement of, the County for reasonable expenses, including, reasonable attorneys' fees, related to (i) review and negotiation of this Agreement, (ii) review and negotiation of any other documents related to the Project or the Facilities, or (iii) the Project itself or Facilities themselves, in an amount not to exceed \$10,000.

SECTION 7.07. Merger. This Agreement constitutes the entire agreement among the parties to it with respect to the matters contemplated in it, and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had among these parties are merged herein.

SECTION 7.08 Agreement to Sign Other Documents. The County agrees that it will from time to time execute and deliver such further instruments, in form and substance reasonably acceptable to the County, and take such further action as may be reasonable and as may be requested by Navistar or PPT or as may be required to carry out the purpose of this Agreement. Navistar shall reimburse, or cause reimbursement of, the County for reasonable attorneys' fees, related to review and negotiation of such further instruments. Such instruments or actions shall never create or constitute an indebtedness of the County within the meaning of any state constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the credit or taxing power of the State of South Carolina, or any other political subdivision of the State of South Carolina.

SECTION 7.09. Construction of Agreement. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

SECTION 7.10. Applicable Law. The laws of the State of South Carolina govern the construction of this Agreement.

SECTION 7.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 7.12. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 7.13. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving party.

Section 7.14. Further Proceedings. It is intended by the parties that any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the

County without necessity of further proceedings. To the extent that additional proceedings are required by law, however, the County agrees, to the extent permitted by law, to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 7.15. Indemnification and Hold Harmless Obligation of the Company

Except as provided herein, the Navistar, PPT and any applicable Affiliate, (collectively, "Company") shall jointly and severally indemnify and save the County, its past, present and future employees, elected officials, officers and agents (each, an "Indemnified Party") harmless from all claims, and costs related thereto, including reasonable attorneys' fees, by or on behalf of any person arising or relating to the County's execution or delivery of this Agreement, any other documents reasonably necessary to effect this Agreement and the transactions contemplated herein, and any related procedural documents entered into with respect to this Agreement (collectively, "Transaction Documents") or performance of the County's obligations under the Transaction Documents, or the administration of its duties pursuant to the Transaction Documents, or otherwise by virtue of the County having entered into the Transaction Documents. If such a claim is made against any Indemnified Party, then subject to the provisions below, the Company shall either defend the Indemnified Party in any action or proceeding, or provide prompt payment for all reasonable costs of defense incurred by an Indemnified Party if, with the consent of the Company, the Indemnified Party selects its own legal counsel with respect to such claim.

Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against any claim or liability (i) occasioned by the acts or omissions of that Indemnified Party, which are unrelated to the County's execution of the Transaction Documents, the performance of the County's obligations under the Transaction Documents, or the administration of the County's duties under the Transaction Documents, or otherwise by virtue of the County having entered into the Transaction Documents; (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct; or (iii) arising from the County's customary performance and administration of its obligations and duties in connection with its operation of the County's governmental functions outside of the County's execution and performance of the Transaction Documents.

SIGNATURES FOLLOW ON NEXT PAGE.

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

RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina

By: Paul Livingston (SEAL)  
Name: Paul Livingston  
Its: Chairman, County Council, Richland County, South Carolina

ATTEST:

By: Michelle Cannon Finch (SEAL)  
Name: Michelle Cannon Finch  
Its: Clerk to County Council, Richland County, South Carolina

NAVISTAR, INC.,  
a Delaware corporation

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

PURE POWER TECHNOLOGIES, LLC,  
a Delaware limited liability company

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

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

RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina

By: \_\_\_\_\_ (SEAL)  
Name: Paul Livingston  
Its: Chairman, County Council, Richland County, South Carolina

ATTEST:

By: \_\_\_\_\_ (SEAL)  
Name: Michielle Cannon Finch  
Its: Clerk to County Council, Richland County, South Carolina

NAVISTAR, INC.,  
a Delaware corporation

By: Eric Tech (SEAL)  
Name: Eric Tech  
Its: Engine Group

PURE POWER TECHNOLOGIES, LLC,  
a Delaware limited liability company

By: Thomas Kasher (SEAL)  
Name: Thomas Kasher  
Its: President

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EXHIBIT A

PRODUCTION FACILITY LAND

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar at the Point of Beginning (POB-B), this #4 Rebar being a common corner of Parcel "B" and a parcel of property now or formerly of Keller Properties, Inc.; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S 30°42'38" E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road; thence proceeding along Parcel "A" the following courses: a curve to the left having a radius of 50.00 feet; an arc length of 77.93 feet; a chord bearing of N76°38'30"W and a chord length 70.28 feet to a #4 Rebar; thence proceeding S58°42'22"W for a distance of 146.06 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of S73°14'46"W and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N89°18'32"W for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 460.00 feet, an arc length of 86.99 feet, a chord bearing of S77°04'31"W a chord length of 170.96 feet to a #4 Rebar; thence proceeding S66°21'58"W for a distance of 103.97 feet to a #4 Rebar; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W for a distance of 82.78 feet to a #4 Rebar; thence proceeding along reserved property and property now or formerly of Coca-Cola Bottling Company N66°21'53"E for a distance of 756.99 feet to a 2 ½" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. S55°36'41"E for a distance of 163.06 feet to a 2" iron pipe; thence proceeding along property now or formerly of Keller Properties, Inc. N23°26'37"E for a distance of 209.45 feet to a #4 Rebar and Point of Beginning (POB-B), said parcel contains an area of 3.88 acres, more or less.

TOGETHER WITH

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, more particularly described as follows:

Beginning at a point on the southern margin of the right-of-way of Northpoint Boulevard where it intersects with the western margin of the right-of-way of Community Road; thence running in a southeasterly direction for a distance of approximately 616.3 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 6056.50 feet; an arc length of 270.38 feet; a chord bearing of S30 42'38"E and a chord length of 270.33 feet to a #4 Rebar on the western margin of the right-of-way of Community Road, the Point of Beginning (POB-A); from said point of beginning, thence along the western margin of the right-of-way of Community Road the following courses to the creek; proceeding along a curve to the left having a radius of 6056.40 feet, a chord bearing and distance of S32°45'25"E, 162.27 feet, an arc length of 162.28 feet to a concrete monument; thence proceeding S33°02'31"E, 10.08 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 5729.58 feet, a chord bearing and distance of S32°09'35"E, 258.44

feet, an arc length of 258.47 feet to a concrete monument; thence proceeding S31°05'41"E, 459.05 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the right having a radius of 883.73 feet, a chord bearing and distance of S14°05'35"E, 516.67 feet, an arc length of 524.32 feet to a concrete monument; thence proceeding S02°54'14"W, 301.76 feet to a concrete monument at the point of curvature of a non-tangent curve; thence proceeding along a curve to the left having a radius of 965.22 feet, a chord bearing and distance of S05°48'06"E, 302.00 feet, an arc length of 303.25 feet to a concrete monument; thence proceeding S03°54'31"E, 162.57 feet to a concrete monument; thence proceeding S24°45'08"E, 45.78 feet to a point in the center of the creek; thence following the creek centerline S54°53'30"W, 92.85 feet to a point; thence following the creek centerline S80°29'27"W, 42.27 feet to a point; thence following the creek centerline S77°11'27"W, 45.78 feet to a point; thence following the creek centerline S85°05'49"W, 34.67 feet to a point; thence following the creek centerline S35°45'15"W, 37.68 feet to a point; thence following the creek centerline N. 79°22'15"W, 23.49 feet to a point; thence following the creek centerline S56°18'52"W, 58.20 feet to a point; thence following the creek centerline S81°54'49"W, 47.17 feet to a point; thence following the creek centerline S84°56'19"W, 26.03 feet to a point; thence following the creek centerline S79°16'52"W, 33.49 feet to a point; thence following the creek centerline N76°36'20"W, 39.05 feet to a point; thence following the creek centerline N75°36'20"W, 23.30 feet to a point; thence following the creek centerline S22°45'02"W, 36.32 feet to a point; thence following the creek centerline N80°20'08"W, 23.26 feet to a point; thence following the creek centerline N01°08'00"E, 20.82 feet to a point; thence following the creek centerline N52°59'26"W, 44.15 feet to a point; thence following the creek centerline N23°36'16"W, 39.49 feet to a point; thence following creek centerline N55°36'57"W, 48.22 feet to a point; thence following the creek centerline S71°31'34"W, 38.67 feet to a point; thence following the creek centerline S19°14'48"E, 19.57 feet to a point; thence following the creek centerline S50°35'39"W, 30.67 feet to a point; thence following the creek centerline N30°28'21"W, 16.24 feet to a point; thence following the creek centerline N36°29'39"W, 33.63 feet to a point; thence following the creek centerline N76°19'46"W, 49.29 feet to a point; thence following the creek centerline S73°49'21"W 22.68 feet to a point; thence following the creek centerline S03°18'27"W, 37.42 feet to a point; thence following the creek centerline N77°39'36"W, 41.24 feet to a point; thence following the creek centerline N77°33'40"W, 41.48 feet to a point; thence following the creek centerline N27°56'03"W, 33.98 feet to a point; thence following the creek centerline N60°27'23"W, 33.10 feet to a point; thence following the creek centerline S32°16'34"W, 24.52 feet to a point; thence following the creek centerline S89°16'56"W, 15.72 feet to a point; thence following the creek centerline N45°13'18"W, 38.26 feet to a point; thence following the creek centerline N26°17'46"E, 25.62 feet to a point; thence following the creek centerline N09°35'24"W, 25.42 feet to a point; thence following the creek centerline N84°41'36"W 15.32 feet to a point; thence following the creek centerline N07°53'25"E, 41.75 feet to a point; thence following the creek centerline N32°48'04"W, 25.64 feet to a point; thence following the creek centerline N71°09'43"W, 43.35 feet to a point; thence following the creek centerline N10°59'52"W, 28.18 feet to a point; thence following the creek centerline N64°22'23"W, 21.10 feet to a point; thence following the creek centerline S61°33'26"W, 20.51 feet to a point, thence following the creek centerline N67°57'58"W, 19.33 feet to a point; thence following the creek centerline S87°51'09"W, 26.09 feet to a point; thence following the creek centerline S44°17'45"W, 42.36 feet to a point; thence following the creek centerline S85°30'34"W, 17.61 feet to a point; thence following the creek centerline N55°25'28"W, 25.30 feet to a point; thence following the creek centerline N09°20'09"W, 25.33 feet to a point; thence following the creek centerline N59°58'35"W, 51.28 feet to a point; thence following the creek centerline N29°43'27"W, 42.86 feet to a point; thence following the creek centerline N48°39'23"W, 60.79 feet to a point; thence following the creek centerline S78°10'45"W, 18.08 feet to a point; thence following the creek centerline N50°00'43"W, 29.92 feet to a point; thence following the creek centerline N10°37'24"W, 25.73 feet to a point; thence following the creek centerline N35°41'36"W, 25.40 feet to a

point; thence following the creek centerline S78°12'03"W, 33.67 feet to a point; thence following the creek centerline N47°42'19"W, 23.71 feet to a point; thence following the creek centerline N51°00'09"W, 43.98 feet to a point; thence following the creek centerline N79°33'04"W, 43.89 feet to a point; thence following the creek centerline S36°46'14"W, 24.19 feet to a point; thence proceeding along property now or formerly of T. Walter Brashier N08°44'56"W, 1,493.05 feet to a #4 Rebar; thence along Parcel "B" the following courses: N66°21'58"E, for a distance of 103.97 feet to a #4 Rebar; thence proceeding along an arc of a curve to the right having a radius of 460.00 feet; an arc length of 86.99 feet, a chord bearing of N77°04'31"E a chord length of 170.96 feet to a #4 Rebar; thence proceeding S89°18'32"E for a distance of 197.20 feet to a #4 Rebar; thence proceeding along an arc of a curve to the left having a radius of 800.00 feet; an arc length of 405.98 feet; a chord bearing of N73°14'46"E and a chord length of 401.64 feet to a #4 Rebar; thence proceeding N58°42'22"E for a distance of 146.06 feet to a #4 Rebar; thence proceeding along a curve to the right having a radius of 50.00 feet, an arc length of 77.93 feet, a chord bearing of S76°38'30"E and a chord length of 70.28 feet to a #4 Rebar at the Point of Beginning (POB-A). Said parcel contains an area of 61.09 acres, more or less.

LESS HOWEVER: All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as 1.46 acres on that certain survey title "Closing Survey for South Carolina Electric and Gas Company, Northpoint Industrial Park, 115/23kV Substation" prepared by Glenn Associates Surveying, Inc. dated August 9, 2006, and recorded in Book 1245, page 2240 in the Office of the Register of Deeds for Richland County, South Carolina, on October 27, 2006; said tract having such boundaries and measurements as shown on the Closing survey.

EXHIBIT B

R&D FACILITY LAND

LEGAL DESCRIPTION

All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

TOGETHER WITH

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

EXHIBIT C

FORM OF LIMITED WARRANTY DEED

STATE OF SOUTH CAROLINA	)	
	)	<b>TITLE TO REAL ESTATE</b>
COUNTY OF RICHLAND	)	<b>LIMITED WARRANTY DEED</b>

KNOW ALL MEN BY THESE PRESENTS that the undersigned **RICHLAND COUNTY DEVELOPMENT CORPORATION**, a non-profit corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Five and 00/100 Dollars (\$5.00) and [other valuable consideration], to it well and truly paid at and before the sealing and delivery hereof (the receipt and legal sufficiency of which are hereby acknowledged) by **PURE POWER TECHNOLOGIES, LLC**, a Delaware limited liability company (hereinafter referred to as the "Grantee"), whose mailing address is as hereinafter set forth, has granted, bargained, sold, aliened, conveyed and released, and by these presents does grant, bargain, sell, alien, convey, and release unto the Grantee, its successors and assigns, all of the Grantors' right, title, and interest in and to all that certain tract or parcel of land with all fixtures and improvements thereon lying described as follows (the "Premises"):

DESCRIPTION OF THE PREMISES CONVEYED: As set forth on Exhibit "A" attached hereto and incorporated herein by reference.

