



## **RICHLAND COUNTY COUNCIL REGULAR SESSION AGENDA**

**DECEMBER 6, 2011  
6:00 PM**

**CALL TO ORDER**

**HONORABLE PAUL LIVINGSTON, CHAIR**

**INVOCATION**

**THE HONORABLE JOYCE DICKERSON**

**PLEDGE OF ALLEGIANCE**

**THE HONORABLE JOYCE DICKERSON**

### **Approval Of Minutes**

1. Regular Session: November 15, 2011 **[PAGES 8-18]**

### **Adoption Of The Agenda**

#### **Report Of The Attorney For Executive Session Items**

2.
  - a. SCE&G [OUTSIDE COUNSEL]
  - b. Redistricting Update [OUTSIDE COUNSEL]
  - c. Darrell's vs. Richland County [OUTSIDE COUNSEL]
  - d. SOB Update - Legal Advice
  - e. Medicare Retiree Group Health Insurance Benefits Services - Contractual Matter
  - f. FN Manufacturing, LLC - Pending Litigation
  - g. McEntire Produce, Inc. - Pending Litigation

### **Citizen's Input**

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

### **Report Of The County Administrator**

4. a. Legislative Delegation Update

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

5. a. January Meeting Schedule
- b. Annual Council Retreat, January 26-27, 2012, Clemson University Sandhill Research & Education Center, 900 Clemson Road

## **Report Of The Chairman**

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

6. a. Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company LLC, acting for itself, one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the Company to claim certain special source credits against such FILOT payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto
- b. Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself, one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto
- c. An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes
- d. Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters
- e. An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto
- f. An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto
- g. An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project

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

### **Approval Of Consent Items**

7. Authorizing an Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Richland County, South Carolina, and Fairfield County, South Carolina, to expand the boundaries of the park to include certain real property located in Richland County, and related matters [**THIRD READING**] [**PAGES 24-34**]
8. Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters [**THIRD READING**] [**PAGES 35-82**]
9. An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes [**SECOND READING**] [**PAGES 83-85**]
10. An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto [**SECOND READING**] [**PAGES 86-88**]
11. County Council Shirts [**PAGES 89-93**]
12. Approval of Competitive 2010 Local Emergency Management Performance Funds Grant [**PAGES 94-96**]
13. Payment Procedures for County Grant Programs [**PAGES 97-101**]
14. Special DUI Prosecutor Grant [**PAGES 102-105**]
15. VOTE Federal Accessibility Grants for the Election Commission [**PAGES 106-108**]
16. CDBG Allocation of Funds Decker Boulevard Specific [**PAGES 109-113**]
17. Resolution to Distribute \$5,281.78 in Federal Forestry Funds [**PAGES 114-118**]
18. Professional Services Property Acquisition adjacent to Jim Hamilton-LB Owens Airport [**PAGES 119-127**]
19. Increase RCSD Deputy Current Pay [**PAGES 128-137**]

### **Second Reading Items**

20. An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto **[PAGES 138-174]**
21. An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto **[PAGES 175-202]**
22. An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes **[PAGES 203-221]**
23. An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company LLC, acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project ("FILOT Payments"); (3) the Company to claim certain special source credits against such FILOT Payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto **[PAGES 222-262]**
24. Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters **[PAGES 263-342]**
25. An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto **[PAGES 343-355]**
26. An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project **[PAGES 356-366]**

### **First Reading Items**

27. An Ordinance Amending the Fiscal Year 2011-2012 Hospitality Tax Budget to appropriate \$25,000 of Hospitality Tax Undesignated Fund Balance for a grant to the Miss S.C. Pageant **[PAGES 367-369]**

### **Report Of Development And Services Committee**

28. Proposed Amendment to Settlement Agreement with Northeast Landfill [PAGES 370-468]

29. Old LRADAC Building Environmental Remediation and Demolition Project [PAGES 469-472]

### **Report Of Administration And Finance Committee**

30. Action to Make Certain Department Heads with Contractual Responsibility At Will Employment Status [TO TABLE] [PAGES 473-476]

31. Responses from RFP to Medicare Retiree Group Health Insurance Benefit Services (*Possible Executive Session Item*) [PAGES 477-480]

### **Report Of Rules And Appointments Committee**

#### **1. Notification Of Vacancies**

32. Business Service Center Appeals Board-1 [Vincent K. Bartley, January 22, 2012\*]

\* This person is eligible for reappointment

33. Township Auditorium Board-1 [Angela M. Kirby, May 15, 2012 *Resigned*]

#### **2. Notification Of Appointments**

34. Accommodations Tax Committee-4 [positions are for 2 persons in Hospitality and 2 employed with Lodging]; no applications were received.

35. Airport Commission-3; applications were received from the following: J. Russell Goudelock, II\*; Stuart C. Hope; Don Purcell\* [PAGES 484-490]

\* Signifies incumbent

36. Appearance Commission-2 [positions needed are 1 horticulturalist and 1 landscaper]; no applications were received.

37. Board of Assessment Control-1; no applications were received

38. Building Codes Board of Adjustments-3 [positions needed: 1 electrician and 2 persons from the fire protection industry]; no applications were received

39. Business Service Center Appeals Board-1 [CPA preferred]; no applications were received

40. Internal Audit Committee-1; one application was received from Sandra C. Manning [PAGES 495-497]

41. Lexington/Richland Alcohol and Drug Abuse Council-2; applications were received from Marilyn M. Matheus\* and Timothy D. Harbeson\* [PAGES 498-502]

\* Signifies incumbent

42. Richland Memorial Hospital Board-4; applications were received from the following: James Edward "Ward" Bradley, Rosalyn Woodson Frierson\*; Gerald Isreal, Jr.\*; Boyd Summers [PAGES 503-514]

\* Signifies incumbent

### 3. Discussion From Rules And Appointments Committee

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

### Other Items

44. REPORT OF THE CLERK'S OFFICE ORGANIZATION AD HOC COMMITTEE [PAGES 516-519]
45. REPORT OF THE FIRE AD HOC COMMITTEE [PAGE ]
46. A Resolution to appoint and commission George William Catoe, Jr. as a code enforcement officer for the proper security, general welfare, and convenience of Richland County [PAGES 521-522]
47. A Resolution to appoint and commission Karl L. Kinard as a code enforcement officer for the proper security, general welfare, and convenience of Richland County [PAGES 523-524]

### Citizen's Input

48. Must Pertain to Items Not on the Agenda

### Executive Session

### Motion Period

49. a. Based on Councilwoman Dickerson's motion to return the CMRTA to the City of Columbia, I make a motion to direct staff to determine the financial impact on Richland County of such action on an annual basis with a projection out to 5 years [MALINOWSKI]
- b. Resolution honoring the Recreation Commission on being reaccredited by CAPRA [WASHINGTON]
- c. Develop a Capital Projects Sales Tax for November 2012, with collections beginning May 1, 2013. The Capital Projects Sales Tax is a 1% increase, with 100% of the proceeds going towards identified capital projects in both the City, County and adjacent municipalities. It is a seven year tax, through 2019, expected to generate over \$400,000,000. A Priority Investment Element inventories potential funding sources and forecasted revenues available to finance planning initiatives, capital improvements, and other quality of life projects in the community should be used. Planning for roads, new parks, or new schools is the easy part; figuring out a long range capital plan to pay for them is the true challenge. New growth and development demand

additional public services, roads, and utilities. Managing available revenue sources and enumerating project needs helps ensure that adequate capacity is available to serve the magnitude and timing of anticipated development.

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

d. Remove the 400ft separation between bars to have a more safe and friendly effective pedestrian environment. [JACKSON]

e. Permanently finance the bus by a \$5 vehicle registration fee for noncommercial vehicles and \$10 for commercial vehicles. [JACKSON]

f. Sheriff's Department Salary Increase Request [LIVINGSTON]

g. Rezoning of Ridgeway Street from split commercial to residential [LIVINGSTON]

## **Adjournment**



# Richland County Council Request of Action

**Subject**

Regular Session: November 15, 2011 **[PAGES 8-18]**



# MINUTES OF



## RICHLAND COUNTY COUNCIL REGULAR SESSION TUESDAY, NOVEMBER 15, 2011 6:00 p.m.

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

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### MEMBERS PRESENT:

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

**OTHERS PRESENT** – Milton Pope, Tony McDonald, Sparty Hammett, Roxanne Ancheta, Randy Cherry, Stephany Snowden, Tamara King, Melinda Edwards, John Hixson, Dale Welch, Nelson Lindsay, Sara Salley, Buddy Atkins, Larry Smith, Charlie Fisher, Chanda Cooper, Don Chamblee, Nancy Stone-Collum, Justin Martin, Geo Price, Michael Byrd, Monique Walters, Michelle Onley

### CALL TO ORDER

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

### INVOCATION

The Invocation was given by the Honorable Damon Jeter

## PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Honorable Damon Jeter

## APPROVAL OF MINUTES

**Regular Session: November 1, 2011** – Mr. Malinowski stated that a copy of the letter of support for Richland Community Health Care Association should be attached to the minutes. Mr. Malinowski further stated that Mr. Washington was spelled incorrectly on p. 7 of the minutes.

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

## ADOPTION OF AGENDA

Mr. Jackson moved, seconded by Mr. Malinowski, to move Items 5.a., 7.a., and 7.b. prior to the Report of the Attorney for Executive Session. The vote in favor was unanimous.

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

## PRESENTATIONS

**Farm-City Proclamation [HUTCHINSON & JACKSON]** – Ms. Hutchinson and Mr. Jackson presented a proclamation recognizing November 18-24, 2011 as Farm-City Week. Teachers and students from Horrell Hill Elementary were also recognized for their contributions to Farm-City Week.

**Richland County Conservation Commission/Gills Creek Watershed Assoc./AT&T Foundation** – Mr. Ted Creech, on behalf of AT&T Foundation, presented a check for \$11,500 to the Gills Creek Watershed for an iPhone Project. The Conservation Commission also contributed \$8,500 toward this endeavor.

**SC Philharmonic, Morihiko Nakahara, Music Director** – Mr. Nakahara and Ms. Hallyburton thanked Council for their support and outlined upcoming events of the SC Philharmonic.

## REPORT OF THE COUNTY ATTORNEY FOR EXECUTIVE SESSION MATTERS

- a. Richland County vs. SCE&G
- b. Darrell's vs. Richland County
- c. IGA – Fire Contract
- d. Economic Development Items

## OUTSIDE COUNSEL EXECUTIVE SESSION

=====  
Council went into Executive Session at approximately 6:32 p.m. and came out at  
approximately 7:48 p.m.  
=====

- a. **Richland County vs. SCE&G** – Ms. Kennedy moved, seconded by Ms. Dickerson, to proceed as discussed in Executive Session. The vote was in favor.
- b. **Darrell's vs. Richland County** – Ms. Dickerson moved, seconded by Ms. Hutchinson, to proceed as directed in Executive Session. The vote in favor was unanimous.
- c. **Economic Development Items** – No action was taken.

## CITIZENS' INPUT

No one signed up to speak.

## REPORT OF THE COUNTY ADMINISTRATOR

- a. **Eastover Water Negotiations** – Mr. Pope stated that staff is presently working on rescheduling the meeting with Eastover and Council will be updated as these negotiations progress.
- b. **Business Service Reform Task Force** – Mr. Pope stated that the next meeting is scheduled for November 21<sup>st</sup>, 4-6 p.m. at the Chamber of Commerce.

## REPORT OF THE CLERK OF COUNCIL

- a. **Farm-City Proclamation** – Taken up during the Presentations at beginning of meeting.

## REPORT OF THE CHAIRMAN

- a. **Miss SC Pageant** – Ms. Dickerson moved, seconded by Ms. Kennedy, to sponsor the event. A discussion took place.  
  
The vote was in favor.
- b. **Reinstitute TIF Committee** – Mr. Jeter moved, seconded by Mr. Washington, to select a TIF Ad Hoc Committee.

Ms. Dickerson offered the following friendly amendment : “If Council members are interested in serving to submit their names to the Chair.” The friendly amendment was accepted.

#### PUBLIC HEARINGS

- **Authorizing an Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Richland County, South Carolina, and Fairfield County, South Carolina, to expand the boundaries of the park to include certain real property located in Richland County, and related to Project Cyrus; and other related matters** – No one signed up to speak.
- **An Ordinance Authorizing a deed to Cohn & Cohn Investments, LLC, for approximately 4.94 acres of land, constituting a portion of Richland County TMS # 25800-04-01** – No one signed up to speak.

#### APPROVAL OF CONSENT ITEMS

- **Authorizing an Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Richland County, South Carolina, and Fairfield County, South Carolina, to expand the boundaries of the park to include certain real property located in Richland County, and related to Project Cyrus; and other related matters [THIRD READING]**
- **An Ordinance Authorizing a deed to Cohn & Cohn Investments, LLC, for approximately 4.94 Acres of land, constituting a portion of Richland County TMS # 25800-04-01 [THIRD READING]**
- **11-14MA, Ron Johnson, Longcreek Plantation, RU to RS-LD (4.91 Acres), Longtown Rd. East & Longtown Rd. West 20500-05-02 [THIRD READING]**
- **11-14MA, Adams Northeast AME Church, Kay Hightower, RU to GC (10.62 Acres), 409 Longtown Rd., 17400-05/12/13/14/26 [THIRD READING]**

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

#### THIRD READING

**Authorizing An Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Richland County, South Carolina, and Fairfield County, South Carolina, to expand the boundaries of the park to include certain real property located in Richland County; and other related matters** – Mr. Jackson moved, seconded by Ms. Hutchinson, to defer this item until the December 6<sup>th</sup> Council meeting. The vote in favor was unanimous.

**An Ordinance Amending the Richland County Code of Ordinances; Chapter 26, Land Development; Article X, Subdivision Regulations; Section 26-224, Division of Real Property to Heirs of a Decedent; so as to exempt certain subdivisions from road construction requirements when property is being transferred to immediate family members or by will or intestate succession or forced division decreed by appropriate judicial authority** – Mr. Washington moved, seconded by Mr. Jackson, to approve this item. The vote in favor was unanimous.

Mr. Washington moved, seconded by Mr. Jackson, to reconsider this item. The motion failed.

### SECOND READING

**Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters** – Mr. Malinowski requested that Exhibit A be attached and that the commencement date be amended to December 31, 2014.

Mr. Malinowski moved, seconded by Ms. Dickerson, to approve this item as amended. The vote in favor was unanimous.

### FIRST READING

**An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes** – Mr. Malinowski moved, seconded by Ms. Dickerson, to approve this item. The vote in favor was unanimous.

**An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto** – Mr. Malinowski moved, seconded by Ms. Kennedy, to approve this item. The vote in favor was unanimous.

### REPORT OF THE ADMINISTRATION AND FINANCE COMMITTEE

**Hospitality Tax County Promotions Grant Program Changes** – Mr. Jeter moved, seconded by Mr. Washington, to defer this item.

Ms. Hutchinson made a substitute motion, seconded by Mr. Malinowski, to approve Alternative #1.

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

The vote was in favor.

### REPORT OF ECONOMIC DEVELOPMENT COMMITTEE

**Governmental Affairs Representative Services Contract Renewal** – Mr. Washington stated that the committee recommended approval of this item. The vote in favor was unanimous.

**A Resolution Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the “County”) and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the “Company”), in connection with the establishment of certain facilities in the County; (2) the benefits of a multi-county industrial or business park to be made available to the Company; and (3) other matters relating thereto** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the “County”) and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the “Company”), in connection with the establishment of certain facilities in the County (the “Project”); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto [FIRST READING BY TITLE ONLY]** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**Inducement Resolution for Bottling Group, LLC** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto [FIRST READING BY TITLE ONLY]** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**Inducement Agreement for Spirax Sarco, Inc.** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**A Resolution Authorizing the execution and delivery of an inducement agreement by and between Richland County, South Carolina, and Spirax Sarco, Inc. whereby, under certain conditions, Richland County will execute an amended fee in lieu of tax agreement for a project involving not less than ten million dollars (\$10,000,000) investment** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes [FIRST READING BY TITLE ONLY]** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**A Resolution Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the “County”) and Westinghouse Electric Company, LLC, acting for itself and for one or more affiliates or other project sponsors (the “Company”), in connection with the establishment of certain facilities in the County; (2) the benefits of a fee in lieu of tax arrangement, special source credits and multi-county industrial or business park designation to be made available to the Company; and (3) other matters relating thereto** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

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

**Identifying an Economic Development Project to be located in Richland County, South Carolina; authorizing a fee agreement between Project Rocky and Richland County, South Carolina to induce Project Rocky to expand its existing manufacturing facility in Richland County; and other related matters** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and [Project Rocky], as sponsor, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters [FIRST READING BY TITLE ONLY]** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto [FIRST READING BY TITLE ONLY]** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project [FIRST READING BY TITLE ONLY]** – Mr. Washington stated that the committee recommended approval of this item. The vote was in favor.

**OTHER ITEMS**

**Report of the Fir Ad Hoc Committee** – This was taken up during Executive Session.

**Community Residential Care Facility in an Unincorporated Area of Richland County: 429 Rockhaven Drive, Columbia, SC 29223** – Council received this as information.

**CITIZENS INPUT**

Ms. Judy Irvin, Mr. Luke Dozier and Ms. Verner Starks spoke regarding residential care facilities in their community.

**OUTSIDE COUNSEL EXECUTIVE SESSION**

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**Council went into Executive Session at approximately 8:45 p.m. and came out at approximately 8:55 p.m.**  
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- a. **IGA – Fire Contract** – No action was taken.



## MOTION PERIOD

Pursuant to a request from Gary Watts, the Richland County Coroner, I move that the County Administrator and/or his designee along with the County Attorney meet with the Coroner and Probate Judge Amy McCullough to determine whether a County ordinance could be developed that would assist in the recovery of costs associated with the disposition of unclaimed decedents. This would only apply to those individuals whose estates are determined to have financial resources available. Explanation: According to the Coroner, the number of families declining custody of their deceased relatives is rising annually with the County having to bear the cost of preparation and burial of these individuals. In many cases, the Coroner and Probate Judge have determined that the decedent's estate have sufficient assets to cover these costs; however, they currently have no means to recover the costs associated with these expenses. [PEARCE] – This item was referred to the A&F Committee.

Motion for resolution from County Council supporting the One-Book, One Columbia reading initiative. This endeavor was a huge success last year in its inaugural year and will be taking place again in 2012. The Richland County library is involved and this is a resolution in which County Council will officially endorse the One-Book, One Columbia initiative. (Note: There is no financial resources tied to this resolution, this is merely showing County Council's support.) [ROSE] –Mr. Malinowski moved, seconded by Ms. Hutchinson, to adopt a resolution supporting One-Book, One Columbia reading initiative. The vote in favor was unanimous.

In an attempt to give qualified law firms an opportunity to participate in the counties bond work. We would request that the County Attorney establish a list of qualified firms and the list would be used to rotate the counties bond function. In addition, the county would encourage these firms to ensure that there is minority partnership in the process [JETER & WASHINGTON] – This item was referred to the A&F Committee.

## ADJOURNMENT

The meeting adjourned at approximately 9:02 p.m.

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Paul Livingston, Chair

\_\_\_\_\_  
Damon Jeter, Vice-Chair

\_\_\_\_\_  
Gwendolyn Davis Kennedy

\_\_\_\_\_  
Joyce Dickerson

\_\_\_\_\_  
Valerie Hutchinson

\_\_\_\_\_  
Norman Jackson

\_\_\_\_\_  
Bill Malinowski

\_\_\_\_\_  
Jim Manning

\_\_\_\_\_  
L. Gregory Pearce, Jr.

\_\_\_\_\_  
Seth Rose

\_\_\_\_\_  
Kelvin E. Washington, Sr.

The minutes were transcribed by Michelle M. Onley

# Richland County Council Request of Action

**Subject**

- a. SCE&G [OUTSIDE COUNSEL]
- b. Redistricting Update [OUTSIDE COUNSEL]
- c. Darrell's vs. Richland County [OUTSIDE COUNSEL]
- d. SOB Update - Legal Advice
- e. Medicare Retiree Group Health Insurance Benefits Services - Contractual Matter
- f. FN Manufacturing, LLC - Pending Litigation
- g. McEntire Produce, Inc. - Pending Litigation

# Richland County Council Request of Action

**Subject**

For Items on the Agenda Not Requiring a Public Hearing

# Richland County Council Request of Action

**Subject**

- a. Legislative Delegation Update

# Richland County Council Request of Action

**Subject**

a. January Meeting Schedule

b. Annual Council Retreat, January 26-27, 2012, Clemson University Sandhill Research & Education Center, 900 Clemson Road

# Richland County Council Request of Action

## **Subject**

- a. Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company LLC, acting for itself, one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the Company to claim certain special source credits against such FILOT payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto
- b. Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself, one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto
- c. An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes
- d. Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters
- e. An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto
- f. An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto
- g. An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project
- h. An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes

# Richland County Council Request of Action

## **Subject**

Authorizing an Amendment to the Master Agreement governing the I-77 Corridor Regional Industrial Park by and between Richland County, South Carolina, and Fairfield County, South Carolina, to expand the boundaries of the park to include certain real property located in Richland County, and related matters [**THIRD READING**] [**PAGES 24-34**]

## **Notes**

First Reading: September 20, 2011

Second Reading: October 4, 2011

Third Reading:

Public Hearing: November 1, 2011



STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. []

AUTHORIZING AN AMENDMENT TO THE MASTER AGREEMENT GOVERNING THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA, AND FAIRFIELD COUNTY, SOUTH CAROLINA, TO EXPAND THE BOUNDARIES OF THE PARK TO INCLUDE CERTAIN REAL PROPERTY LOCATED IN RICHLAND COUNTY; AND RELATED MATTERS.

WHEREAS, to promote the economic welfare of its citizens by providing employment and other benefits, Richland County, South Carolina (“Richland”) and Fairfield County, South Carolina (“Fairfield” and with Richland, “Counties”), are authorized under Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (“Act”) jointly to develop an industrial or business park in the geographical boundaries of one or more of the member counties;

WHEREAS, on April 15, 2003, the Counties entered into an agreement entitled “Master Agreement Governing the I-77 Corridor Regional Industrial Park” (“Master Agreement”), the provisions of which replaced all existing Phase Agreements and now govern the operation of the Park;

WHEREAS, to further economic development in the corporate limits of the City of Columbia, South Carolina (“City”), the City desires that the Counties expand the boundaries of the Park to include property located in Richland and described on the attached Exhibit A (“Property”); and

WHEREAS, the City desires to enter into an agreement with Richland relating to the distribution of fees-in-lieu of tax paid on behalf of the Property to the City, a copy of which is attached as Exhibit B (“Intergovernmental Agreement”).

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

**Section 1.** Pursuant to Section 3a of the Master Agreement, the Master Agreement is amended to include the Property in the Park, the legal description of which is attached as Exhibit A.

**Section 2.** The Intergovernmental Agreement is approved, and the Chairman, the County Administrator, the Clerk are each authorized and directed to execute and deliver the Intergovernmental Agreement, in substantially the form approved, together with additions, modifications and changes as are both: (a) not materially adverse to the County; and (b) approved, with the advice of counsel, with the approval being evinced by the execution and delivery of the final form of the Intergovernmental Agreement.

**Section 3.** The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to execute and deliver any documents and take any further actions as may be reasonably necessary to further the intent of this Ordinance.

**Section 4.** If any part of this Ordinance is unenforceable, then the remainder is unaffected.

**Section 5.** Any ordinance, resolution or order, the terms of which conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 6.** This Ordinance is effective after third and final reading.

RICHLAND COUNTY COUNCIL

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

(SEAL)

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

All that certain piece, parcel or lot of land, with improvements thereon, if any, situate, lying and being in Richland County, South Carolina, and being shown and designated as 132.284 acres, more or less, on a boundary survey prepared for Saro Properties, a Partnership, by B.P. Barber and Associates, Inc., dated October 13, 2005, revised on October 25, 2005, and recorded in Plat Book 1115, at page 2282.

This being a portion of the property conveyed to Halifax Properties, LLC by deed of Saro Properties, dated October 28, 2005, and recorded October 31, 2005, in Deed Book 1115, at page 2286.

Richland County Tax Map No. 16200-04-18

**EXHIBIT B**  
**INTERGOVERNMENTAL AGREEMENT**



("Taxing Districts") that would otherwise levy tax millage on the properties located in the Richland County portion of the Park, if the properties were not located in the Park;

WHEREAS, Section 3.03(b) of the Park Agreement provides that Richland County may unilaterally amend the distribution of Revenues set forth in Section 3.03(a) of the Park Agreement by passage of an ordinance; and

WHEREAS, pursuant to Section 3.03(b) of the Park Agreement and pursuant to Ordinance No. [], enacted by the County Council on [], 2011, the County has agreed to amend the distribution of Revenues to the Taxing Districts as more particularly set forth in this Agreement, but only with respect to the Revenues paid by or on behalf of properties located on the Property ("Property Revenues").

NOW, THEREFORE, on the basis of the premises and mutual covenants contained in this Agreement, the sufficiency of which consideration is acknowledged, Richland County and the City agree:

1. City Consent to Inclusion of Property in the Park. At execution and delivery of this Agreement by the City and Richland County, the City affirms its consent to the inclusion of the Property in the Park.

2. Distribution of Property Revenues. Property Revenues shall be annually distributed as follows:

(a) One percent (1%) of the Property Revenues shall be distributed to Fairfield County in accordance with the procedures set forth in the Park Agreement;

(b) Of the remaining ninety-nine percent (99%) of the Property Revenues, Richland County shall distribute to the City not less than its proportionate share of the Property Revenues (calculated based upon the City's percentage of millage levied on the Property, compared to the total millage levied by all Taxing Districts on the Property in the applicable property tax year). Richland County shall distribute to the City the City's portion of the Property Revenues as calculated herein in accordance with Richland County's normal procedure for the distribution of tax revenues of Taxing Districts for which Richland County is responsible for collecting tax revenues. Richland County is entitled to discontinue making the distribution referenced in the previous sentence after the earlier of: (i) the sum of the distributions to the City related to the Property equals \$1,250,000; and (ii) five years from the effective date of this Agreement.

(c) Remaining Property Revenues (after distribution to Fairfield County and to the City, as set forth in Sections 2(a) and 2(b) above, respectively), may be distributed in the manner set forth, from time to time, by ordinance of Richland County.

3. Removal of Property from the Park. Unless requested or consented to by ordinance of the City, Richland County shall not: (a) take any affirmative action to remove the Property from the Park, (b) consent to the removal of the Property from the Park, (c) terminate the Park Agreement; or (d) enact an ordinance or take any other action to provide for a distribution of the City's portion of the Property Revenues contrary to the methodology set forth in Section 2 of this Agreement.

4. Binding Effect of Agreement. This Agreement serves as a written instrument, which is binding upon the City and Richland County.

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 Agreement 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 Agreement.

5. Complete Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the Agreement's subject matter and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof, and neither party shall be bound by any oral or written agreements, statements, promises, or understandings not specifically set forth in this Agreement. This Agreement may only be amended upon the enactment of ordinances by both the City and Richland County, and a written amendment hereto executed by authorized officers of both the City and Richland County.

6. Counterpart Execution. This Agreement may be executed in multiple counterparts.

7. Termination. This Agreement may not be terminated by either party hereto for a period of 30 years commencing with the later of the effective date of this Agreement or the effective date of the expansion of the boundaries of the Park to include the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and the year first above written.

Witness:

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

RICHLAND COUNTY, SOUTH CAROLINA

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

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

Attest: \_\_\_\_\_

Clerk to County Council

Witness:

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

CITY OF COLUMBIA, SOUTH CAROLINA

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

Steven A. Gantt

Its: City Manager

Attest: \_\_\_\_\_

City Clerk



**EXHIBIT A**  
**MASTER AGREEMENT**  
**GOVERNING THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK**  
**DATED AS OF APRIL 15, 2003, AS AMENDED**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF PROPERTY**

All that certain piece, parcel or lot of land, with improvements thereon, if any, situate, lying and being in Richland County, South Carolina, and being shown and designated as 132.284 acres, more or less, on a boundary survey prepared for Saro Properties, a Partnership, by B.P. Barber and Associates, Inc., dated October 13, 2005, revised on October 25, 2005, and recorded in Plat Book 1115, at page 2282.

This being a portion of the property conveyed to Halifax Properties, LLC by deed of Saro Properties, dated October 28, 2005, and recorded October 31, 2005, in Deed Book 1115, at page 2286.

Richland County Tax Map No. 16200-04-18

# Richland County Council Request of Action

## **Subject**

Authorizing the Execution and Delivery of an Amendment to the Fee Agreement between Richland County, South Carolina, and Arum Composites, LLC its affiliates and assigns, to provide for a new effective date and millage rate; and other matters **[THIRD READING] [PAGES 35-82]**

## **Notes**

First Reading: November 1, 2011  
Second Reading: November 15, 2011  
Third Reading:  
Public Hearing:

**AN ORDINANCE**

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE FEE AGREEMENT BETWEEN RICHLAND COUNTY, SOUTH CAROLINA, AND ARUM COMPOSITES, LLC ITS AFFILIATES AND ASSIGNS, TO PROVIDE FOR A NEW EFFECTIVE DATE AND MILLAGE RATE; AND OTHER MATTERS.

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“Act”), to (i) enter into agreements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State of South Carolina will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; and (ii) covenant with such industry to accept certain payments in lieu of *ad valorem* taxes (“FILOT”) with respect to such investment;

WHEREAS, Arum Composites, LLC a company authorized to do business in the State of South Carolina, along with its affiliates and assigns (collectively, “Company”) entered into a “Fee-in-Lieu of Tax and Incentive Agreement,” dated as of February 1, 2008, a copy of which is attached as Exhibit A (“Fee Agreement”), with respect to the Company’s investment in the County (“Project”);

WHEREAS, the Act requires the Company to place the Project in service no later than December 31, 2011, which is the last day of the property tax year which is three years from the year in which the County and the Company entered into the Fee Agreement (“Commencement Date”);

WHEREAS, the Company does not anticipate commencing the Project until after the Commencement Date and requests the County to amend the Fee Agreement to extend the Commencement Date to December 31, 2014;

WHEREAS, the Act permits the County and the Company to amend the Fee Agreement; and

WHEREAS, in consideration of the extension of the Commencement Date, the Company agrees to amend the Fee Agreement to amend the effective millage rate to be 461.2.

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

**Section 1. *Authorization to Execute and Deliver First Amendment to Fee Agreement.*** The Chair of County Council, or in the Chair’s absence, the Vice-Chair, is authorized and directed to execute and deliver, and the Clerk to County Council is authorized and directed to attest the same, an amendment to the Fee Agreement (“First Amendment”), which First Amendment (i) extends the Commencement Date until December 14, 2011; and (ii) revises the effective millage rate. The First Amendment is attached to this Ordinance as Exhibit B in substantially final form, with such changes as may be required or deemed appropriate by the Chair, or Vice-Chair in the Chair’s absence, with the advice of counsel.

**Section 2. *Further Acts.*** The Chair, or the Vice-Chair in the Chair’s absence, and the Clerk to County Council are authorized to execute and deliver such other closing and related instruments, documents, certificates and other papers as are necessary to effect the intent and delivery of the First Amendment.

**Section 3. *General Repealer.*** The County Council repeals any part of any ordinance or resolution that conflicts with any part of this Ordinance.

**Section 4. Severability.** Should any part, provision, or term of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding or determination shall not affect the rest and remainder of the Ordinance or any part, provision or term thereof, all of which is deemed separable.

This Ordinance takes effect and is in full force only after the County Council has approved it following three readings and a public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

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Paul Livingston, Chairman of County Council

ATTEST:

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Michelle Onley, Clerk to County Council

READINGS:

First Reading: November 1, 2011  
Second Reading: November 15, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 6, 2011

**EXHIBIT A**  
**“FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT”**  
**DATED AS OF FEBRUARY 1, 2008**

**EXHIBIT B**  
**“FIRST AMENDMENT TO THE FEE AGREEMENT”**



## FIRST AMENDMENT TO THE FEE AGREEMENT

This First Amendment to the Fee Agreement (“First Amendment”) is effective December \_\_, 2011, between Richland County, South Carolina (“County”), a body politic and corporate and political subdivision of the State of South Carolina, and Arum Composites, LLC, a company qualified to do business in the State of South Carolina, its affiliates and assigns (collectively, “Company”).

WHEREAS, each capitalized term not defined in this First Amendment has the meaning as provided in the “Fee-in-Lieu of Tax and Incentive Agreement,” dated as of February 1, 2008, a copy of which is attached as Exhibit A (“Fee Agreement”), and if not provided in the Fee Agreement, as provided in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (“Act”), and terms not otherwise defined herein shall have the meanings assigned to them in the Fee Agreement;

WHEREAS, the Act requires the Company to place Economic Development Property in service not later than the date that must not be later than the last day of the property tax year which is three years from the year in which the County and the Company entered into the Fee Agreement (i.e. no later than December 31, 2011) (“Commencement Date”); and

WHEREAS, the Company does not anticipate commencing the Project until after December 31, 2011;

WHEREAS, the County and the Company now desire to amend the Fee Agreement to extend the Commencement Date to December 31, 2014 and make any conforming changes necessary to the Fee Agreement;

WHEREAS, by the County’s Ordinance No. [], enacted December \_\_, 2011, the County authorized the execution and delivery of this First Amendment; and

WHEREAS, the County and the Company now desire to enter this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained in this First Amendment and other good and valuable consideration, the receipt of which the County and Company each acknowledge, the County and the Company agree as follows:

1. Fee Agreement Amendments. The County and the Company amend the Fee Amendment as follows:

(a) *Effective Date*. The effective date of the Fee Agreement shall be the date of the First Amendment.

(b) *Effective Millage Rate*. Section 5.01(b)(ii)(2) is hereby amended to provide for a fixed millage rate of 461.2 to be applicable for the duration of the Fee Agreement.

2. Remainder of Fee Agreement. Except as described in this First Amendment’s Section 1, the Fee Agreement remains unchanged and in full force.

3. Severability. If any provision of this First Amendment is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom.

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

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

RICHLAND COUNTY, SOUTH CAROLINA

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Paul Livingston, Chairman of County Council

ATTEST:

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Michelle Onley, Clerk to County Council

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

Arum Composites, LLC

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BY:  
ITS:

**EXHIBIT A**  
**“FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT”**  
**DATED AS OF FEBRUARY 1, 2008**

---

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

ARUM COMPOSITES, LLC

Dated as of February 1, 2008

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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 February 1, 2008, between RICHLAND COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and ARUM COMPOSITES, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Company");

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered, under and pursuant to the provisions of the Code of Laws of South Carolina, 1976, as amended through the date hereof (the "Code"), particularly Title 12, Chapter 44 thereof (the "FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof; the "Special Source Act") (collectively, the "Act"), and in order to promote the economic development of the County and surrounding areas by inducing investors to locate and/or expand industrial and commercial properties ("Economic Development Property") within the County, thereby expanding the tax base in the County and creating jobs for its citizens: (i) to enter into agreements with such investors pursuant to which such investors will make negotiated fee in lieu of *ad valorem* tax ("FILOT") payments with respect to such Economic Development Property; (ii) to permit investors to claim special source credits against their FILOT payments ("Special Source Credits") to reimburse such investors for qualifying expenditures in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iii) to create, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, the Company plans a significant investment within the jurisdiction of the County through the acquisition of certain land and the construction, equipping and furnishing of certain facilities to be used primarily for commercial services (the "Project"), and the Company anticipates that, should its plans proceed as expected, it will invest a minimum of \$600,000,000 in conjunction with the Project and within the County; and

WHEREAS, such projected investment will qualify the Project as an enhanced investment or "super-fee" under the FILOT Act (an "Enhanced Investment"), which entitles the Company to (i) an extended minimum investment period of eight (8) years (the "Statutory Investment Period") to reach the applicable minimum investment, if any, under Section 12-44-30(7) of the FILOT Act, and (ii) an additional five (5) years beyond the Statutory Investment Period to complete the Project if the Company does not anticipate completing the Project within the Statutory Investment Period and the Company applies to the County for an extension and the County thereby agrees to such an extension (the "Extended Investment Period").



WHEREAS, the County has determined that the Project will subserve the purposes of the Act; the Company is a Project Sponsor and the Project constitutes Economic Development Property and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County adopted a Resolution on November 20, 2007, pursuant to which the County agreed to negotiate in good faith a FILOT agreement, subject to approval by ordinance of the County Council; and

WHEREAS, the County authorized the foregoing actions to be taken for the benefit of the Company, and ratified all prior actions taken with respect to the Project (including the inducement documents in the name of "Project Y") pursuant to an Ordinance enacted on December 18, 2007; and

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

NOW, THEREFORE, in consideration of the premises; the potential jobs and investment to be created by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

[Article I follows on next page]

## ARTICLE I

### DEFINITIONS

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

“*Act*” shall mean, collectively, the FILOT Act, the Multi-County Park Act and the Special Source Act, as amended through the date hereof.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including attorneys’ fees; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred and that the County shall have furnished to the Company an invoice or itemized statement of all expenses incurred; and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

“*Agreement*” shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(A)(18) and (19) of the Code, any Corporate Affiliate of the Company, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising apart of the Project, any financing entity or other third party investing in or providing funds for the Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 8.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Act. The Company has not identified any Sponsor, Sponsor Affiliate or other Co-Investor as of the date of execution and delivery of this Agreement.

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

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

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

“*Council*” shall mean the governing body of the County.

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Economic Development Property*” shall mean each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Code, excluding specifically any Non-Qualifying Property.

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

“*Existing Property*” shall mean property proscribed from becoming Economic Development Property under this Agreement pursuant to Section 12-44-110 of the Code, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; (c) property purchased by or on behalf of the Company during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Code.

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

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

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

“*Investment Period*” shall mean the period for completion of the Project, which shall be equal to the Statutory Investment Period unless hereinafter extended by Resolution of the Council; provided that there shall be no extension of the period for meeting the Minimum Investment Requirement beyond the Statutory Investment Period, all determined as specified in Section 12-44-30(13) of the Code.

“*Land*” shall mean the land upon which the Project would be constructed, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with the provisions hereof.

“*Minimum Investment Requirement*” shall mean investment in the Project within the County by any one of the Company or any Sponsor or Sponsor Affiliate of not less than \$600,000,000 prior to the end of the Statutory Investment Period.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to 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 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 replaced from time to time.

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

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT Payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Economic Development Property which qualifies pursuant to the FILOT Act for the assessment ratio and negotiated millage rate described in **Section 5.01(b)(i)** hereof.

“*Non-Qualifying Property*” shall mean that portion of the facilities located on the Land and consisting of: (i) Existing Property; (ii) except as to Replacement Property, property which the Company places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the FILOT Act, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to **Section 4.03(a)(ii)** hereof.

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

“*Project*” shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements constructed thereon; (ii) all machinery, equipment, furnishings and other personal property acquired by or on behalf of the Company for use on or about the Land; and (iii) any Replacement Property; provided, however, that, except as to the Land and any Replacement Property, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service by the end of the Investment Period, and the term Project shall be deemed to exclude any Existing Property or other Non-Qualifying Property.

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

“*Released Property*” shall include Economic Development Property which is scrapped, sold, disposed of, or released from this Agreement by the Company pursuant to **Section 4.03** hereof and Section 12-44-50(B) of the Code; any portion of the Economic Development Property constituting infrastructure which the Company dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; and any Economic Development Property damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

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

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

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

“*Special Source Improvements*” shall mean any qualifying infrastructure defined under Section 4-29-68 of the Code, as amended through the date hereof, and shall be deemed to include initially, for purposes of this Agreement, the Land, the buildings, fixtures and other real property improvements on the Land and any additions or improvements to any of the foregoing, whether paid for by the Company or any Co-Investor directly or through lease payments.

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

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

“*Statutory Investment Period*” shall mean the period commencing on the date of the first expenditures with respect to the Project and ending eight (8) years after the end of the Property Tax Year in which the initial phase of the Project is placed in service, all as specified in Section 12-44-30(13) of the Code. For illustrative purposes, if the initial phase of the Project should be placed in service in the Property Tax Year ending on December 31, 2008, the end of the Statutory Investment Period would be December 31, 2016.

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

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

**Section 1.02** References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

[End of Article I]

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement, the Negotiated FILOT Payments and Special Source Credit arrangements as set forth herein, the inclusion of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

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

(c) This Agreement has been duly executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the undersigned representatives of the County, conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the undersigned representatives of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the undersigned representatives of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any South Carolina court or before any South Carolina governmental authority or arbitration board or tribunal, any of which to the best knowledge of the undersigned representatives of the County could materially adversely affect this Agreement or which could adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly

authorized to execute and deliver this Agreement. The Company's fiscal year end is December 31 of each year, and the Company will notify the County of any changes in the fiscal year of the Company.

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

(c) The agreements with the County with respect to the FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to consider locating the Project within the County and the State.

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

[End of Article II]



## ARTICLE III

### CERTAIN UNDERTAKINGS OF THE COUNTY

Section 3.01 Agreement to Accept FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Economic Development Property until this Agreement expires or is sooner terminated. The County makes no warranty, either express or implied, as to the title to any part of the Project or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs.

Section 3.02 Special Source Credits.

(a) As reimbursement for the Company's investment in Special Source Improvements pursuant to **Section 4.04** hereof, the County agrees that the Company shall be entitled to claim annual Special Source Credits in amounts equal to 27% of its annual FILOT payments during the Terms of this Agreement, subject to adjustment as provided herein, all in accordance with the Special Source Act. In no event shall the aggregate amount of the Special Source Credits exceed the amount heretofore or hereafter expended by the Company or any Co-Investor with respect to Special Source Improvements relating to the Property. The Company shall claim such Special Source Credits by filing with the County Administrator and the County Auditor, at the time it makes its FILOT Payment, an Annual Special Source Credit Certification (substantially in the form of **Exhibit B-1** hereto) showing the amount of aggregate investment in the Project and Special Source Improvements and the calculation of the Special Source Credits. The amount of such Special Source Credit, after confirmation by the County and the County's agreement therewith, shall be deducted by the County from its annual FILOT bill.

(b) THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A SPECIAL LIMITED OBLIGATION PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY, IF ANY, HEREUNDER WITH RESPECT TO THE PROJECT.

(c) If investment in the Project does not aggregate \$600,000,000 or more by the end of the Statutory Investment Period, the County reserves the right to terminate or adjust the Special Source Credits. The County may exercise such option to terminate or adjust the Special Source Credits at any time following the date that is the earliest of (i) the date the Company files with the County Administrator and the County Auditor, an Annual Aggregate Investment Certification (substantially in the form of **Exhibit B-2** hereto) stating whether the aggregate investment in the Project has or has not reached, or is not anticipated to reach, \$600,000,000 by the end of the Statutory Investment Period, or (ii) the final day of the Statutory Investment Period. The Company shall file such Annual Aggregate Investment Certification at such time it files its Annual Special Source Credit Certificate. Such Annual Aggregate Investment Certification and Annual Special Source Credit Certificate shall be sent by way of regular mail delivery to the County Administrator and the County Auditor.

Section 3.03 Related Undertakings.

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

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

[End of Article III]

## ARTICLE IV

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

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

(a) The Company agrees that in order to fully qualify for the benefits of this Agreement it must acquire and/or develop, or cause to be acquired and/or be developed, the Project, as the same shall be determined from time to time by the Company in its sole discretion, and to expend or cause to be expended upon the Cost of the Project not less than \$600,000,000 or to the end of the Investment Period; provided, however, that the benefits provided to the Company under this Agreement shall be subject to adjustment or termination as provided in **Sections 3.02** and **5.01** hereof if the aggregate investment in the Project does not reach the levels specified therein. As required by Section 12-44-30(2) of the Code, at least a portion of the assets comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is executed and delivered.

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

(c) To encourage the Company to increase its investment in the Project, if the investment in the Project reaches at least \$600,000,000 by the end of the Statutory Investment Period and the Company commits to additional investment in the Project, upon the Company's written request, the County, acting by Resolution, will consider extension of the period for completion of the Project for up to an additional five years (the "Extended Investment Period") (such Statutory Investment Period or Extended Investment Period, as the case may be, referred to herein as the "Investment Period"); provided, however, that there shall be no extension of the period for meeting the Minimum Investment Requirement beyond the Statutory Investment Period.

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

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

Section 4.03 Modification of Project.

(a) As long as no Event of Default exist hereunder, the Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may during the Investment Period, at its own expense, add all such real and personal property as the Company in its discretion deems useful or desirable to the Economic Development Property qualifying for the Negotiated FILOT under **Section 5.01** hereof without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 8.01** hereof with respect to Economic Development Property, in any instance where the Company in its discretion determines that any items included in the Project, including any Economic Development Property and any portion of the Land, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company may, at any time and in its discretion by written notice to the County, remove any Economic Development Property, real or personal, from the Negotiated FILOT set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes.

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

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

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

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

[End of Article IV]

## ARTICLE V

### FILOT PAYMENTS

#### Section 5.01 FILOT Payments.

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

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

(i) For each annual increment of investment in Economic Development Property, the annual Negotiated FILOT Payments shall be payable for a consecutive period of up to 30 years. Accordingly, if such Economic Development Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a consecutive period of 30 years, up to an aggregate of 38 years or, if the Investment Period is extended to the Extended Investment Period, up to an aggregate of 43 years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 4%; (2) a millage rate of 388.7, which is the millage rate applicable in the County as of June 30, 2007 for the particular taxing district in which the Land is located, fixed for the entire term of this Agreement; and (3) the fair market value of such Economic Development Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Code, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence) as determined by the Department of Revenue.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT, the Economic Development Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

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

(ii) to reduce such payments in the event that the Economic Development Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the value of the Project or such portion thereof;

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

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

(d) Upon the Company's installation of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject

to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the thirty-year period applicable to the Released Property.

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

(e) In the event that, for any reason, the FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Economic Development Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Economic Development Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable with respect to the portion of the Economic Development Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f) If the Company fails to invest at least \$600,000,000 in the Project within the Statutory Investment Period but invests at least \$100,000,000 in the Project within five years from the end of the property tax year in which this Agreement is executed, the Negotiated FILOT shall be adjusted such that it is calculated for all succeeding tax years based on a 6% assessment ratio. With respect to all tax years for which the Company has paid a Negotiated FILOT calculated using a 4% assessment ratio, the Company shall pay to the County, within 30 days of receipt of written notice requesting payment, the difference between the FILOT Payments theretofore actually paid and the FILOT Payments that would have been paid based on a six percent (6%) assessment ratio, with such difference being subject to interest as provided in Section 12-54-25(D) of the Code, and the Statutory Investment Period shall be revised to five (5) years.

(g) If the Company fails to maintain its investment at the level of \$100,000,000 (without regard to depreciation) for the duration of this Agreement, the County reserves the right to terminate this Agreement retroactively. If the County terminates this Agreement retroactively, the Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment shall be due and payable with respect to such property within 30 days of the County provided written notice to the Company of such Deficiency Payment. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to maintain a \$100,000,000 investment, Section 12-44-140(D) of the Code provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(h) In the event that the Company's investment in the Project reaches the Minimum Investment Requirement but, based on original income tax basis without regard to depreciation falls below the Minimum Investment Requirement, the Company shall make FILOT payments for the Project based on a 6% assessment ratio prospectively for the remainder of the term of this Agreement.

(i) In accordance with the provisions of **Sections 4.01(b)** and **8.03** hereof except for Existing Property, the fair market value of all property utilized by the Company at the Project site, whether owned by the Company outright or utilized by the Company pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

(j) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within ninety (90) days following receipt by the Company of notice that there has been a final determination by the County that such a Deficiency Payment or other retroactive payment is due.

[End of **Article V**]



## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

Section 6.01 Payment of Administration Expenses. Within thirty (30) days after receipt of an invoice, the Company will pay the County's attorneys' fees incurred to date in an amount not to exceed \$15,000. Thereafter, the Company will reimburse the County from time to time for its Administration Expenses, including attorneys' fees, promptly upon written request therefor, but in no event later than 30 days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement, and, aside from the attorneys' fees, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby.

#### Section 6.02 Indemnification.

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

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

Section 6.03 Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

[End of Article VI]

## ARTICLE VII

### PARTICULAR COVENANTS AND AGREEMENTS

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

Section 7.02 Maintenance of Existence. Unless the County shall consent otherwise, which consent shall not be unreasonably withheld, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property (except, in either case, where the resulting, surviving, or transferee entity is the Company or an Corporate Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby consents). The resulting, surviving or transferee entity, if not the Company, shall, within sixty (60) days following any such merger, consolidation or transfer, provide the County with written notification of such event together with a copy of the written instrument by which such resulting, surviving, or transferee entity has assumed the rights and obligations of the Company under this Agreement. The Company acknowledges that, except as permitted herein, transfers of this Agreement or Economic Development Property may cause the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 7.03 Records and Reports. The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project which are placed in service in each Property Tax Year during the Investment Period, the amount of investment in the Project and in Special Source Improvements, and its computations of all Negotiated FILOT Payments and Special Source Credits and to comply with all reporting requirements of the State and the County applicable to Economic Development Property under the Act, including without limitation the reports required by 12-44-90 of the Code (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the code for a recapitulation of the terms of this Agreement. Specifically, the Company shall provide the following:

(a) Each year during the Term hereof, the Company shall deliver to the County Administrator, County Auditor and the County Assessor a copy of its most recent annual filings made with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Administrator, County Auditor and the County Assessor of the County and of any county which is a party to the Multi County Park Agreement and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate. Notwithstanding any other provision of this

Section, the Company may, by clear, written designation, conspicuously marked, designate with respect to any filings delivered to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company.

[End of **Article VII**]

## ARTICLE VIII

### CONVEYANCES; ASSIGNMENTS; SPONSORS AND SPONSOR AFFILIATES

Section 8.01 Conveyance of Liens and Interests: Assignment. The Company may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Economic Development Property to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Economic Development Property, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such Economic Development Property, as long as the transferee in any such arrangement leases the Economic Development Property in question to the Company or any of its Corporate Affiliates or operates such assets for the Company or any of its Corporate Affiliates or is leasing such Economic Development Property in question from the Company or any of its Corporate Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to property so transferred: (i) except in connection with any transfer to a Corporate Affiliate of the Company, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the written consent of the County; (ii) except where a financing entity which is the income tax owner of all or part of the Economic Development Property, is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing or where the transfer relates to Released Property pursuant to **Section 4.03** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent that the transferee or financing entity shall become obligated to pay make Negotiated FILOT Payments hereunder, the transferee shall assume the then current basis of the Company (or other income tax owner) in the Economic Development Property transferred; (iv) the Company, transferee or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Economic Development Property may cause all or part of the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 8.02 Sponsors and Sponsor Affiliates. The County hereby authorizes the Company to designate from time to time Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(18) or (19), respectively, and Section 12-44-130 of the Code, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Corporate Affiliates of the Company or other Persons described in **Section 8.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of

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

[End of **Article VIII**]

## ARTICLE IX

### TERM; TERMINATION

Section 9.01 Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder.

Section 9.02 Termination. The County and the Company may agree to terminate this Agreement at any time, or the Company may, at its option, terminate this Agreement at any time, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. The County may elect to terminate this Agreement if the Company fails to meet and maintain a minimum investment of \$100,000,000, and if the Agreement is terminated, the Project shall be subject retroactively to *ad valorem* taxes as provided in **Section 5.01** hereof and any amounts due to the County as a result thereof shall be due and payable as provided in **Section 5.01** hereof. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for such retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights, as it would have with respect to *ad valorem* taxes and the County's rights owing hereunder at the time of such termination shall survive any such termination.

[End of **Article IX**]

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default by the Company. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company:

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

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Company written notice of such default; provided, the County may, in its discretion, grant the Company a longer period of time as necessary to cure such default if the Company proceeds with due diligence to cure such default; and provided further, that no Event of Default shall exist under this paragraph (b) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Company has contested the occurrence of such default.

The Company's failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Sections 3.03, 4.01 and 5.01** hereof.

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

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

(b) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 7.03** hereof; or

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

Section 10.03 Application of Monies upon Enforcement of Remedies against Company. Any monies received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings; second, to



pay Administration Expenses; and third, to pay the Negotiated FILOT in accordance with **Section 5.01** hereof.

Section 10.04 Default by the County. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for mandamus or specific performance.

[End of **Article X**]

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers, or remedies.

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

Section 11.03 Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

- (a) As to the County:

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

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

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

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

(c) As to the Company:

ARUM COMPOSITES, LLC  
c/o Corporation Service Company  
2711 Centerville Road, Suite 300  
PMB 811  
Wilmington, Delaware 19808

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

Larry D. Estridge, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
Post Office Box 10208  
Greenville, South Carolina 29603-0208  
Phone: 864-255-5401  
Fax: 864-255-5481  
Email: [lestridge@wcsr.com](mailto:lestridge@wcsr.com)

Section 11.04 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 11.05 Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 11.06 Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 11.07 Headings and Table of Contents: References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

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

Section 11.09 Amendments. Subject to the limitations set forth in Section 12-44-40(J)(2) of the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 11.10 Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.


Section 11.11 Further Proceedings. It is intended by the parties that any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the County Administrator and/or County Auditor without necessity of further proceedings. To the extent that additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

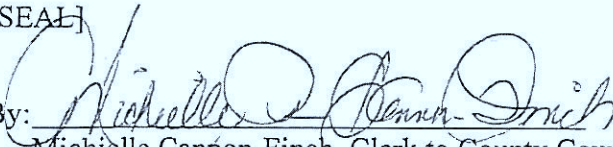
Section 11.12 Limited Obligation of the County with Respect to Project. THE PROJECT SHALL GIVE RISE TO NO PECUNIARY LIABILITY OF THE COUNTY OR ANY INCORPORATED MUNICIPALITY NOR TO ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

[End of Article XI]

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

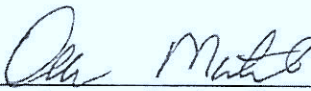
RICHLAND COUNTY, SOUTH CAROLINA

By:   
Joseph McEachern, Chair of County Council  
Richland County, South Carolina

[SEAL]  
By:   
Michelle Cannon-Finch, Clerk to County Council  
Richland County, South Carolina

Date: 02/21, 2008

ARUM COMPOSITES, LLC

By:   
Name: Dan Martinelli  
Its: Manager

Date: 08 February, 2008

Legal  
Approved  


## EXHIBIT A

### LEGAL DESCRIPTION

#### Firetower Parcel

That tract of land in Richland County, South Carolina, being shown and designated as "Firetower I-77 Partners Parcel 1" containing 171.180 acres on ALTA/ACSM Land Title Survey, Project-Arum Composites, LLC prepared by B.P. Barber & Associates, Inc., dated May 9, 2007, revised September 25, 2007, recorded in the Office of the Register of Deeds for Richland County in Book 1061 at page 807, together with any gores or strips, if any, between the common boundaries of Parcel 1 and Parcel 2.

#### City of Columbia Parcel

That tract of land in Richland County, South Carolina, being shown and designated as "City of Columbia Parcel 2" containing 294.788 acres on ALTA/ACSM Land Title Survey, Project-Arum Composites, LLC prepared by B.P. Barber & Associates, Inc., dated May 9, 2007, revised September 25, 2007, recorded in the Office of the Register of Deeds for Richland County in Book 1061 at page 807, together with any gores or strips, if any, between the common boundaries of Parcel 1 and Parcel 2.

EXHIBIT B-1

ANNUAL SPECIAL SOURCE CREDIT CERTIFICATION

Reference is made to that certain Fee In Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, 2008 (the "Agreement") between ARUM COMPOSITES, LLC (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

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

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$600,000,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 20[\_\_\_].

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

(a) The Statutory Investment Period has not yet elapsed. To date, the Company and all Co-Investors have invested in the aggregate \$ \_\_\_\_\_ (without regard to depreciation) in the Project, and the Company anticipates that investment in the Project will aggregate at least \$600,000,000 prior to the end of the Statutory Investment Period.

or

(b) The Company and all Co-Investors invested in the aggregate not less than \$600,000,000 (without regard to depreciation) in the Project prior to the end of the Statutory Investment Period.]

3. The Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the FILOT payment due on January 15, 200[\_\_\_].

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

5. The invoice for FILOT payments for tax year \_\_\_\_\_ provided to the Company by the County Auditor specifies that the FILOT payment due on January 15, \_\_\_\_\_ is \$\_\_\_\_\_.

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

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Exhibit B-1-1

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

8. The amount due from the County to the Company on January 15, 20[ ] as a Special Source Credit is \$\_\_\_\_. The Company has deducted such amount from the FILOT Payment accompanying this certificate.

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

ARUM COMPOSITES, LLC

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



EXHIBIT B-2

ANNUAL AGGREGATE INVESTMENT CERTIFICATION

Reference is made to that certain Fee In Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, 2008 (the "Agreement") between ARUM COMPOSITES, LLC (the "Company") and Richland County, South Carolina (the "County"). Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

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

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$600,000,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 20[\_\_\_].

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

(a) The Company and all Co-Investors invested in the aggregate not less than \$600,000,000 (without regard to depreciation) in the Project prior to the end of the Statutory Investment Period. In accordance with **Section 3.02** of the Agreement, the Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the Personal Property FILOT Payment due on January 15, 200[\_\_\_].

or

(b) As of the end of the Statutory Investment Period, the Company and all Co-Investors invested in the aggregate less than \$600,000,000 (without regard to depreciation) in the Project [or, if applicable, as of the date hereof, the Company does not anticipate that investment in the Project will aggregate at least \$600,000,000 prior to the end of the Statutory Investment Period]. To date, the Company has claimed an aggregate of \$ \_\_\_\_\_ in Special Source Credits. In accordance with **Section 3.02** of the Agreement, the County has the right to terminate or adjust the Special Source Credits under such circumstances. ]

Exhibit B-2-1

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

ARUM COMPOSITES, LLC

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

# Richland County Council Request of Action

## **Subject**

An Ordinance Amending the Richland County Code of Ordinances; Chapter 23, Taxation; Article VI, Local Hospitality Tax; Section 23-69, Distribution of Funds; Subsection (a)(4); so as to increase the amount of funding dedicated to organizations and projects that generate tourism in those areas where Richland County collects Hospitality Taxes  
**[SECOND READING] [PAGES 83-85]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

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

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

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

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

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

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

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

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

RICHLAND COUNTY COUNCIL

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

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

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

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

# Richland County Council Request of Action

## **Subject**

An Ordinance Amending the Richland County Code of Ordinances, Chapter 2, Administration; Article VII, Boards, Commissions and Committees; Section 2-332, Boards, Commissions and Committees Created; Subsection (Q), Internal Audit Committee; so as to add members thereto **[SECOND READING] [PAGES 86-88]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

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

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

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

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

(q) *Internal Audit Committee.*

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

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

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

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

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

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

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

RICHLAND COUNTY COUNCIL

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

ATTEST THIS THE \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2011.