GRANTEE'S MAILING ADDRESS: For purposes of this Title to Real Estate Limited Warranty Deed, the Grantee's mailing address is:

1410 Northpoint Boulevard  
Blythewood, South Carolina 29016.

TOGETHER WITH ALL AND SINGULAR the rights, members, easements, any and all crops and timber growing on the Premises, any and all surface or subsurface sand, gravel, oil, gas, or mineral rights and royalties on the Premises, any and all surface and subsurface water appurtenant to the Premises,

all well, spring, reservoir, littoral rights, riparian rights, and water rights of any type, and hereditaments and appurtenances to the Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the Premises before mentioned unto the Grantee, its successors and assigns, forever.

AND the Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the Premises unto the Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof, but no others.

**[SIGNATURE PAGE ATTACHED]**

**[remainder of page intentionally left blank]**



WITNESS the Grantor's hand and seal this \_\_\_\_ day of August, 2010.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

GRANTOR:

RICHLAND COUNTY DEVELOPMENT  
CORPORATION, a non-profit corporation  
organized and existing under the laws of the  
State of South Carolina

\_\_\_\_\_  
Witness Number 1

By: \_\_\_\_\_ (SEAL)

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness Number 2

STATE OF SOUTH CAROLINA                    )  
                                                          )   ACKNOWLEDGMENT  
COUNTY OF RICHLAND                        )

I, \_\_\_\_\_, a notary public for South Carolina, do hereby certify that RICHLAND COUNTY DEVELOPMENT CORPORATION, a non-profit corporation organized and existing under the laws of the State of South Carolina, by \_\_\_\_\_, its \_\_\_\_\_, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where official seal is required by law) official seal this \_\_ day of August, 2010.

\_\_\_\_\_  
Signature of Notary Public (SEAL)

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

EXHIBIT "A"

Legal Description: All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

TOGETHER WITH

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

Derivation: Title to Real Estate Limited Warranty Deed from Richland County, South Carolina, to Richland County Development Corporation, dated August \_\_\_\_\_, 2010, and recorded August \_\_\_\_\_, 2010, in the Office of the Register of Deeds for Richland County, South Carolina, in Book \_\_\_\_\_, at Page \_\_\_\_\_.

Tax Map Number: 14500-03-06

STATE OF SOUTH CAROLINA        )  
COUNTY OF RICHLAND            )

AFFIDAVIT OF CONSIDERATION

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred consists of the following:

All that certain piece, parcel and tract of land situate, lying and being in the County of Richland, State of South Carolina, near the City of Columbia, located on Research Drive, containing 2.8658 acres, more or less, more fully shown on that certain Property Survey and Easement Map prepared for Carolina Park Associates by A & S of Columbia, Inc. dated March 17, 1998, last revised March 24, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 29, page 447, also shown on that certain plat prepared for Katherine S. Milnor by Associated E & S, Inc. dated December 31, 1998, and recorded in the Office of the Register of Deeds for Richland County in Book 276, page 656. Reference to said plat is craved for a fuller description, with all measurements being a little more or less.

TOGETHER WITH

All of Katherine S. Milnor's right, title and interest in that certain non-exclusive, perpetual commercial easement more fully described in the Easement Agreement between Carolina Park Associates II and South Carolina Research Authority dated March 27, 1998, and recorded in the Office of the Richland County Register of Deeds in Book 32, page 389.

3. Check one of the following: The deed is:
  - (a) \_\_\_\_\_ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b) \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c)   X   exempt from the deed recording fee because (See Information section of affidavit): Exemption (1) (\$5.00).

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \_\_\_\_\_.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_.
5. Check Yes \_\_\_ or No \_\_\_ to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_
- (b) Place the amount listed in item 5 above here: \_\_\_\_\_  
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ \_\_\_\_\_

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor's attorney.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Infrastructure Credit and Incentive Agreement  
Richland County, South Carolina, Navistar, Inc., and Pure Power Technologies, LLC  
EXHIBIT C-6

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\_\_\_\_\_, Esq.  
Attorney for Richland County Development Corporation

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Notary Public for \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
(SEAL)

**INFORMATION**

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and

(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT D

SPECIAL SOURCE REVENUE CREDIT CERTIFICATION

Reference is made to that certain Infrastructure Credit and Incentive Agreement dated as of July 1, 2010 (the "Agreement"), by and among Richland County, South Carolina (the "County"), Navistar, Inc. and Pure Power Technologies, LLC. Each capitalized term not herein defined has the meaning ascribed in the Agreement. This Certificate shall be delivered not later than August 31 of each year beginning on August 31, 2010. The Certificate should be addressed to each of the following parties:

Richland County, South Carolina  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29202

Richland County, South Carolina  
Attn: Richland County Auditor  
2020 Hampton Street  
Columbia, SC 29202

Parker Poe Adams & Bernstein, LLP  
Attn: Ray E. Jones  
P.O. Box 1509  
Columbia, SC 29202

In accordance with the terms of the Agreement, the undersigned authorized agent of [claiming party name to be inserted] certifies to the County as follows:

1. [Claiming party name to be inserted] is entitled to claim a Special Source Revenue Credit (each, a "Credit") against its annual Richland Fee Payment for this tax year, as set forth in Section 3.03 of the Agreement, not exceeding an amount for which a Credit is permitted under the Act.

3. [Claiming party name to be inserted] is entitled to a Credit for this tax year, calculated as follows:

Fair market value as determined by appraisal, in accordance with the Code of Laws of South Carolina 1976, as amended, of real property portion of Existing Blythewood Property \_\_\_\_\_ x .06 assessment ratio = \_\_\_\_\_ (Real Property Assessed Value)

Cost less statutory depreciation, in accordance with the Code of Laws of South Carolina 1976, as amended, of personal property portion of Existing Blythewood Property \_\_\_\_\_ x .06 assessment ratio = \_\_\_\_\_ (Personal Property Assessed Value)

Real Property Assessed Value + Personal Property Assessed Value = \_\_\_\_\_  
(Total Assessed Value)

Total Assessed Value x .4608 (fixed millage rate) =

\_\_\_\_\_ (Resulting Richland Fee Payment)

Richland Fee Payment otherwise due on Existing Blythewood Property ("Pre-Credit Richland Fee Payment") - Resulting Richland Fee Payment =

Credit Amount (see below)

4. The Credit Amount is intended to equal the amount that must be applied to reduce the Pre-Credit Richland Fee Payment by an amount sufficient to equal the Resulting Richland Fee Payment, which Resulting Richland Fee Payment shall be reflected as being due on the tax bill sent to [claiming party name to be inserted] by the County Auditor. The Credit Amount will fluctuate each year depending on the calculation of the Resulting Richland Fee Payment and the Pre-Credit Richland Fee Payment.

5. The Credit Amount specified in this Certificate for the current tax year, together with the amount of all Credits previously claimed pursuant to the Agreement, do not, in the aggregate, exceed the total cost of Infrastructure and other qualifying property, for which a Credit is permitted under the Act.

IN WITNESS WHEREOF, I have executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_.

[Claiming Party Name to be Inserted],

a \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_





+

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

**Applicant MUST reside in Richland County.**

Name: DR TODD BEASLEY

Home Address: 424 FLORIDA ST

Telephone: (home) 8032400823 (work) SAME

Office Address: SAME

Email Address: toddbsl@zoho.com

Educational Background: Doctorate - Education, Masters - Environmental Science, BS - Criminal Justice

Professional Background: 25 years in Education (Environmental Science) + Horticulture

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

Name of Committee in which interested: Board of Zoning Appeals

Reason for interest: As a burgeoning business owner I understand the need for zoning regulations and want to help the county grow smartly with sustainability as a focus.

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission: Deep understandings of social, economic, & environment issues

- Burgeoning business owner becoming familiar w/ zoning. Live in Olympic neighborhood and want to help improve all areas for future.

Presently serve on any County Committee, Board or Commission? NO

Any other information you wish to give? Email me for my CV

Recommended by Council Member(s): suggested by Allison Terracio

Hours willing to commit each month: I am flexible. as I work from home.

**CONFLICT OF INTEREST POLICY**

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

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

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

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

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

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

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

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

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

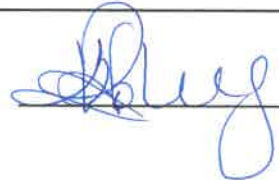
If so, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

 \_\_\_\_\_  
Applicant's Signature Date 2/5/2020

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

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

**Applications are current for one year.**

<b>Staff Use Only</b>	
Date Received: <u>2-11-20</u>	Received by: <u></u>
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved	<input type="checkbox"/> Denied <input type="checkbox"/> On file



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Applicant MUST reside in Richland County.

Name: DR. TODD BEASLEY

Home Address: 424 FLORIDA ST

Telephone: (home) 803 240 0823 (work) SAME

Office Address: SAME

Email Address: toddbs1@zoho.com

Educational Background: Doctorate - Education / Masters - Env Science / BS - Criminal Justice

Professional Background: 25 years in Horticulture, Education and new-business

Male [ ] Female [ ] Age: 18-25 [ ] 26-50 [X] Over 50 [ ]

Name of Committee in which interested: Central Midlands Council of Government

Reason for interest: my education + background plus living here since 94 has given

me deep skills around balancing the needs of the people, economics, + env plus deep experience

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

Commission: Doctorate in Education w/ research agenda on diversity + high populations of minorities and low socio-economic status. 25 years in Horticulture + Ed.

I want to help improve Richland County!

Presently serve on any County Committee, Board or Commission? NO

Any other information you wish to give? email me for my CV

Recommended by Council Member(s): Suggested by Allison Terracio

Hours willing to commit each month: I am flexible

CONFLICT OF INTEREST POLICY

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

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

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

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

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


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

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

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

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

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

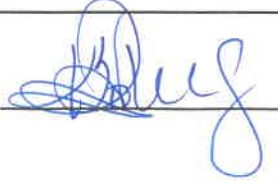
  
\_\_\_\_\_  
Applicant's Signature

2/5/20  
\_\_\_\_\_  
Date

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

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

**Applications are current for one year.**

<b>Staff Use Only</b>	
Date Received: <u>2-21-20</u>	Received by: 
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved 236 of 275 <input checked="" type="checkbox"/> Denied <input type="checkbox"/> On file	



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Applicant MUST reside in Richland County.

Name: Julie-Ann Dixon

Home Address: 119 Kings Creek Road, Irmo, SC 29063

Telephone: (home) 803-463-2442 (work)

Office Address:

Email Address: jdixon204@gmail.com

Educational Background:

Senior Awareness & Community

Professional Background: Involvement/Relations

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

Name of Committee in which interested: Central Midland Council of Government

Reason for interest: I would like to continue serving the Seniors in the Regions

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

Commission:

Since serving on the CMCOG, I have been actively involved with our Ombudsman Program throughout the Regions. If given the chance, I would love to continue to serve our Seniors throughout the Region, to advocate and educate our Seniors. I am currently a Volunteer Ombudsman, Certified Ombudsman Witness for the Region's 117 facilities and an advocate. As a Certified Ombudsman Witness, I assist seniors with their legal rights should they request a second opinion on explanation and implementation of their "Will". As the Volunteer Ombudsman, I visit facilities and speak with Resident Council President is to educate seniors on their "Rights" while living in a facility. I also assist Ombudsman staff on training for facilities staff and hope to include "Independent Housing Staff". I also meet with the Family Council Members at each of our 117 Facilities throughout the Regions to educate them on their Rights as Family Members.

Presently serve on any County Committee, Board or Commission?

Central Midlands Council of Government and Richland County

Neighborhood Council.

Any other information you wish to give?

Recommended by Council Member(s): Malinowski, Dickerson

Hours willing to commit each month: Endless

**CONFLICT OF INTEREST POLICY**

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

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

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

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

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

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

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

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

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

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

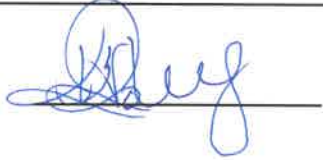
J. Dixon  
Applicant's Signature

2/5/2020  
Date

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

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

**Applications are current for one year.**

	<b>Staff Use Only</b>		
Date Received:	<u>2-10-20</u>	Received by:	
Date Sent to Council:	<u>                    </u>		
Status of Application:	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> On file



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Applicant MUST reside in Richland County.

Name: Kurtina J. Ricketts
Home Address: 17 Trentridge Ct Columbia, SC 29229
Telephone: (home) 303-994-7245 (work) 803-419-1348
Office Address: 7900 Brookmont Lane Columbia, SC 29203
Email Address: nwpcrc@gmail.com, Kricketts@richland2.org
Educational Background: Associate Degree in Architectural Engineering Technology and Art
Professional Background: Emergency preparedness and services
Male [ ] Female [ ] Age: 18-25 [ ] 26-50 [x] Over 50 [ ]
Name of Committee in which interested: Music Festival Commission
Reason for interest: To promote and bring awareness to mental and behavioral health issues in our urban communities.
Your characteristics/qualifications, which would be an asset to Committee, Board or Commission: I am trust-worthy, reliable, and self-motivated. I have coaching experience and am the chapter organizer of the National Women's Political Caucus - Richland County
Presently serve on any County Committee, Board or Commission? No
Any other information you wish to give?
Recommended by Council Member(s):
Hours willing to commit each month: 90 hours each month

CONFLICT OF INTEREST POLICY

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



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

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

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

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

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

**STATEMENT OF FINANCIAL OR PERSONAL INTERESTS**

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

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

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

*Paulina Rucke*  
Applicant's Signature

January 17, 2020  
Date

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

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

**Applications are current for one year.**

<b>Staff Use Only</b>	
Date Received: <u>1-29-2020</u>	Received by: <u><i>[Signature]</i></u>
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved	<input type="checkbox"/> Denied <input type="checkbox"/> On file



**Agenda Briefing**

**Prepared by:** Ashiya Myers, Assistant to the County Administrator  
**Department:** Administration  
**Date Prepared:** September 11, 2020      **Meeting Date:** September 15, 2020  
**Approved for consideration:** County Administrator      Leonardo Brown, MBA, CPM  
**Subject:** Safe Voting Plan 2020

**Recommended Action:**

Richland County Voter Registration & Elections recommends approval of the Safe Voting Plan 2020 Grant Agreement.