\_\_\_\_\_  
Michelle Onley  
Assistant Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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



# Richland County Council Request of Action

**Subject**

County Council Shirts [**PAGES 89-93**]

**Notes**

November 22, 2011 - The committee recommended that Council choose from the designs that were presented to the committee and that Council maintain the official county seal on whatever design it selects. The vote in favor was unanimous.



November 14, 2011

Richland County Office of Public Information

To: Members of Richland County Council  
From: Stephany Snowden  
Re: Proposed County Council Shirt Design

Dear members of Richland County Council, as requested, please see three recommended designs for the proposed County Council shirts.

**Design A** – Reflects the design on a dark background and white lettering

**Design B** – Reflects the design on a light background and dark lettering

**Design C** - Reflects the design on a medium background and dark lettering

**Follow Up**

Once Council has designated a design and style of shirt, PIO will follow up with a ROA with finalized costs. If you have any additional questions, please feel free to contact me at (803) 576-2065.

Thank you very much

  
Stephany Snowden

A



# COUNTY COUNCIL

B



COUNTY COUNCIL

*Bringing Citizens and  
Government Together*

C



# Richland County Council

# Richland County Council Request of Action

**Subject**

Approval of Competitive 2010 Local Emergency Management Performance Funds Grant **[PAGES 94-96]**

**Notes**

November 22, 2011 - The committee recommended that Council approve the request to accept the LEMPG grant, if awarded, in an amount up to \$21,000. The vote in favor was unanimous.

## Richland County Council Request of Action

**Subject:** Approval of Competitive 2010 Local Emergency Management Performance Funds Grant

### **A. Purpose**

County Council is requested to approve the LEMPG Grant Solicitation for the Emergency Services Department of up to \$21,000. The purpose of the project is to create a weather station system for the Emergency Management Division. No funds are needed.

### **B. Background / Discussion**

Richland County has applied for “left over” funds in the Competitive 2010 Local Emergency Management Performance Fund grant in the amount of \$21,000. If awarded, the funds will assist Emergency Services in establishing a system of weather reporting stations at locations throughout the County. These weather stations will form a data collection system that will be used to track weather conditions, in forecasting, and will provide “real time” weather information for incident management. The grant request is \$21,000 however a partial grant award is possible.

The system measures and records wind speed and direction, air temperature and relative humidity, barometric pressure, solar radiation, and rain. This timely information is critical to events including hazardous material, nuclear plant and storm events. The data will also be accessible by the South Carolina Emergency Management Division, school districts and other agencies that make decisions based on weather conditions.

These funds require no new cash match.

### **C. Financial Impact**

There is no financial impact. The match requirement will be met as in-kind services using \$21,000 of existing employee salaries.

### **D. Alternatives**

1. Approve the request to accept the LEMPG grant, if awarded.
2. Do not approve, forfeit funds, and decrease likelihood for future funding.

### **E. Recommendation**

It is recommended that Council approve the request to accept up to \$21,000 for the LEMPG grant, if awarded.

Recommended by: Michael A. Byrd      Department: Emergency Services      Date: 10/27/11

### **F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Finance**

Reviewed by: Daniel Driggers Date: 10/27/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Procurement**

Reviewed by: Rodolfo Callwood Date: 10/28/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Grants**

Reviewed by: Sara Salley Date: 10/28/2011  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Legal**

Reviewed by: Larry Smith Date:  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Administration**

Reviewed by: Tony McDonald Date: 11/14/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation: Recommend approval. The County's match will be met with in-kind services; no cash layout will be required of the County.



# Richland County Council Request of Action

**Subject**

Payment Procedures for County Grant Programs [**PAGES 97-101**]

**Notes**

November 22, 2011 - The committee recommended that Council maintain the existing grant payment procedures. The vote in favor was unanimous.

# Richland County Council Request of Action

**Subject:** Payment Procedures for County Grant Programs

**A. Purpose**

County Council is requested to consider the following motion to standardize the payment processes for all County grant programs. Currently the County has grant programs that pay organizations on the front end as well as on a reimbursement basis.

**B. Background / Discussion**

The following motion was made by Council member Kelvin Washington at the October 18, 2011 Council Meeting:

*Richland County should standardize the reimbursement practices for all County grant programs to allow grantees to draw down grant funds up front. Currently, County grant programs are administered in different ways – some allowing up front drawdowns, others are on a reimbursement basis. All grantees are held responsible for spending and reporting on County funds according to program grant guidelines, rules and regulations. Grantees who do not follow these rules and regulations jeopardize receiving funds from the County in the future.*

Per Mr. Washington, all County-run grant programs should allow for up-front payments to accommodate those organizations that do not have funds available to pay for items and wait for reimbursement from the County.

Currently, County grant programs pay out grant funds in different ways as outlined below. Some require proof of payment or proof of price while others allow for the grantee to be paid up-front and provide proof of purchase and receipts after the fact.

**Current Grant Payment Policies:**

Grant Program	Up-Front	Reimbursement	Combination
Administration Grants (A-Tax, H-Tax, Discretionary)	X		
Community Development		X	
Conservation Commission			X
Neighborhood Improvement		X	

**Administration Grants (A-Tax, H-Tax, Discretionary Grants)** - Grantees may request payment in advance of spending funds. The grantees are required to submit invoices and proof of payment for all expenses with their Mid-Year (January of each year) and Final reports (July of each year). For grants \$25,000 and above, payments are released per quarter. Because some grantees do not have start-up funds, payments are not based on reimbursements, but rather these grantees are provided with funds up-front. By providing funds to the grantee in advance of the grantee spending funds, the County does run the risk that the grantee may not follow the rules and spend funds on ineligible items. In this case, the County works with the organization to solve the issue by deducting funds from the grantee’s next payment request or invoicing the organization to repay the funds. Organizations that do not follow grant guidelines and requirements run the risk of not being funded in the future.

**Community Development Grants** – These grants are reimbursable only as required by HUD. Federal funds are used for these grants which makes them HUD sub-recipients and subject to all HUD guidelines and requirements. Failure to follow those guidelines make the County non-compliant and at risk for losing

all HUD and potential future federal funding. Community Development grantees are required to follow the guidelines below:

1. A fully executed contract or written agreement. (HUD requirement; defines the scope of the project, defines responsibilities of each involved party, specifies the funding amount and may address timing of the project)
2. An established purchase order not to exceed the amount specified in the agreement. (Richland County Requirement)
3. An invoice or request for funds. (HUD and Richland County requirements)
4. Documented expenditures equal to the invoice amount (HUD and Richland County requirements; proof of monies expended and purpose(s) of expenditure; documentation that any reimbursed expenditure relates to the designated project)
5. Approval signature of Grant Manager or Coordinator. (HUD; proves that the manager/coordinator is aware of the expenditure and approves the expenditure)
6. Grants Accountant reviews documents for accuracy of charges and eligibility of expenses, initials and dates documents. (Departmental; an additional validation of the expenditure and that the expenditure conforms to HUD program regulations)
7. Grant Accountant codes invoice for payment, providing purchase order number, GL and JL codes. Accountant then scans invoice and supporting documents, retains an electronic copy, and emails to Richland County Finance for payment. (HUD requires copies of documents as support for CD Draw down from HUD and Richland County Finance requires coding and emailing of documents.)

**Conservation Grants** – The Community Conservation and Historic Preservation programs are advertised as reimbursement grants. Costs incurred will be reimbursed through invoice to the RCCC as work is completed and approved. Reimbursements will not be allowed for work completed prior to the grant award. Grant recipients submit a grant payment request form along with the invoice(s) and/or receipts. Once the request is approved, it is submitted to the Finance Department. In Conservation’s case, reimbursement does not strictly mean that the grantee must have spent the money first. Frequently, grantees submit their proof of cost – an invoice from the contractor – rather than proof of payment. Conservation accepts these invoices because the majority of the grantees are non-profits and are not able to pay upfront such large bills totaling thousands of dollars. This method allows the contractors to be paid in a more timely fashion and does not strain the grantee’s cash flow situation. Smaller expenses for materials and salary are reimbursed upon submission of receipts, cancelled checks or personnel time sheets.

**Neighborhood Grants** - These matching grants are reimbursable only. The award maximum is \$1,500. Receipts must accompany the neighborhood’s reimbursement request. Neighborhood Improvement cannot give funds out ahead of time/without receipts because there is no recourse if the community does not comply with the terms that the money was to be expended for or if no projects occur at all. Without the reimbursement policy, the County would be writing checks and hoping recipients “play by the rules.” Neighborhood associations are not required to maintain or provide financial reports. Also, the receipts that the neighborhoods provide the County are also given to the Finance Dept. so Finance will know it is a valid request for the check.

### **C. Financial Impact**

There is no financial impact associated with this request.

### **D. Alternatives**

1. Approve the motion to allow all County grantees to draw down grant funds up front.
2. Do not approve the motion.

**E. Recommendation**

It is recommended that Council approve the motion to allow all County grantees to draw down grant funds up front.

Recommended by: Kelvin Washington Department: Council Date: 11/2/11

**F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Finance**

Reviewed by: Daniel Driggers Date: 11/7/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)

Comments regarding recommendation: This is a policy decision for Council related to financial accountability for the use of funds. Therefore I would recommend that if approved, the County include clear guidelines on responsibilities for reviewing compliance to ensure funds are spent according to agreements.

Since the departments responsible for the grant programs are commenting after Finance, I would encourage the departments to comment on the reason that the current program guidelines were established as noted in an effort to not lose the committee/departments insight.

**Procurement**

Reviewed by: Rodolfo Callwood Date: 11/7/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)

Comments regarding recommendation: A policy decision at Council discretion; my understanding of the grants process is that the granting agencies reimburse funds after determining that the funds have been utilized in accordance with their guidelines.

**Community Development**

Reviewed by: Valeria Jackson Date:  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)

Comments regarding recommendation:  
This will not be allowed under HUD regulations. All of the CD Department funding (with exception of HOME match) is HUD funding. Even HOME Match has to follow this same rule. HUD Grantees who do not follow these rules and regulations jeopardize receiving funds from the County in current and future years. This would be an unacceptable method of disbursement under HUD federal regulations.

**Conservation Commission**

Reviewed by: Dr. James Atkins Date: 11/16/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)

Comments regarding recommendation: This recommendation pertains only to the RC Conservation Commission grants.

### **Planning and Development Services**

Reviewed by: Amelia Linder

Date: 11/14/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: My recommendation of denial is based on Ms. Valeria Jackson's comments regarding HUD regulations.

### **Grants**

Reviewed by: Sara Salley

Date: 11/14/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Funds distributed by Community Development must follow HUD regulations therefore if Council chooses to allow up-front payments for grant funds, this department should be excluded from such ruling. As for grants managed by Administration, up-front payments are allowed as some organizations do not have the funds to spend then wait for grant reimbursement. Grant expenditures are reviewed through mid-year and final reports to ensure funds are spent correctly.

### **Legal**

Reviewed by: Larry Smith

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: This recommendation is limited to grants managed by Administration. As to those grants involving HUD funds, based on Ms. Jackson's comments I would recommend that they be excluded from consideration for up-front funding.

### **Administration**

Reviewed by: Tony McDonald

Date: 11/15/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Grant funds are currently disbursed in a combination of methods for various reasons, as indicated above. Requiring all grants to be paid to the recipients up front would diminish the control that the County now has with respect to the accountability of the recipients and their compliance with the terms under which the funds were awarded. It is recommended, therefore, that the existing procedures remain in place.

# Richland County Council Request of Action

## **Subject**

Special DUI Prosecutor Grant [**PAGES 102-105**]

## **Notes**

November 22, 2011 - The committee recommended that Council approve the request to accept the Special DUI Prosecutor Grant in the amount of \$75,000 from the Office of Highway Safety of the South Carolina Department of Public Safety. The vote in favor was unanimous.

# Richland County Council Request of Action

**Subject:** Special DUI Prosecutor Grant

## **A. Purpose**

County Council is requested to approve a no-match grant in the amount of \$75,000 from the Office of Highway Safety of the South Carolina Department of Public Safety. This grant project is 100% federal money and requires no matching funds.

## **B. Background / Discussion**

The Richland County Solicitor's Office received the 2012 Special DUI Prosecutor Grant on a non-competitive basis (allocation) as part of a state-wide initiative to increase convictions of pending DUI cases in Magistrate Courts. While General Sessions's level cases are allowed under the program, the emphasis is on prosecution in Magistrate and Municipal Courts. The goal of this project is that the DUI prosecutor will reduce the number of pending DUI cases in the judicial circuits by at least 10% in FFY 2012 over the number of pending cases in 2011. In addition, dismissals of DUI cases should not occur without the input from and notification to the arresting office/agency.

Funds can be used for in the Solicitors Office to include salary and fringe for a specialized prosecutor, supplies, computer equipment and employee training.

Grant Award:	\$75,000
Specialized DUI Prosecutor:	\$75,000
Required Match	<u>\$0</u>
Total:	\$75,000

## **C. Financial Impact**

There is no financial impact.

## **D. Alternatives**

1. Approve the request to accept the Office of Highway Safety with no match required.
2. Do not approve, forfeit funds, and decrease likelihood for future funding.

## **E. Recommendation**

It is recommended that Council approve the request to accept the State Office of Victim Assistance funds and approve the matching funds required as outlined by the funding agency.

Recommended by: John Stuart    Department: Solicitor's Office    Date: November 8, 2011

## F. Reviews

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

### Finance

Reviewed by: Daniel Driggers

Date: 11/8/11

✓ Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

### Procurement

Reviewed by: Rodolfo Callwood

Date: 11/9/11

✓ Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

### Grants

Reviewed by: Sara Salley

Date: 11/14/11

✓ Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

### Legal

Reviewed by: Larry Smith

Date:

✓ Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

### Administration

Reviewed by: Sparty Hammett

Date: 11/14/11

✓ Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommend approval of the request to accept the Office of Highway Safety grant with no match required.



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF HIGHWAY SAFETY  
P. O. BOX 1993  
BLYTHEWOOD, SOUTH CAROLINA 29016

**DUI PROSECUTOR GRANT AWARD**

Subgrantee: Fifth Circuit Solicitor's Office

Grant Period: 10/1/2011 – 9/30/2012

Date of Award: October 1, 2011

Amount of Award: \$75,000

Grant Number: 2JCS1221

In accordance with the provisions of the Highway Safety Act of 1966, 72 Stat. 885, as amended, CFDA No. 20.601, the S. C. Department of Public Safety hereby awards to the foregoing Subgrantee, a grant in the amount shown above for the continuation of the 5<sup>th</sup> Judicial Circuit Special DUI Prosecutor and within the purposes and categories authorized for the Highway Safety grants.

**The grant shall become effective as of the date of the award, contingent upon the return of the original of this form to the Office of Highway Safety, signed by the Subgrantee in the space provided below.** This award must be accepted within 30 days, and such progress and other reports required by the S. C. Department of Public Safety must be submitted to the Office of Highway Safety in accordance with regulations.



Phil Riley, Director  
Office of Highway Safety



Ed Harmon, Assistant Director  
Office of Highway Safety

Acceptance of Grant Award:

  
Signature of Solicitor

# Richland County Council Request of Action

## **Subject**

VOTE Federal Accessibility Grants for the Election Commission [**PAGES 106-108**]

## **Notes**

November 22, 2011 - The committee recommended that Council accept the two grants, if awarded, totaling \$50,224 from the Help America Vote Act (HAVA) Health and Human Services Voting Access for Individuals with Disabilities. Council member Rose abstained from voting. The vote for accepting the two grants, if awarded, was unanimous.

## Richland County Council Request of Action

**Subject:** VOTE Federal Accessibility Grants for the Election Commission

### **A. Purpose**

County Council is requested to accept two grants, if awarded, totaling \$50,224.00 from the Help America Vote Act (HAVA) Health & Human Services (HHS) Voting Access For Individuals with Disabilities (VOTE).

### **B. Background / Discussion**

The Richland County Election Commission has two grant opportunities that will assist the County serve voters with disabilities through HAVA, a United States federal law which was signed into law in 2002. HAVA mandates that all states and localities upgrade many aspects of their election procedures and provides grants to eligible jurisdictions to make those improvements. The Secretary of Health and Human Services is authorized to make payments to state and local governments for making polling places, including the path of travel, entrances, exits, and voting areas of each polling facility accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation as for other voters.

The first grant of \$1,224 was awarded to the Commission by HAVA for funds that will cover the cost of repairs for existing ADA voting machines (parts and shipping). There is no match required for this reimbursement grant.

For the second grant, the Commission will apply for \$49,000 to HAVA to purchase 14 new ADA voting machines. This grant, if awarded, will be paid upon reimbursement and has no match requirement.

### **C. Financial Impact**

There is no financial impact associated with this request.

### **D. Alternatives**

1. Approve the request to accept the HAVA grants in the amount of \$50,224, if awarded.
2. Do not approve.

### **E. Recommendation**

It is recommended that Council approve the request to accept the HAVA grants.

Recommended by: Garry Baum

Department: Elections

Date: 11/7/2011

**F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Finance**

Reviewed by: Daniel Driggers Date: 11/7/11  
✓ Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Procurement**

Reviewed by: Rodolfo Callwood Date: 11/8/11  
✓ Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Grants**

Reviewed by: Sara Salley Date: 11/9/11  
✓ Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Legal**

Reviewed by: Larry Smith Date:  
✓ Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Administration**

Reviewed by: J. Milton Pope Date: 11-14-11  
✓ Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

# Richland County Council Request of Action

**Subject**

CDBG Allocation of Funds Decker Boulevard Specific **[PAGES 109-113]**

**Notes**

November 22, 2011 - The committee recommended that Council approve the expenditure of CDBG funds for the Decker Boulevard Master Plan in the amount of \$300,000. The vote in favor was unanimous.

# Richland County Council Request of Action

**Subject:** CDBG Allocation of Funds  
Decker Boulevard Specific

## **A. Purpose**

County Council is requested to approve the coordination of efforts between the Planning and Development Services Department and the Community Development Office toward the allocation of Community Development Block Grant (CDBG) funding for several neighborhood improvement projects based upon the Decker Boulevard Master Plan goals, objectives, and recommendations. The CDBG allocation totals \$300,000.00 and no match is required.

## **B. Background / Discussion**

The Decker Boulevard Master plan area is comprised of 731 acres, including properties within approximately ¼ mile of each side of Decker Boulevard as well as the greater Woodfield Park neighborhood area. The study area is roughly bordered by Percival Road, I-77, and Fort Jackson to the south and east; Forest Acres and the Trenholm Road corridor to the west; and Two Notch Road and the Columbia Place Mall to the north.

In FY11, November 22, 2010, Neighborhood Improvement, Community Development and Richland County Conservation Commission signed a memorandum of understanding for the utilization of \$300,000 of Community Development's CDBG funding that was awarded to Decker Boulevard after it was designated S/B. Community Development receives more than 30% of federal grant money to use in an area designated as slum and blight. Decker Boulevard became qualified as a redevelopment area and was awarded the grant funds to be expended by September 30, 2012. In FY11, staff did not complete the task of expending the money as the agreement stated and an estimated total of \$150,000 was removed from the Decker Master Plan fund and used for the completion of a sewer project in Bookert Heights. As of July 2011, Neighborhood Improvement received a new allocation of \$150,000 from Community Development to bring their total sum awarded back up to \$300,000 for Decker Blvd eligible projects. CDBG Funding Priorities:

### **1. Installation of Woodfield Park Community Neighborhood Identification Signs (\$75,000):**

Tasks:

- Staff has contracted with AOS to complete the installation of neighborhood branding and identification signage throughout the Greater Woodfield Neighborhood area for a total of seven (7) signs.

**2. Installation of Corridor Identification/Neighborhood Branding Signage (\$80,000):**

Tasks:

- Staff has completed the design and identified AOS to construct four (4) gateway entrance signs to be located at the corner of (1) Trenholm Ext and (2) Decker Boulevard (Taco Bell/Dent Middle School Properties) and at (3) Decker and Percival Road (SCDOT right-away). • Staff designed /advised on the construction of five (5) identifying markers in the form of an “I” (pillar sign monument) to be placed at the corner of O’Neil/Decker (2); Brookfield/Decker (2); Old Percival/Decker (1).
- Staff has identified the property owners for each parcel where a sign will be constructed and has begun the surveying and easement development process.
- Staff has worked with the County Attorney to develop a quick claim deed for the Taco Bell parcel and to develop an easement agreement for the Dent Middle School Property.

**3. Installation of Banner Signs (\$6,500):**

Tasks:

- Staff worked with the consultant to design thirty (30) new light pole banner signs to be placed along Decker Boulevard.

**4. Appraisal (\$2,500):**

Tasks:

- Staff requested quotes from qualifying consultants to conduct an appraisal on the property located at 2765 Decker Boulevard to determine the property value of this parcel and with the intent to pursue possible demolition, purchase and rehabilitation of this property.

**5. Implementation of Commercial Façade Improvement Program (\$136,000):**

The purpose of the program is to provide financial incentive to existing business owners located within the Decker Boulevard Commercial Redevelopment District and to provide an opportunity to upgrade the exterior of their building. The program is designed to retain and attract businesses, strengthen the Decker Boulevard Commercial District, increase utilization of buildings, restore economic vitality and enhance property values. This fund shall not be available to businesses along commercial corridors within the unincorporated areas of the County.

Tasks:

- Developed Program Guidelines
- Developed the Application Process
- Identified a Funding Source for the grant
- Determined up to \$10,000 per applicant

**C. Financial Impact**

Seven (7) Woodfield Park Neighborhood Signs:	\$75,000.00
Four (3) Gateway Entrance Signs:	\$50,000.00
Five (5) Identifying markers:	\$30,000.00
Thirty (30) Light Pole Banners:	\$ 6,500.00
Façade Grant:	\$136,000.00
Appraisal:	\$ 2,500.00
<b>TOTAL:</b>	<b>\$300,000.00</b>

**C. Recommendation**

It is recommended that Council approve the expenditure of CDBG funds for the Decker Blvd. Master Plan in the amount of \$300,000.00.

Recommended by: Planning and Development Services Date:

**F. Approvals**

**Finance**

Reviewed by: Daniel Driggers Date: 11/10/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
 Comments regarding recommendation:

**Community Development**

Reviewed by: Valeria Jackson Date: 11/10/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
 Comments regarding recommendation:

**Procurement**

Reviewed by: Rodolfo Callwood Date: 11/14/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)  
 Comments regarding recommendation:

**Grants**

Reviewed by: Sara Salley Date: 11/14/11  
 Recommend Council approval  Recommend Council denial  
 Council Discretion (please explain if checked)



Comments regarding recommendation:

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

**Administration**

Reviewed by: Sparty Hammett

Date: 11/17/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

# Richland County Council Request of Action

**Subject**

Resolution to Distribute \$5,281.78 in Federal Forestry Funds [**PAGES 114-118**]

**Notes**

November 22, 2011 - The committee recommended that Council approve the resolution allocating \$5,281.78, of which 50% will be apportioned to public schools, and the remaining 50% will be used for the construction and/or improvement of public roads. The vote in favor was unanimous.

## **Richland County Council Request of Action**

Subject: Resolution to Distribute \$5,281.78 in Federal Forestry Funds

### **A. Purpose**

The Richland County Treasurer has received a check from the Office of the State Treasurer for Federal Forestry Funds. These funds are generated based on a portion of the net proceeds generated by the sale of forest products extracted from Fort Jackson and other military installations located within Richland County. The total amount of forestry funds available for allocation by County Council is \$5,281.78.

### **B. Background / Discussion**

The Richland County Treasurer currently has a total of \$5,281.78 in Federal Forestry Fund monies. These funds were received from the Office of the State Treasurer as payment based on a portion of the net proceeds generated by the sale of forest products extracted from Fort Jackson and other military installations located within Richland County.

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

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

The last time that Richland County Council allocated military forestry funds was in April of 2009. The resolution passed in 2009 allocated a total amount of \$54,100.30 of which 50% was apportioned to Richland School District One, Richland School District Two, and Richland-Lexington School District Five (according to the respective student population of each district). The remaining 50% was transferred to the General Fund of Richland County to be used for the construction of new roads and/or improvement of public roads within the county.

The resolution currently before Council uses the same 50/50 allocation ratio used in 2009; however, Council may adjust these proportions at its discretion.

### **C. Financial Impact**

A total of \$5,281.78 will be divided according to a ratio set forth by Council for the benefit of public schools and public roads. There are no costs to the County associated with this request.

**D. Alternatives**

- 1. Approve the resolution allocating \$5,281.78, of which 50% will be apportioned to public schools, and the remaining 50% for the construction and/or improvement of public roads.
- 2. Approve the resolution allocating \$5,281.78 using a proportion other than 50/50 for distribution between public schools and roads.
- 3. Do not approve the resolution allocating Federal Forestry Funds for public schools and roads.

**E. Recommendation**

It is recommended that County Council approve either the first or second alternative.

Recommended by: Staff                      Department: Administration                      Date: November 7, 2011

**F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Finance**

Reviewed by: Daniel Driggers                      Date: 11/7/11  
✓ Recommend Council approval                       Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Legal**

Reviewed by: Larry Smith                      Date:  
✓ Recommend Council approval                       Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation:

**Administration**

Reviewed by: Tony McDonald                      Date: 11/10/11  
✓ Recommend Council approval                       Recommend Council denial  
 Council Discretion (please explain if checked)  
Comments regarding recommendation: Recommend approval of the 50/50 distribution of the funds as described above.



COUNTY OF RICHLAND  
OFFICE OF COUNTY TREASURER



DAVID A. ADAMS  
COUNTY TREASURER

P.O. BOX 11947  
Columbia, SC 29211  
(803) 576-2275  
TDD (803) 748-4999

17 October 2011

To: Tony McDonald, Assistant County Administrator  
From: David A. Adams, Richland County Treasurer  
RE: Distribution of Federal Forestry Funds

Please note that the Treasury has received a check for Federal Forestry Funds in the amount of \$5,281.78. These are not funds received annually.

According to Title 10, Section 2665 (E) the United States Code of Laws, these funds may only be used for County public roads and schools.

I believe that these funds were last allocated by resolution of Richland County Council in April 2009.

Please contact me with any questions or clarifications.

# Richland County Council Request of Action

## **Subject**

Professional Services Property Acquisition adjacent to Jim Hamilton-LB Owens Airport **[PAGES 119-127]**

## **Notes**

November 22, 2011 - The committee recommended that Council approve the request to authorize the execution of a contract with LPA Group for property acquisition professional services in the amount of \$55,474. The committee also recommended that the Federal Aviation Administration commitment to the project be obtained in writing prior to entering into the contract. The vote in favor was unanimous.

## Richland County Council Request of Action

**Subject:** Professional Services / Property acquisition adjacent to Jim Hamilton-LB Owens Airport

### A. Purpose

County Council is requested to approve a contract for professional services with LPA Group of Columbia, SC for the acquisition of two properties adjacent to the Jim Hamilton – LB Owens Airport (CUB). A copy of the Work Authorization for these services is attached.

### B. Background / Discussion

There are two pieces of property adjacent to the airport that are desired for acquisition. One will require subdivision of less than one half of an acre from a larger parcel in order to support the future extension of Taxiway ‘A’. The other is a 5.71 acre parcel which is undeveloped, currently on the market and available for purchase. The following parcel numbers are affected:

R13705-16-02	<0.5 acre
R13705-16-01	5.71 acre

The parcel with the TMS reference R13705-16-02 is required in order to progress with the design, permitting, and construction of a project to extend Taxiway ‘A’. This project will provide an important safety enhancement to the airport by permitting a perpendicular intersection of Taxiway ‘A’ with Runway 13/31. The Environmental Assessment (EA) for this project has been prepared and approved by the staff of the FAA. The FAA will participate in this project by funding 95% of the cost. These funds have been provided in the most recently issued Airport Improvement Program (AIP) grant.

The parcel with the TMS reference R13705-16-01 is currently on the market. It is undeveloped and heavily wooded. In addition to a significant drainage course, it also contains low grade wetlands. The intention for this property follows:

- To ensure no incompatible adjacent development to the airport.
- To remove existing tree penetrations to the airport airspace transition surfaces.
- To eventually relocate existing stormwater management facilities and permit additional airside development.

The Richland County Airport Commission has voted to recommend purchase of this property to the Richland County Council. The FAA will participate in this project by funding 95% of the cost. However, these funds have not yet been provided. The County will be required to pay the money up front and then will be eligible for reimbursement next year through our next Airport Improvement Program (AIP) grant. The FAA staff has provided verbal agreement to this. This property acquisition is also reflected in our Airport Capital Improvement Program (ACIP).

The Federal Aviation Administration has an extensive checklist of requirements (in excess of 20 items) associated with property acquisition. This work authorization (WA) will complete many



of these administrative requirements for the acquisition of these two properties which have not yet been completed.

The South Carolina Aeronautics Commission, which normally participates in airport development projects with 2.5% grant matching funds, does not participate in property acquisition projects, so five percent of the cost will ultimately be borne by Richland County.

Additionally, 95% of the actual property purchase price will be available for funding through the AIP.

**C. Financial Impact**

The initial funding for this project will be as follows:

Federal (FAA)	\$22,887	AIP Grant 17 -2011
Local (RC)	\$32,587*	Available from capital rollover funds in the airport budget
Total	\$55,474	

\* \$27,290 of this amount will be available for future reimbursement from the FAA.

**D. Alternatives**

The alternatives available to County Council follow:

1. Approve the request to authorize executing a contract for Property Acquisition professional services. This will permit the eventual acquisition of property that will enhance the safety and development of the airport.
2. Do not approve the request to authorize executing a contract for Property Acquisition professional services. This will not permit the development of the project for the extension of Taxiway 'A' nor preclude incompatible adjacent development to the airport.

**E. Recommendation**

It is recommended that Council approve the request to authorize executing a contract with LPA Group for property acquisition professional services.

Recommended by:	Department:	Date:
Christopher S. Eversmann, PE, CM	Airport	November 8, 2011

**F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

## Finance

Reviewed by: Daniel Driggers

Date: 11/15/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: This is an allocation of funds that is at council discretion. The unspent budget funds rolled over from the prior year based upon previous commitments to other projects however the reallocation of funds to alternative projects is an appropriate management decision. If not approved, the unspent funds would remain in the Airport Fund at the end of the fiscal year for appropriation in subsequent periods for Airport related projects.

## Procurement

Reviewed by: Rodolfo Callwood

Date: 11/15/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: This request is at the discretion of the Council; LPA doesn't have a current agreement to allow for purchase of real estate and I'm not sure that they are licensed as an Real Estate agency or a brokerage firm.

## Grants

Reviewed by: Sara Salley

Date: 11/17/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

While the FAA has provided verbal approval to allow this expense to be reimbursed from next grant awarded, the County should request that the FAA provide this approval in writing. Council should also be aware that FAA grants are federal funds that are dependent on availability through the federal budget process.

## Legal

Reviewed by: Larry Smith

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: The decision regarding the award of this contract to LPA is within the legal authority and discretion of the Council. However, if the county is going to substantially rely on potential federal funds to pay for the cost of this project, I concur with the recommendation that we make every effort to secure the FAA commitment in writing prior to entering into the proposed agreement.

## Administration

Reviewed by: Tony McDonald

Date: 11/17/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommend approval based on the fact that the proposed property purchases are an integral part of the Airport's capital improvement program and based on the commitment that the FAA will fund 95 percent of the acquisition cost, as well as 95 percent of the consulting services being requested in this ROA. I concur, however, with the Grants Manager and County Attorney that the FAA's commitment to the project should be obtained in writing before we proceed.

**RICHLAND COUNTY, SOUTH CAROLINA**

**Work Authorization for Professional Services**

\_\_\_\_\_  
(Project Identification No.)

\_\_\_\_\_  
**No. 29 (Twenty-Nine)**  
(Work Authorization No.)

It is agreed to undertake the following work in accordance with the provisions of our Prime Agreement for Professional Services dated February 1, 2007.

**A. Description of Assignment:**

The CONSULTANT shall provide special professional services, as described in Attachments A and B for the 2011 Property Acquisition Project at **Jim Hamilton – L.B. Owens Airport**, herein after referred to as the **PROJECT**.

**Special Services:**

1. The CONSULTANT shall provide Property Acquisition Assistance services in accordance with Exhibit "B", Section II of the Prime Agreement and Attachment B.

**B. Basis of Compensation/Period of Services:**

The CONSULTANT shall be paid the following:

1. For SPECIAL SERVICES (Property Acquisition Assistance) as outlined in Section A-1 above, the OWNER shall pay the CONSULTANT the lump sum subconsultant cost of **Forty Six Thousand Two Hundred Twenty Eight Dollars and No Cents (\$46,228.00)** plus a lump sum project management and subconsultant administrative fee of **Nine Thousand Two Hundred Forty Six Dollars and No Cents (\$9,246.00)** for a total lump sum amount of **Fifty Five Thousand Four Hundred Seventy Four Dollars and No Cents (\$55,474.00)** as shown in Attachment A.

\_\_\_\_\_  
Agreed as to scope of services and budget:

For: **RICHLAND COUNTY, SC**

For: **THE LPA GROUP INCORPORATED**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachments: A - Fee Proposal  
B – Property Acquisition Assistance Scope of Work  
C – Scope of Work Sketch

**ATTACHMENT A  
FEE PROPOSAL  
2011 PROPERTY ACQUISITION PROJECT  
JIM HAMILTON - L.B. OWENS AIRPORT**

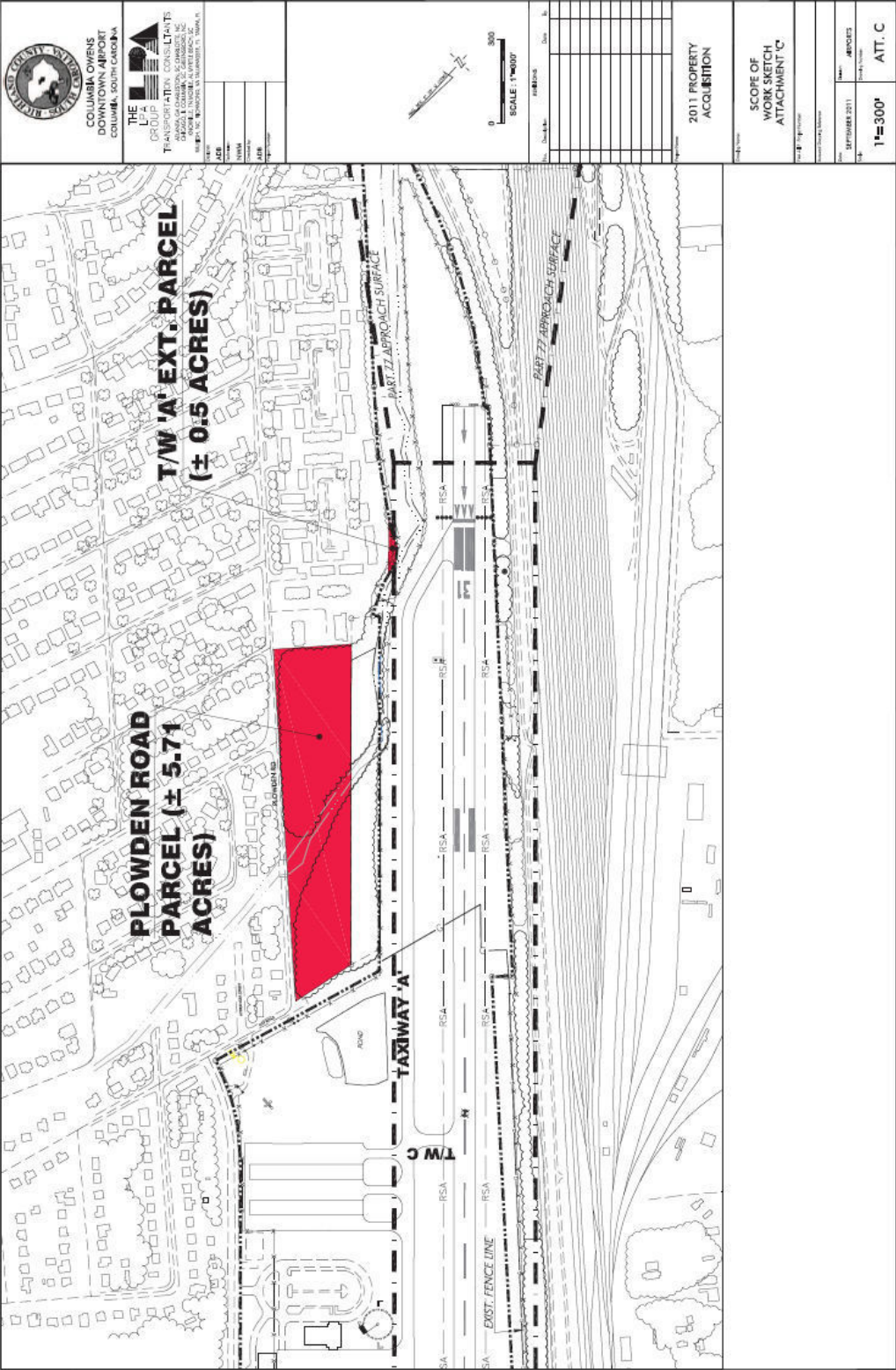
	<b>TAXIWAY A EXT PARCEL (+0.5 Ac.)</b>	<b>PLOWDEN ROAD PARCEL (+5.71 Ac.)</b>	<b>TOTALS</b>
	TMS R13705-16-02	TMS R13705-16-01	
<u>Project Tasks</u>			
LPA Project Management/Coordination	\$4,458	\$4,788	\$9,246
THC Project Management/Coordination/Expenses	\$8,429	\$8,429	\$16,858
Title Research	\$0	\$550	\$550
Boundary Survey	\$1,100	\$2,200	\$3,300
Environmental Phase 1	\$2,750	\$2,750	\$5,500
Appraisal	\$6,600	\$6,600	\$13,200
Review Appraisal	\$3,410	\$3,410	\$6,820
	\$26,747	\$28,727	\$55,474
<b>TOTAL PROJECT</b>	<b>\$26,747</b>	<b>\$28,727</b>	<b>\$55,474</b>
<b>FAA ELIGIBLE</b>	<b>\$26,747</b>	<b>\$28,727</b>	<b>\$55,474</b>
<b>FAA SHARE in AIP #17-2011</b>	<b>\$22,887</b>	<b>\$0</b>	<b>\$22,887</b>
<b>STATE SHARE</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>LOCAL SHARE</b>	<b>\$3,860</b>	<b>\$28,727</b>	<b>\$32,586</b>

10/11/2011

**ATTACHMENT B  
PROPERTY ACQUISITION ASSISTANCE SCOPE OF WORK**

The **CONSULTANT** will provide project management of all the steps required and in accordance with the Uniform Relocation Act of 1970, as amended, and all Federal Aviation Administrations (FAA) advisory circulars and orders, to acquire property identified by the County. Said services include managing sub-consultant companies, interviewing affected property owners, appraisals, review appraisals, phase I environmental analysis and reporting, title examinations, real estate closings of the subject property, recording the deed at the County Courthouse for the benefit of the County, and attending miscellaneous meetings with the County representatives and FAA personnel as necessary. There are two (2) parcels of land described as follows:

<b>Tax #</b>	<b>Owner</b>	<b>Address</b>	<b>Description</b>	<b>Acreage</b>
R13705-16-02	Columbia Gardens LTD	4000 Plowden Rd	“Taxiway A Extension Parcel”	±0.5 Acres
R13705-16-01	VIP Developers Inc	3800 Plowden Rd	“Plowden Road Parcel”	±5.71 Acres



**THE GROUP**  
 ARCHITECTS  
 1200 W. BROAD ST., SUITE 100  
 COLUMBIA, SOUTH CAROLINA 29201  
 TEL: 803.733.4400  
 WWW.GROUPARCHITECTS.COM



NO.	DESCRIPTION	DATE	BY

2011 PROPERTY ACQUISITION

SCOPE OF WORK SKETCH ATTACHMENT 'C'

DATE	REVISIONS
SEPTEMBER 2011	

1"=300'  
 ATT. C

# Richland County Council Request of Action

## **Subject**

Increase RCSD Deputy Current Pay **[PAGES 128-137]**

## **Notes**

November 22, 2011 - The committee recommended that Council allow the Sheriff's Department to use counter offers and other existing internal measures as an immediate tool to address turnover issues that will occur over the next several months on a case-by-case basis. In addition, the committee recommended that the motion made by Council members Manning and Jackson that states 'In order to ensure that Richland County can better recruit and retain qualified Sheriff's Deputies in this region, I hereby move that Council increase the current pay for deputies commensurate with the pay for deputies employed by the City of Columbia and Lexington County,' be rolled into the Classification and Compensation study for FY13. The vote in favor was unanimous.



# Richland County Council Request of Action

**Subject:** Increase RCSD Deputy Current Pay

## **A. Purpose**

In order to ensure that Richland County can better recruit and retain qualified Sheriff's Deputies in this region, I hereby move that the Council increase the current pay for deputies commensurate with the pay for deputies employed by the City of Columbia and Lexington County. [Manning, Jackson] Forwarded to the A&F Committee.

## **B. Background / Discussion**

The Richland County Sheriff's Department (RCSD) is the largest department in Richland County Government. It is also the largest Sheriff's department in the state according to information reported in the South Carolina Association of Counties 2011 Wage and Salary Survey.

Below are the pay ranges reported by the Municipal Association of South Carolina (MASC) and the South Carolina Association of Counties (SCAC) for the Uniform Patrol Officer (Deputy for Richland County) job classification for the three local governments;

<u>Local Government</u>	<u>Minimum Annual Wage</u>	<u>Maximum Annual Wage</u>
City of Columbia	\$29,864	\$47,781
Lexington County	\$35,048	\$49,068
Richland County	\$28,407	\$45,453

The County will need to increase the pay range to LH (\$34,562-\$55,301) to be competitive with the current minimum wage of Lexington County. Richland County's pay range for law enforcement is LI which has a minimum wage of \$37,008.

It is important to note, the minimum annual wage reported may or may not be the pay rate for some, any, or all new hires. Depending on various circumstances (i.e. the relevant experience, education, and/or certification of the applicant) new hires may be started above the minimum of the pay range.

## **C. Financial Impact**

Richland County does not have information on the exact annual wages for each Uniform Patrol Officer with the City of Columbia or Lexington County. In addition, it is an established common acceptable compensation practice to use pay ranges for analyzing and comparing this type of data. Therefore, this ROA uses the minimum annual wage for comparison purposes. Implementation of the new minimum pay range for the Deputy Sheriff position during the current fiscal year would require the use of General Fund balance.

## **D. Alternatives**

1. Approve the request to increase the Deputy Sheriff job minimum starting wages during the current fiscal year (this would require the use of general fund balance).

2. Approve the request to increase the Deputy Sheriff job minimum starting wages for FY13 with funding to be identified during the budget process.
3. Do not approve the request.

**E. Recommendation**

In order to ensure that Richland County can better recruit and retain qualified Sheriff’s Deputies in this region, I hereby move that the Council increase the current pay for deputies commensurate with the pay for deputies employed by the City of Columbia and Lexington County. [Manning, Jackson] Forwarded to the A&F Committee.

Increasing the current pay (range) for Richland County Deputy Sheriff’s commensurate with pay for Lexington County and the City of Columbia would result in a LH pay grade classification for the Deputy Sheriff job.

Recommended by: County Council Department: Date: November 8, 2011

**F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Finance**

Reviewed by: Daniel Driggers Date: 11/10/11  
 Recommend Council approval ✓ Recommend Council denial  
 Council Discretion (please explain if checked)  
 Comments regarding recommendation:

**Recommendation is not based on the merit of the request but based on the council approval below on October 4<sup>th</sup> to direct staff to complete a countywide study. Therefore we would recommend that this request be included in the countywide process.**

**Approval as stated should include a financial impact to determine the cost and a budget amendment.**

**Increase Detention Center Officers’ Starting Salaries:** Council directed staff to conduct a County-wide compensation study to include all County employees. County Administration will attempt to identify funding in FY 12 to complete the study and have the results available for the FY 13 budget process. The compensation study should be completed within 90 days from issuance of the Notice to Proceed (NTP).

**Human Resources**

Reviewed by: Dwight Hanna Date:  
 Recommend Council approval ✓ Recommend Council denial  
 Council Discretion (please explain if checked)

Comments regarding recommendation: Human Resources supports competitive total compensation (pay and benefits) for all employees including those of the RCSD. Successful recruiting and especially retention are intricate and dynamic functions that

can't be completely achieved with a quick, single, and isolated solution. In order to be effective, recruiting and retention require careful coordination between the two functions, proper planning, adequate resources, and a consistent commitment to stick to the plan long term to avoid unintended consequences or eventually falling back into the same situation.

Turnover is a very complex issue and survey after survey have shown that while pay is a factor, often pay does not rank (by employees) first or even second as the reason that employees leave an employer. It is important to note there are many reasons for employee turnover (i.e. ineffective supervisors, lack of recognition or appreciation, employee-supervisor conflicts, perception of unfairness, company policies, workload, internal pay equity, childcare, work-family life balance, work environment, inadequate or ineffective communications, leadership, training, promotion opportunities, benefits, family obligations, etc.). Human Resources anticipates it will become even more difficult to recruit and retain the best employees once the economy begins to improve in South Carolina. Therefore, if there are multiple reasons for turnover and employees consistently don't rank pay as the top reason for leaving an employer, it is unlikely that increasing pay alone will address retention in a comprehensive manner. Consequently, in order to effectively and strategically address recruiting and retention, the County must consider many other factors and utilize other strategies in addition to pay increases.

Human Resources highly recommends considering the potential consequences of increasing the pay of only some Deputy Officers (those earning less than the proposed minimum) be very carefully considered to avoid creating other issues and/or contributing to turnover. There are some potential negative consequences of increasing the pay range of a single group of employees which should not be overlooked. Internal equity and wage compression should be two primary considerations whenever implementing a pay plan change.

- For example, if the County only increases the pay of some Deputy Officers below the new minimum that will result in many Deputy Officers with a pay rate at or near other Deputy Officers who have been with the County much longer. To make this point clearer, a newly hired Deputy Officer could be paid the same as a Deputy Officer with many years seniority who has earned pay increases over the years through merit pay (PEP). Obviously, this could cause some resentment and even contribute to turnover.
- In addition, if the implementation plan does not include increasing the pay of the supervisors of Deputy Officers there could be some wage compression and/or the perception of pay inequity by those supervisors at the RCSD who work in positions other than Deputy Officer.
- Another consideration is several Richland County law enforcement jobs that currently have a pay range higher than the Deputy position will have an equal or lower pay range if the County increases the Deputy pay range to LH. The reality or perception of pay inequity could also become an issue in other County departments, especially considering the fact there have been no pay increases for employees in a couple years. This is more likely to occur in other public safety departments.

In summary, it must be understood that increasing the minimum pay range will likely instantly help with recruiting for the Deputy position. However, this will result in the need for the County to consider increases to other positions in order to maintain internal equity. Also, increasing the pay will not address those retention factors not related to pay. Moreover, increasing the pay of only those Deputy Officers below the proposed minimum could have unintended consequences (some examples outlined above) if other actions not included in the implementation plan. Consequently, unless the County strategically and comprehensively approaches recruiting and retention we are less likely to achieve the stated objectives we are seeking without contributing to other personnel concerns.

In conclusion, Human Resources recommends consideration for utilizing counter offers as an immediate tool to address turnover issues that will occur over the next several months on a case by case basis. There are several reasons for the recommendation to utilize counter offers that include it could be deployed immediately, would address the specific cases of turnover the motion is aimed at preventing, the County would have discretion of when to utilize retention pay and at what level, utilizing retention pay would minimize adverse impact relating to internal equity and wage compression, the fact that the County is in the process of securing a consultant to conduct a County wide classification and compensation study which will address the larger issue of competitive pay ranges, and it provides the County an opportunity to retain Deputy Sheriffs that have a bona fide job offer from another employer. By using a counter offer the retention issue can be addressed immediately and the recruiting issue will be addressed in the County wide classification and compensation study.

### **Legal**

Reviewed by: Larry Smith

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: The Council possesses the legal authority and discretion to increase the pay of deputies as requested. In exercising that authority, I would encourage the Council to consider the comments of the HR Director regarding maintaining internal equity in the process.

### **Administration**

Reviewed by: Sparty Hammett

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommend addressing in the Countywide Compensation Study approved by Council.

**South Carolina Association of Counties  
ANNUAL WAGE AND SALARY SURVEY REPORT  
Survey Group: I**

Job Title: **UNIFORM PATROL OFFICER II**

Job Code: **527**

County	Hours	Staff Totals	Pay Range		Actual or Mid-Point	Percent Spread
			Minimum	Maximum		
AIKEN	40.0	30	32,923	46,092	39,507	39%
ANDERSON	37.5	123	25,000	58,350	41,675	133%
BERKELEY	42.8	42	32,734	52,375	42,554	60%
CHARLESTON	40.0	78			43,256	
FLORENCE	42.0	5	30,335	45,004	37,669	48%
GREENVILLE	40.0	248	30,485	49,801	40,143	63%
LEXINGTON	43.0	12	40,402	56,563	48,482	40%
RICHLAND	42.5	34	30,925	49,480	40,202	60%
SPARTANBURG	43.0	28	29,102	43,625	36,363	49%
SUMTER	40.0	12	28,519	39,444	33,981	38%
YORK	40.0	38	33,292	46,610	39,951	40%
LOWEST REPORTED SALARIES:			25,000	39,444	33,981	
HIGHEST REPORTED SALARIES:			40,402	58,350	48,482	
ARITHMETIC AVERAGE:			31,371	48,734	40,343	57%

Job Title: **UNIFORM PATROL OFFICER I**

Job Code: **528**

County	Hours	Staff Totals	Pay Range		Actual or Mid-Point	Percent Spread
			Minimum	Maximum		
AIKEN	40.0	14	31,354	43,896	37,625	40%
BERKELEY	42.8	33	30,552	48,883	39,717	59%
CHARLESTON	40.0	103			37,458	
FLORENCE	42.0	52	27,357	40,538	33,947	48%
GREENVILLE	40.0	17	29,312	49,801	39,556	69%
HORRY	42.8	148	31,835	47,754	39,794	50%
LEXINGTON	43.0	88	33,048	49,068	42,058	40%
RICHLAND	42.5	184	28,408	45,453	36,930	60%
SPARTANBURG	43.0	15	27,716	41,574	34,645	50%
SUMTER	40.0	22	26,780	36,644	31,712	36%
YORK	40.0	33	31,818	44,546	38,182	40%
LOWEST REPORTED SALARIES:			26,780	36,644	31,712	
HIGHEST REPORTED SALARIES:			35,048	49,801	42,058	
ARITHMETIC AVERAGE:			30,018	44,815	37,420	49%

Job Title: **CHIEF OF DETECTIVES**

Job Code: **530**

County	Hours	Staff Totals	Pay Range		Actual or Mid-Point	Percent Spread
			Minimum	Maximum		
AIKEN	40.0	1	46,831	65,564	56,197	40%
BERKELEY	42.8	1	49,101	78,562	63,831	60%
FLORENCE	42.0	1	45,226	67,341	56,283	48%
GREENVILLE	40.0	1	52,489	87,103	69,796	65%
LEXINGTON	40.0	2	58,249	81,549	69,899	40%
RICHLAND	37.5	1	53,648	83,837	69,742	60%
SPARTANBURG	43.0	1	49,774	74,660	62,217	49%
LOWEST REPORTED SALARIES:			45,226	65,564	56,197	
HIGHEST REPORTED SALARIES:			58,249	87,103	69,899	
ARITHMETIC AVERAGE:			50,759	77,230	63,995	51%

## Columbia

<b>Population:</b> 116,278	<b>Total FTEs:</b> 2,128
<b>Fiscal Budget:</b> \$107,395,624.00	<b>Budget Year Begins:</b> July
<b>Total Annual Payroll:</b> \$99,515,922.00	
<b>Comp and Class Plan:</b> Yes	<b>Minimum Merit Raise:</b> 0.00 %
<b>Performance System:</b> Yes	<b>Maximum Merit Raise:</b> 0.00 %
	<b>Cost of Living Raise:</b> 0.00 %

Position Title	FTE	Minimum	Median/Actual	Maximum
Account Clerk I	5	\$26,841.30	\$0.00	\$42,946.62
Administrative Officer/Manager	3	\$85,771.62	\$0.00	\$137,235.02
Administrator/Manager	1	\$0.00	\$161,138.64	\$0.00
Animal Control Officer	1	\$23,818.91	\$0.00	\$38,109.86
Assistant Administrator/Manager	1	\$0.00	\$134,907.78	\$0.00
Assistant Clerk/Treasurer	1	\$31,374.31	\$0.00	\$50,199.30
Assistant Fire Chief	3	\$52,528.76	\$0.00	\$84,045.59
Assistant Police Chief	1	\$0.00	\$94,000.00	\$0.00
Assistant Public Works Director	1	\$0.00	\$82,512.39	\$0.00
Automotive Parts Manager	1	\$35,908.38	\$0.00	\$57,452.97
Billing Clerk	4	\$34,396.65	\$0.00	\$55,035.07
Building Codes Administrator	1	\$0.00	\$52,409.43	\$0.00
Building Inspector	4	\$40,440.35	\$0.00	\$64,704.56
Building Maintenance Electrician	3	\$32,886.01	\$0.00	\$52,617.21
Building Maintenance Supervisor	1	\$51,018.09	\$0.00	\$81,628.75
Building Maintenance Worker	5	\$25,330.63	\$0.00	\$40,528.80
Business Licensing Director	1	\$46,485.08	\$0.00	\$74,376.10
Business Licensing Inspector	3	\$28,351.93	\$0.00	\$45,363.52
Cashier/Customer Service Rep.	16	\$23,818.91	\$0.00	\$38,109.86
Chief Engineer	1	\$64,617.17	\$0.00	\$103,387.67
Chief Engineering Technician	1	\$41,951.01	\$0.00	\$67,121.42
City Attorney	1	\$0.00	\$135,960.01	\$0.00
Civil Engineer	3	\$41,951.01	\$0.00	\$67,121.42
Clerk to Council	1	\$0.00	\$63,035.98	\$0.00

Clerk/Typist	19	\$20,797.60	\$0.00	\$33,276.17
Code Enforcement Officer	4	\$28,351.93	\$0.00	\$45,363.52
Communications Center Director	1	\$0.00	\$92,693.56	\$0.00
Community Development Admin.	1	\$0.00	\$67,759.16	\$0.00
Community Services Officer	29	\$23,818.91	\$0.00	\$38,109.86
Computer Programmer/Analyst	2	\$46,485.08	\$0.00	\$74,376.10
Council Member	6	\$0.00	\$13,350.00	\$0.00
Custodian I	2	\$17,775.23	\$0.00	\$28,440.39
Detective/Investigator	6	\$32,886.01	\$0.00	\$52,617.21
Diesel Mechanic	7	\$32,886.01	\$0.00	\$52,617.21
Dispatcher	42	\$28,351.93	\$0.00	\$45,363.52
Economic Development Admin.	1	\$0.00	\$117,934.88	\$0.00
Electric Superintendent	1	\$40,440.35	\$0.00	\$64,704.56
Electrical Foreman	3	\$35,908.38	\$0.00	\$57,452.97
Engineering Technician	8	\$31,374.31	\$0.00	\$50,199.30
Finance Director	1	\$0.00	\$101,000.00	\$0.00
Financial/Budget Analyst	1	\$58,572.45	\$0.00	\$93,716.12
Fire Captain	49	\$41,951.01	\$0.00	\$67,121.42
Fire Chief	1	\$0.00	\$104,853.26	\$0.00
Fire Codes Inspector	1	\$41,951.01	\$0.00	\$67,121.42
Fire Training Officer	3	\$41,951.01	\$0.00	\$67,121.42
Firefighter	70	\$28,351.93	\$0.00	\$45,363.52
GIS Analyst	1	\$40,440.35	\$0.00	\$64,704.56
GIS Department Manager	1	\$0.00	\$48,704.53	\$0.00
GIS Technician	1	\$35,908.38	\$0.00	\$57,452.97
Heavy Motor Equipment Operator	31	\$28,651.93	\$0.00	\$45,363.52
Human Resources Assistant/Specialist	2	\$29,873.64	\$0.00	\$47,781.42
Human Resources Director	1	\$0.00	\$108,217.07	\$0.00
Information Services Manager	1	\$76,705.58	\$0.00	\$122,278.70
Laborer I	34	\$17,775.23	\$0.00	\$28,440.39
Lead Laborer	12	\$25,330.63	\$0.00	\$40,528.80
Light Motor Equipment Operator	15	\$22,306.97	\$0.00	\$35,693.01
Mayor	1	\$0.00	\$17,500.00	\$0.00

Mechanic	9	\$26,841.30	\$0.00	\$42,945.62
Meter Reader	24	\$26,841.30	\$0.00	\$42,945.62
Municipal Court Clerk	11	\$23,818.91	\$0.00	\$38,109.86
Municipal Judge	6	\$0.00	\$35,920.00	\$0.00
Park and/or Recreation Director	1	\$73,683.21	\$0.00	\$117,892.94
Park and/or Recreation Supervisor	2	\$35,908.38	\$0.00	\$57,452.97
Park/Recreation Laborer	38	\$20,797.60	\$0.00	\$33,376.17
Payroll Clerk	3	\$28,351.93	\$0.00	\$45,363.52
Planner I	1	\$35,908.38	\$0.00	\$57,452.97
Planning Director	1	\$0.00	\$101,879.19	\$0.00
Police Administrative Officer	1	\$0.00	\$68,886.62	\$0.00
Police Chief	1	\$85,771.62	\$0.00	\$137,235.02
Police Records Clerk	2	\$20,797.60	\$0.00	\$33,276.17
Police Training Officer	1	\$28,351.93	\$0.00	\$45,363.52
Public Safety Director	1	\$0.00	\$94,886.32	\$0.00
Public Safety Officer	1	\$0.00	\$75,000.00	\$0.00
Public Utilities Director	1	\$79,726.91	\$0.00	\$127,563.45
Public Works Director	1	\$0.00	\$108,527.56	\$0.00
Public Works Foreman I	5	\$25,330.63	\$0.00	\$40,528.80
Purchasing Agent	1	\$0.00	\$58,710.02	\$0.00
Purchasing Assistant	4	\$29,863.64	\$0.00	\$47,781.42
Risk Manager	1	\$0.00	\$72,846.88	\$0.00
Sanitation Supervisor	1	\$0.00	\$55,192.61	\$0.00
Sanitation Truck Driver	28	\$22,306.97	\$0.00	\$35,693.01
Secretary I	18	\$23,818.91	\$0.00	\$38,109.86
Secretary II	29	\$28,351.93	\$0.00	\$45,363.52
Senior Account Clerk	1	\$43,462.72	\$0.00	\$69,540.34
Senior Detective/Investigator	26	\$32,886.01	\$0.00	\$52,617.21
Senior Firefighter/Engineer	140	\$31,374.31	\$0.00	\$50,199.30
Senior Planner	1	\$51,018.09	\$0.00	\$81,628.75
Senior Secretary/Admin. Assistant	21	\$31,374.31	\$0.00	\$50,199.30
Signmaker	2	\$34,396.65	\$0.00	\$55,035.07
Street and Sanitation Supervisor	1	\$44,973.36	\$0.00	\$71,957.18
Street Supervisor	1	\$0.00	\$65,606.13	\$0.00



Switchboard Operator/Receptionist	1	\$20,797.60	\$0.00	\$33,276.17
Uniform Patrol Captain	10	\$51,018.09	\$0.00	\$81,628.75
Uniform Patrol Lieutenant	14	\$43,462.72	\$0.00	\$69,540.34
Uniform Patrol Officer I (Certified)	108	\$29,863.64	\$0.00	\$47,781.42
Uniform Patrol Officer I (Non-Certified)	10	\$28,351.93	\$0.00	\$45,363.52
Uniform Patrol Officer II	110	\$29,863.64	\$0.00	\$47,781.42
Uniform Patrol Sergeant	38	\$38,929.68	\$0.00	\$62,287.71
Vehicle Maintenance Manager	1	\$0.00	\$85,220.93	\$0.00
Vehicle Maintenance Supervisor	1	\$0.00	\$62,571.77	\$0.00
Victim Witness Advocate	2	\$32,886.01	\$0.00	\$52,617.21
Wastewater Plant Operator A	3	\$28,351.93	\$0.00	\$45,363.52
Wastewater Plant Operator D	11	\$31,374.31	\$0.00	\$50,199.30
Wastewater Superintendent	1	\$0.00	\$92,075.46	\$0.00
Water Plant Operator A	3	\$28,351.93	\$0.00	\$45,363.52
Water Plant Operator B	4	\$31,374.31	\$0.00	\$50,199.30
Water Plant Operator C	8	\$34,396.65	\$0.00	\$55,035.07
Water Superintendent	1	\$55,551.10	\$0.00	\$88,881.38
Water/Wastewater Maintenance Mechanic	5	\$28,351.93	\$0.00	\$45,363.52
Water/Wastewater Plant Operator	11	\$28,351.93	\$0.00	\$45,363.52
Water/Wastewater Superintendent	2	\$58,572.45	\$0.00	\$93,716.12
Zoning Administrator	1	\$73,683.21	\$0.00	\$117,892.94

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and FedEx Ground Package System, Inc., acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project; (3) the benefits of a multi-county park to be made available to the Company and the Project; and (4) other matters relating thereto **[PAGES 138-174]**

## **Notes**

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

**RICHLAND COUNTY  
ORDINANCE**

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

WHEREAS, Richland County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof (the "Code"), particularly Title 12, Chapter 44 of the Code (the "FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" (the "Act") and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments, with respect to a project; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors; and

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

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

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

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

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

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

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

Section 2.