**Motion Requested:**

1. Move to accept the grant agreement; or
2. Move to deny the grant agreement.

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

There is no financial obligation from Richland County. The grant is in the amount of \$730,000.

**Motion of Origin:**

There is no associated Council motion of origin. Staff has moved this recommendation forward at the request of Voter Registration & Elections.

Council Member	
Meeting	
Date	

### Discussion:

The Richland County Office of Voter Registration & Elections has received a grant opportunity from the Center of Technology and Civic Life (CTCL), a non-profit entity, in the amount of \$730,000. The proposed grant funds are intended to assist in the “planning and operationalizing safe and secure election administration in Richland County...”

CTCL is a nonprofit that “connects election officials with tools and training.” Key donors include Google, Facebook, the Center for Democracy & Technology, and other notable organizations. Their efforts have impacted over 8,000 elections office and jurisdictions, including Charleston County. Charleston County has recently been granted funds and received approval from their County Council on Tuesday, September 08, 2020.

Though the Richland County Office of Voter Registration & Elections is a state appointed office, per the Attorney General, the South Carolina Election Commission is not authorized by state or federal law to serve as a pass-through entity for grants to county boards. Additionally, the Richland County Board of Voter Registration has written a letter of support to the CTCL for their potential efforts.

Richland County Office of Voter Registration & Elections has prepared a preliminary budget which includes absentee ballot processing equipment, secure drop boxes, and advertisement to promote absentee voting. Approval of the grant funding will assist in their efforts to execute a successful general election.

### Attachments:

1. Correspondence from the South Carolina Election Commission
2. Attorney General’s Opinion
3. Correspondence from Eric K Graben & Matthew W. Couvillion, Wyche, P.A.
4. Correspondence from the Richland County Board of Voter Registration
5. Correspondence from the CTCL
6. Grant Agreement
7. List of Donors
8. Post & Courier News Article – “Charleston gets nearly \$700,000 grant to pay poll workers more amid coronavirus pandemic”
9. Proposed Motion

**From:** [LEONARDO BROWN](#)  
**To:** [ASHIYA MYERS](#)  
**Subject:** FW: [External] FW: Grant Opportunity  
**Date:** Friday, September 11, 2020 9:56:02 AM

---

**LEONARDO BROWN, MBA, CPM**

County Administrator  
Richland County Government  
County Administration Office  
[brown.leonardo@richlandcountysc.gov](mailto:brown.leonardo@richlandcountysc.gov)

P 803-576-2054 O 803-576-2059

2020 Hampton St.  
Columbia, SC 29204  
[www.richlandcountysc.gov](http://www.richlandcountysc.gov)

***“Striving for Excellence”***

***Confidential and Privileged:***

*Unless otherwise indicated or obvious from the nature of the communication, the information contained herein may be privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmittal is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.*

*If you have received this communication in error or are not sure whether it is privileged, please immediately notify me by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication.*

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**From:** ALEXANDRIA STEPHENS <STEPHENS.ALEXANDRIA@richlandcountysc.gov>  
**Sent:** Wednesday, September 9, 2020 10:28 PM  
**To:** LEONARDO BROWN <BROWN.LEONARDO@richlandcountysc.gov>  
**Subject:** Fwd: [External] FW: Grant Opportunity

Mr. Brown,

Please see the attachment I received from the SEC. Hopefully this will prove some insight.

Please let me know if you need any additional information.

Thanks,  
Alexandria

Begin forwarded message:

**From:** "Whitmire, Chris" <[cwhitmi@elections.sc.gov](mailto:cwhitmi@elections.sc.gov)>  
**Date:** September 9, 2020 at 5:38:00 PM EDT  
**To:** ALEXANDRIA STEPHENS <[STEPHENS.ALEXANDRIA@richlandcountysc.gov](mailto:STEPHENS.ALEXANDRIA@richlandcountysc.gov)>  
**Cc:** "Mozingo, Grace" <[gmozingo@elections.sc.gov](mailto:gmozingo@elections.sc.gov)>, "Brant, Harrison" <[hbrant@elections.sc.gov](mailto:hbrant@elections.sc.gov)>  
**Subject: Re: [External] FW: Grant Opportunity**

Alexandria,

This AG Opinion may be of some help:

<http://2hsvz0l74ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2017/12/Suleman-R.-OS-10206-FINAL-Opinion-12-18-2017-01550733xD2C78.pdf-01552514xD2C78.pdf>

While we have received federal grant funds in the past and spent some of those funds on county-level initiatives, we are not currently authorized by state or federal law To serve as a pass-through entity for any grants to county boards.

Thank you,

Chris

Sent from my iPhone

On Sep 9, 2020, at 3:47 PM, ALEXANDRIA STEPHENS <[STEPHENS.ALEXANDRIA@richlandcountysc.gov](mailto:STEPHENS.ALEXANDRIA@richlandcountysc.gov)> wrote:

Good afternoon,

I am just checking to see if there any updates on the request below.

Thanks,  
Alexandria

---

**From:** ALEXANDRIA STEPHENS  
**Sent:** Tuesday, September 8, 2020 5:25 PM  
**To:** 'Whitmire, Chris' <[cwhitmi@elections.sc.gov](mailto:cwhitmi@elections.sc.gov)>  
**Cc:** 'Mozingo, Grace' <[gmozingo@elections.sc.gov](mailto:gmozingo@elections.sc.gov)>  
**Subject:** FW: Grant Opportunity

Hi Chris,

When we spoke last week, I mentioned that you did not have to respond

to the email below because my questions were verbally answered. However, if you could, please respond to my original email explaining that we are not part of the SEC. I need something in writing from the SEC to present to them.

If possible, I would greatly appreciate it if you could get this to me by tomorrow so my items can be placed on the agenda for next week's Council meeting. I apologize for the short notice but I was just informed today.

Thank you,

**Alexandria Stephens**

Director - Voter Registration & Elections

Richland County Government

[stephens.alexandria@richlandcountysc.gov](mailto:stephens.alexandria@richlandcountysc.gov)

P: (803) 576-2201 F: (803)576-2205

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**From:** ALEXANDRIA STEPHENS

**Sent:** Thursday, September 3, 2020 7:18 PM

**To:** 'Whitmire, Chris' <[cwhitmi@elections.sc.gov](mailto:cwhitmi@elections.sc.gov)>

**Subject:** Grant Opportunity

Chris,

A nonprofit organization reached out to me advising me of a grant opportunity for local election boards to assist with the cost of 2020 elections. After speaking with the County Council about this, their question was if we are a "State" office, can the SEC be used as a pass through for the funds instead of the County since we are technically not part of Richland County Government.

As I understand it, we are not a state or county office, but we are funded by the County. I am still not really clear on this.

My question to you is, would this even be an option since we are not a state office? At least to my knowledge we are not. If I am incorrect, please let me know.

If I need to redirect these questions, please let me know.

Thank you,

**Alexandria Stephens**

Director - Voter Registration & Elections

Richland County Government

[stephens.alexandria@richlandcountysc.gov](mailto:stephens.alexandria@richlandcountysc.gov)

P: (803) 576-2201 F: (803)576-2205

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ALAN WILSON  
ATTORNEY GENERAL

December 18, 2017

Rokey W. Suleman, II  
Director  
Richland County Board of Voter Registration and Elections  
P.O. Box 192  
Columbia, SC 29202

Dear Mr. Suleman:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following questions:

Under South Carolina law, is a county board of voter registration and elections a board or agency of the respective county or a board or agency of the State?

Is a county responsible for providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services? If not, what entity is responsible for providing such services?

Is a county responsible for paying settlement and judgment amounts that are the result of litigation brought against the board? If not, what entity is responsible for paying such settlement and/or judgment amounts?

Does a county have the authority to prevent a county board of voter registration and elections from paying legal fees and settlements out of the board's own budget by passing an ordinance or resolution which prohibits funds already appropriated by the county from being used for such purposes?

### Law/Analysis

- I. **Under South Carolina law, is a county board of voter registration and elections a board or agency of the respective county or a board or agency of the State?**

This Office has consistently held that county board of voter registration and elections as well as their predecessor bodies are county agencies. This Office's November 21, 1975 opinion



addressed to the Secretary for the Commissioners of Election for Charleston County, Joseph S. Mendelsohn, examined how the Home Rule Act impacted the commission's appointments and functions as follows:

It is my opinion that the Act will effect no change in the functioning or structure of that body. Section 14-3714 provides, in part, that the county council will not have any new appointive powers with regard to existing commissions and boards whose members are appointed pursuant to general law, as is the case with county election commissions throughout the State. See, 54 STAT. Act No. 971, Part I, Art. 1, subdivision 10 at 2343 (1966); 55 STAT. Act No. 336 at 3120 (1968). Moreover, Section 3 of the Act provides, in part, that all agencies and offices of county government and laws related thereto are to remain in full force and effect until at least January 1, 1980, unless theretofore repealed by the General Assembly. After that date, the county council is empowered to enact ordinances which may supersede special laws relating to that county.

1975 S.C. Op. Att'y Gen. 246 (1975); see also Ops. S.C. Atty. Gen., 1989 WL 406131 (April 6, 1989) (county election commissions have authority to hire and fire clerks and other employees of the commission as "county employees" and the commissions are appointed by an authority "outside county government" under S.C. Code Ann. § 4-9-30(7)); 1998 WL 196482 (March 16, 1998) ("It follows that county boards of registration and election, as the units responsible for the conduct of the election process in the county, are county offices.")<sup>1</sup>; 2010 WL 3048334 (July 1, 2010) (Richland County Board of Voter Registration employees are "county employees"); 2011 WL 5304074 (October 21, 2011) ("[A] county veteran's affairs officer is [a] county officer serving at the pleasure of the county delegations."). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. Ops. S.C. Atty. Gen., 2017 WL 5203263 (October 31, 2017); 2017 WL 3438532 (July 27, 2017); 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Some statutes which these opinions relied upon have since been amended or repealed. Therefore, we will provide a summary of relevant legislative actions and court decisions to determine whether to reaffirm or modify these prior opinions.

Based on our review of the following legislation and court decisions, this Office reaffirms our prior opinions and finds that county boards of voter registration and elections are county agencies. In 2008, the General Assembly ratified Act No. 312 which added Chapter 27 to Title 7 of the South Carolina Code of Laws with the following stated purpose in its title:

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<sup>1</sup> This Office's March 18, 1998 opinion regarding the McCormick County Board of Election and Registration ends with the following disclaimer, "This letter is an informal opinion only.... It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion." Following his election as Attorney General, Henry McMaster deemed this opinion and all prior opinions which had been published but designated as "informal" to be formal opinions of this Office.

TO CODIFY THE PROVISIONS OF LAW THAT CREATED AND COMBINED VARIOUS COUNTY BOARDS OF REGISTRATION AND ELECTION COMMISSIONS INTO A SINGLE ENTITY, TO PROVIDE THAT THOSE COUNTIES THAT DO NOT HAVE COMBINED BOARDS OF REGISTRATION AND ELECTION COMMISSIONS MUST HAVE THEIR SEPARATE BOARDS AND COMMISSIONS APPOINTED PURSUANT TO THE PROVISIONS OF SECTIONS 7-5-10 AND 7-13-70.

2008 Act No. 312. In Section 7-27-130, the Act clarified that Chapter 27 was not intended to alter prior statutory authority for the county boards.

The codification of the county boards of registration and election commissions as provided in Article 2 of this chapter does not create new statutory authority, but is a continuation of acts passed by the General Assembly to combine the election and registration functions in order to provide a unified commission for the traditional state functions of conducting elections and registering electors by county.

S.C. Code Ann. § 7-27-130 (Supp. 2009) (emphasis added). Section 2 of the Act provided that Richland County continued to have separate boards and commissioners as follows, “the Richland County Election Commission and the Richland County Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7-5-10 and 7-13-70.” 2008 Act No. 312, § 2.

Subsequently, in 2011, the General Assembly passed Act No. 17 which combined the Richland County Election Commission and the Richland County Board of Registration. The combined boards were reformed as the Board of Elections and Voter Registration of Richland County. 2011 Act No. 17, § 1. However, in S.C. Pub. Interest Found. v. Courson, 2012-CP-40-7790 (S.C. Com. Pl. Aug. 26, 2013), the Act’s constitutionality was challenged as a violation of both the prohibition on special legislation, S.C. Const. art. III, § 34, and the prohibition on single county acts, S.C. Const. art. VIII, § 7. The Court found that “Act 17 of 2011 violates Article VII[I], § 7 of the Constitution: ‘No laws for a specific county shall be enacted.’” Further, the Court found that the General Assembly had offered no “logical or sound reason” for the Act’s creation of “local or special legislation.” Therefore, the Court held that “Act 17 constitutes an unconstitutional local or special law, where a general law was already applicable. It creates special exception for Richland County, and it thereby violates S.C. Constitution Article III, § 34.”

Following the ruling in Courson, the General Assembly passed 2014 Act No. 196 to cure the issues identified by the Court. In relevant part, the Act is titled:

AN ACT TO AMEND SECTION 7-3-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SELECTION AND DUTIES OF THE EXECUTIVE DIRECTOR OF THE STATE ELECTION COMMISSION, SO AS TO REQUIRE THE EXECUTIVE DIRECTOR OF THE STATE ELECTION COMMISSION TO SUPERVISE, REVIEW, AND AUDIT THE CONDUCT AND PERFORMANCE OF THE COUNTY BOARDS OF VOTER REGISTRATION AND ELECTIONS; BY ADDING SECTION 7-3-25 SO AS TO PROVIDE REMEDIAL PROCEDURES WHEN THE STATE ELECTION COMMISSION DETERMINES THAT A COUNTY BOARD OF VOTER REGISTRATION AND ELECTIONS HAS FAILED TO COMPLY WITH APPLICABLE STATE OR FEDERAL LAW; TO AMEND SECTION 7-5-10, AS AMENDED, RELATING TO THE APPOINTMENT AND REMOVAL OF MEMBERS OF COUNTY BOARDS OF REGISTRATION, SO AS TO ESTABLISH COUNTY BOARDS OF VOTER REGISTRATION AND ELECTIONS AND TO PROVIDE FOR THEIR COMPOSITION, TERMS, AND DUTIES; ... TO REPEAL SECTION 7-5-35 RELATING TO COMBINED COUNTY ELECTION AND REGISTRATION COMMISSIONS, SECTION 7-13-70 RELATING TO THE APPOINTMENT, REMOVAL, AND TRAINING OF COUNTY ELECTION COMMISSIONERS, AND CHAPTER 27, TITLE 7 RELATING TO COUNTY BOARDS OF REGISTRATION AND ELECTION COMMISSIONS...

2014 Act No. 196. While the Act repealed Chapter 27 of Title 7, it also created the replacement bodies for the county boards of registration, election commissions, and combined boards in the form of the county boards of voter registration and elections in Section 7-5-10(A). 2014 Act No. 196, § 2. The Act explicitly stated that the powers and duties of the county boards of registration, election commission, and combined boards “devolved upon” the county boards of voter registration and elections in Section 7-5-10(C) as follows:

The previous offices of county election commissions, voter registration boards, or combined boards are abolished. The powers and duties of the county election commissions, voter registration boards, or combined boards are devolved upon the board of voter registration and elections for each county created in subsection (A). Those members currently serving on the county election commissions, voter registration boards, or combined boards shall continue to serve in a combined governing capacity until at least five members of the successor board members established under this section are appointed and qualify.

2014 Act No. 196, §3 (emphasis added).

The acts discussed above do not include a statement of legislative intent, either express or implied, to fundamentally transform the county boards into state boards. In fact, 2008 Act No. 312 expressly states it was meant to be “a continuation of acts passed by the General Assembly”

rather than “creat[ing] new statutory authority.” While 2011 Act No. 17 combined the two bodies, there is no evidence of legislative intent to create the combined board as a state agency. Finally, 2014 Act No. 196 devolved the powers and duties of the prior bodies on the board of voter registration and elections for each county. Although the boards of voter registration and elections are supervised by the Executive Director of the State Election Commission, the board members are appointed and removed by the Governor upon the recommendation of the legislative delegation of the counties. See S.C. Code Ann. § 7-5-10 (Supp. 2016). The board members are selected from the “qualified electors of that county” in which they would serve. Id. Ultimately, while the acts discussed above have abolished the county election commissions and voter registration boards and granted the State Election Commission a supervisory role over the replacement county boards of voter registration and elections, there is no statement of legislative intent that the new county boards were created as state agencies rather than county agencies.

This Office’s prior opinions have addressed why the former county election commissions and county boards of registration and election were considered “county offices” even though their respective commissions and members are not appointed nor supervised by county government.

Section 4–9–30(7) provides that county council is authorized

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. (emphasis added).

Section 7–13–70 expressly provides that commissioners of election are appointed by the Governor upon the recommendation of the Senator and at least half of the members of the House of Representative from the county. Since the appointing authority for county election commissioners is by an authority “outside county government”, by Section 4–9–30(7) the General Assembly has mandated that county council possesses no authority in this area, although county election commissioners have been determined in prior opinions of this Office to be county officers.

Op. S.C. Atty. Gen., 1989 WL 406131 (April 6, 1989); see also Op. S.C. Atty. Gen., 1991 WL 633035 (August 8, 1991) (opining magistrates court personnel are “county employees” according to S.C. Code Ann. §4-9-30(7) as personnel “under the direction of... an official appointed by an

authority outside county government.”). Further, this Office’s March 16, 1998 opinion explained as follows:

As an initial matter, County Boards of Registration and Election are responsible for, among other things, the registration of electors who apply for registration in the county and the carrying out of the election in the county. S.C. Code Ann. § 7-5-30; § 7-13-70. This Office has previously concluded that county election commissioners are county officers, despite the fact that they are appointed by an authority “outside county government.” Op. Atty. Gen. dated April 6, 1989. It follows that county boards of registration and election, as the units responsible for the conduct of the election process in the county, are county offices. The fact that the county government does not have the power to appoint members of the board does not change their identity as county offices.

Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). As discussed above, some of the statutes referred to in these prior opinions have been amended or repealed. However, the previous bodies’ powers and duties were “devolved upon the board of voter registration and elections for each county.” S.C. Code Ann. 7-5-10(C) (Supp. 2016). Further, those duties which are explicitly stated are limited to providing services to those “electors who apply for registration in the county” and “qualified electors of their respective county.” S.C. Code Ann. 7-5-30. Clearly, the jurisdictional limits as well as the population which these bodies serve are not statewide, but rather continue on a countywide basis.

As discussed in the opinions quoted above, while board of voter registration and elections for each county are not created or appointed by a county governing body, this does not prevent such board members from being regarded as county officers. S.C. Code Ann. § 4-9-30(7) charges county governing bodies with “develop[ing] personnel system policies and procedures for county employees... and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government.” However, this statute also expressly forbids county governing bodies from exercising “[t]his employment and discharge authority [over]... personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.” Id. (emphasis added). Therefore, Section 4-9-30(7) provides that there are county agencies under the direction of officials who are appointed by an authority outside of county government. It is this Office’s opinion that a court likely would find the board of voter registration and elections for each county to be county agencies whose board members are appointed by an authority outside county government.

- II. Is a county responsible for providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services? If not, what entity is responsible for providing such services?**

It is this Office's opinion that the governing body of a county is responsible for either providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services. This Office's March 16, 1998 opinion to McCormick County Attorney, G.P. Callison, Jr., squarely addressed this issue. Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). Mr. Callison asked "whether McCormick County is responsible for providing legal advice to or paying for the legal representation of the McCormick County Board of Election and Registration." Id. As discussed above, the opinion reaffirmed this Office's prior opinions which found that such bodies are county offices.

The Board of Election and Registration of McCormick County was created by Act No. 178 of 1995. This Act provides that there are five members of the board who must be appointed upon recommendation of a majority of the McCormick County Legislative Delegation, including the Senator. Section 1(A). The Act further provides that the board shall receive an annual appropriation from the governing body of McCormick County in an amount not less than that received for the operation of both the commissioners of election and board of registration for fiscal year 1994-1995. Section 1(E).

...

[S]ince the Board of Election and Registration is a county office, McCormick County would have the same responsibility in providing legal advice or paying for legal representation for the Board as it would for any other county agency or office. In many counties, the county attorney by county ordinance or contract, represents county governmental agencies in civil matters. Since I do not know the exact duties of the McCormick County Attorney, I am unable to state whether such is the case in McCormick County. If such is the case, then the county attorney would represent the Board of Election and Registration as it would any other county agency. If the county attorney is not authorized to represent county governmental agencies such as the Board, Act No. 178, Section 1(E) provides that the McCormick County governing body shall provide appropriations for the operation of the Board. The operation of the Board would naturally include the need for legal representation for legal conflicts arising out the Board's duties. Therefore, such legal expenses would fall within the scope of appropriations by the county governing body for the operation of the Board. Accordingly, whether done so by the county attorney or otherwise, McCormick County would be responsible for providing for legal representation of the Board, as it would any county agency or office.

Id. As discussed above, it is this Office's opinion that a court likely would find the board of voter registration and elections for each county to be county agencies and would likewise find their members to be county officers. Therefore, the above opinion would be equally applicable

to these county boards, unless there has been a change in law which compels a different conclusion.

As discussed more fully above, there have been a number of relevant changes to the South Carolina Code of Laws. However, these changes do not contain a statement of legislative intent, either express or implied, that would transfer the “responsib[ility] for providing for legal representation of the Board” from a county’s governing body. *Id.* Like Act No. 178 of 1995 which established an annual appropriation amount for the McCormick County Board of Election and Registration, the Board of Elections and Voter Registration of Richland County was also provide a minimum annual appropriation in 2011 Act No. 17, § 1. The act codified Section 7-27-405(H) which provided, “The annual budget for the Board of Elections and Voter Registration of Richland County may not be less than the average of the two annual budgets for the Charleston County and Greenville County Boards of Election and Voter Registration for the prior fiscal year.” However, following the decision in *Courson*, 2014 Act No. 196 repealed Chapter 27 of Title 7 in its entirety. As a result of repealing Chapter 27, the appropriation amounts provided for each county’s respective election commissions, voter registration boards, or combined boards, including Section 7-27-405(H), were removed from the South Carolina Code of Laws.

While we have been unable to locate a replacement provision in the South Carolina Code of Laws which provides for annual appropriations to the county boards of voter registration and elections, we do not interpret this to mean that a county governing body no longer appropriates funding for such bodies.<sup>2</sup> If the General Assembly intended for the State to assume such responsibility, or to otherwise assign responsibility to another political subdivision, it is this Office’s opinion that it would have done so expressly. In fact, the title and text of Section 7-5-40 implies that expenses related to registration are incurred by the counties.

Each county shall receive an annual supplement from the State to help defray the expenses of personnel in keeping the registration office open as required in § 7-5-130. Counties with populations from twenty-five thousand to one hundred

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<sup>2</sup> The South Carolina Supreme Court has held that a county must “pay reasonable compensation” from county funds for offices created by the General Assembly even when a pay scale had not been established by statute. In *Kramer v. Cty. Council for Dorchester Cty.*, 277 S.C. 71, 282 S.E.2d 850 (1981), the Court held:

It is certainly competent for the General Assembly to mandate county funding of county agencies, as in Section 4-1-80, Code. Likewise the General Assembly has the authority to direct counties to support with county funds the courts of the unified system.

...

We therefore hold that Dorchester County shall determine and pay reasonable compensation to the respondent from the general funds of the County until such reasonable time as the General Assembly shall enact a uniform pay scale for masters-in-equity in South Carolina.

277 S.C. 71, 74-76, 282 S.E.2d 850, 852-53. See also *Op. S.C. Atty. Gen.*, No. 85-15, 1985 WL 165986 (February 22, 1985) (“Aiken County cannot refuse to provide compensation for the individual who holds a magisterial office in Aiken County which has been established by the General Assembly.”).

thousand shall receive twice the amount of such supplement; counties with populations from one hundred thousand one to two hundred thousand shall receive three times the amount of the supplement; counties with over two hundred thousand shall receive four times the amount of the supplement. Such supplements shall be in such amounts as provided for in the annual general appropriations act of the State.

S.C. Code Ann. § 7-5-40 (Supp. 2016) (emphasis added). The express language used to describe the purpose of the State's annual supplement is to "defray the expenses" of each county. Black's Law Dictionary defines "defray" to mean "to reduce (expenses that someone else has incurred) by contributing money." DEFRAID, Black's Law Dictionary (10th ed. 2014). The statutory language indicates that counties incur the expenses of providing these registration services and the State annually appropriates a supplement to each county to assist with these operations based upon the population of the county. Because the South Carolina Code of Laws maintains that counties are responsible for the expenses of keeping registration offices open, it is this Office's opinion that each county governing body is responsible for the expenses of its respective county board of voter registration and elections. As our March 16, 1998 opinion stated, these expenses "naturally include the need for legal representation for legal conflicts arising out the Board's duties." Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). Therefore, it is this Office's opinion that the governing body of a county is responsible for either providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services.

**III. Is a county responsible for paying settlement and judgment amounts that are the result of litigation brought against the board? If not, what entity is responsible for paying such settlement and/or judgment amounts?**

It is this Office's opinion that the governing body of a county is responsible for appropriating sufficient funds to allow a county board of voter registration and elections to pay settlement and judgment amounts which arise out of the board's duties. As discussed in the response to question two, each county governing body is responsible for the expenses of its respective county board of voter registration and elections. Just as those expenses "naturally include the need for legal representation for legal conflicts arising out the Board's duties," so too would the payment of settlement and judgment amounts that result from such representation "fall within the scope of appropriations by the county governing body for the operation of the Board." Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998).



**IV. Does a county have the authority to prevent a county board of voter registration and elections from paying legal fees and settlements out of the board's own budget by passing an ordinance or resolution which prohibits funds already appropriated by the county from being used for such purposes?**

Whether a county has the authority to adopt an ordinance or resolution which prevents a county board of voter registration and elections from paying legal fees, settlements, and judgements out of county funds appropriated to such a board is addressed under a two-step analysis established by the South Carolina Supreme Court in Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008). This Office's March 14, 2017 opinion discusses the deference afforded county governments in adopting an ordinance and when such an ordinance will be found invalid as follows:

Initially, we note that the courts have consistently recognized the basic principle that a local ordinance, just like a state statute, is presumed to be valid as enacted unless or until a court declares it to be invalid. See McMaster v. Columbia Bd. of Zoning Appeals, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) ("A municipal ordinance is a legislative enactment and is presumed to be constitutional."), citing Town of Scranton v. Willoughby, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991); Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984); Op. S.C. Atty. Gen., 2003 WL 21471503 (June 4, 2003). An ordinance will not be declared invalid unless it is clearly inconsistent with general state law. Hospitality Ass'n of S.C. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). Only the courts, and not this Office, possess the authority to declare such an ordinance invalid. Therefore, [an ordinance will] be presumed valid and must be followed until a court sets it aside or subsequent legislative action revokes or amends its application.

In Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008), the Supreme Court of South Carolina described the two-step process to determine whether a local ordinance is valid. "First, the Court must consider whether the [county] had the power to enact the ordinance. ... [Second], if the [county] had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general law of the State." Id. at 361. The Constitution of South Carolina "mandates that the legislature provide by general law the powers, duties, and functions of counties and municipalities. S.C. Const. art. VIII, §§ 7 and 9." Joytime Distributors & Amusement Co. v. State, 338 S.C. 634, 647, 528 S.E.2d 647, 654 (1999). The General Assembly has provided such power to enact local legislation as follows:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25 (emphasis added).

Op. S.C. Atty. Gen., 2017 WL 1095386, at \*1–2 (March 14, 2017).

The request letter notes that the Richland County Council added Section 1-16 to the Richland County Code by ordinance. Section 1-16 reads as follows:

Notwithstanding any other ordinance, Richland County shall not pay the legal fees incurred by any board, committee, commission or similar entity that is not created by County ordinance or whose members are not appointed by the Richland County Council. Further, Richland County shall not pay any legal judgments ordered against, or any settlement amounts proposed by or on behalf of any board, committee, commission or similar entity that is not created by County ordinance or whose members are not appointed by the Richland County Council. This ordinance only applies to boards, committees, commissions or similar entities, and does not apply to offices under the direction of County elected officials or offices under the direction of officials appointed by the Richland County Council or the Richland County Administrator.

As discussed in our response to question one, this Office has consistently held that the board of voter registration and elections for each county and their predecessor bodies are county agencies whose members are “appointed by an authority outside county government” as described in S.C. Code Ann. § 4-9-30(7). Therefore, Richland County Code Section 1-16 would apply to the Richland County Board of Voter Registration and Elections, as well as a number of other similarly appointed county entities. Again, S.C. Code Ann. § 7-5-40 states that the State annually appropriates a supplement to “defray the expenses” each county incurs to “keep[] the registration office open.” As discussed above, it is this Office’s opinion that the governing body of a county is responsible for either providing legal services its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board

of voter registration and elections to obtain legal services, as well as appropriating sufficient funds to allow a county board of voter registration and elections to pay settlement and judgment amounts which arise out of the board's duties. Plainly, an ordinance, such as Section 1-16, which purports to prohibit a county governing body from providing such appropriations would be inconsistent with Office's interpretation of the general law of the State. Therefore, it is this Office's opinion that a court would find a county does not have the authority to adopt an ordinance or resolution which prevents a county board of voter registration and elections from paying legal fees, settlements, and judgements out of county funds appropriated to such a board as such an ordinance would be inconsistent with the general law of the State. Foothills Brewing Concern, *supra*. Even so, Section 1-16 is presumed to be valid unless or until a court declares it to be invalid.

### **Conclusion**

It is this Office's opinion that a court likely would find the board of voter registration and elections for each county to be county agencies whose board members are appointed by an authority outside county government according to S.C. Code Ann. § 4-9-30(7). S.C. Code Ann. § 7-5-40 states that the State annually appropriates a supplement to "defray the expenses" each county incurs to "keep[] the registration office open." As this Office's March 16, 1998 opinion stated, these expenses "naturally include the need for legal representation for legal conflicts arising out the Board's duties." Op. S.C. Atty. Gen., 1998 WL 196482 (March 16, 1998). Therefore, it is this Office's opinion that the governing body of a county is responsible for either providing legal services for its respective county board of voter registration and elections, or for otherwise appropriating sufficient funds to allow a county board of voter registration and elections to obtain legal services, as well as appropriating funds for the payment of settlement and judgment amounts that result from such representation. It is this Office's opinion that a court would find a county does not have the authority to adopt an ordinance or resolution which prevents a county board of voter registration and elections from paying legal fees, settlements, and judgements out of county funds appropriated to such a board as such an ordinance would be "[in]consistent with the general law of the State." Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008).

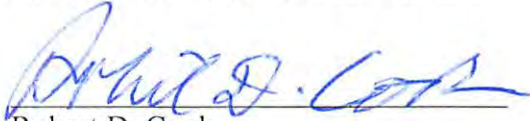
Sincerely,



Matthew Houck  
Assistant Attorney General

Rokey W. Suleman, II  
Page 13  
December 18, 2017

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook  
Solicitor General

## CONFIDENTIAL MEMORANDUM

To: Interested Parties

From: Eric K Graben & Matthew W. Couvillion, Wyche, P.A.

Date: September 1, 2020

Subject: Grants by a Section 501(c)(3) Organization to South Carolina Local Governments

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A section 501(c)(3) organization is considering making grants to South Carolina local government units. The purpose of the grants would be to provide financial support for the local government units to acquire equipment, staff and training that then facilitates voter registration and voting in elections. The local government units would receive a cash grant. The local government units would then own and control all of the equipment, staff and training that they would acquire with the grants funds and use such resources to help administer an efficient, accurate, and secure voting process.

### **Federal income tax rules permit grants by Section 501(c)(3)s to local governments**

Section 501(c)(3) organizations are generally permitted to make grants to governmental units under applicable federal income tax law, as long as the grants are for an exempt purpose of the exempt organization.<sup>1</sup>

A section 501(c)(3) entity must be organized and operated for specific exempt purposes. Applicable Treasury Regulations specifically provide that a section 501(c)(3) organization's assets are considered dedicated to an exempt purpose under the organizational test if upon dissolution they would be distributed to a state or local government for a public purpose.<sup>2</sup> Ongoing operational grants to state and local governments are also generally permitted. Treasury Regulations applicable to section 501(c)(3) private foundations, which are subject to greater restrictions than section 501(c)(3) public charities, specifically permit grants to government units and treat them similarly to grants to other section 501(c)(3) public charities.<sup>3</sup> Under these rules, most grants to governmental units qualify as being for charitable, as well as public, purposes.<sup>4</sup> In limited circumstances, exceptions apply to grants made for personal reasons or that do not benefit the public.<sup>5</sup>

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<sup>1</sup> Rev. Rul. 62-78, 1962-1 C.B. 86 (Organizations exempt from Federal income tax under section 501 as described in section 501(c)(3) of the Internal Revenue Code of 1954 may make distributions of income or other unrestricted funds to a state or municipality, or to an activity which is an integral part thereof, without jeopardizing their exempt status, provided such distributions are in furtherance of the exempt purposes of the donor organization).

<sup>2</sup> Treas. Reg. § 1.501(c)(3)-1(b)(4).

<sup>3</sup> Treas. Reg. § 53.4945-5(a)(6)(ii) (providing that expenditure responsibility, a review and reporting regime that is generally required for private foundation grants to entities that are not Section 501(c)(3) public charities, is not required for grants to government units, as long as the contribution is made for exclusively public purposes); Treas. Reg. § 53.4942(a)-3(a)(2)(i) (providing that distributions to government units for public purposes are generally qualifying distributions).

<sup>4</sup> Rev. Rul. 2007-41, 2007-25 I.R.B. (Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.) See also, IRS 1990 EO CPE Text, E. Instrumentalities, available at <https://www.irs.gov/pub/irs-tege/eotopice90.pdf>. See e.g. Rev. Rul. 67-446, 1967-2 CB 119 (contributions to a city to be used to provide railroads with substitute facilities outside the city are for a public purpose); Rev. Rul. 69-90, 1969-1 C.B. 63 (contributions to a city to provide a public parking lot are for a public purpose); Rev. Rul. 79-323, 1979-2 CB 106 (contributions to a commission established by a state legislature to promote economic development are for a public purpose); Rev. Rul. 81-307, 1981-2 CB 78 (contribution of reward money by a parent of a murdered individual to the police for information leading to the conviction of the murderer is for a public purpose); Rev. Rul. 81-219, 1981-2 CB 77 (contributions to fund formed solely to acquire portrait of judge for display in courthouse of political subdivision is for a public purpose).

<sup>5</sup> Nunzio Lombardo, TC Memo 1985-552 (Charitable deduction denied for donation of money and property to local school because the donation was pursuant to plea bargain agreement and was primarily motivated by desire to avoid jail on drug sales conviction).



## South Carolina law does not prohibit Section 501(c)(3) grants to local governments

South Carolina state law generally does not prohibit or restrict a section 501(c)(3) organization from making grants to support local government units.<sup>6</sup> Instead, such grants are regularly made in South Carolina to support local government units.

There are numerous section 501(c)(3) organizations in South Carolina that are formed primarily or exclusively to support local government units or instrumentalities, including, but not limited to, schools, libraries, zoos, universities, and parks.<sup>7</sup> Other section 501(c)(3) organizations provide one-time grants in support of a specific local government activity.<sup>8</sup> Accordingly, South Carolina state law would not prohibit grants to local governments to support modern, efficient, accurate, and secure voter registration and voting equipment and facilities.

As the recipient of such grant funds, a local government unit should consider how and where such funds are received. Factors such as how the funds will be controlled or whether use of the grant will trigger certain approvals should all be considered in advance. Local government officials in individual jurisdictions could independently choose to decline grants on behalf of their localities for political reasons, personal reasons, or as a matter of local public policy.

### Conclusion

In sum:

- Federal income tax law permits section 501(c)(3) organizations to make grants to local government units for a public purpose; and,
- South Carolina state law does not prohibit section 501(c)(3) organizations from making grants to government units.

Please let us know if you have further questions or need any additional information.

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<sup>6</sup> SC Code § 33-31-302 provides that unless its articles of incorporation provide otherwise, every South Carolina non-profit corporation has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation power [(1) through (12) omitted] (13) to make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest. SC Code § 33-31-1406(a)(6) provides that upon dissolution if a non-profit corporation is a public benefit or religious corporation, and no provision has been made in its articles or bylaws for distributions of assets on dissolution, then in dissolution, it may transfer, subject to any contractual or legal requirement, its assets: (i) to one or more entities described in Section 501(c)(3) of the International Revenue Code, to the United States, to a state, or to a political subdivision of the United States or a state, for public purpose [remainder omitted]. SC Code § 33-31-1505(b) provides that a foreign corporation with a valid certificate of authority has the same, but no greater rights, and enjoys the same, but no greater privileges, as, and as except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character. Note that not all state law non-profit corporations are per se 501(c)(3) corporations – they must still satisfy the requirements of 501(c)(3).

<sup>7</sup> See e.g., Friends of the Greenville Zoo, Inc. (EIN: 57-0654589, makes grants to and otherwise supports The Greenville Zoo); Public Education Partners (EIN: 57-1030778, makes grants to and otherwise supports Aiken County's Public Schools); Riverbanks Society (EIN: 23-7278668, makes grants and otherwise supports The Richland – Lexington Riverbanks Park [the Columbia zoo]); Friends of the Charleston County Library (EIN: 57-0742388, makes grants to and otherwise supports Charleston County Library); The Medical University of South Carolina Foundation (EIN: 57-6028985, makes grants to and otherwise supports the Medical University of South Carolina).

<sup>8</sup> Common section 501(c)(3) grants to local government units in South Carolina include financial support for the purchase of playground and other park equipment, first responder staffing and equipment, and student retention programming for public schools.

**Board Members**  
Dr. Charles P. Austin, Sr. - Chair  
Dr. Duncan A. Buell - Vice Chair  
Anjanette D. President  
Yolanda Y. Taylor

# *Voter Registration & Elections of*



Attachment 4

**Alexandria Stephens**  
Director

## *Richland County, South Carolina*

Tiana Epps Johnson  
Executive Director  
Center for Tech and Civic Life

9/8/2020

Dear Executive Director Epps Johnson:

I am pleased to write this letter of support for the for the grant application that was submitted by Ms. Alexandria Stephens, Director of Voter Registration and Elections of Richland County.

The Richland County Voter Registration and Elections Commission enthusiastically support the application and we pledge to work with Director Stephens and staff to ensure compliance with the terms of the grant.

Please know that we sincerely appreciate the commitment of financial resources to assist Richland County with this momentous election cycle.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles P. Austin, Sr.", is written over a faint, larger version of the same signature.

Dr. Charles P. Austin, Sr  
Chair, Richland County  
Voter Registration & Elections Commission  
Cc:

- Richland County Council
- County Administrator Leonardo Brown
- Director Alexandria Stephens
- Richland County Voter Registration & Elections Commission



August 28, 2020

Richland County  
Elections and Voter Registration Board  
Richland County Administration Building  
2020 Hampton St.  
Columbia, SC 29204

To whom it may concern:

I am pleased to inform you that the Center for Tech and Civic Life (“CTCL”) has decided to award you a grant to support the work of Richland County.

The following is a description of the grant:

**AMOUNT OF GRANT:** Seven Hundred Thirty Thousand US dollars (USD \$730,000).

**PURPOSE:** The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration in Richland County in accordance with the attached Richland County Safe Voting Plan 2020

Before we transmit these funds, we ask that you sign this agreement promising to use the grant funds in compliance with United States tax laws. Specifically, by signing this letter you agree to the following:

- 1.Ã Richland County is a local government unit or political subdivision in the meaning of 26 USC 170(c)(1).



- 2.Ã This grant shall be used *only* for the public purpose described above, and for no other purposes.
- 3.Ã Richland County shall not use any part of this grant to give a grant to another organization unless CTCL agrees to the specific grant in writing.
- 4.Ã Richland County has produced a plan for safe and secure election administration in 2020, including an assessment of election administration needs, budget estimates for such assessment, and an assessment of the impact of the plan on voters. This plan is attached to this agreement. The County shall expend the amount of this grant for purposes contained in this plan by December 31, 2020.
- 5.Ã Richland County shall produce a report documenting how this grant has been expended in support of the activities described in paragraph 4. This report shall be written and sent to CTCL by January 31, 2021 or in any other format approved by CTCL.
- 6.Ã Richland County shall not reduce the budget of the Elections and Voter Registration Board of Richland County (“the Board”) or fail to appropriate or provide previously budgeted funds to the Board for the term of this grant. Any amount reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant.
- 7.Ã CTCL may discontinue, modify, withhold part of, or ask for the return all or part of the grant funds if it determines, in its sole judgment, that (a) any of the above conditions have not been met or (b) it must do so to comply with applicable laws or regulations.
- 8.Ã The grant project period of June 15, 2020 through December 31, 2020 represents the dates between which covered costs may be applied to the grant.