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

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

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

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

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

Section 3. The County, with the consent of the City of Columbia, will insure that the Project will be included, if not already included, and will remain, within the boundaries of a multi-county industrial or business park, pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution on terms which provide, for all jobs created at the Project during the Investment Period, including any extension thereof, any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.

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

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

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

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

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

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

[End of Ordinance]

Enacted in meeting duly assembled December 13, 2011.

RICHLAND COUNTY, SOUTH CAROLINA

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

[SEAL]

Attest:

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

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

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

FEDEX GROUND PACKAGE SYSTEM, INC.

Dated as of December 1, 2011

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

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

### 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” (the “Act”) and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, without limitation, negotiated FILOT payments, with respect to a project; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors; and

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

WHEREAS, the County has determined the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on November 15, 2011 (the “Inducement Resolution”), whereby the County agreed to provide FILOT and multi-county industrial or business park benefits, which are set forth in greater detail herein; and

WHEREAS, the County has determined that it is in the best interest of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by an Ordinance enacted by the Council on December 13, 2011, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises; the potential investment to be created, or caused to be created, by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

## ARTICLE I

### DEFINITIONS

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

“*Act*” shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable attorneys’ fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and that the County shall have furnished to the Company, an itemized statement of all expenses incurred and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

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

“*Agreement*” shall mean this Fee In Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in or providing funds for the Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, [the Company and Columbia Baseline Development, LLC, a North Carolina limited liability company, are the only Co-Investors.

“*Company*” shall mean FedEx Ground Package System, Inc., a Delaware corporation, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

“*Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. The parties anticipate that the initial Negotiated FILOT Property comprising the Project will be placed in service in the Property Tax Year ending on May 31, 2012 and that in such event, the Compliance Period will end on May 31, 2017.

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

“*Council*” shall mean the governing body of the County and its successors.

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Event of Default*” shall mean an Event of Default, as set forth in **Section 8.01** hereof.

“*Existing Property*” shall mean property previously subject to property taxes in South Carolina, which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor

Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Negotiated FILOT Act.

“*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.

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

“*FILOT Payments*” shall mean the FILOT payments to be made by the Company or any other Co-Investor with respect to the Project whether made as Negotiated FILOT Payments pursuant to the Negotiated FILOT Act or as FILOT payments pursuant to the Multi-County Park Act.

“*Inducement Resolution*” shall mean the Resolution approved by the County on November 15, 2011 with respect to the Project.

“*Investment Period*” shall mean the period for completion of the Project, which shall be initially equal to the Compliance Period; provided, however, that, the Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for up to a five-year extension to the Investment Period beyond the Compliance Period as permitted by the Negotiated FILOT Act, and the County may approve of such extension in its sole discretion; provided further that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act.

“*Land*” shall mean the land upon which the Project has been or will be located, acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

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

“*Minimum Statutory Investment Requirement*” shall mean investment in the Project of not less than \$2,500,000 during the Compliance Period, as required by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof in determining whether the Company or any other Sponsor or Sponsor Affiliate qualifies for Negotiated FILOT Payments.

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

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

“*Multi-County Park Agreement*” shall mean that certain Master Agreement Governing the I-77 Corridor Regional Industrial Park between the County and Fairfield County, South Carolina dated as of April 15, 2003, as amended, supplemented, or modified through the date hereof and as such agreement may be further amended, supplemented, or replaced from time to time.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate described in **Section 5.01(b)(ii)** hereof.

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

“*Negotiated FILOT Property*” shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

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

“*Released Property*” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.02(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act; which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; or which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

“*Replacement Property*” shall mean all property installed in or on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Negotiated FILOT Property, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. Initially, the Company is the only Sponsor and Columbia Baseline Development, LLC is the only Sponsor Affiliate.

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

“*Term*” shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act, as amended through the date hereof.



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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and the Negotiated FILOT Payments, the inclusion and maintenance of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby. The County has obtained or will obtain all consents and approvals required to consummate the transactions contemplated by this Agreement. With respect to the Multi-County Park Agreement, the County has obtained or will obtain the approval by Fairfield County and will use its best efforts to secure the consent of the City of Columbia (“City”). The County cannot guaranty that the City will provide its consent on terms that are acceptable to the County.

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

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

(a) The Company is a corporation validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is May 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company presently intends to operate the Project primarily for distribution and/or related activities.

(c) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

### ARTICLE III

#### COVENANTS OF COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Multi-County Park Designation. The County will take all appropriate actions within its control to insure that the Project will be included within the boundaries of the Multi-County Park, and that the Project will remain within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution on terms which provide, for all jobs created at the Project from January 1, 2011 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks. Because the Project is also located within the City, the City must consent to the inclusion of the Project within the Multi-County Park. The County cannot guarantee that the City will provide its consent on terms that are acceptable to the County.

Section 3.03. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and any other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the

enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then, at the request of the Company, the County agrees to use its best efforts to extend to the Company and any other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT, and agrees, if requested, to enter into a lease purchase agreement with the Company and any other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160; Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and any other Sponsor or Sponsor Affiliate the intended benefits of this Agreement. The Company acknowledges, if a court of competent jurisdiction determines that all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and any other Sponsor or Sponsor Affiliate must transfer the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply. In such lease purchase agreement, the County, upon the conveyance of title to the Project to the County at the expense of the Company or such other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company or such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project for Ten Dollars (\$10.00).

#### ARTICLE IV

#### COVENANTS OF COMPANY

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

Section 4.02. Investment in Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on May 31, 2015.

(b) Expenditures by Co-Investors shall, together with expenditures by the Company, count toward all investment requirements set forth in this Agreement, including the Minimum Contractual Investment Requirement, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined without regard to depreciation by reference to the property returns of the Company and all Co-Investors filed with respect to the Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act.

(c) The Company or any other Sponsor or Sponsor Affiliate may, prior to the end of the Compliance Period, apply to the County for an extension of the Investment Period beyond the Compliance Period of up to five years, as permitted by the Negotiated FILOT Act, and the County may approve such extension in its sole discretion. There shall be no extension, however, beyond the Compliance Period of the period for meeting the Minimum Statutory Investment Requirement.

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

(e) The Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as the Company, or such Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when the Company or any other Co-Investor in its discretion determines any of its items included in the Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company, or such Co-Investor, may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT Property, real or personal, from the Negotiated FILOT arrangement

set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act.

(iv) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, the Company, or such Co-Investor, shall deliver to the County a new **Exhibit A** to this Agreement or schedules or supplements to **Exhibit A**; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 4.03. Failure to Comply with Minimum Contractual Investment Requirement. If the Company does not comply, or cause compliance, with the Minimum Contractual Investment Requirement by the end of the Compliance Period, but has nevertheless complied, or caused compliance, with the Minimum Statutory Investment Requirement, then the County shall have the right to terminate prospectively the Negotiated FILOT Payments, and in such event, the Project shall become subject to regular *ad valorem* taxes or FILOT Payments under the Multi-County Park Agreement, as applicable.

Section 4.04. Payment of Administration Expenses. The Company will reimburse, or cause reimbursement to, the County from time to time for its Administration Expenses promptly upon written request therefor, but in no event later than sixty (60) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement or the Project, and, aside from attorneys' fees described below, the County anticipates no out of pocket expenses in connection with the initial approval of this Agreement and the transactions authorized hereby. The parties understand that legal counsel to the County has estimated its fees and other expenses for review of this Agreement, the Inducement Resolution, the Multi-County Park Agreement and all resolutions, ordinances, and other documentation related thereto at \$3,500 or less, and the Company agrees to pay such legal fees to the County on or before December 31, 2011.

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

Section 4.06. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event or Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and

covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

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

Section 4.07. Records and Reports. The Company and any other Co-Investor will each maintain such books and records with respect to the Project as will permit the identification of those portions of the Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, and computations of all Negotiated FILOT Payments made by such entity hereunder and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Each year during the Term hereof, the Company and any other Co-Investor shall deliver to the County Auditor, the County Assessor, and the County Treasurer a copy of its most recent annual filings made with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

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

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the

Company or such other Co-Investor believes contain proprietary, confidential, or trade secret matters. To the extent permitted by law, the County shall comply with all reasonable, written requests made by the Company and any other Co-Investor with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company or any other Co-Investor.

## ARTICLE V

### FEES IN LIEU OF TAXES

#### Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is anticipated that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2014. If the Company designates any Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if required, pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall be payable for a period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a period of twenty (20) years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 8%; (2) a millage rate equal to 489.3 mills with respect to all Negotiated FILOT Property located thereon, which rate shall be fixed in



accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Project property owned by such entity so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT Payments, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

(i) to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.02(e)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project at a result of circumstances beyond the control of the Company or any other Sponsor or Sponsor Affiliate, as the case may be;

(iii) to increase such payments in the event the Company or any Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or

(iv) to adjust such payments if the Company or any Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.02(e)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the twenty year period applicable to the Released Property.

(ii) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and any other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with

respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and any other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of the Negotiated FILOT Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a “Deficiency Payment”).

(f)

(i) In the event that the investment in the Project is insufficient to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project does not exceed \$5,000,000 by the end of the Compliance Period, and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(ii) In the event that investment in the Project satisfies the Minimum Statutory Investment Requirement by the end of the Compliance Period, but subsequently falls below the Minimum Statutory Investment Requirement, without regard to depreciation, the Project shall thereafter be

subject to *ad valorem* taxes, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act.

(iii) In accordance with the provisions of **Sections 4.02(b) and 6.02** hereof, except for Existing Property, the fair market value of all property utilized by the Company or any other Co-Investor at the Project site, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 5.02. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and any Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or such Co-Investors or any of their respective Affiliates or operates such assets for the Company or such Co-Investors or any of their respective Affiliates or is leasing portion of the Project in question from the Company or such Co-Investors or any of their respective Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to any Negotiated FILOT Property so transferred: (i) except in connection with any transfer to any Co-Investors, an Affiliate of the Company or such Co-Investors, or transfers pursuant to clause (b) above (as to which such

transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County, in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Negotiated FILOT Property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or such Co-Investors hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.02(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent the transferee or financing entity shall become obligated to pay make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or such Co-Investors (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or such Co-Investors, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or such Co-Investors and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this **Section 6.01**, and at the Company's or such Co-Investor's expense, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or such Co-Investors under this Agreement and/or any release of the Company pursuant to this **Section 6.01**.

The Company acknowledges such a transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company or such Co-Investors with the Transfer Provisions.

Section 6.02. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Project prior to the end of the Compliance Period the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project prior to the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all

investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

Section 7.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder.

Section 7.02. Termination. In addition to the rights of the County under **Sections 5.01(f)** and **8.01**, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination. The County may unilaterally terminate this Agreement if the Company ceases operation at the Project for a period of more than one year.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or other Sponsor or Sponsor Affiliate (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

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

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph (a)**, and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Sponsor or Sponsor Affiliate, as the case may be, to make certain additional payments to the County, all as set forth in **Section 4.04** and **5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies only as to the Defaulting Entity:

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

(b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 4.06** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Section 8.03. Defaulted Payments. In the event the Company or any other Sponsor or Sponsor Affiliate should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

Section 8.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Sponsor or Sponsor Affiliate provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company or any other Sponsor or Sponsor Affiliate of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company or such other Sponsor or Sponsor Affiliate of any or all such other rights, powers, or remedies.

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Sponsor or Sponsor Affiliates designated pursuant to **Section 6.02** hereof and their respective successors and assigns as permitted hereunder.

Section 9.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Richland County, South Carolina  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29202  
Fax: 803-576-2137

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

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



Fax: 803-255-8017

(b) if to the Company:

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

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

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

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

Nexsen Pruet, LLC  
April C. Lucas, Esquire  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Fax: 803-253-8277

Section 9.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 9.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 9.07. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of

this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11. Further Proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

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

RICHLAND COUNTY, SOUTH CAROLINA

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

[SEAL]

ATTEST:

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

FEDEX GROUND PACKAGE SYSTEM, INC.

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

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

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

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

## EXHIBIT B

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

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

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

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

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

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

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

Exhibit B -1

NPCOL1:2576097.3-LOCAL\_AGR-(SJM) 041919-00002

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

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

RICHLAND COUNTY COUNCIL

BY:

  
Paul Livingston, Chair

ATTEST this the 5 day of  
January 2011, 2011


  
Michelle Onley, Assistant Clerk of Council

Exhibit B -2

NPCOL1:2576097.3-LOCAL\_AGR-(SJV) 041919-00002

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing pursuant to Chapter 44 of Title 12, South Carolina Code of Laws, 1976, as amended, the execution and delivery of a fee agreement between Richland County, South Carolina and Bottling Group, LLC and matters relating thereto **[PAGES 175-202]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

RICHLAND COUNTY COUNCIL

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

Chair  
Richland County Council

ATTEST:

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

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

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF RICHLAND         )

I, the undersigned, Clerk to County Council of Richland County ("County Council") DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on three separate days. At least one day passed between first and second reading and at least seven days between second and third reading. At each meeting, a quorum of the County Council was present and remained present throughout the meeting.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Richland County Council, South Carolina, as of this \_\_\_\_ day of \_\_\_\_\_, 2011.

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

~#4833-9820-5197 v.1~

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

**FEE AGREEMENT**

BETWEEN

**RICHLAND COUNTY, SOUTH CAROLINA**

AND

**BOTTLING GROUP, LLC**

DATED  
AS OF  
DECEMBER 1, 2011

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## **FEE AGREEMENT**

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

### **WITNESSETH:**

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

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

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

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

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

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

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

**ARTICLE I  
WAIVER OF RECAPITULATION; DEFINITIONS**

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

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

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

**SECTION 1.3. *Definitions.***

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

**“Administration Expenses”** means the reasonable and necessary out-of-pocket legal fees and expenses incurred by the County with respect to this Agreement; provided, however, that no such expense shall be considered an Administration Expense unless the County furnishes to the Company a statement in writing indicating the reason such expense has been or will be incurred and either estimating the amount of such expense or stating the basis on which the expense has been or will be computed.

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

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



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

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

**“Commencement Date”** means the last day of the property tax year when Project property is first placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company have entered into this Fee Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## **ARTICLE VII EFFECTIVE DATE**

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

## **ARTICLE VIII SPECIAL COVENANTS**

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

**SECTION 8.2. Indemnification Covenants.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE X COMPANY OPTION TO TERMINATE

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

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

## **ARTICLE XI MISCELLANEOUS**

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

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

If to the Company:

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

With a copy to:

Bottling Group, LLC  
One Pepsi Way  
Somers, NY 10589

Attention: General Counsel

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

If to the County:

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

With a copy to:

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

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

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

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

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

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

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

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

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

**SECTION 11.10. *Filings.***

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

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

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

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

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

**SECTION 11.13. *Payment of Administration Expenses.*** The Company will pay to the County from time to time amounts equal to the Administration Expenses of the County promptly upon written request therefor, but in no event later than February 29, 2012, after receiving written notice from the County specifying the nature of such expenses and requesting payment of the same; provided, however, that the County's attorneys' fees for all work relating to the drafting, review, and negotiation of the Inducement Resolution, this Fee Agreement, and related documents shall not exceed \$3,500.

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



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

**RICHLAND COUNTY, SOUTH CAROLINA**

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

ATTEST:

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

**BOTTLING GROUP, LLC**

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

**DESCRIPTION OF LAND**

~#4841-1320-3213 v.5~

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing the execution and delivery of an amended fee in lieu of tax agreement between Richland County, South Carolina, and Spirax Sarco, Inc.; and other matters relating thereto including, without limitation, payment of a fee in lieu of taxes **[PAGES 203-221]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

**STATE OF SOUTH CAROLINA  
RICHLAND COUNTY**

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

WHEREAS, Richland County, South Carolina (the “County”), acting by and through its County Council (the “County Council”), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into agreements to provide for payment of a fee in lieu of taxes pursuant to the Act and, to accept any grants for such projects through which powers the industrial development of the State of South Carolina (the “State”) and will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed and approved this 13th day of December, 2011

RICHLAND COUNTY, SOUTH CAROLINA

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

ATTEST:

By: \_\_\_\_\_  
Micheelle Cannon-Finch, Clerk to County Council  
Richland County, South Carolina

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



FIRST AMENDMENT TO FEE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

SPIRAX SARCO, INC.  
a Delaware Corporation

Dated as of December 1, 2011

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

## FIRST AMENDMENT TO FEE AGREEMENT

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

### WITNESSETH:

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

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

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

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

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

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

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

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

## ARTICLE II

### AMENDMENTS TO 2009 FEE AGREEMENT

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

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

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

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

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

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

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

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

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

The Company would owe \$94,500

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

### ARTICLE III

#### MISCELLANEOUS

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

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

reason of the terms of this First Amendment, or the undertakings required of the County hereunder, by reason of the performance of any act requested of it by the Company, or by reason of the operation of the Project by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its members of County Council, agents, officers, or employees should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding.

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

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

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



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

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

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

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

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

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

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

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

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

RICHLAND COUNTY, SOUTH CAROLINA

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

ATTEST:

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

SPIRAX SARCO, INC.

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

Don B. Harrison

Its: Vice President Finance/CEO

EXHIBIT "A"

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

Tax Map No.: 17600-01-25

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing (1) the execution and delivery of a fee in lieu of tax and incentive agreement between Richland County, South Carolina (the "County") and Westinghouse Electric Company LLC, acting for itself and for one or more affiliates or other project sponsors (the "Company"), in connection with the establishment of certain facilities in the County (the "Project"); (2) the County to covenant in such agreement to accept certain negotiated fees in lieu of ad valorem taxes with respect to the Project ("FILOT Payments"); (3) the Company to claim certain special source credits against such FILOT Payments; (4) the benefits of a multi-county park to be made available to the Company and the Project; and (5) other matters relating thereto **[PAGES 222-262]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

**RICHLAND COUNTY  
ORDINANCE**

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

WHEREAS, Richland County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof (the "Code"), particularly Title 12, Chapter 44 of the Code (the "FILOT Act"), Sections 4-1-175 and 4-29-68 of the Code (collectively, the "Special Source Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act") (collectively, the "Act") and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments, with respect to a project; (iii) to authorize investors to claim certain special source credits against such FILOT payments ("Special Source Credits"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate any Special Source Credits granted to investors; and

WHEREAS, Westinghouse Electric Company LLC, a limited liability company organized and existing under the laws of Delaware, acting for itself and for one or more affiliates or other project sponsors, (the "Company") proposes to establish certain manufacturing and related facilities in the County (the "Project"), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, in the aggregate at least \$35,000,000 in the Project as set forth below; and

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

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

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

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

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

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



Section 2.

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

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

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

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

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

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

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

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

Section 3. The County will insure that the Project will be included, if not already included, and will remain, within the boundaries of a multi-county industrial or business park, pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution on terms which provide, for all jobs created at the Project during the Investment Period, including any extension thereof, any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits authorized herein.

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

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

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

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

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

[End of Ordinance]

Enacted in meeting duly assembled December 13, 2011.

RICHLAND COUNTY, SOUTH CAROLINA

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

[SEAL]

Attest:

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

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

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

WESTINGHOUSE ELECTRIC COMPANY LLC

Dated as of December 1, 2011

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

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

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof (the “Code”), particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof, and Section 4-29-68 of the Code by incorporation, the Special Source Act”) (collectively, the “Act”) and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, without limitation, negotiated FILOT payments, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for certain expenditures including, without limitation, those incurred in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and facilitate the grant of Special Source Credits; and

WHEREAS, the Company proposes to establish certain manufacturing and related facilities in the County (the “Project”), and the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, in the aggregate at least \$35,000,000 in the Project by the end of the Compliance Period (as defined below); and

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



WHEREAS, the County has determined the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on November 15, 2011 (the "Inducement Resolution"), whereby the County agreed to provide FILOT, Special Source Credit and multi-county industrial or business park benefits, which are set forth in greater detail herein; and

WHEREAS, the County has determined that it is in the best interest of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by an Ordinance enacted by the Council on December 13, 2011, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises; the potential investment to be created, or caused to be created, by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

## ARTICLE I

### DEFINITIONS

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

"*Act*" shall mean, collectively, the Negotiated FILOT Act, the Special Source Act and the Multi-County Park Act.

"*Administration Expenses*" shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable attorneys' fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and that the County shall have furnished to the Company, an itemized statement of all expenses incurred and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

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

“*Agreement*” shall mean this Fee In Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in or providing funds for the Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, **[the Company and \_\_\_\_\_ are the only Co-Investors]**.

“*Company*” shall mean Westinghouse Electric Company, a Delaware limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

“*Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. **The parties anticipate that the initial Negotiated FILOT Property comprising the Project will be placed in service in the Property Tax Year ending on March 31, 2012 and that in such event, the Compliance Period will end on March 31, 2017.**

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

“*Council*” shall mean the governing body of the County and its successors.

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Event of Default*” shall mean an Event of Default, as set forth in **Section 8.01** hereof.

“*Existing Property*” shall mean property previously subject to property taxes in South Carolina, which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Negotiated FILOT Act.

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

“*FILOT Payments*” shall mean the FILOT payments to be made by the Company or any other Co-Investor with respect to the Project whether made as Negotiated FILOT Payments pursuant to the Negotiated FILOT Act or as FILOT payments pursuant to the Multi-County Park Act.

“*Inducement Resolution*” shall mean the Resolution approved by the County on November 15, 2011 with respect to the Project.

“*Investment Period*” shall mean the period for completion of the Project, which shall be initially equal to the Compliance Period; provided, however, that, if the Company and any Co-Investors in the aggregate meet the Minimum Contractual Investment Requirement by the end of the Compliance Period, the period for completion of the Project shall automatically extend for another five years; and provided further that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act.

“*Land*” shall mean the land upon which the Project has been or will be located, acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

“*Minimum Contractual Investment Requirement*” shall mean investment of at least \$35,000,000 (without regard to depreciation, disposals, or other diminution in value) by the Company and all Co-Investors in the aggregate in the Project during the Compliance Period.

“*Minimum Statutory Investment Requirement*” shall mean investment in the Project of not less than \$2,500,000 during the Compliance Period, as required by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof in determining whether the Company or any other Sponsor or Sponsor Affiliate qualifies for Negotiated FILOT Payments.

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

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

“*Multi-County Park Agreement*” shall mean that certain Master Agreement Governing the I-77 Corridor Regional Industrial Park between the County and Fairfield County, South Carolina dated as of April 15, 2003, as amended, supplemented, or modified through the date hereof and as such agreement may be further amended, supplemented, or replaced from time to time.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate described in **Section 5.01(b)(ii)** hereof.

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

“*Negotiated FILOT Property*” shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

“*Non-Qualifying Property*” shall mean that portion of the facilities located on the Land which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act, including, without limitation, property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.02(e)(iii)** hereof.

“*Person*” shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

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

“*Property Tax Year*” shall mean the annual period which is equal to the fiscal year of the Company or any other Co-Investor, as the case may be, *e.g.*, with respect to the Company, the period ending on March 31 of each year; provided, however, that the Property Tax Year for the Company shall control for purposes of determining the Compliance Period and Investment Period.

“*Released Property*” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.02(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act; which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; or which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

“*Replacement Property*” shall mean all property installed in or on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Negotiated FILOT Property, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

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

“*Special Source Credits*” shall mean the special source revenue credits described in **Section 3.02** hereof.

“*Special Source 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, machinery, equipment and other personal property (such machinery, equipment and other personal property herein referred to as “Personal Special Source Improvements”) and any other property permitted by the Special Source Act, which is to be used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, any additions or improvements to any of the foregoing, and Personal Special Source Improvements, whether paid for by the Company or any other Co-Investors directly or through lease payments. The Company shall notify the County of the amount of any Special Source Credits allocated to Personal Special Source Improvements and any removal thereof from the Project to the extent not replaced with property of equal or greater value.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. Initially, **[the Company is the only Sponsor and**  

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**is the only Sponsor Affiliate.]**

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

“*Term*” shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act, as amended through the date hereof.

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

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and the Negotiated FILOT Payments and the Special Source Credits as set forth herein, the inclusion and maintenance of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby. The County has obtained all consents and approvals required to consummate the transactions contemplated by this Agreement or the Multi-County Park Agreement including, without limitation, the approval by Fairfield County.

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

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is March 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company presently intends to operate the Project primarily for manufacturing and/or related activities.

(c) The agreements with the County with respect to the Negotiated FILOT, Special Source Credits and the Multi-County Park were factors in inducing the Company to locate the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

### ARTICLE III

#### COVENANTS OF COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Special Source Credits.

(a) The County, as an additional incentive to induce the Company to locate the Project within the County and as reimbursement for investment in certain Special Source 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. If the aggregate investment in the Project equals or exceeds \$35,000,000 prior to the end of the Compliance Period, the annual Special Source Credit shall equal 20% of the annual FILOT Payments for a period of ten years. The Special Source Credit shall increase to 30% of the annual FILOT Payments during the year in which the aggregate investment in the Project equals or exceeds \$85,000,000, provided, however, there shall be no extension of the ten-year period when the Special Source Credits apply. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the



aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

(b) The Special Source Credits shall be reflected by the County on each bill to a Claiming Entity for FILOT Payments due with respect to the Project, by reducing the total original FILOT Payment otherwise due with respect to such property by the amount of such Special Source Credits. Each Claiming Entity shall provide the County with a certification showing the amount of Special Source Credits being claimed and the calculations therefor in substantially the form set forth in **Exhibit B** hereto.

(c) To the extent that the Company allocates any Special Source Credits to Personal Special Source Improvements and later removes such Personal Special Source Improvements from the Project and does not replace the same with property of equal or greater value, the Negotiated FILOT Payments which would be applicable to such Personal Special Source Improvements absent such removal shall continue for a period of two years.