Your acceptance of these agreements should be indicated below. Please have an authorized representative of Richland County sign below, and return a scanned copy of this letter to us by email at [grants@techandcivicliflife.org](mailto:grants@techandcivicliflife.org)

On behalf of CTCL, I extend my best wishes in your work.

Sincerely,

Tiana Epps Johnson  
Executive Director  
Center for Tech and Civic Life



RICHLAND COUNTY

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**To: Center for Technology and Civic Life**  
**From: Alexandria Stephens, Director of Voter Registration and Elections, Richland County, SC**  
**Date: August 31, 2020**  
**Re: Richland County, SC Safe Voting Plan**

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## **Overview**

Richland County, SC has faced some challenges in the past, and wishes to efficiently and effectively execute the November 3, 2020 General Election.

Specifically, Richland County faced significant problems during its June primary, where enough poll workers were not available and there was a significant increase in absentee voting. The number of total registered voters to date is 269,904. Of the expected 189,000 voters, 60,000 are expected to vote by mail. This document offers an assessment of resources needed for Richland County to safely and thoroughly prepare for the General Election.

A preliminary budget overview estimate on top of what is already available to the County is as follows:

Absentee Ballot Processing Equipment	\$450,000
In-person Voting at Polling Places on Election Day	\$175,000
Secure Dropboxes	\$5,000
Advertising to Promote Absentee Voting	\$100,000
<b>Total</b>	<b>\$730,000</b>

## **Needs Assessment & Costs**

The following sections outline initial details of the operation and costs associated with each of the aforementioned categories.

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### **Absentee Ballot Processing Equipment and Outreach Materials**

For the November General Election, we anticipate absentee-by-mail turnout to be around 60,000. Automation will be critical to efficiently and accurately manage ballot envelopes and ballots in weeks leading up to Election Day and in the canvassing process afterwards. To that end, the following is needed:

- **Central Count 850 Machine:** The process of counting ballots is time consuming and diverts staff away from other activities that cannot be automated. A Central Count 850 Machine will enable the County to tabulate ballots a timely manner.

- **Inbound Mail Sorting Machine:** A sorting machine will assist in the processing of the influx of mailed in ballots.
- **Outreach Materials:** To promote absentee by mail voting ahead of the General Election, we would like to advertise the absentee and voter registration via social media, news outlets, radio and non-partisan community groups.

	<u>Total cost</u>	<u>Units</u>	<u>Unit costs</u>
Central Count 850 Machine	\$100,000	1	\$100,000
Inbound Mail Sorting Machine	\$350,000	1	\$350,000
Advertising to Promote Absentee Voting	\$100,000	1	\$100,000
<b>Total</b>	<b>\$550,000</b>		

### Secure Dropboxes

In the primary, we had two drop boxes installed. Installing an additional **10 secure dropboxes (a total of 12)** will help ensure that voters have some opportunity to return their ballots if it may be too late to send via USPS. The State Board of Elections has approved of this expenditure but we are unsure of the delivery date at this time. I have reached out to another vendor who has promised a delivery date of September 30, 2020.

	<u>Total cost</u>	<u>Units</u>	<u>Unit costs</u>
Dropboxes	\$5,000	10	\$500

### In-person Voting at Polling Places on Election Day

Richland County is committed to working to secure many fully-staffed polling places for the General Election.

In order to process as many voters as quickly as possible, thirty (30) additional voting machines would assist in increasing the number of voters able to be served at a time.

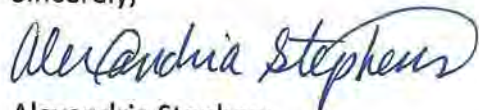
In addition, to support optimal social distancing inside polling places and facilitate higher than average traffic, we anticipate significant supply needs at polling places, such as traffic cones parking, masking tape, directional signage, extension cords, and clipboards.

	<u>Total cost</u>	<u>Units</u>	<u>Unit costs</u>
ES&S DS200 Voting Machines	\$150,000	30	\$5,000
Miscellaneous Polling Place Supplies	\$25,000		
<b>Total</b>	<b>\$175,000</b>		

**Conclusion**

The investments outlined above will allow Richland County to reduce the risk of exposure to coronavirus for voters, election staff and poll workers; identify best practices; innovate to efficiently and effectively educate our residents about how to exercise their right to vote; be intentional and strategic in reaching our residents and communities; and, above all, ensure the right to vote in a diversity of communities throughout the county. Thank you for the opportunity to submit this request.

Sincerely,



Alexandria Stephens  
 Director - Voter Registration & Elections  
 Richland County Government

## Key funders and partners – Center for Tech and Civic Life

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[techandcivicliflife.org/key-funders-and-partners](https://techandcivicliflife.org/key-funders-and-partners)

Key funders and partners

We believe our expertise is best put to work in collaboration with others. That's why our partners and funders are essential to helping us grow our reach and impact.

These are a few of the organizations who have supported our work over the years:

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**If you're interested in exploring partnership opportunities with us, please email [hello@techandciviclife.org](mailto:hello@techandciviclife.org).**

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Charleston County has secured a nearly \$700,000 national grant to purchase mail-in ballot equipment, open additional absentee voting sites and pay poll workers more in the hope of recruiting reliable Election Day help.

The grant comes from the Center For Tech and Civil Life, a Chicago-based voting advocacy group that is distributing more than \$250 million to local governments ahead of November’s elections.

The grant was approved Tuesday by Charleston County Council’s Special Finance Committee and has already been received.

Due to the COVID-19 pandemic gripping South Carolina, the Charleston County board of elections is anticipating around 200,000 ballots to be cast, with about half of those being done absentee or by mail-in voting.

Uses for the \$695,000 grant include:

- \$450,000 for equipment to process ballots and applications.
- \$100,000 to spend on advertisements in local newspapers and billboards to promote mail-in voting.
- \$25,000 to spend on polling place rental for a fourth satellite location for absentee voting.
- \$120,000 to spend on recruiting more poll workers, including paying them \$100 more than the state-mandated wage. That means poll managers that were to be paid \$165 will now get \$265 for the day and clerks who got \$225 will now get \$325.

Joe Debney, director of the Charleston County Board of Elections and Registration, said the funding will be crucial for hiring additional workers at more absentee locations and polling spots on Election Day.

Debney pointed to the 2018 midterm elections in the county when more than 200 poll workers didn’t show up on Election Day, causing long delays.



## MOTION

To Accept On Behalf of the Board of Elections and Voter Registration  
of Richland County a grant in the Amount of \$730,000

As it appears that at the time of the making of this motion the State of South Carolina has not acted to accept a grant from the Center for Tech and Civic Life to the Board of Elections and Voter Registration of Richland County (the “Board”) in the amount of \$730,000 (the “grant”), I move that Richland County accept as a pass through to the Board the grant, which is to be used exclusively for the public purpose of “planning and operationalizing safe and secure election administration in Richland County in accordance with the Richland County Safe Voting Plan 2020” as submitted by the Director of Elections & Voter Registration in her application to the Center of August 31, 2020.

The acceptance of this grant as a pass through on behalf of the Board in no way obligates the government of Richland County to conduct any election or to have any role in the planning or execution of elections, the same remaining the responsibility of State-created and controlled boards of election and voter registration pursuant to Title 7 of the South Carolina Code of Laws.

It is further the intent of this motion that the Board, its Director and staff shall be responsible for all aspects of administration of the grant.



## **REQUEST OF ACTION**

**Subject:** FY20 - District 3 Hospitality Tax Allocations

### **A. Purpose**

County Council is being requested to approve a total allocation of **\$38,000** for District 3.

### **B. Background / Discussion**

For the 2020 - 2021 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> reading) for FY21, Special Called Meeting – June 11, 2020:** Establish Hospitality Tax discretionary accounts for each district in FY21 at the amount of \$82,425. Move that all unspent H-Tax funding for FY19-20 be carried over and added to any additional funding for FY20-21.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY21 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 3 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding	\$ 82,425
<b>FY2020 Remaining</b>	<b>\$211,050</b>
Friends of the Tapp's Art Center	\$ 5,000
Columbia Music Festival Association	\$ 8,000
Benedict College	\$ 15,000
Columbia World Affairs Council	\$ 10,000
F.U.N.D.S. Inc.	
<b>Total Allocation</b>	<b>\$ 38,000</b>
<b>Remaining Balance</b>	<b>\$255,475</b>

**C. Legislative / Chronological History**

- 3<sup>rd</sup> Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3<sup>rd</sup> Reading of Budget FY19 June 21 ,2018
- 3<sup>rd</sup> Reading of the Budget FY20 June 10, 2019
- 3<sup>rd</sup> Reading of the Budget FY21 June 11, 2020

**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.



**Agenda Briefing**

**Prepared by:** James E. Hayes, Director

**Department:** Office of Budget & Grants Management

**Date Prepared:** September 09, 2020

**Meeting Date:** September 15, 2020

<b>Approved for consideration:</b>	County Administrator	Leonardo Brown, MBA, CPM
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**Subject:** County Administrator – Budget Motions

**Recommended Action:**

The County Administrator recommends approval of the below motions.

**Motion Requested:**

Motion to approve amendments to the Fiscal Year 2021 Budget, as submitted to Council in the Recommended Budget Book received during the week of August 31, 2020

- A. Includes 10% budget reduction to many departments and county funded organizations, and
  - a. Formal acceptance of County Grants as outlined in the Recommended Budget Book;
  - b. Approval of Lump Sum Appropriation recipients' budgets being reduced by 10% of FY20 approved budgets;
  - c. Approval to fund Chamber of Commerce at their FY21 requested amount of \$53,000 which is less than the currently approved amount of \$55,000;
  - d. approval to fund Central Midlands COG at the FY21 contractual amount of \$194,977;
  - e. Approval to add additional funding to the RCSD FY21 General Fund Budget to pay for the statutorily required Body Worn Cameras and In Car Cameras.
- B. Includes freeze on hiring non-essential personnel and discourages spending on non-essential items.
- C. Acknowledges that additional budget adjustments may be made based on actual revenue received.
- D. Acknowledges that the Fiscal Year 2022 budget process will develop an annual budget.
- E. Acknowledges that in this time of financial uncertainty that any increases in revenue need to remain unencumbered and unassigned.

**Additional Consideration Requested:**

- A. RCSD School Resource Officers – The Sheriff is requesting \$727,497.60 in additional funding
- B. RCSD Victim's Assistance – The Sheriff is requesting \$153,389.52 in additional funding

**Request for Council Reconsideration:**  Yes

**Fiscal Impact:**

The FY2021 General Fund Budget currently budgeted at \$186.7M has the resources to implement the recommended budget motions by making allocation adjustments within the budget. Presently, it does not include funding for any additional considerations.

Assuming no other changes to the FY2021 recommended budget, to add the additional funding requested to the Richland County Sheriff’s Department budget, Council would need to make and approve the following motion:

*Move to amend the FY2021 General Fund, Victim’s Assistance, and School Resource Officer budgets to cover the additional funding requested by the Sheriff.*

If approved, there would also need to be three readings and a public hearing.

**Motion of Origin:**

There is no associated motion of origin. These matters were discussed during the September 03, 2020 Budget Work Session.

Council Member	
Meeting	
Date	

**Attachments:**

1. Correspondence from the Richland County Sheriff’s Department

# Richland County Sheriff's Department Operations Division

Attachment 1




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PO Box 143  
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## Memorandum

To: County Council Chairman Livingston  
:  
Cc: County Council  
Leonardo Brown, Richland County Administrator  
Dr. John Thompson, Assistant County Administrator

From: Deputy Chief Chris Cowan 

Subject: Sheriff's Budget Amendments, motion request

Date: August 27, 2020 **UPDATES in GREEN; September 8, 2020**

Historically the Sheriff has never asked Council for anything that is not critical to providing the highest level of public safety to the Citizens of Richland County. The Department has worked to reduce expenditures, over the last several years; which has reduced many operational capacities. Reductions in our budget, over the last few years, have negatively impacted our ability to provide services. The purpose of this memo is to ask for a Council motion to recover funding lost, in the Sheriff's budget, so that we can operate at appropriate law enforcement levels.

We have always sought nontraditional ways to cover expenditures. From acquiring 90% of the funding for our K9 Patrol functions from the Sheriff's Foundation and the National Integrated Ballistics Information Network, to recovering millions of dollars in nonpayment of vehicle property taxes for the County. From Special Duty covering 100% of its expenses and adding \$248,000 annually to the County's general fund for victim services, to grants that on average cost the County .10 cents on the dollar or free to the County; that help provide closure to victims. With no capital funding, no vehicle funding for three (3) years and reductions in salary line items, over the last three years; RCSD's budget has taken numerous cuts. Noting that several of these cuts have been to salaries which under SC Home Rule should not have occurred (please reference County Chief Deputy Attorney's Attorney General Opinion from 2014 Amendment (2) two and page (4) four of Attorney General Opinion from 2020 Amendment (3) three; both attached).

### RCSD's Mission Statement

**"It is our mission, as trusted public servants, to prevent crime and the fear of crime by providing excellence in law enforcement services, accountability and connections with our communities."**

# Richland County Sheriff's Department

## Operations Division



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### Example of reductions:

- 1) During the budget process for this biennium County Staff presented two options, for Victim's Assistance budget centers, to Council. Due to the lesser amount being approved by Council, the Sheriff's Victim's Assistance salary budget was lowered by \$153, 456. Not only does this impact funding, that had previously been approved for the Sheriff's budget, but it impacted services to victims and deputies pay. During the FY21 meetings and discussions with staff, over the last twenty months (see attached addendum 4) , Staff recommended that RCSD present a briefing document to Council.  
Subsequently, The Sheriff directed staff, all last budget year, to do more with less and cover the shortfalls in our budget. We have forgone projects last year due to his having to put money toward the Total Rewards Study, shortfalls in Victim's Assistance and capital projects not being approved. Please keep in mind that RCSD generates \$248,000 annually, directly in to the Victims Assistance fund; when deputies work special duties
- 2) Over the last three years the Sheriff has contributed almost \$1.5 million dollars to TRS and salaries in an effort to bridge the gaps created by reductions in funding and competitive market. There were 160 deputies who received no raises during TRS. The lack of funding for those personnel put them far behind starting pay for other deputies and agencies in the Midlands. The Sheriff reallocated fuel funds to cover salary shortfalls.
- 3) For the last several years RCSD has covered \$24,000 to pay for landscaping at three County owned properties. Prior Administrative staff directed the Department to move forward with this expenditure due to County staff being shorthanded.

There has been discussion about cutting budgets across the County. We understand that these are hard times and RCSD wants to work with Administration on presenting a balanced budget. RCSD needs to be able to operate effectively; while being good stewards of the tax dollar in these uncertain times. Please keep in mind that there has been a nearly \$2 million decrease in the Sheriff's budget, over the last three years, that will be realized in FY21. Since we have covered the shortfalls, for the last several years, the Sheriff is asking Council to approve the attached budget amendments (see amendment #1; that RCSD submitted March 13, 2020 and in March 2019) for FY21.

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## AMENDMENT 1

	Approved Budget	Reallocation (by Sheriff)	Revised Budget Needed
Salary	\$23,667,083.00	\$475,512.11	\$24,142,595.00
FICA 0	\$1,810,532.00	\$36,307.82	\$1,846,840.00
PORS	\$4,290,814.00	\$91,315.37	\$4,382,130.00

Reallocations totaling \$603,135.30 done for 2021 from Fuel - Shortfall for 150 employees not impacted by Phase I or Phase II of TRS

### Sheriff 1100201000 – YR 2021

	Approved Budget	Additional Request
Service Contracts	\$543,701.00	\$38,714.00
Community Cameras		
Bandwidth for IT		\$160,000
Building Maintenance	\$25,000.00	\$24,000.00
Landscaping at Headquarters, Victim’s Assist and K9 facilities		
Automotive Equipment	\$0	\$44,000.00
Live Scan – electronic fingerprint machine for Alvin S Glenn		

- **The above four (4) items are being addressed using nonrecurring funds that the Sheriff generated in FY20.**

### Victim’s Assistance 1100201000 – YR 2021

	Approved Budget	Additional Salary Amount Request
	\$521, 143	\$153,390.52 salary shortfall
Approved Salary Budget for 2021and 2020	\$270,899.00	
Actual Salary Expense for 2020,	\$424,288.52	
Over Budget in 2020 =	\$153,389.52	

**More information on Victim Services; as requested by Council in the September 3<sup>rd</sup>, 2020 meeting; you will find listed on the next page of this memo:**

### RCSD’s Mission Statement

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- Council voted to not increase Victim Services funding, during the last biennium. This resulted in the Sheriff's budget for salaries, in victim's services, being cut and impacting services he provides.

Comparing the last five years of Victim Services, with no new positions/FTEs added over the last five years (but there have been increases in PORS, FICA and TRS), below are the budgeted numbers:

FY16	\$608, 508
FY17	\$641, 713
FY18	\$654, 781
FY19	\$659, 443
FY20	\$524, 067

The amount over Budget in 2020, and the amount needed for FY21 = \$153,389.52

Due to the type of budget center, the Sheriff cannot transfer funds in to Victim Services from a general fund account to cover any shortfalls.

- In relation to Victim Services there are positions that are funded by grants. Noting that (1) one FTE is funded by the Victims of Crime Act Program (VOCA) and the other FTE is funded through the Violence Against Women Act program (VAWA). There is no limit on funding years on these programs and they remain grant funded

## RCSD's Mission Statement

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# Richland County Sheriff's Department Operations Division



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## School District 1 1232201001

	Approved Budget	Additional Request	Revised Budget
Salary	\$1,687,669.00	\$102,465.97	\$1,790,134.97
Part-time Wages	\$44,541.00	\$5,156.58	\$49,697.58
Longevity	\$0	\$12,227.60	\$12,227.60
FICA	\$129,107.00	\$11,640.19	\$140,747.19
Worker's Comp	\$58,146.00	\$3,792.67	\$61,938.67
PORS	\$250,762.00	\$99,281.47	\$350,043.47
Health Ins.	\$561,782.00	\$106,411.60	\$668,193.60

## School District 1 1232201001

	Approved Budget	Additional Request	Revised Budget
Operating	\$67,200.00	\$10,000.00	\$77,200.00
Total Request		\$350,976.08	

## School District 2 1232201002

	Approved Budget	Additional Request	Revised Budget
Salary	\$1,011,952.00	\$24,571.15	\$1,036,523.15
Longevity	\$0	\$10,854.85	\$10854.85
FICA	\$77,414.00	\$1,880.02	\$79,294.02
Worker's Comp	\$35,014.00	\$849.70	\$35,863.70
PORS	\$150,162.00	\$49,265.05	\$199,427.05
Health Ins.	\$328,309.00	\$55,902.32	\$384,211.32
Operating	\$40,320.00	\$8,320.00	\$48,640.00
Total Request		\$151,643.79	

## Heathwood Academy 1232201003

	Approved Budget	Additional Request	Revised Budget
Salary	\$40,243.00	\$3,400.08	\$43,643.08
FICA	\$3,079.00	\$259.70	\$3,338.70
Worker's Comp	\$1,392.00	\$118.05	\$1,510.05
PORS	\$5,932.00	\$2,464.93	\$8,396.93
Health Ins.	\$13,548.00	\$3,156.84	\$16,704.84
Operating	\$1,680.00	\$200.00	\$1,880.00
Total Request		\$9,599.60	

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# Richland County Sheriff's Department

## Operations Division



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### School District 5 1232201005

	Approved Budget	Additional Request	Revised Budget
Salary	\$562,666.00	\$84,032.73	\$646,698.73
Part-time Wages	\$28,954.00	\$5,901.92	\$34,855.92
Longevity	\$0	\$6,962.48	\$6,962.48
FICA 5	\$43,044.00	\$9,094.93	\$52,138.93
Worker's Comp	\$19,295.00	\$3,080.78	\$22,375.78
PORS	\$83,937.00	\$43,298.53	\$127,235.53

### School District 5 1232201005

	Approved Budget	Additional Request	Revised Budget
Health Ins.	\$179,281.00	\$54,586.76	\$233,867.76
Operating	\$25,200.00	\$8,320.00	\$33,520.00
<b>Total Request</b>		<b>\$215,278.13</b>	

	MOU amount	Revised Budget	Cost to County
Dist 1	2,579,864.78	3,466,737.08	886,872.30
Dist 2	1,124,012.22	1,976,832.64	852,820.42
Heathwood	47,443.98	83,387.45	35,943.47
Dist 5	1,047,373.04	1,268,449.03	221,075.99
<b>Total</b>	<b>4,798,694.02</b>	<b>6,795,406.20</b>	<b>1,996,712.18</b>

- **MOU amounts increased; not the cost to the County from FY20.**
- **75.97% of overall cost of the SRO program is funded by the Districts.**
- **This is not increasing positions but covering the increased costs of the program (TRS, PORS, FICA, operations).**

#### RCSD's Mission Statement

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# Richland County Sheriff's Department Operations Division



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The Richland County Sheriff's Department responds to an average 155,000 calls for service each year. This number does not include the calls for service on school grounds. If SROs are not in schools, the Sheriff will still have the responsibility for responding to the calls for service on school grounds, as required by law and his mission as Sheriff. Below is a snapshot of calls for service on school grounds:

## 2016 – 2017 School Year

- Total number incidents 3730
- Conflict Resolutions 3859
- Home Welfare Checks 129
- Classes taught 2765
- Number students 60127
- Incidents investigated 2509

## 2017 – 2018 School Year

- Total number incidents 12051
- Conflict Resolutions 296
- Home Welfare Checks 7
- Classes taught\_ 1172
- Number students 14656
- Incidents investigated 1517

## 2018 – 2019 School Year

- Total number incidents 6967
- Conflict Resolutions 425
- Home Welfare Checks 2
- Classes taught\_ 2511
- Number students 35370
- Incidents investigated 524

## 2019 – 2020 School Year

- Total number incidents 1643
- Conflict Resolutions 1809
- Home Welfare Checks 148
- Classes taught\_ 1616
- Number students 38417
- Incidents investigated 1007

### RCSD's Mission Statement

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There are (88) deputies assigned to the SRO division. We have (12) twelve Crossing Guards (paid by the Districts).

- District 1                    40 SRO's.
  - District 2                    26 SRO's.
  - Lex Rich 5                    14 SRO's.
  - Heathwood Hall            1 SRO.
- Noting that the Sheriff requires any additional SROs, requested by a district, be paid at 100%.

A recent national publication outlined the role of a school resource officer during COVID. It is important to note that in Richland County all SROs are working in their schools.

**Some additional roles the SRO will play during COVID:**

- Provide online safety tips
- Monitor online traffic of students and staff
- In person and online encouragement
- In person and online mentoring
- Monitor indigence
- Continue home visits and counseling
- Teaching everything from biking, hiking and picnic safety to general crime prevention
- Bully prevention
- Assist in feeding children in less fortunate homes
- Sounding board for staff, parents and children on safety issues, quality of life issues, ect

## UNPAID Property Taxes recovered by RCSD:

### 2019

- The amount owed was- \$128,444.19 with \$78,846 recovered (paid).

### 2020

- So far the amount owed is- \$219,090.39 with \$195,831.05 recovered (Paid).

### **RCSD's Mission Statement**

**“It is our mission, as trusted public servants, to prevent crime and the fear of crime by providing excellence in law enforcement services, accountability and connections with our communities.”**

Bradley T. Farrar, Esquire, 2007 WL 3317615 (2007)

2007 WL 3317615 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 26, 2007

\*1 Bradley T. Farrar, Esquire  
Deputy Richland County Attorney  
P. O. Box 192  
Columbia, South Carolina 29202

Dear Mr. Farrar:

In a letter to this office you raised the following scenarios:

Richland County does not consider grants to be part of its sheriff's department general fund budget. Are grant funds (e.g. from the State or Federal government) that are provided to counties or sheriff's departments for the purpose of hiring new or special deputies, for example, considered a part of a sheriff's budget?

Ex: The County or its sheriff's department receives a federal grant to hire two special resource officers (SROs) to work in a school district. The grant provides funding for the two SROs for only three years. At the end of the three years, no replacement funding is available, yet the two SROs (classified as "deputies") remain. The County has not taken any action to "reduce or restructure" the sheriff's department's budget, but the two deputies can no longer be paid.

You questioned whether the County is required to pick up where the grant ended.

You also raised the following question:

Richland County does not consider special revenue funds to be part of its sheriff's department general fund budget. Are special revenue funds received in the furtherance of programs such as victim's assistance and other state mandated programs that may create duties for a sheriff's department considered a part of the sheriff's budget? In particular, if the funds are discontinued or reduced (due to, e.g., a cessation of the given program), must a county cover any shortfall to ensure no deputies are displaced even though the purpose for which they were hired may no longer exist and the county did not provide the original funding for their positions?

A prior opinion of this office dated August 14, 1985 is responsive to your questions. That opinion cited the determination that, generally, the hiring and discharge of a deputy sheriff are matters solely within the prerogative of a sheriff. See also: Op. Atty. Gen. dated January 8, 2007.

S.C. Code Ann. Section 23-13-10 of the Code provides that the appointment of a deputy sheriff shall continue during the pleasure of the sheriff. The State Supreme Court has held that this provision gives a sheriff absolute authority as to the discharge of his deputies and, therefore, county grievance procedures are inapplicable to the discharge of a deputy sheriff by the sheriff. Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). See also: Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985); Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988); Botchie v. O'Dowd, 299 S.C. 329, 384 S.E.2d 727 (1989). The August, 1985 opinion also stressed that generally, "...deputy sheriffs are answerable only to the sheriff and not to the county government."

The August, 1985 opinion specifically dealt with the question of whether action could be taken by a county council to withdraw the appropriation for a particular deputy sheriff's position so as to result in the termination of the particular deputy. The opinion concluded that

\*2 ...it is the opinion of this Office that it is extremely doubtful as to whether such action could be taken. While obviously a county council is vested with discretion in dealing with any appropriations from the standpoint of general economic and efficiency concerns, such discretion could not be utilized in a manner which would interfere with the decisions of a sheriff as to hiring and discharge of a deputy sheriff. Generally, courts have closely examined situations where attempts were made to withhold appropriations for sheriffs once they were appointed. *Flaherty v. Milliken*, 86 N.E. 558 (1908). Moreover, in a previous opinion of this Office dated February 7, 1978, it was stated that "(w)ith reference to budgetary matters, while it is true that the council exercises totally the budgetary authority of... (a)... county and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions [Section 4-9-140, Code of Laws of South Carolina, 1976] nevertheless, it cannot so decrease the appropriations of an elected official's office so as to prevent the proper functioning thereof...'

The opinion concluded that

...a sheriff possesses absolute control insofar as the hiring and discharge of his deputies is concerned. Therefore, it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly.

However, the opinion also stressed that "[a]s to county council's general authority with respect to appropriations for sheriffs' departments, we express no opinion. Our opinion addresses only the question of county council's utilizing its appropriation authority indirectly to 'discharge' a particular deputy sheriff." Another opinion of this office dated May 8, 1989 determined that "...whether or not a council by the budgetary process prevented the proper functioning of an elected official's office is a factual matter which cannot be determined by this office."