(d) THE COUNTY SHALL HAVE NO FINANCIAL OBLIGATION OF ANY KIND RELATING TO THE SPECIAL SOURCE CREDITS EXCEPT TO THE EXTENT THE FILOT PAYMENTS ARE PAID BY THE CLAIMING ENTITY AND RECEIVED BY THE COUNTY WITH RESPECT TO THE PROJECT.

Section 3.03. Multi-County Park Designation. The County will take all appropriate actions to insure that the Project will be included within the boundaries of the Multi-County Park, and that the Project will remain within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution on terms which provide, for all jobs created at the Project from January 1, 2011 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits set forth herein.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and any other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then, at the request of the Company, the County agrees to use its best efforts to extend to the Company and any other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT and the Special Source Credits, and agrees, if requested, to enter into a lease purchase agreement with the Company and any other Sponsor or Sponsor

Affiliate pursuant to Section 12-44-160; Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and any other Sponsor or Sponsor Affiliate the intended benefits of this Agreement. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and any other Sponsor or Sponsor Affiliate benefits commensurate with, but not in excess of, those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. The Company acknowledges, if a court of competent jurisdiction determines that all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and any other Sponsor or Sponsor Affiliate must transfer the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply. In such lease purchase agreement, the County, upon the conveyance of title to the Project to the County at the expense of the Company or such other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company or such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project for Ten Dollars (\$10.00).

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

## ARTICLE IV

### COVENANTS OF COMPANY

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

Section 4.02. Investment in Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of

the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on **March 31, 2015**.

(b) Expenditures by Co-Investors shall, together with expenditures by the Company, count toward all investment requirements set forth in this Agreement, including the Minimum Contractual Investment Requirement, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined without regard to depreciation by reference to the property returns of the Company and all Co-Investors filed with respect to the Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act.

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

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

(e) The Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as the Company, or such Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when the Company or any other Co-Investor in its discretion determines any of its items included in the Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company, or such Co-Investor, may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT

Property, real or personal, from the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act.

(iv) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, the Company, or such Co-Investor, shall deliver to the County a new **Exhibit A** to this Agreement or schedules or supplements to **Exhibit A**; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 4.03. Funding for Special Source 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 Project.

Section 4.04. Failure to Comply with Minimum Contractual Investment Requirement. If the Company does not comply, or cause compliance, with the Minimum Contractual Investment Requirement by the end of the Compliance Period, but has nevertheless complied, or caused compliance, with the Minimum Statutory Investment Requirement, the Company and each other Co-Investor shall continue to be eligible to take advantage of the Negotiated FILOT hereof; however, in such event, the Company shall not be eligible to receive the Special Source Credits provided for herein.

Section 4.05. Payment of Administration Expenses. The Company will reimburse, or cause reimbursement to, the County from time to time for its Administration Expenses promptly upon written request therefor, but in no event later than sixty (60) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by this Agreement or the Project, and, aside from attorneys' fees described below, the County anticipates no out of pocket expenses in connection with the initial approval of this Agreement and the transactions authorized hereby. The parties understand that legal counsel to the County has estimated its fees and other expenses for review of this Agreement, the Inducement Resolution, the Multi-County Park Agreement and

all resolutions, ordinances, and other documentation related thereto at **\$3,500** or less, and the Company agrees to pay such legal fees to the County on or before December 31, 2011.

Section 4.06. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and any other Co-Investor shall use the Project as it deems fit for any lawful purpose.

Section 4.07. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event or Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is

made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

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

Section 4.08. Records and Reports. The Company and any other Co-Investor will each maintain such books and records with respect to the Project as will permit the identification of those portions of the Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, and computations of all Negotiated FILOT Payments made by such entity hereunder and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Each year during the Term hereof, the Company and any other Co-Investor shall deliver to the County Auditor, the County Assessor, and the County Treasurer a copy of its most recent annual filings made with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

(c) The Company shall also provide annually the information required by the Resolution adopted by the County Council on December 14, 2010, a copy of which is attached hereto as **Exhibit C**.

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Co-Investor believes contain proprietary, confidential, or trade secret matters. To the extent permitted by law, the County shall comply with all reasonable, written requests made by the Company and any other Co-Investor with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company or any other Co-Investor.

## ARTICLE V

### FEES IN LIEU OF TAXES

#### Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is anticipated that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, **2014**. If the Company designates any Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if required, pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall be payable for a period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a period of twenty (20) years.

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) a millage rate equal to 409.3 mills with respect to all Negotiated FILOT Property located thereon, which rate shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Project property owned by such entity so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT Payments, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

(i) to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.02(e)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project at a result of circumstances beyond the control of the Company or any other Sponsor or Sponsor Affiliate, as the case may be;

(iii) to increase such payments in the event the Company or any Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or



(iv) to adjust such payments if the Company or any Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.02(e)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the twenty year period applicable to the Released Property.

(ii) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and any other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from

*ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and any other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of the Negotiated FILOT Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a “Deficiency Payment”).

(f)

(i) In the event that the investment in the Project is insufficient to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project does not exceed \$5,000,000 by the end of the Compliance Period, and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(ii) In the event that investment in the Project satisfies the Minimum Statutory Investment Requirement by the end of the Compliance Period, but subsequently falls below the Minimum Statutory Investment Requirement, without regard to depreciation, the Project shall thereafter be subject to *ad valorem* taxes, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act.

(iii) In accordance with the provisions of **Sections 4.02(b)** and **6.02** hereof, except for Existing Property, the fair market value of all property utilized by the

Company or any other Co-Investor at the Project site, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 5.02. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and any Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or such Co-Investors or any of their respective Affiliates or operates such assets for the Company or such Co-Investors or any of their respective Affiliates or is leasing portion of the Project in question from the Company or such Co-Investors or any of their respective Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to any Negotiated FILOT Property so transferred: (i) except in connection with any transfer to any Co-Investors, an Affiliate of the Company or such Co-Investors, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County, in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Negotiated FILOT Property is the transferee pursuant to clause (b) above and

such financing entity assumes in writing the obligations of the Company or such Co-Investors hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.02(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent the transferee or financing entity shall become obligated to pay make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or such Co-Investors (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or such Co-Investors, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or such Co-Investors and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this **Section 6.01**, and at the Company's or such Co-Investor's expense, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or such Co-Investors under this Agreement and/or any release of the Company pursuant to this **Section 6.01**.

The Company acknowledges such a transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company or such Co-Investors with the Transfer Provisions.

Section 6.02. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Project prior to the end of the Compliance Period the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project prior to the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement. The Company shall provide the County and the

Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

Section 7.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder.

Section 7.02. Termination. In addition to the rights of the County under **Sections 5.01(f)** and **8.01**, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination. The County may unilaterally terminate this Agreement if the Company ceases operations at the Project for a period of more than one year.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or other Sponsor or Sponsor Affiliate (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

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

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph (a)**, and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such

default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Sponsor or Sponsor Affiliate, as the case may be, to make certain additional payments to the County, all as set forth in **Section 4.04** and **5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies only as to the Defaulting Entity:

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

(b) have access to and inspect, examine, and make copies of the books and records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 4.06** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Section 8.03. Defaulted Payments. In the event the Company or any other Sponsor or Sponsor Affiliate should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

Section 8.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Sponsor or Sponsor Affiliate provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company or any other Sponsor or Sponsor Affiliate of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company or such other Sponsor or Sponsor Affiliate of any or all such other rights, powers, or remedies.

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Sponsor or Sponsor Affiliates designated pursuant to **Section 6.02** hereof and their respective successors and assigns as permitted hereunder.

Section 9.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Richland County, South Carolina  
Attn: Richland County Administrator  
2020 Hampton Street  
Columbia, SC 29202  
Fax: 803-576-2137

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

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

(b) if to the Company:

Westinghouse Electric Company, LLC

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

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

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

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

Nexsen Pruet, LLC  
April C. Lucas, Esquire  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Fax: 803-253-8277

Section 9.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 9.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 9.07. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.



Section 9.09.      Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 9.10.      Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11.      Further Proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

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

RICHLAND COUNTY, SOUTH CAROLINA

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

[SEAL]

ATTEST:

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

WESTINGHOUSE ELECTRIC COMPANY LLC

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

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

Exhibit A -1

NPCOL1:2631738.1-LOCAL\_AGR-(SSC) 032330-00010

**EXHIBIT B**

**[INSERT SPCIAL SOURCE CREDIT CERTIFICATION]**

Exhibit A -2

NPCOL1:2631738.1-LOCAL\_AGR-(SSC) 032330-00010

## EXHIBIT C

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

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

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

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

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

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

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

Exhibit C -1

NPCOL1:2631738.1-LOCAL\_AGR-(SSC) 032330-00010

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

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

RICHLAND COUNTY COUNCIL

BY:   
Paul Livingston, Chair

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


  
Michelle Onley, Assistant Clerk of Council

Exhibit C -2

NPCOL1:2631738.1-LOCAL\_AGR-(SSC) 032330-00010

# Richland County Council Request of Action

## **Subject**

Authorizing the execution and delivery of a fee agreement by and between Richland County, South Carolina and Project Rocky I and Project Rocky II, as sponsors, to provide for fee-in-lieu of ad valorem taxes and other incentives; authorizing the grant of special source revenue credits; and other related matters **[PAGES 263-342]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:





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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

**RICHLAND COUNTY COUNCIL**

**(SEAL)**

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

**ATTEST:**

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

Richland County, South Carolina

Introduction: November 15, 2011

Second Reading: December 6, 2011

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

Public Hearing: December 6, 2011

Third Reading: December 13, 2011

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

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

**STATE OF SOUTH CAROLINA**

**COUNTY OF RICHLAND**

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

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Name: Michelle Onley  
Title: Clerk of County Council

Richland County, South Carolina

Dated: December 13, 2011

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

ROCKY I

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

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”), dated as of December 13, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and ROCKY I, a corporation organized and existing under the laws of the State of Delaware (the “Company”);

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered, under and pursuant to the provisions of the Code of Laws of South Carolina, 1976, as amended through the date hereof (the “Code”), particularly Title 12, Chapter 44 thereof (the “FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof; the “Special Source Act”) (collectively, the “Act”), and in order to promote the economic development of the County and surrounding areas by inducing investors to locate and/or expand industrial and commercial properties (“Economic Development Property”) within the County, thereby expanding the tax base in the County and creating jobs for its citizens: (i) to enter into agreements with such investors pursuant to which such investors will make negotiated fee in lieu of *ad valorem* tax (“FILOT”) payments with respect to such Economic Development Property; (ii) to permit investors to claim special source credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for qualifying expenditures in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Special Source Improvements”); and (iii) to create, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

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

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

WHEREAS, the County has determined that the Project will subserve the purposes of the Act; the Company is a Project Sponsor and the Project constitutes Economic Development Property and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County adopted a Resolution on November



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

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

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

NOW, THEREFORE, in consideration of the premises; the potential jobs and investment to be created by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

[**Article I** follows on next page]

## ARTICLE I

### DEFINITIONS

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

“*Act*” shall mean, collectively, the FILOT Act, the Multi-County Park Act and the Special Source Act, as amended through the date hereof.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including attorneys’ fees; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred and that the County shall have furnished to the Company an invoice or itemized statement of all expenses incurred; and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

“*Agreement*” shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(A)(18) and (19) of the Code, any Corporate Affiliate of the Company, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising part of the Project, any financing entity or other third party investing in or providing funds for the Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 8.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Act. The Company has not identified any Sponsor, Sponsor Affiliate or other Co-Investor as of the date of execution and delivery of this Agreement.

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

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

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

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

“*Council*” shall mean the governing body of the County.

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Economic Development Property*” shall mean each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Code, excluding specifically any Non-Qualifying Property.

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

“*Existing Property*” shall mean property proscribed from becoming Economic Development Property under this Agreement pursuant to Section 12-44-110 of the Code, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; (c) property purchased by or on behalf of the Company during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Code.

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

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

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

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

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

“*Land*” shall mean the land upon which the Project would be constructed, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

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

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

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

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT Payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Economic Development Property which qualifies pursuant to the FILOT Act for the assessment ratio and negotiated millage rate described in **Section 5.01(b)(i)** hereof.

“*Non-Qualifying Property*” shall mean that portion of the facilities located on the Land and consisting of: (i) Existing Property; (ii) except as to Replacement Property, property which the Company places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the FILOT Act, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to **Section 4.03(a)(ii)** hereof.

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

“*Project*” shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements constructed thereon; (ii) all machinery, equipment, furnishings and other personal property acquired by or on behalf of the Company for use on or about the Land; and (iii) any Replacement Property; provided, however, that, except as to the Land and any Replacement Property, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service by the end of the Investment Period, and the term Project shall be deemed to exclude any Existing Property or other Non-Qualifying Property.

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

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

“*Released Property*” shall include Economic Development Property which is scrapped, sold, disposed of, or released from this Agreement by the Company pursuant to **Section 4.03** hereof and Section 12-44-50(B) of the Code; any portion of the Economic Development Property constituting infrastructure which the Company dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; and any Economic Development Property damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

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

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

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

“*Special Source Improvements*” shall mean any qualifying infrastructure defined under Section 4-29-68 of the Code, as amended through the date hereof, and shall be deemed to include initially, for purposes of this Agreement, the Land, the buildings, fixtures and other real property improvements on the Land and any additions or improvements to any of the foregoing, whether paid for by the Company or any Co-Investor directly or through lease payments.

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

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

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

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

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

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

[End of **Article I**]

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement, the Negotiated FILOT Payments and Special Source Credit arrangements as set forth herein, the inclusion of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

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

(c) This Agreement has been duly executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the undersigned representatives of the County, conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the undersigned representatives of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the undersigned representatives of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any South Carolina court or before any South Carolina governmental authority or arbitration board or tribunal, any of which to the best knowledge of the undersigned representatives of the County could materially adversely affect this Agreement or which could adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

(a) The Company is a corporation validly existing and in good standing under the laws of the State of Delaware; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to

execute and deliver this Agreement. The Company's fiscal year end is \_\_\_\_\_ of each year, and the Company will notify the County of any changes in the fiscal year of the Company.

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

(c) The agreements with the County with respect to the FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to consider locating the Project within the County and the State.

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

[End of **Article II**]

## ARTICLE III

### CERTAIN UNDERTAKINGS OF THE COUNTY

Section 3.01 Agreement to Accept FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Economic Development Property until this Agreement expires or is sooner terminated. The County makes no warranty, either express or implied, as to the title to any part of the Project or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs.

#### Section 3.02 Special Source Credits.

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

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

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



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

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

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

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

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

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

Section 3.03 Related Undertakings.

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

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

(c) The County will expend up to \$75,000 for the installation of a traffic signal at the intersection of Pineview Road Extension and American Italian Way. Installation of such traffic signal shall be completed within 6 months of issuance of a certificate of occupancy for the Project. The County, at its sole expense, has or will conduct a traffic study of this intersection in connection with the Project.

(d) The County acknowledges that the construction plans for the Project entail the removal of trees at the Project site and that strict compliance with county ordinances regarding the removal of trees will create undue hardship to the Project.

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

[End of **Article III**]

## ARTICLE IV

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

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

(a) The Company agrees that in order to fully qualify for the benefits of this Agreement it must acquire and/or develop, or cause to be acquired and/or be developed, the Project, as the same shall be determined from time to time by the Company in its sole discretion, and to achieve the Company Project Commitments by the end of the Statutory Investment Period; provided, however, that the benefits provided to the Company under this Agreement shall be subject to adjustment or termination as provided in **Sections 3.02** and **5.01** hereof if the Company does not achieve the Company Project Commitments. As required by Section 12-44-30(2) of the Code, at least a portion of the assets comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is executed and delivered.

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

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

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

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

Section 4.03 Modification of Project.

(a) As long as no Event of Default exist hereunder, the Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may during the Investment Period, at its own expense, add all such real and personal property as the Company in its discretion deems useful or desirable to the Economic Development Property qualifying for the Negotiated FILOT under **Section 5.01** hereof without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 8.01** hereof with respect to Economic Development Property, in any instance where the Company in its discretion determines that any items included in the Project, including any Economic Development Property and any portion of the Land, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company may, at any time and in its discretion by written notice to the County, remove any Economic Development Property, real or personal, from the Negotiated FILOT set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes.

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

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

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

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

[End of **Article IV**]

## ARTICLE V

### FILOT PAYMENTS

#### Section 5.01 FILOT Payments.

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

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

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

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) a millage rate of 409.3, which is the millage rate applicable in the County as of June 30, 2011 for the particular taxing district in which the Land is located, fixed for the entire term of this Agreement; and (3) the fair market value of such Economic Development Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Code, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence) as determined by the Department of Revenue.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT, the Economic Development Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

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

(ii) to reduce such payments in the event that the Economic Development Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the value of the Project or such portion thereof;

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

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

(d) Upon the Company's installation of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject

to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the thirty-year period applicable to the Released Property.

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

(e) In the event that, for any reason, the FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Economic Development Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Economic Development Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable with respect to the portion of the Economic Development Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

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

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

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

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

(i) In accordance with the provisions of **Sections 4.01(b)** and **8.03** hereof except for Existing Property, the fair market value of all property utilized by the Company at the Project site, whether owned by the Company outright or utilized by the Company pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

(j) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within ninety (90) days following receipt by the Company of notice that there has been a final determination by the County that such a Deficiency Payment or other retroactive payment is due.

[End of **Article V**]



## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

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

Section 6.02 Indemnification.

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

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

Section 6.03 Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any

such default relates to its obligations to make FILOT Payments hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

[End of **Article VI**]

## ARTICLE VII

### PARTICULAR COVENANTS AND AGREEMENTS

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

Section 7.02 Maintenance of Existence. Unless the County shall consent otherwise, which consent shall not be unreasonably withheld, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property (except, in either case, where the resulting, surviving, or transferee entity is the Company or an Corporate Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby consents). The resulting, surviving or transferee entity, if not the Company, shall, within sixty (60) days following any such merger, consolidation or transfer, provide the County with written notification of such event together with a copy of the written instrument by which such resulting, surviving, or transferee entity has assumed the rights and obligations of the Company under this Agreement. The Company acknowledges that, except as permitted herein, transfers of this Agreement or Economic Development Property may cause the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 7.03 Records and Reports. The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project which are placed in service in each Property Tax Year during the Investment Period, the amount of investment in the Project and in Special Source Improvements, and its computations of all Negotiated FILOT Payments and Special Source Credits and to comply with all reporting requirements of the State and the County applicable to Economic Development Property under the Act, including without limitation the reports required by 12-44-90 of the Code (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the code for a recapitulation of the terms of this Agreement. Specifically, the Company shall provide the following:

(a) Each year during the Term hereof, the Company shall deliver to the County Administrator, County Auditor and the County Assessor a copy of its most recent annual filings made with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Administrator, County Auditor and the County Assessor of the County and of any county which is a party to the Multi County Park Agreement and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate. Notwithstanding any other provision of this

Section, the Company may, by clear, written designation, conspicuously marked, designate with respect to any filings delivered to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company.

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

[End of **Article VII**]

## ARTICLE VIII

### CONVEYANCES; ASSIGNMENTS; SPONSORS AND SPONSOR AFFILIATES

Section 8.01 Conveyance of Liens and Interests: Assignment. The Company may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Economic Development Property to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Economic Development Property, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such Economic Development Property, as long as the transferee in any such arrangement leases the Economic Development Property in question to the Company or any of its Corporate Affiliates or operates such assets for the Company or any of its Corporate Affiliates or is leasing such Economic Development Property in question from the Company or any of its Corporate Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to property so transferred: (i) except in connection with any transfer to a Corporate Affiliate of the Company, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the written consent of the County; (ii) except where a financing entity which is the income tax owner of all or part of the Economic Development Property, is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing or where the transfer relates to Released Property pursuant to **Section 4.03** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent that the transferee or financing entity shall become obligated to pay make Negotiated FILOT Payments hereunder, the transferee shall assume the then current basis of the Company (or other income tax owner) in the Economic Development Property transferred; (iv) the Company, transferee or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Economic Development Property may cause all or part of the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 8.02 Sponsors and Sponsor Affiliates. The County hereby authorizes the Company to designate from time to time Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(18) or (19), respectively, and Section 12-44-130 of the Code, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Corporate Affiliates of the Company or other Persons described in **Section 8.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Sections 12-44-

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

[End of **Article VIII**]

## ARTICLE IX

### TERM; TERMINATION

Section 9.01 Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder.

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

[End of **Article IX**]

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default by the Company. Any one or more of the following events (herein called an “Event of Default”, or collectively “Events of Default”) shall constitute an Event of Default by the Company:

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

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Company written notice of such default; provided, the County may, in its discretion, grant the Company a longer period of time as necessary to cure such default if the Company proceeds with due diligence to cure such default; and provided further, that no Event of Default shall exist under this paragraph (b) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Company has contested the occurrence of such default.

The Company’s failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Sections 3.03, 4.01 and 5.01** hereof.

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

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

(b) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 7.03** hereof; or

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

Section 10.03 Application of Monies upon Enforcement of Remedies against Company. Any monies received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings; second, to



pay Administration Expenses; and third, to pay the Negotiated FILOT in accordance with **Section 5.01** hereof.

Section 10.04 Default by the County. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for mandamus or specific performance.

[End of **Article X**]

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers, or remedies.

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

Section 11.03 Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

- (a) As to the County:

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

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

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

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

(c) As to the Company:

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

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

And

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

Section 11.04 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 11.05 Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 11.06 Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 11.07 Headings and Table of Contents: References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

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

Section 11.09 Amendments. Subject to the limitations set forth in Section 12-44-40(J)(2) of the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 11.10 Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 11.11 Further Proceedings. It is intended by the parties that any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the County Administrator and/or County Auditor without necessity of further proceedings. To the extent that additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

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

[End of **Article XI**]

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

RICHLAND COUNTY, SOUTH CAROLINA

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

[SEAL]

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

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

ROCKY I

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

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

## EXHIBIT B-1

### ANNUAL SPECIAL SOURCE CREDIT CERTIFICATION

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

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

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

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

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

or

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

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

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

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

Exhibit - B-1-1

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

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

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

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

ROCKY I

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



**EXHIBIT B-2**

**ANNUAL AGGREGATE PROJECT CERTIFICATION**

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

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

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

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

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

or

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

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

ROCKY I

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

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

RICHLAND COUNTY, SOUTH CAROLINA

and

ROCKY II

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

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”), dated as of December 13, 2011, between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and ROCKY II, a corporation organized and existing under the laws of the State of Delaware (the “Company”);

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered, under and pursuant to the provisions of the Code of Laws of South Carolina, 1976, as amended through the date hereof (the “Code”), particularly Title 12, Chapter 44 thereof (the “FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof; the “Special Source Act”) (collectively, the “Act”), and in order to promote the economic development of the County and surrounding areas by inducing investors to locate and/or expand industrial and commercial properties (“Economic Development Property”) within the County, thereby expanding the tax base in the County and creating jobs for its citizens: (i) to enter into agreements with such investors pursuant to which such investors will make negotiated fee in lieu of *ad valorem* tax (“FILOT”) payments with respect to such Economic Development Property; (ii) to permit investors to claim special source credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for qualifying expenditures in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Special Source Improvements”); and (iii) to create, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

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

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

WHEREAS, the County has determined that the Project will subserve the purposes of the Act; the Company is a Project Sponsor and the Project constitutes Economic Development Property and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County adopted a Resolution on November

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

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

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

NOW, THEREFORE, in consideration of the premises; the potential jobs and investment to be created by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and the sum of \$10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

[**Article I** follows on next page]

## ARTICLE I

### DEFINITIONS

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

“*Act*” shall mean, collectively, the FILOT Act, the Multi-County Park Act and the Special Source Act, as amended through the date hereof.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including attorneys’ fees; provided, however, that no such expense shall be considered an Administration Expense unless the County and the Company shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred and that the County shall have furnished to the Company an invoice or itemized statement of all expenses incurred; and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

“*Agreement*” shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(A)(18) and (19) of the Code, any Corporate Affiliate of the Company, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising part of the Project, any financing entity or other third party investing in or providing funds for the Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 8.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Act. The Company has not identified any Sponsor, Sponsor Affiliate or other Co-Investor as of the date of execution and delivery of this Agreement.

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

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

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

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

“*Council*” shall mean the governing body of the County.

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Economic Development Property*” shall mean each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Code, excluding specifically any Non-Qualifying Property.

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

“*Existing Property*” shall mean property proscribed from becoming Economic Development Property under this Agreement pursuant to Section 12-44-110 of the Code, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; (c) property purchased by or on behalf of the Company during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property, all as determined pursuant to Section 12-44-110 of the Code.

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

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

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

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



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

“*Land*” shall mean the land upon which the Project would be constructed, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

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

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

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

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT Payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Economic Development Property which qualifies pursuant to the FILOT Act for the assessment ratio and negotiated millage rate described in **Section 5.01(b)(i)** hereof.

“*Non-Qualifying Property*” shall mean that portion of the facilities located on the Land and consisting of: (i) Existing Property; (ii) except as to Replacement Property, property which the Company places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the FILOT Act, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to **Section 4.03(a)(ii)** hereof.

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

“*Project*” shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements constructed thereon; (ii) all machinery, equipment, furnishings and other personal property acquired by or on behalf of the Company for use on or about the Land; and (iii) any Replacement Property; provided, however, that, except as to the Land and any Replacement Property, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service by the end of the Investment Period, and the term Project shall be deemed to exclude any Existing Property or other Non-Qualifying Property.

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

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

“*Released Property*” shall include Economic Development Property which is scrapped, sold, disposed of, or released from this Agreement by the Company pursuant to **Section 4.03** hereof and Section 12-44-50(B) of the Code; any portion of the Economic Development Property constituting infrastructure which the Company dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code; and any Economic Development Property damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

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

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

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

“*Special Source Improvements*” shall mean any qualifying infrastructure defined under Section 4-29-68 of the Code, as amended through the date hereof, and shall be deemed to include initially, for purposes of this Agreement, the Land, the buildings, fixtures and other real property improvements on the Land and any additions or improvements to any of the foregoing, whether paid for by the Company or any Co-Investor directly or through lease payments.

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

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

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

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

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

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

[End of **Article I**]

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement, the Negotiated FILOT Payments and Special Source Credit arrangements as set forth herein, the inclusion of the Project in the Multi-County Park, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

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

(c) This Agreement has been duly executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the undersigned representatives of the County, conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the undersigned representatives of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the undersigned representatives of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any South Carolina court or before any South Carolina governmental authority or arbitration board or tribunal, any of which to the best knowledge of the undersigned representatives of the County could materially adversely affect this Agreement or which could adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

(a) The Company is a corporation validly existing and in good standing under the laws of the State of Delaware; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to

execute and deliver this Agreement. The Company's fiscal year end is \_\_\_\_\_ of each year, and the Company will notify the County of any changes in the fiscal year of the Company.

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

(c) The agreements with the County with respect to the FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to consider locating the Project within the County and the State.

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

[End of **Article II**]

## ARTICLE III

### CERTAIN UNDERTAKINGS OF THE COUNTY

Section 3.01 Agreement to Accept FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Economic Development Property until this Agreement expires or is sooner terminated. The County makes no warranty, either express or implied, as to the title to any part of the Project or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs.

#### Section 3.02 Special Source Credits.

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

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

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

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

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

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

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

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

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

Section 3.03 Related Undertakings.

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

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

(c) The County will expend up to \$75,000 for the installation of a traffic signal at the intersection of Pineview Road Extension and American Italian Way. Installation of such traffic signal shall be completed within 6 months of issuance of a certificate of occupancy for the Project. The County, at its sole expense, has or will conduct a traffic study of this intersection in connection with the Project.

(d) The County acknowledges that the construction plans for the Project entail the removal of trees at the Project site and that strict compliance with county ordinances regarding the removal of trees will create undue hardship to the Project.

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

[End of **Article III**]

## ARTICLE IV

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

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

(a) The Company agrees that in order to fully qualify for the benefits of this Agreement it must acquire and/or develop, or cause to be acquired and/or be developed, the Project, as the same shall be determined from time to time by the Company in its sole discretion, and to achieve the Company Project Commitments by the end of the Statutory Investment Period; provided, however, that the benefits provided to the Company under this Agreement shall be subject to adjustment or termination as provided in **Sections 3.02** and **5.01** hereof if the Company does not achieve the Company Project Commitments. As required by Section 12-44-30(2) of the Code, at least a portion of the assets comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is executed and delivered.

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

(c) To encourage the Company to increase its investment in the Project, if the investment in the Project reaches at least \$21,000,000 by the end of the Statutory Investment Period and the Company commits to additional investment in the Project, upon the Company's written request, the County, acting by Resolution, will consider extension of the period for completion of the Project for up to an additional five years (the "Extended Investment Period") (such Statutory Investment Period or Extended Investment Period, as the case may be, referred to herein as the "Investment Period"); provided, however, that there shall be no extension of the period for meeting the Minimum Investment Requirement beyond the Statutory Investment Period.

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

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



Section 4.03 Modification of Project.

(a) As long as no Event of Default exist hereunder, the Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may during the Investment Period, at its own expense, add all such real and personal property as the Company in its discretion deems useful or desirable to the Economic Development Property qualifying for the Negotiated FILOT under **Section 5.01** hereof without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 8.01** hereof with respect to Economic Development Property, in any instance where the Company in its discretion determines that any items included in the Project, including any Economic Development Property and any portion of the Land, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions of the Land from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company may, at any time and in its discretion by written notice to the County, remove any Economic Development Property, real or personal, from the Negotiated FILOT set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes.

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

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

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

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

[End of **Article IV**]

## ARTICLE V

### FILOT PAYMENTS

#### Section 5.01 FILOT Payments.

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

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

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

(ii) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) a millage rate of 409.3, which is the millage rate applicable in the County as of June 30, 2011 for the particular taxing district in which the Land is located, fixed for the entire term of this Agreement; and (3) the fair market value of such Economic Development Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Code, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence) as determined by the Department of Revenue.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(iv) For purposes of calculating the Negotiated FILOT, the Economic Development Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

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

(ii) to reduce such payments in the event that the Economic Development Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the value of the Project or such portion thereof;

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

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

(d) Upon the Company's installation of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject

to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the thirty-year period applicable to the Released Property.

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

(e) In the event that, for any reason, the FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Economic Development Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Economic Development Property affected by such circumstances *ad valorem* taxes and that, to the extent permitted by law, the Company shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable with respect to the portion of the Economic Development Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

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

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

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

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

(i) In accordance with the provisions of **Sections 4.01(b)** and **8.03** hereof except for Existing Property, the fair market value of all property utilized by the Company at the Project site, whether owned by the Company outright or utilized by the Company pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

(j) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within ninety (90) days following receipt by the Company of notice that there has been a final determination by the County that such a Deficiency Payment or other retroactive payment is due.

[End of **Article V**]

## ARTICLE VI

### PAYMENT OF EXPENSES BY COMPANY

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

Section 6.02 Indemnification.

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

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

Section 6.03 Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any

such default relates to its obligations to make FILOT Payments hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Code.

[End of **Article VI**]

## ARTICLE VII

### PARTICULAR COVENANTS AND AGREEMENTS

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

Section 7.02 Maintenance of Existence. Unless the County shall consent otherwise, which consent shall not be unreasonably withheld, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property (except, in either case, where the resulting, surviving, or transferee entity is the Company or an Corporate Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby consents). The resulting, surviving or transferee entity, if not the Company, shall, within sixty (60) days following any such merger, consolidation or transfer, provide the County with written notification of such event together with a copy of the written instrument by which such resulting, surviving, or transferee entity has assumed the rights and obligations of the Company under this Agreement. The Company acknowledges that, except as permitted herein, transfers of this Agreement or Economic Development Property may cause the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 7.03 Records and Reports. The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project which are placed in service in each Property Tax Year during the Investment Period, the amount of investment in the Project and in Special Source Improvements, and its computations of all Negotiated FILOT Payments and Special Source Credits and to comply with all reporting requirements of the State and the County applicable to Economic Development Property under the Act, including without limitation the reports required by 12-44-90 of the Code (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the code for a recapitulation of the terms of this Agreement. Specifically, the Company shall provide the following:

(a) Each year during the Term hereof, the Company shall deliver to the County Administrator, County Auditor and the County Assessor a copy of its most recent annual filings made with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the County Administrator, County Auditor and the County Assessor of the County and of any county which is a party to the Multi County Park Agreement and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate. Notwithstanding any other provision of this



Section, the Company may, by clear, written designation, conspicuously marked, designate with respect to any filings delivered to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company.

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

[End of **Article VII**]

## ARTICLE VIII

### CONVEYANCES; ASSIGNMENTS; SPONSORS AND SPONSOR AFFILIATES

Section 8.01 Conveyance of Liens and Interests: Assignment. The Company may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Economic Development Property to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Economic Development Property, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such Economic Development Property, as long as the transferee in any such arrangement leases the Economic Development Property in question to the Company or any of its Corporate Affiliates or operates such assets for the Company or any of its Corporate Affiliates or is leasing such Economic Development Property in question from the Company or any of its Corporate Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to property so transferred: (i) except in connection with any transfer to a Corporate Affiliate of the Company, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the written consent of the County; (ii) except where a financing entity which is the income tax owner of all or part of the Economic Development Property, is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing or where the transfer relates to Released Property pursuant to **Section 4.03** hereof, no such transfer shall affect or reduce any of the obligations of the Company hereunder; (iii) to the extent that the transferee or financing entity shall become obligated to pay make Negotiated FILOT Payments hereunder, the transferee shall assume the then current basis of the Company (or other income tax owner) in the Economic Development Property transferred; (iv) the Company, transferee or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Economic Development Property may cause all or part of the Economic Development Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Notwithstanding anything to the contrary set forth herein, the County hereby authorizes and approves the assignment of the Project and this Agreement to

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Section 8.02 Sponsors and Sponsor Affiliates. The County hereby authorizes the Company to designate from time to time Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(18) or (19), respectively, and Section 12-44-130 of the Code, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make

investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Corporate Affiliates of the Company or other Persons described in **Section 8.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Sections 12-44-30(18) or (19) and Section 12-44-130 of the Code must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to or greater than \$2,500,000 prior to the end of the Statutory Investment Period, the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof in accordance with Section 12-44-30(18) of the Code. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate so designated within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service assets to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Code.

[End of **Article VIII**]

## ARTICLE IX

### TERM; TERMINATION

Section 9.01 Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder.

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

[End of **Article IX**]

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default by the Company. Any one or more of the following events (herein called an “Event of Default”, or collectively “Events of Default”) shall constitute an Event of Default by the Company:

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

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Company written notice of such default; provided, the County may, in its discretion, grant the Company a longer period of time as necessary to cure such default if the Company proceeds with due diligence to cure such default; and provided further, that no Event of Default shall exist under this paragraph (b) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Company has contested the occurrence of such default.

The Company’s failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Sections 3.03, 4.01 and 5.01** hereof.

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

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

(b) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 7.03** hereof; or

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

Section 10.03 Application of Monies upon Enforcement of Remedies against Company. Any monies received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings; second, to

pay Administration Expenses; and third, to pay the Negotiated FILOT in accordance with **Section 5.01** hereof.

Section 10.04 Default by the County. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for mandamus or specific performance.

[End of **Article X**]

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers, or remedies.

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

Section 11.03 Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

- (a) As to the County:

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

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

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

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

(c) As to the Company:

ROCKY II

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

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

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

And

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

Section 11.04 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 11.05 Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 11.06 Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 11.07 Headings and Table of Contents: References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.



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

Section 11.09 Amendments. Subject to the limitations set forth in Section 12-44-40(J)(2) of the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 11.10 Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 11.11 Further Proceedings. It is intended by the parties that any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the County Administrator and/or County Auditor without necessity of further proceedings. To the extent that additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

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

[End of **Article XI**]

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

RICHLAND COUNTY, SOUTH CAROLINA

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

[SEAL]

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

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

ROCKY II

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

[INSERT DESCRIPTION OF TAX PARCEL R19000-05-07]

## EXHIBIT B-1

### ANNUAL SPECIAL SOURCE CREDIT CERTIFICATION

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

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

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$21,000,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 2016.

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

(a) The Statutory Investment Period has not yet elapsed. To date, the Company and all Co-Investors have invested in the aggregate \$\_\_\_\_\_ (without regard to depreciation) in the Project, and the Company anticipates that investment in the Project will aggregate at least \$21,000,000 prior to the end of the Statutory Investment Period.

or

(b) The Company and all Co-Investors invested in the aggregate not less than \$21,000,000 (without regard to depreciation) in the Project prior to the end of the Statutory Investment Period.]

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

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

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

Exhibit - B-1-1

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

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

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

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

ROCKY II

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

**EXHIBIT B-2**

**ANNUAL AGGREGATE INVESTMENT CERTIFICATION**

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

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

1. The Statutory Investment Period, during which the Company and any Co-Investors must have invested an aggregate of at least \$21,000,000 (without regard to depreciation) in the Project in order to qualify for Special Source Credits, [ends/ended] on December 31, 2016.

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

(a) The Company and all Co-Investors invested in the aggregate not less than \$21,000,000 (without regard to depreciation) and created at least 27 new full-time jobs at the Project prior to the end of the Statutory Investment Period. In accordance with **Section 3.02** of the Agreement, the Company is entitled to claim Special Source Credits against its annual Personal Property FILOT Payments (as defined in the Agreement) with respect to the Project, commencing with the Personal Property FILOT Payment due on \_\_\_\_\_, 20\_\_.

or

(b) As of the end of the Statutory Investment Period, the Company and all Co-Investors invested in the aggregate less than \$21,000,000 (without regard to depreciation) and created at least 27 new full-time jobs at the Project [or, if applicable, as of the date hereof, the Company does not anticipate that investment in the Project will aggregate to at least \$21,000,000 and involve the creation of at least 27 new full-time jobs prior to the end of the Statutory Investment Period]. To date, the Company has claimed an aggregate of \$ \_\_\_\_\_ in Special Source Credits. In accordance with **Section 3.02** of the Agreement, the County has the right to terminate or adjust the Special Source Credits under such circumstances.]

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

ROCKY II

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

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing the execution and delivery of an infrastructure credit agreement by and between Richland County and Koyo Corporation of U.S.A., so as to provide, among other things, special source revenue credits for a project; and to provide for other matters related thereto **[PAGES 343-355]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

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

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE CREDIT AGREEMENT BY AND BETWEEN RICHLAND COUNTY AND KOYO CORPORATION OF U.S.A., SO AS TO PROVIDE, AMONG OTHER THINGS, SPECIAL SOURCE REVENUE CREDITS FOR A PROJECT; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.**

WHEREAS, Richland County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized by Sections 12-44-70, 4-1-175, and 4-29-68 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), to provide special source revenue credits, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County; and

WHEREAS, Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the "Company"), operates a manufacturing facility located in the County (the "Facility"); and

WHEREAS, the Facility is located in a multi-county park (the "Park") pursuant to an Agreement for Designation of the I-77 Corridor Regional Industrial Park Phase II made and entered into as of April 19, 1994 by and between the County and Fairfield County; and

WHEREAS, the Company has made and intends to make continuing and further investment at the facility (the "Project") and has requested the County provide certain economic development incentives to the Company related to such investment; and

WHEREAS, the Company has placed certain assets in service at the Project during the calendar years 2003 through 2007 (property tax years 2004 through 2008)(the "Assets") and, by virtue of the Project being in a Park, the Company has made tax payments to the County attributable to these assets under Section 4-1-170, et. al., and otherwise applicable law; and

WHEREAS, the County has now agreed to grant the Company a special source revenue credit (the "SSRC") against a portion of certain future tax payments attributable to the Assets; and

WHEREAS, the Company has caused to be prepared and presented to the Council the form of the Infrastructure Credit Agreement by and among the County and the Company (the "Agreement"), which provides for a special source revenue credit against a portion of certain future tax payments attributable to the Assets as set forth in the Agreement; and



WHEREAS, it appears that the Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended; and

WHEREAS, in order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina (the "State") by assisting the Company to expand or locate an industrial facility in the State, the Council enacts this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Approval of Agreement. The Agreement is approved as follows:

(a) The form, terms, and provisions of the Agreement presented to this meeting and filed with the Clerk to County Council (the "Clerk") are approved and all of the terms, provisions, and conditions of the Agreement are incorporated by reference. The Chairman of the County Council (the "Chairman") and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Agreement in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Agreement to be delivered to the Company.

(b) The Agreement to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are approved by the County officials executing the Agreement. The County officials shall consult the attorney for the County (the "County Attorney") with respect to any changes to the Agreement. The execution of the Agreement by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Agreement now before this meeting.

(c) If under the Agreement or the Act any future actions of the Company (including, without limitation, the supplementation of the exhibits thereto and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the Chairman or the Richland County Administrator (the "County Administrator") upon affirmative resolution of the County Council to the extent permitted by law. The County officials shall consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

Section 2. Execution of Document. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things reasonably necessary to effect the execution and delivery of the Agreement and the County's performance of its obligations under the Agreement.

Section 3. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be

invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 4. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

RICHLAND COUNTY COUNCIL

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

(SEAL)

Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2011

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF RICHLAND                )

I, the undersigned, Clerk to County Council of Richland County (“County Council”), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on three separate days. At least one day passed between first and second reading and at least seven days between second and third reading. At each meeting, a quorum of the County Council was present and remained present throughout the meeting.

To the best of my knowledge, the County Council has not taken any action to repeal the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Richland County Council, South Carolina, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Clerk of County Council  
Richland County, South Carolina

## INFRASTRUCTURE CREDIT AGREEMENT

THIS INFRASTRUCTURE CREDIT AGREEMENT, dated as of \_\_\_\_\_, 2011 (the "Agreement"), by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (the "County") and KOYO CORPORATION OF U.S.A., a South Carolina corporation (the "Company").

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by Sections Sections 12-44-70, 4-1-175, and 4-29-68 of the Code of Laws of South Carolina, 1976 (the "Code"), as amended, to provide a special source revenue credit for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County; and

WHEREAS, the Company operates a manufacturing facility located in the County (the "Facility"); and

WHEREAS, the Facility is located in a multi-county park (the "Park") pursuant to an Agreement for Designation of the I-77 Corridor Regional Industrial Park Phase II made and entered into as of April 19, 1994 by and between the County and Fairfield County; and

WHEREAS, the Company has made and intends to make continuing and further investment at the Facility (the "Project") and has requested the County provide certain economic development incentives to the Company related to such investment; and

WHEREAS, the Company has placed certain assets in service at the Project during the calendar years 2003 through 2007 (property tax years 2004 through 2008)((the "Assets") and, by virtue of the Project being in a Park, the Company has made tax payments to the County attributable to these assets under Section 4-1-170, et. al., and otherwise applicable law; and

WHEREAS, the County has now agreed to grant the Company a special source revenue credit (the "SSRC") against a portion of certain future tax payments attributable to the Assets; and

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

## ARTICLE I

### DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

“Act” shall mean, collectively, Title 4, Chapter 29 and Sections 4-1-170, -172 & -175 of the Code.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. (a) The County represents and warrants that: (i) it is a body politic and corporate and a political subdivision of the State of South Carolina; (ii) it is authorized by the Act to enter into this Agreement; (iii) it has approved this Agreement in accordance with the procedural requirements of the Act and any other applicable state law; and (iv) it has authorized its officials to execute and deliver this Agreement.

(b) The County will take all reasonable actions and use its best efforts to ensure that the Project is located in the Park or any other joint county industrial and business park for the longer of the term of this Agreement or such period of time as is necessary to allow the Company and any related parties to receive the benefit of the incentives provided in this Agreement.

SECTION 2.02. Representations by the Company. The Company represents and warrants that it: (i) is or will be validly existing and in good standing under the laws of the state of organization or incorporation; (ii) is or will be authorized to transact business in the State of South Carolina; (iii) has the power to enter into this Agreement; (iv) has by proper action approved this Agreement; and (v) has authorized its officials to execute and deliver this Agreement.

SECTION 2.03. Covenants of County and Company.

The County and Company covenant, each to the other, that they will from time to time and at the expense of the Company execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute an indebtedness of the County within the meaning of any state constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution relating to indebtedness payable solely from a revenue-producing project or from a special source, which source does not involve revenues from any tax or license) or statutory limitation and shall never constitute or give rise to a pecuniary

liability of the County or a charge against its general credit or taxing power or pledge the credit or taxing power of the State, or any other political subdivision of the State.

### ARTICLE III

#### SPECIAL SOURCE REVENUE CREDIT

##### SECTION 3.01. Special Source Revenue Credit.

(a) Subject to Section 3.02 below, the County shall provide to the Company a Special Source Revenue Credit against the tax payments attributable solely to the Assets (the “MCIP Payments”), equal to sixty-five percent (65%), beginning for the property tax year 2011 (payment for which is due on or about January 15, 2012) and continuing through the property tax year 2027 (payment for which is due on or about January 15, 2028).

(b) THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDIT IN THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE STATED MCIP PAYMENTS PAID BY THE COMPANY, AND DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION RELATING TO INDEBTEDNESS PAYABLE SOLELY FROM A REVENUE-PRODUCING PROJECT OR FROM A SPECIAL SOURCE, WHICH SOURCE DOES NOT INVOLVE REVENUES FROM ANY TAX OR LICENSE) AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE SPECIAL SOURCE REVENUE CREDIT.

(c) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing is limited solely and exclusively to the provision of a Special Source Revenue Credit against the MCIP Payments. The County is not required to execute or perform any of its duties, obligations, powers, or covenants in this Agreement except to the extent of the MCIP Payments received from the Company.

SECTION 3.02. Investment and Job Creation Requirement. The Company shall invest at least \$20,000,000 in the Project and create at least twenty-five (25) new full-time jobs at the Project by December 31, 2018. This investment and job creation requirement is not independent and not in addition to the related such requirements committed by the Company in that certain First Amendment to Fee Agreement dated as of the same date herein.

## ARTICLE IV

### CONDITIONS TO DELIVERY OF AGREEMENT;

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the ordinance of the County approving the SSRC, duly certified by the Clerk of the County Council under its corporate seal to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) Such additional certificates (including appropriate no-litigation certificates and certified copies of ordinances, resolutions, or other proceedings adopted by the County), instruments or other documents as the Company may reasonably request.

SECTION 4.02. Transfers of Project. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, to others. No sale, lease, conveyance, or grant shall relieve the County from the County's obligations to provide the Special Source Revenue Credit to the Company or its assignee, provided, however, that the assignee has agreed to be bound by the Company's obligations under this Agreement.

SECTION 4.03. Assignment by County. The County shall not attempt to assign, transfer, or convey its obligation to provide the Special Source Revenue Credit hereunder to any other Person.

## ARTICLE V

### EVENTS OF DEFAULT; LEGAL PROCEEDINGS; REMEDIES; NONWAIVER

SECTION 5.01. Events of Default. The following shall be "Events of Default" under this Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make any payments within the times specified in this Agreement, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

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

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of

30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

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

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

#### SECTION 5.02. Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may terminate this Agreement in which case the Company is not entitled to the SSRC.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement; or
- (2) terminate this Agreement.

SECTION 5.03. Reimbursement of Legal Fees and Expenses and Other Expense. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefore, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

SECTION 5.04. Nonwaiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy in this Agreement. No waiver of any provision in this Agreement shall be effective unless the same shall be in writing and signed by the waiving party hereto.

## ARTICLE VI



MISCELLANEOUS

SECTION 6.01. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.02. Provisions of Agreement for Sole Benefit of County and Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.03. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement and the Special Source Revenue Credit shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.04. No Liability for Personnel of County or Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in an individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Credit or the Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 6.05. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States first-class registered mail, postage prepaid, addressed as follows:

- (a) if to the County: Richland County, South Carolina  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

(b) if to the Company: Koyo Corporation of U.S.A.

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

with copies to: McNair Law Firm, P.A.  
Attn: Erik P. Doerring, Esq.  
1221 Main Street, Suite 1800 (29201)  
P.O. Box 11390 (29211)  
Columbia, South Carolina

The County and the Company may, by notice given under this Section 6.05, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 6.06. Applicable Law. The laws of the State of South Carolina shall govern the construction of this Agreement.

SECTION 6.07. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.08. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.09. Administration Expenses. The Company agrees to reimburse the County from time to time for its Administrative Expenses promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County. The written request shall include a description of the nature of the Administrative Expenses. As used in this section, "Administrative Expenses" means the reasonable and necessary out-of-pocket expenses, including reasonable attorneys' fees, incurred by the County with respect to this Agreement and all documents and other incentive documents related to this Agreement, including, but not limited to, the multi-county park documents; the fulfillment of its obligations under this Agreement and the multi-county park documents; and in the implementation and administration of the terms and provisions of the documents after the date of execution thereof but only in case such are incurred as a result of a request by the Company for a modification, assignment, or a termination of such documents by the Company, or as a result of a bankruptcy of the Company or a default by the Company under the terms of this Agreement.

SECTION 6.10 Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

[KINDLY ADD OUR STANDARD COUNTY INDEMNIFICATION LANGUAGE]

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the Chair of its County Council and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council, and Koyo Corporation of U.S.A. has caused this Agreement to be executed by its authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

\_\_\_\_\_  
Paul Livingston, Chair, County Council

ATTEST:

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

**KOYO CORPORATION OF U.S.A.**

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

# Richland County Council Request of Action

## **Subject**

An Ordinance Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Koyo Corporation of U.S.A., relating to, without limitation, the payment to Richland County of a fee in lieu of taxes, an extension of the investment period to allow for continuing and further investment in the project, and the extension of the term of the project **[PAGES 356-366]**

## **Notes**

First Reading: November 15, 2011

Second Reading:

Third Reading:

Public Hearing:

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

**AN ORDINANCE AUTHORIZING THE FIRST AMENDMENT OF THAT CERTAIN FEE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND KOYO CORPORATION OF U.S.A., RELATING TO, WITHOUT LIMITATION, THE PAYMENT TO RICHLAND COUNTY OF A FEE IN LIEU OF TAXES, AN EXTENSION OF THE INVESTMENT PERIOD TO ALLOW FOR CONTINUING AND FURTHER INVESTMENT IN THE PROJECT, AND THE EXTENSION OF THE TERM OF THE PROJECT.**

WHEREAS, Richland County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution (the "Constitution"), the Code of Laws of South Carolina, 1976, as amended (the "Code"), and the case law of the courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; and

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code (the "Act") to enter into certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute "projects" as defined in the Act) and to accept any grants for such projects; and

WHEREAS, through employment of the powers granted by the Act, the County is empowered to promote the economic and industrial development of the State of South Carolina (the "State") and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State and thus use and employ the manpower, agricultural products, and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally by providing for the exemption of such project from property taxes and for the payment of a fee in lieu of property taxes (a "fee agreement," as defined in the Act); and

WHEREAS, Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the "Company"), operates a manufacturing facility located in the County (as defined in the Fee Agreement, as that term is defined below, the "Project"); and

WHEREAS, the County and the Company entered into that certain Fee Agreement, effective as of December 31, 2008 (the "Fee Agreement") by which there was created a fee-in-lieu-of-tax arrangement with respect to certain property owned by Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$30,000,000 in the Project by December 31, 2013 (the "Investment Period"); and

WHEREAS, as of the date hereof, the Company has invested at least \$14 million in the Project, as originally required by the Fee Agreement; and

WHEREAS, the laws of the State of South Carolina allow an extension of the Investment Period for up to five additional years prior to the expiration of the initial five-year period in which to add further and additional investment to a project, and the increase of the term of a fee agreement of up to thirty (30) years; and

WHEREAS, the Company intends to make continuing and further investment in the Project and has requested the County provide certain economic development incentives to the Company by amending the Fee Agreement to authorize the extension of the Investment Period for an additional five years (the "Investment Period Extension") and the extension of the Term from 20 to 30 years (as that term is defined in the Fee Agreement) (the "Term Extension" and, collectively with the Investment Period Extension, the "Extensions") for the Project; and

WHEREAS, the County and the Company now desire to amend the Fee Agreement to memorialize such agreements; and

WHEREAS, all capitalized terms not specifically defined herein, shall have the meaning as defined in the Fee Agreement, and if not defined therein shall have the meaning as defined in the Act; and

WHEREAS, the County has determined that the Extensions would directly and substantially benefit the general public welfare of the County by inducing the Company to make further investments in the County, thereby providing for the creation of jobs and employment in the County, the increase of the ad valorem tax base of the County, and service, employment or other public benefits not otherwise provided locally; and that the Extensions give rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either; and

WHEREAS, the purposes to be accomplished by the Extensions, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes and the inducement of continued utilization of the Project which is located in the County and State are of paramount importance and the benefits of the Project will be greater than the costs; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the First Amendment of Fee Agreement (the "Amendment") by and between the County and the Company memorializing the Extensions; and

WHEREAS, the County desires to authorize the Extensions, and it appears that the Amendment now before this meeting is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Extension of the Investment Period. The Investment Period for investments under Section 3.5 of the Fee Agreement shall be extended until December 31, 2018 pursuant to Section 12-44-30(13) of the Act, and all other sections of the Agreement shall be revised to allow for such five-year extension of the Investment Period.

Section 2. Extension of the Term. The Term of the Fee Agreement pursuant to Section 4.1 of the Fee Agreement shall be extended until midnight on December 31 of the thirtieth (30<sup>th</sup>) year after the last year during which any portion of the Project is placed in service or the last FILOT Payment is made under the Fee Agreement, whichever is later, pursuant to Section 12-44-30(21) of the Act, and all other sections of the Agreement shall be revised to allow for such extension of the Term.

Section 3. Approval of Amendment. The Amendment is approved as follows:

(a) The form, terms, and provisions of the Amendment presented to this meeting and filed with the Clerk to County Council (the "Clerk") are approved and all of the terms, provisions, and conditions of the Amendment are incorporated by reference. The Chairman of the County Council (the "Chairman") and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Amendment in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Amendment to be delivered to the Company.

(b) The Amendment to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are approved by the County officials executing the Amendment. The County officials shall consult the attorney for the County (the "County Attorney") with respect to any changes to the Amendment. The execution of the Amendment by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Amendment now before this meeting.

(c) If under the Amendment or the Act any future actions of the Company (including, without limitation, the supplementation of the exhibits thereto and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the Chairman or the Richland County Administrator (the "County Administrator") upon affirmative resolution of the County Council to the extent permitted by law. The County officials shall consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

(d) The Amendment shall provide that the Company will invest at least an additional \$20,000,000 and create at least twenty-five (25) new full-time jobs ("New Jobs") at the Project before the end of the Investment Period, as extended.

(e) The Amendment shall provide that if by December 31, 2018 the Company has not invested a total of at least \$50 million at the Project and created the New Jobs, and provided written certification of same to the County Administrator, the Term Extension shall be null and void and Section 4.1 of the Fee Agreement shall be deemed so amended.

Section 4. Execution of Document. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things reasonably necessary to effect the execution and delivery of the Amendment and the County's performance of its obligations under the Amendment.

Section 5. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 6. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 7. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

RICHLAND COUNTY COUNCIL

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

(SEAL)

Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2011

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

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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



Third Reading: December 13, 2011



## FIRST AMENDMENT OF FEE AGREEMENT

This First Amendment of Fee Agreement (the "Amendment") is made and entered into as of \_\_\_\_\_, 2011, by and between Richland County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and Koyo Corporation of U.S.A., a corporation organized and existing under the laws of the State of South Carolina (the "Company").

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined in the Fee Agreement (as that term is defined below), and if not defined therein shall have the meaning as defined in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"); and

WHEREAS, the Company operates a manufacturing facility located in the County (as defined in the Fee Agreement, the "Project"); and

WHEREAS, the County and the Company entered into that certain Fee Agreement, effective as of December 31, 2008 (the "Fee Agreement"), a copy of which is attached hereto as Exhibit A, by which there was created a fee-in-lieu-of-tax arrangement with respect to certain property owned by Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$30,000,000 in the Project by December 31, 2013 (the "Investment Period"); and

WHEREAS, as of the date hereof, the Company has invested at least \$14 million in the Project, as originally required by the Fee Agreement; and

WHEREAS, the laws of the State of South Carolina allow an extension of the Investment Period for up to five additional years prior to the expiration of the initial five-year period in which to add further and additional investment to a project, and the increase of the term of a fee agreement of up to thirty (30) years; and

WHEREAS, the Company intends to make continuing and further investment in the Project and has requested the County provide certain economic development incentives to the Company by amending the Fee Agreement to authorize the extension of the Investment Period for an additional five years (the "Investment Period Extension") and the extension of the Term from 20 to 30 years (as that term is defined in the Fee Agreement) (the "Term Extension" and, collectively with the Investment Period Extension, the "Extensions") for the Project; and

WHEREAS, the County and the Company now desire to amend the Fee Agreement to memorialize such agreements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

1. Extension of the Investment Period. The Investment Period for investments under Section 3.5 of the Fee Agreement shall be extended until December 31, 2018 pursuant to Section 12-44-30(13) of the Act, and all other sections of the Agreement shall be revised to allow for such five-year extension of the Investment Period.

2. Extension of the Term. The Term of the Fee Agreement pursuant to Section 4.1 of the Fee Agreement shall be extended until midnight on December 31 of the thirtieth (30<sup>th</sup>) year after the last year during which any portion of the Project is placed in service or the last FILOT Payment is made under the Fee Agreement, whichever is later, pursuant to Section 12-44-30(21) of the Act, and all other sections of the Agreement shall be revised to allow for such extension of the Term.

3. Additional Investment and Jobs Creation; Clawback. The Company shall invest at least an additional \$20,000,000 and create at least twenty-five (25) new full-time jobs (“New Jobs”) at the Project before the end of the Investment Period, as extended. However, if by December 31, 2018 the Company has not invested a total of at least \$50 million at the Project and created the New Jobs, and provided written certification of same to the County Administrator, the Term Extension shall be null and void and Section 4.1 of the Fee Agreement shall be deemed so amended.

4. Severability. If any term, provision, or any portion of this Amendment shall to any extent and for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this Amendment shall be valid and enforceable to the fullest extent permitted by the law.

IN WITNESS WHEREOF, Richland County, South Carolina, has executed this First Amendment of Fee Agreement by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council, and the Company has executed this First Amendment of Fee Agreement by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

RICHLAND COUNTY, SOUTH CAROLINA

WITNESSES:

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

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

(SEAL)

ATTEST:

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

WITNESSES:

Koyo Corporation of U.S.A.