Additionally, in an opinion of this office dated January 8, 2007 reference was made to S.C. Code Ann. §4-9-30(7) which generally gives county governing bodies the responsibility of employing and discharging county personnel. However, such provision further states that "[t]his employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government." That opinion dealt not with the issue of specifically terminating employees of an elected official but with the desire by a county to reduce budget allocations to elected officials and, therefore, suggest to elected officials to decrease their staffs in order to remain within guidelines of a revised budget.

\*3 The opinion commented on the "broad authority and discretion to county governments to appropriate funds for county purposes." That opinion reiterated the advice set forth above that while a county council exercises totally the budgetary authority of a county and can, therefore, decrease, increase, or otherwise alter appropriations for specific county offices and functions, ...nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office... Whether or not the council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official's office is a factual matter which cannot be determined by this office... (Accordingly)... a county government's ability to decrease appropriations to the office of an elected official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office.

Such opinion reiterated the earlier advice set out above that

...it is extremely doubtful whether action could be taken by a county council to withdraw the appropriation of the position of a particular deputy sheriff. Such could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly.

The opinion commented further that

...we certainly recognize the Legislature's intent to vest budgetary authority in the county's governing body. However,...such authority is limited with regard to the reduction in appropriations to the office of an elected official. Clearly, such reductions may not be to the extent that prevents the official's office from functioning properly. Furthermore, because counties are prohibited by Section 4-9-30(7) from terminating the employees of public officials, we are doubtful as to whether a court would allow counties to indirectly terminate an employee by abolishing their position through a reduction in appropriations for that position.

In this instance, the determination of whether the reductions you mention in your letter will result in the affected office's inability to function properly is clearly a question of fact. Moreover, whether or not the reduction in funding to such offices is in fact a termination is also a question of fact. As we stated on numerous occasions, only a court, as the finder of fact, may ultimately resolve factual issues.

Consistent with the above, in the opinion of this office, it remains clear that where grant funds have been utilized to hire additional deputies, it is extremely doubtful whether action could be taken by a county council to discontinue funding for those positions. As stated in the referenced August, 1985 opinion, "[s]uch could be construed as indirectly terminating a particular deputy sheriff's position which is a position the county council is not empowered to abolish directly." Therefore, consistent with such, it appears that the Council would be required to pick up where the grant ended. Such would similarly be the advice as to special revenue funds that were utilized to fund deputy positions even if the purpose for which the deputies were hired may no longer exist and the county did not provide the original funding for their positions.

\*4 With kind regards, I am,  
Sincerely,

Henry McMaster  
Attorney General  
By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook  
Assistant Deputy Attorney General

2007 WL 3317615 (S.C.A.G.)

End of Document

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ALAN WILSON  
ATTORNEY GENERAL

August 17, 2020

David L. Tedder, Esq.  
County Attorney  
Jasper County  
Post Office Box 420  
Ridgeland, South Carolina 29936

Dear Mr. Tedder:

We received your letter requesting an opinion of this Office concerning "the duties, responsibilities and liability of the Sheriff on the one hand, and the recourses and duties of County Council on the other, when it is determined that the Sheriff has spent more than the Council appropriated budget for the Sheriff's Office." You explain these questions involve the following:

1. Expenditures by the Sheriff of funds for overtime for deputies beyond the budgeted amounts.
2. Expenditures by the Sheriff for deputy salaries (including pay raises, promotions) that total beyond the amount authorized.
3. Expenditures by the Sheriff in excess of the amounts budgeted for vehicles and related expenditures.

You question "whether these over-expenditures, which were not authorized by Council, create a liability on the Sheriff's part, and what remedies or other courses of action are available to Council."

#### Law/Analysis

The South Carolina Constitution provides with respect to political subdivisions, which includes counties:

(b) Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses

for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced.

S.C. Const. art. X, § 7 (2009).

Section 4-9-30(5)(a) of the South Carolina Code (Supp. 2019) gives county councils the authority to

to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above . . . .

(emphasis added). This provision gives county councils the authority to appropriate funds for the operations of sheriff's departments.

The relationship between county councils and the sheriffs' offices they fund is complex because sheriffs are not only the chief law enforcement officers for the county, but are also elected constitutional officers. S.C. Const. art. V, § 24 (2009). Furthermore, our courts recognize "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." Edwards v. Lexington Cnty. Sheriff's Dep't, 386 S.C. 285, 287 n. 1, 688 S.E.2d 125, 127 n. 1 (2010). In several opinions, this Office opined that county councils are restricted from using the appropriations process to effectively remove a deputy from his or her position because "the county council is not empowered to abolish [them] directly." Op. Att'y Gen., 1987 WL 245480 (S.C.A.G. Aug. 3, 1987).

As you mentioned in your letter, this Office issued an opinion in 1989 addressing a sheriff's expenditures in excess of the amount allocated. Op. Att'y Gen., 1989 WL 406145 (S.C.A.G. May 8, 1989). In that opinion, we acknowledged the county council's authority to appropriate funds for the operation of a sheriff's office, but stated the county council cannot decrease funding to prevent the office from functioning.<sup>1</sup> Id. Ultimately, we concluded that "any action

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<sup>1</sup> We cited to a proviso in section 4-9-30 stating

David L. Tedder, Esq.  
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by the Berkeley County Council through its budgetary process cannot interfere with the Sheriff's role as chief law enforcement officer in his county." Id. We also noted in regard to a question concerning the county council's ability to limit overtime expenditures, "any requirements of federal law must be observed," but advised questions regarding this matter are better addressed by the United States Department of Labor. Id. In accordance with this opinion, we continue to believe a county council does not have authority through the budget process to interfere with the operations of a sheriff's department.

Nonetheless, sheriffs' offices are restricted to the appropriations they receive. Section 8 of article X of the South Carolina Constitution (2009) states "[m]oney shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law." Moreover, when a county council adopts a budget appropriating funds to a sheriff's department, that budget has the force of law because it is a legislative action passed by ordinance. See S.C. Code Ann. § 4-9-120 (year) ("The council shall take legislative action by ordinance . . .").

In an opinion issued by this Office in 2016, we addressed the ability of a county supervisor to expend funds in excess of those appropriated by the county council. Op. Att'y Gen., 2016 WL 3946153 (S.C.A.G. July 5, 2016). Citing to section 8 of article X and to section 4-9-120, we determined "if a county supervisor spends public money in a manner that is contrary to an ordinance of the county, then he or she has acted unlawfully by exceeding his or her legal authority." Id. Furthermore, we opined "expending public money in excess of the budgeted amount is an unlawful act." Id. See also Op. Att'y Gen., 2007 WL 419432 (S.C.A.G. Jan. 8, 2007) ("[I]f a public official were to expend funds that were not appropriated, such action would be in violation of the South Carolina Constitution."). However, because "determining whether the county supervisor you refer to in your letter actually acted unlawfully would require a factual determination," we declined to make a determination of whether that particular county supervisor acted unlawfully. Id. We also declined to address whether criminal charges could be levied against the county supervisor. Id. But, relying on several prior opinions, we stated in regard to civil liability "it is the opinion of this Office that a court could find a public official personally liable for spending public funds in excess of the budgeted amount, even if the excess funds are spent for a public purpose." Id.

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if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

Id. (quoting S.C. Code Ann. § 4-9-30(5)). Subsequent to that opinion, the Legislature removed this proviso from section 4-9-30. 1991 S.C. Acts 114. Nonetheless, we believe a county council remains restricted from decreasing the funding of a sheriff's office which would result in preventing that office from functioning.

David L. Tedder, Esq.  
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August 17, 2020

You informed us that Jasper County operates under a Council-Administrator form of government and that it generally receives budget requests for the year from its elected constitutional officers. However, you state that “[i]t has come to light there have been substantial over-expenditures in several categories of appropriations to the Sheriff’s Department.” Your letter mentions over-expenditures related to salaries and overtime as well as vehicle expenses. Some of these relate to unexpected circumstances including hurricane Dorian, but you note these only account for a “minor part of the over-expenditures which concern Council.” Thus, you wish to know “what remedies or other courses of action are available to Council.”

Based on our prior opinions, County Council must appropriate funds to facilitate the proper functioning of the Sheriff’s Office. We believe this should include amounts appropriate for the proper staffing and equipment. However, the Sheriff is restrained from expending public funds in excess of the amount appropriated. If the Sheriff’s expenditures exceed the amount appropriated, a court could find such expenditures as unlawful, but “a due care standard of Chandler v. Britton would apply.” Op. Att’y Gen., 2016 WL 3946153 (S.C.A.G. July 5, 2016) (quoting Op. Att’y Gen., 2003 WL 21040136 (February 21, 2003)). Thus, “liability would turn in part on a factual determination that the official acted at least negligently in exceeding the budgetary authority,” which is beyond the scope of an opinion of this Office. Id. Accordingly, for County Council to hold the Sheriff personally responsible, you would need to demonstrate to a court that he or she was negligent in exceeding the appropriations made by County Council.

### Conclusion

County Council has both the authority and the responsibility to make appropriations sufficient for the proper funding of the Sheriff’s Department. In addition, consistent with prior opinions, this Office believes the County Council may not use its budgetary authority to interfere with the operating decisions of the Sheriff’s Department. However, once County Council adopts a budget, expenditures over this amount could be viewed by a court as unlawful in violation of both the budget ordinance and section 8 of article X of the South Carolina Constitution. If a court finds the Sheriff acted negligently in expending funds over the amount appropriated, he or she could be held personally liable.

Sincerely,



Cydney Milling  
Assistant Attorney General

David L. Tedder, Esq.  
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August 17, 2020

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R. D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General

# Richland County Sheriff's Department

## Operations Division



“Enriching community trust through high standards of excellence”

Telephone (803) 576-3000  
Fax (803) 576-3190

5623 Two Notch Road  
PO Box 143  
Columbia, SC. 29202

### AMENDMENT 4

## Memorandum

To: Leonardo Brown, Richland County Administrator  
Dr. John Thompson, Assistant County Administrator

From: Deputy Chief Chris Cowan

Subject: Time line – budget submissions related to shortfalls on Axon

Date: January 30, 2020

You had requested that I try to provide a perspective on when information was provided to, and submissions were made, by RCSD on the budget and Axon (body worn cameras and in car camera components/storage). RCSD attempts to keep copious notes on meetings, emails, submissions and interactions so that we can convey reliable information. Please find below the dates and the pertinent topic, to this memo, in those interactions:

January 17, 2018; meeting with Dir. Hayes and Asst. Admin. Topic: FY 19, 20, 21 and planning for shortfalls, Axon projections/totals and documents provided for support.

January 23, 2018; correspondence to Administration on all topics discussed during 1/17 meeting.

May 21, 2018; meeting with Dir. Hayes, Dir. Hoyle, B. Madden who called the meeting failed to show. Topic; shortfalls predicted on vehicles, equipment and Axon.

August 16, 2018; meeting with Dir. Hayes, Dr. Yudice, Dir. Hoyle, and Brandon Madden. Topic: FY19 need, FY20 projections on Axon and documents provided for support.

September 18, 2018; meeting with Dr. Yudice and Brandon Madden. Topic: FY19 need, FY20 projections on Axon and possible solutions to pay for the shortfalls and projections brought forward.

December 19, 2018; RCSD budget submitted, that included detailed requests and supporting documentation that included Axon expenses.

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December 13, 2018; RCSD provided object codes, amounts, vendors for all shortfalls to Administrator Gomeau, as he requested, in follow up to a face to face meeting on the issue.

April 11, 2019; meeting with Dr. Yudice, Asst Admin Powerll, Dir. Hayes, A. Myers. Topic: FY20, 21 shortfalls, costs, needs. Documentation provided including Axon expenses.

April 30, 2019; discussion with Dir. Hayes and Dr. Thompson about no inclusion of operational items that are mandated by State law.

May 15, 2019; discussion with Dir. Hayes ref request by RCSD on how will missing operational items be funded. We were told that it was being considered separately and included in CIP that would come later.

May 23, 2019; meeting with Dr. Yudice and Dr. Thompson. Topic: shortfalls and concerns by RCSD on how critical operational items are to be paid. Documentation provided.

July 17, 2019; meeting with Dir. Hayes and Dr. Thompson. Topic: Victim Services shortfall, Axon, MDTs and money not in the budget to cover expenses. Documentation provided.

July 30, 2019; meeting with Dr. Yudice. Topic: shortfalls to breakdown the previous week's meeting and what exactly RCSD's concerns were.

August 20, 2019; meeting with Dir. Hayes and Dr. Thompson. This was on the heels of the August meeting of the Sheriff and Mr. Brown and the concerns the Sheriff expressed to Mr. Brown. Documentation of shortfalls provided. Specifically the Axon due date of November 30, 2019 was discussed.

August 30, 2019 CIP Submitted breaking out Axon cameras and the total \$939,000.

October 2, 2019; Correspondences with Dir. Hayes and Dr. Thompson reference to shortfalls and invoice deadline approaching.

November 14, 2019; meeting with Administrator and Chair ref to challenges RCSD faces and Axon invoice deadline was discussed. Notified that RCSD worked with Axon to not violate chapter of contract, consolidated costs which Axon then agreed to extend the deadline to January 29, 2020.

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December 13, 2019; email exchange began re use of bond funds and Sheriff agreed to use part of the \$2 million set aside for laboratory/communications project.

January 16, 2020; email exchange continued with the Sheriff offering to supplement the payment using RCSD current budget with the agreement that funds would be reimbursed by April 1, 2020.

January 28, 29 and 30, 2020; email exchange continues searching for solutions.

June 15, 2020 very positive meeting with Administrator, ACA and Budget Director to evaluate solutions for shortfalls. Recommendation made for Sheriff to present briefing to Council.

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