\_\_\_\_\_

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

\_\_\_\_\_

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

EXHIBIT A

Fee Agreement

# Richland County Council Request of Action

**Subject**

An Ordinance Amending the Fiscal Year 2011-2012 Hospitality Tax Budget to appropriate \$25,000 of Hospitality Tax Undesignated Fund Balance for a grant to the Miss S.C. Pageant **[PAGES 367-369]**

**Notes**

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

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

AN ORDINANCE AMENDING THE FISCAL YEAR 2011-2012 HOSPITALITY TAX BUDGET TO APPROPRIATE \$25,000 OF HOSPITALITY TAX UNDESIGNATED FUND BALANCE FOR A GRANT TO THE MISS S.C. PAGEANT.

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

SECTION I. That the amount of twenty-five thousand dollars (\$25,000) be appropriated in the Hospitality Tax Fund. Therefore, the Fiscal Year 2011-2012 Hospitality Tax Annual Budget is hereby amended as follows:

HOSPITALITY TAX - REVENUE

Revenue appropriated July 1, 2011 as amended:	\$ 8,325,267
Appropriation of undesignated fund balance:	<u>25,000</u>
Total Hospitality Tax Revenue as Amended:	\$ 8,350,267

HOSPITALITY TAX - EXPENDITURES

Expenditures appropriated July 1, 2011 as amended:	\$ 8,325,267
Grant Award:	<u>25,000</u>
Total Hospitality Tax Expenditures as Amended:	\$ 8,350,267

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

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

SECTION IV. Effective Date. This ordinance shall be enforced from and after \_\_\_\_\_, 2010.

RICHLAND COUNTY COUNCIL



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

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

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

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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

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

# Richland County Council Request of Action

## **Subject**

Proposed Amendment to Settlement Agreement with Northeast Landfill [**PAGES 370-468**]

## **Notes**

November 22, 2011 - The committee recommended that Council conduct a work session prior to December 30, 2011. Participants in the work session should include: County Council, representatives from Republic Services, County Staff, and the Conservation Commission. The vote was in favor.

## Richland County Council Request of Action

**Subject:** Proposed Amendment to Settlement Agreement with Northeast Landfill

### **A. Purpose**

The purpose of this item is to request the County Council's consideration of a proposed amendment to the Settlement Agreement between Richland County and the Northeast Landfill.

### **B. Background / Discussion**

In 2005, Richland County amended its Solid Waste Management Plan, the result of which, among other things, prohibited the expansion of existing landfills in the County. Following the amendment, the Northeast Landfill (owned at the time by Allied Waste, now owned by Republic Services) filed an application to the South Carolina Department of Health and Environmental Control (DHEC) for the expansion of the Landfill's disposal facility off of Highway 601 in Lower Richland.

DHEC, of course, denied the application as it was inconsistent with the County's newly revised Solid Waste Management Plan. As a result, the Northeast Landfill sued the County, claiming that the amended Solid Waste Management Plan was unlawful.

The lawsuit ultimately ended in a Settlement Agreement in 2007 in which the Landfill was granted the authority to expand its Lower Richland facility; however, the Landfill agreed to permanently close the facility ten years following the issuance of the DHEC permit. As part of the Settlement Agreement, the Landfill also agreed to pay Richland County a host fee of \$1 per ton for all waste it accepted from outside of Richland County.

Recently, Northeast Landfill representatives approached County officials about a potential amendment to the Settlement Agreement with the goal of removing the ten-year cap on the life of the Landfill and allowing the Landfill to continue to operate until its capacity is exhausted, which would be approximately thirty years according to Landfill officials. In exchange, the Landfill has offered the following:

- Continue to pay the County \$1 per ton for all out-of-county waste accepted, through the remaining life of the original Settlement Agreement (2018).
- Immediately begin to pay the County \$.50 per ton for all in-county waste, and continue to do so for the life of the Landfill.
- Increase the out-of-county host fee by \$.50 per ton, making the total out-of-county host fee \$1.50 per ton, beginning in 2019 (the end date for the original Settlement Agreement) and continuing through the life of the Landfill.
- Begin paying the Old McGraw Community Development Corporation, the organization representing the communities closest to the Landfill, \$.50 per ton for

both in-county and out-of-county waste, to continue through the life of the Landfill.

Based on figures provided by the Landfill, 175,000 tons were accepted in 2010, 50,000 of which came from outside of Richland County, making the host fee approximately \$50,000 in that year. Attached is a spreadsheet which illustrates the increase in revenue to the County under the Landfill's proposal.

One final component of the Landfill's proposal is that it would purchase the Cook's Mountain property, which is approximately two miles from the Landfill site. The conservation easement that currently exists on the property would continue in perpetuity.

A copy of the Landfill's entire proposal is attached.

If the Council were to accept the proposal from Northeast Landfill, ~~two things~~ **the following** must happen: ~~(1) the County's Solid Waste Management Plan would have to be revised in order to remove the existing ten-year cap on the Landfill; and (2) the Settlement Agreement from 2007 would have to be amended, both of which can be achieved with one reading by the Council.~~

### **C. Financial Impact**

Under the existing proposal from the Northeast Landfill, the County's revenue would increase from approximately \$50,000 per year to the amounts shown on the attached financial spreadsheet. The numbers reflected assume that the current disposal rate of 175,000 tons per year continue throughout the life of the Landfill. Of course, the amount of revenue would be determined by the actual number of tons that the Landfill accepts each year.

### **D. Alternatives**

1. Approve the proposal from Northeast Landfill, which would remove the existing ten-year cap and allow the Landfill to continue to operate until its capacity has been exhausted, and which would extend the host fee as indicated above.
2. Approve the proposal from Northeast Landfill, which would remove the existing ten-year cap and allow the Landfill to continue to operate until its capacity has been exhausted, but negotiate a host fee amount other than what the Landfill has proposed.
3. Do not approve proposal from Northeast Landfill and leave the existing Settlement Agreement in place, which would require the Landfill to shut down operations in 2018 whether or not its capacity has been exhausted. This alternative would have no impact on existing revenues.

**E. Recommendation**

The County Council has taken a policy position on this issue in the past, that position being the adoption of the provisions of the Settlement Agreement which, among other things, requires the Northeast Landfill to cease operations by the year 2018. Unless the Council wishes to change that position, then there is no need to amend the Settlement Agreement as is being requested.

If, however, the Council decides to reconsider its earlier position, then it is recommended that the following terms be included in any renegotiated Agreement:

- There will be no expansions beyond the current permitted footprint capacity of the Landfill, i.e., once the existing capacity is exhausted, no further expansions can occur.
- The host fee will be increased to an amount acceptable to the County Council and to the Landfill, with the final amount to be determined through negotiations.
- Any incentives to be provided to the surrounding community(ies) by the Landfill will be handled directly between those two parties and kept separate from the County’s renegotiated Settlement Agreement.

By: Tony McDonald, Administration

Date: August 30, 2011

**F. Reviews**

(Please replace the appropriate box with a ✓ and then support your recommendation in the Comments section before routing. Thank you!)

**Solid Waste**

Reviewed by: Paul Alcantar

Date: 10/10/2011

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: The host fee should be increased to an amount acceptable to the County Council and to the Landfill, with the final amount to be determined through negotiations.

**Finance**

Reviewed by: Daniel Driggers

Date: 10/11/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: As stated in the ROA, the County currently has an active agreement with Northeast therefore amendments to the agreement would be a policy decision for Council discretion. However I do support the recommendation of administration above concerning items to be considered if a negotiations move forward.

The request seems to be primarily a County operational concern. Based on the current operation and agreement, the financial impact of the revenues

generated by the agreement to the County, are considered immaterial to the long-term sustainability of the County landfill financial operation.

### **Legal**

Reviewed by: Larry Smith

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Council has the legal authority to amend the agreement. However, I would concur with the comments of Administration regarding the consideration of any terms of a renegotiated agreement.

### **Administration**

Reviewed by: Tony McDonald

Date: 10/12/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: As indicated above, if the Council wishes to amend its position on the longevity of the Northeast Landfill, it is recommended that the following items be incorporated into the amendment:

- There will be no expansions beyond the current permitted footprint capacity of the Landfill, i.e., once the existing capacity is exhausted, no further expansions can occur.
- The host fee will be increased to an amount acceptable to the County Council and to the Landfill, with the final amount to be determined through negotiations.
- Any incentives to be provided to the surrounding community(ies) by the Landfill will be handled directly between those two parties and kept separate from the County's renegotiated Settlement Agreement.

NORTHEAST LANDFILL SETTLEMENT AGREEMENT

CURRENT AGREEMENT

	Total Tons	Out-of-County	In-County	Host Fee per Ton for Out-of-County	Host Fee per Ton for In-County	Total Annual Revenue	Total Revenue over Remaining Life of Original Agreement - 7 Years (Thru 2018)
County	175,000	50,000	125,000	\$ 1.00	\$ -	\$ 50,000.00	\$ 350,000.00
Community	0	0	0	\$ -	\$ -	\$ -	\$ -

PROPOSED AMENDMENT - Part 1

	Total Tons	Out-of-County	In-County	Host Fee per Ton for Out-of-County	Host Fee per Ton for In-County	Total Annual Revenue	Total Revenue over Remaining Life of Original Agreement - 7 Years (Thru 2018)
County	175,000	50,000	125,000	\$ 1.00	\$ 0.50	\$ 112,500.00	\$ 787,500.00
Community	175,000	50,000	125,000	\$ 0.50	\$ 0.50	\$ 87,500.00	\$ 612,500.00

Additional County Revenue (Over Amt. from Original Settlement Agreement) \$ 62,500.00 \$ 437,500.00

PROPOSED AMENDMENT - Part 2

	Total Tons	Out-of-County	In-County	Host Fee per Ton for Out-of-County	Host Fee per Ton for In-County	Total Annual Revenue	Total Revenue over Life of Extended Agreement - 23 Years (2019 thru 2041)
County	175,000	50,000	125,000	\$ 1.50	\$ 0.50	\$ 137,500.00	\$ 3,162,500.00
Community	175,000	50,000	125,000	\$ 0.50	\$ 0.50	\$ 87,500.00	\$ 2,012,500.00

Additional County Revenue (Over Amt. from Original Settlement Agreement) \$ 200,000.00 \$ 3,600,000.00

Total County Revenue \$ 250,000.00 \$ 3,950,000.00



ATTORNEYS AT LAW

Reply To  
WESTON ADAMS, III  
Direct Dial: (803) 227-2322  
wadams@mgclaw.com  
COLUMBIA

September 26, 2011

**VIA HAND-DELIVERY**  
The Office of Richland County Council  
2020 Hampton Street  
Columbia, South Carolina 29201

Re: Northeast Landfill, LLC

Dear Larry, Milton, and Tony,

I am writing you on behalf of my client Northeast Landfill, LLC (NEL) in regard to our ongoing negotiations with the County regarding NEL. Several new issues have arisen that merit the County's consideration, which we describe below for your review.

At the County's suggestion, we recently met several times with the Old McGraw Community and the Lake Dogwood Community (Communities) through their representatives on the Old McGraw Community Development Corporation (OMCDC) to ascertain their view of our proposal to you described in my letter of July 13, 2011. Under that proposal, NEL offered to increase the host fee paid to the county from \$1 per ton on out-of-county waste, to \$1 per ton on both in- and out-of-county waste. As you know, that proposal to include both in- and out-of-county waste was intended to be paid directly to the County, and was intended to take care of the needs of both Richland County and the these Communities, with the County sharing the proceeds with the Communities. In response to the proposal that the County be the medium through which the Communities received their payments, the County expressed its desire that NEL not deliver any payments to the Communities through the County but, instead, provide those payments directly to the Communities. At the County's suggestion, we therefore met with OMCDC, which is that area's only community group, to discuss the NEL matter. OMCDC is recognized by the neighborhood as its area leadership group. OMCDC believes that it should directly receive 50 cents per ton on both in- and out-of-county waste because, in OMCDC's view, the Communities are the neighborhoods most affected by the presence of NEL by virtue of being closer to the landfill than any other neighborhoods. Because OMCDC's preference is to receive the money directly, and that desire appears to match the wish of many in County government, my client proposes that 50 cents per ton be paid directly from my client to OMCDC.

COLUMBIA | CHARLESTON | GREENVILLE | CHARLOTTE | RALEIGH | MYRTLE BEACH  
1320 MAIN STREET, 10<sup>TH</sup> FLOOR | POST OFFICE BOX 12519 | COLUMBIA, SC 29211 | 803-779-2300 PHONE | 803-748-0526 FAX  
[WWW.MGCLAW.COM](http://WWW.MGCLAW.COM)



My client is in the process of working out the details of an agreement with OMCDC, along the lines outlined above. Any agreement my client signs with OMCDC would not require County Council approval, but because this entire matter is of obvious interest to Council, my client wants to keep Council informed of its discussions with OMCDC.

As for the host fees to be paid to the County, my client proposes the following. The County currently receives \$1 per ton on out-of-county waste only, and receives no payment on in-county waste. NEL proposes to continue to pay the County that \$1 per ton on out-of-county waste until January 1, 2019. My client further proposes that on January 1, 2019, it would increase the out-of-county host fee payable to the County from the current \$1 per ton to \$1.50 per ton. Further, as to in-county waste, NEL offers the County 50 cents per ton on in-county waste, which would start immediately upon execution of an amendment to the Settlement Agreement between NEL and the County, and would run for the extended life of the landfill beyond the current 7 year life. NEL estimates that the extended life of the landfill would be an additional 23 years on top of the remaining 7 years of landfill life.

To summarize both the proposed agreements with OMCDC and with the County, from the time of execution of the County and OMCDC agreements until January 1, 2019, NEL would pay OMCDC 50 cents per ton on all waste, while the County would receive \$1 per ton on out-of-county waste, and 50 cents per ton in-county waste. Starting on January 1, 2019, NEL would pay: 1) the County \$1.50 per ton on out-of-county waste; 2) the County 50 cents per ton on in-county waste; and 3) OMCDC 50 cents per ton on all waste.

NEL's proposal would result in significant revenue increases to the County prior to January 1, 2019. Last year's aggregate yearly host fee payment to the County was roughly \$50,000.00. This amount was based on the fact that, out of the total 175,000 tons disposed of at NEL in 2010, NEL accepted only around 50,000 tons of out-of-county waste. NEL expects the current disposal rates of 175,000 tons per year, out of which 50,000 tons per year will be out-of-county waste, to remain roughly the same for the foreseeable future. If those rates remain constant and no extension of landfill life is granted to NEL, then NEL would pay the County around a total of \$350,000.00 over the remaining 7 year life of the landfill before NEL closes and the current Settlement Agreement ends. (7 years at \$50,000.00 per year = \$350,000.00 in total payments. The 10-year limit imposed in 2007 has roughly 7 years remaining at this point in time.) In contrast, assuming current rates of disposal remain constant, if the 10-year landfill life is lifted, and over the next 7 years NEL pays the County \$1 on out-of-county and 50 cents on in-county waste, then NEL would pay the County \$112,500.00 per year for the next 7 years:

- 125,000 tons of in-county waste at 50 cents per ton generates \$62,500.00 per year;
- 50,000 tons of out-of-county waste at \$1 per ton generates \$50,000.00 per year;

- \$62,500.00 per year for in-county + \$50,000.00 for out-of-county = \$112,500.00 per year;
- \$112,500.00 per year would mean approximately \$787,500.00 to the County over the next 7 years alone,

This is an increase of \$437,500.00 over the \$350,000.00 that the County is currently set to receive over that 7 year period.

More importantly, NEL's increased payments would result in even greater revenue increases after January 1, 2019. If the 7 year life limit is lifted, NEL estimates that it would have an estimated additional 23 years of life to fill its permitted envelope, for a total of 30 years. Again, assuming the present rate of disposal remains current over the extended life of the landfill, the yearly payment to the County would be \$137,500.00 per year for the added 23 years of landfill life:

- 125,000 tons of in-county waste at 50 cents per ton generates \$62,500.00 per year;
- 50,000 tons of out-of-county waste at \$1.50 per ton generates \$75,000.00 per year;
- \$62,500.00 per year for in-county + \$75,000.00 for out-of-county = \$137,500.00 per year;
- \$137,500.00 per year for 23 years would mean \$3,162,500.00 to the County over that added 23 year period.

Add the \$787,500.00 that NEL would pay the County for the 7 years preceding January 1, 2019, to the \$3,162,500.00 that NEL would pay the County in the 23 years following January 1, 2019, and the total payment to the County would be \$3,959,000.00 over the 30 year life of the landfill. Compare that total payment of \$3,959,000.00 to the County over the estimated total 30 years to the \$350,000.00 that NEL is set to pay the County if the facility closes in 7 years, and the added value to the County of extending the landfill's life is \$3,609,000.00. Also, note that NEL's annual permitted rate of disposal (set by DHEC) is 529,600 tons per year. As such, the annual payment to the County over the 30 year window could go significantly higher in any given year if the disposal rate ends up being higher than the currently predicted rate of 175,000 tons per year.

In addition to the benefits the County will realize from increased host fees, lengthening the life of the facility is also in the best interest of the County from a cost of waste disposal perspective. If NEL were to close in 7 years, the Columbia area would be left with only one municipal solid waste landfill, for which there would be no competition. From an economist's point of view, that lack of competition in the waste disposal business would not be ideal for either Columbia businesses or residences.

On a different note, my client would also like to address a question recently raised regarding its plans for the approximately 1131 acre Cook's Mt. property, for which NEL has a

September 26, 2011  
Page 4

pending contract to purchase. My client plans to preserve the property in the same fashion as have the current owners. Under the Conservation Easement, which restricts 1101 acres (all but 30 acres of the 1131 acre property), the owners of the property are limited to farming, timber, and hunting uses, in perpetuity. The property covered under the easement cannot be used for any other purpose, including commercial purposes. This obviously would preclude my client from either expanding any landfill or other commercial operations onto the Cook's Mt. property or from locating another commercial landfill on the property. The Conservation Easement in fact prevents **any** type of commercial business on that 1101 acre property. (Note also that an expansion of NEL onto Cook's Mt. is not only expressly prohibited by the terms of the Conservation Easement, but is also physically impossible, because more than 1 mile of third-party owned land separates NEL from Cook's Mt.) As for the 30 acres not covered by the Conservation Easement, my client has no intention of engaging in any commercial or residential development on that 30 acre tract, and will leave that tract in its current undeveloped state. As soon as possible after closing, my client hopes to resell the entire Cook's Mt. property to a recreational buyer interested in owning conserved property. NEL does not intend to retain ownership of the property.

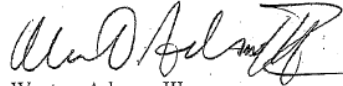
NEL also would like to address a question recently posed concerning whether NEL has any plans to expand its facility on currently-owned property or any other adjacent property. Note that NEL has no current plans to expand its facility, because it recently completed an expansion in 2008. In fact, no further expansion is possible on the land currently encompassing the facility. Although my client has no current expansion intentions, in order to allay any concerns that the County has in this regard, NEL is willing to consider a contractual agreement with the County that would prohibit any further expansion of the facility.

As to a different environmental issue, that being groundwater quality at NEL, all of the perimeter groundwater monitoring wells surrounding all sides of the facility are in compliance with the legal Maximum Contaminant Levels (MCLs) that govern my client's operation, per the enclosed April 5, 2011 groundwater report that NEL submitted to DHEC. This report inarguably establishes that no off-site migration of groundwater contamination is occurring at NEL. If off-site migration were occurring (which it is not), it would manifest itself in the perimeter wells surrounding the site.

Again, my client appreciates the time that you and County Council have devoted to considering our proposal. We look forward to discussing this matter with you in more detail at a time of your choosing.

September 26, 2011  
Page 5

Best regards,

A handwritten signature in black ink, appearing to read "Weston Adams, III". The signature is stylized with a large, prominent initial "W" and a long, sweeping underline.

Weston Adams, III

WA/mar  
Enclosure



HERST & ASSOCIATES, INC.®

*Global Presence  
Personal Attention*

Mr. Laurence M. Leblang  
Hydrogeologist  
Solid Waste Groundwater Section  
Bureau of Land and Waste Management  
SCDHEC  
2600 Bull Street  
Columbia, South Carolina 29201

April 5, 2011

Dear Mr. Leblang:

**2010 Status Report of Corrective Measures  
Northeast Landfill, Richland County, South Carolina  
Solid Waste Permit # 402434-1101**

On behalf of the Northeast Landfill, Herst & Associates, Inc. is submitting one hardcopy and one electronic copy of the 2010 Status Report of Corrective Measures. The corrective measures implemented to remediate low level groundwater impacts include active gas extraction and passive gas venting. The purpose of the report is (1) to provide a brief history and updated summary of the occurrence of volatile organic compounds (VOCs) since approval of the remedy, (2) evaluate the effectiveness of the existing remedial approaches, and (3) to provide recommendations in regards to the present remedial approaches.

**Background**

The Northeast Landfill, Permit No. 402434-1101, is a municipal solid waste landfill located in Richland County, South Carolina. Assessment monitoring has been performed at the facility in response to detections of low level concentrations of VOCs in groundwater samples from monitoring wells adjacent to the Phase 1 Unit. The nature and extent of groundwater impacts has been characterized in several studies and corrective measures implemented.

The following discussion of site background was adopted from the Evaluation of Corrective Measures, compiled by Lorris Environmental, Inc. (LEI) dated April 28, 2010. An investigation into the source of the VOCs, Landfill Gas Source Determination and Assessment Report (LEI, December 20, 1999), provided evidence that the VOC impact resulted from contact between groundwater and landfill gas originating from the Phase 1 Unit.

A landfill Gas Collection & Control System (GCCS), comprised of an active gas extraction system and passive soil-gas vents, was installed as a pro-active measure to alleviate the conditions brought about by the build-up of landfill gas in the Phase 1 Unit. This system has been operating and expanding since January of 2000.

The site conducted an assessment of the occurrence of landfill gas in the Methane Migration Assessment Report (SCS Engineers, January 9, 2006). Based on the results of this assessment, the site submitted the Landfill Gas Collection and Control System Master Plan (SCS Engineers, May 30, 2006). This plan provided a detailed approach to further enhancing the GCCS in order to more

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aggressively extract landfill gas at the site. Detailed reports concerning upgrades and additions to the GCCS during 2007-2009 were included in the following reports: Construction Documentation Report - Landfill Gas Collection & Control System Expansion (SCS Engineers, July 5, 2007) and Construction Certification Report (SCS Engineers, October 15, 2009).

Additions have been made to the facility's GCCS to address the groundwater quality in the areas proximate to monitoring wells MW-6, MW-7/MW-7A/MW-7B, and MW-10/MW-10A. The passive vents wells located south of Phase 1, including VW-2, VW-5, VW-7, VW-10, and VW-14, were connected to the active gas extraction system. Two active extraction wells were installed in the eastern portion of Phase 1, and six active extraction wells were installed in the central and southeastern portions of Phase 2. During August-October 2009, a GCCS Expansion was performed at the facility. The GCCS was significantly enhanced by the addition of fifteen new landfill gas extraction wells and associated landfill gas collection piping. These new system components were located primarily along the southwest and central portions of landfill Phases 2 and 3.

According to SCS Engineers, in 2010 a new flare was installed at the landfill which increased the capacity of the landfill GCCS from 650 scfm to 3,000 scfm.

The detection of low level VOCs commonly associated with landfill gas combined with the observation of significant quantities of landfill gas in the area, the lack of correlation between inorganics in the leachate and the groundwater, and the correlation between VOCs in landfill gas samples and the groundwater, led to the conclusion that landfill gas emanating from the Phase 1 Unit was the source of the impact. The presence of low level VOCs is believed to result from either direct contact between the gas and the groundwater or from the gas adsorbing to the soil in the vadose zone, where it is carried to the groundwater by infiltrating precipitation.

After collecting evidence supporting landfill gas as the source of the impact and presenting this information to the Department, approval was granted to begin an Assessment of Corrective Measures. The Assessment of Corrective Measures & Selection of Remedy (LEI, June 1, 2000) included an analysis of the overall performance and capabilities of potential corrective measures and their effectiveness in meeting the requirements set forth in the Solid Waste Management regulations. Based on the results of the assessment, an Active Gas Extraction and Passive Gas Venting System was determined to be the most effective and efficient remedial option.

Initial analytical data indicated that the GCCS had markedly improved groundwater quality in the area after it was brought on-line. Based on that data, SCDHEC concluded that the corrective measures appeared to be adequately addressing the impact.

During July and August 2008, four impacted monitoring wells were abandoned due to landfill expansion, including MW-4S, MW-9A, MW-10A, and MW-11. New monitoring wells MW-17, MW-18, and MW-19 were installed in July-August 2008 to monitor the same upper hydrostratigraphic unit as the abandoned wells. In a letter dated May 18, 2010, the SCDHEC requested that an additional well be installed near methane monitoring well GMP-13 to monitor potential groundwater contaminant migration. According to Bunnell-Lammons Engineering, Inc., new well MW-20 was installed on November 11, 2010. Well MW-20 was sampled for the first time during the December 2010 event.

This report provides an updated summary of the status of corrective measures and an evaluation of the effectiveness of these actions.

## Results

Two methods were utilized to evaluate the progress and effectiveness of the corrective measures employed to address the impact to groundwater in the area downgradient of the Phase 1 Unit. These methods were: 1) the generation of time versus concentration plots to visualize temporal trends in total and individual VOC concentrations, and 2) a direct comparison of observed VOC concentrations to established SCDHEC maximum contaminant levels (MCLs).

### Time Versus Concentration Plots

Time versus concentration plots have been constructed for each of the facility's current monitoring wells in which VOCs have been confirmed detected. Graphs depicting both the total VOC (TVOC) concentrations and the concentrations of the individual VOCs detected in each monitoring well are provided in Appendix A. Table 1 lists VOCs detected during 2010.

During 2010, wells MW-6, MW-7B, MW-15, and MW-19 exhibited detections of VOCs. The following items summarize the VOC concentrations detected during the 2010 semi-annual events.

- TVOC concentrations at MW-6 continue to increase over time. Well MW-6 is located interior to the facility boundary (non-perimeter well), south of the Phase 1 Unit and east of the Phase 2 Unit. Of the seven VOCs detected during the May and December 2010 events, three (1,4-dichlorobenzene, benzene, cis-1,2-dichloroethylene) indicated recent concentration increases, three (1,1-dichloroethane, trichloroethylene, xylenes) indicated recent stable concentrations, and one (tetrachloroethylene) indicated recent concentration decreases.
- TVOC concentrations have been decreasing at MW-7B since the peak concentration in October 2007 (37.1 ug/L) through the December 2010 event (2.2 ug/L). Only one VOC was detected during a semi-annual event in 2010: cis-1,2-dichloroethylene (2.2 ug/L) during the December 2010 event. A decreasing trend in VOC concentrations is illustrated on the time versus concentration plots for MW-7B. The decreases in VOC concentrations and number of VOCs detected appear to correlate with the implementation of the corrective measures at the site (early 2008 gas extraction system enhancement). Well MW-7B is located interior to the facility boundary (non-perimeter well), southeast of the Phase 1 Unit.
- TVOC concentrations have been decreasing at MW-15 since October 2007 (28.4 ug/L) through the December 2010 event (2.9 ug/L). Only one VOC was detected during a semi-annual event in 2010: 1,1-dichloroethane (2.9 ug/L) during the December 2010 event. A decreasing trend in VOC concentrations is illustrated on the time versus concentration plots for MW-15. The decreases in VOC concentrations and number of VOCs detected appear to correlate with the implementation of the corrective measures at the site (early 2008 gas extraction system enhancement). Well MW-15 is located interior to the facility boundary (non-perimeter well), in the southeast portion of proposed Phase 5A.
- Low level concentrations of VOCs have been detected at MW-19 since the initial sampling event in October 2008. Only 1,1-dichloroethane was confirmed detected at MW-19 during 2010. The TVOC and individual VOC time versus concentration plots for MW-19 exhibit no apparent trends since the first sampling date of October 2008.
- The following wells did not exhibit a confirmed VOC detection in 2010: MW-1R, MW-2, MW-3, MW-12A, MW-14, MW-16, MW-17, MW-18, MW-20, P-21, and P-26.

The time versus concentration plots indicate that the corrective measures implemented have had a positive influence on the groundwater quality at the MW-7B and MW-15 monitoring well locations. Only trace concentrations of 1,1-dichloroethane have been confirmed detected at well MW-19, with no upward trends. It appears the enhancements to the GCCS have not improved groundwater quality at well MW-6. However, well MW-6 is located in the interior portion of the site (not a perimeter well) and is located in close proximity to the Phase 1 and 2 Units. Review of MW-6 data indicates that additional enhancements to the GCCS may be needed in effort to improve groundwater quality at this location.

#### MCL Comparison

Table 1 provides a summary table of VOCs detected during the May and December 2010 events. A comprehensive table of historic confirmed VOC detections for the current groundwater monitoring well network is included in Table 2. Where applicable, the corresponding SCDHEC established MCLs are provided on Table 2.

During 2010, wells MW-6, MW-7B, MW-15, and MW-19 exhibited detections of VOCs. Historically, nine VOCs have been confirmed detected at the site (1,1-dichloroethane, 1,4-dichlorobenzene, benzene, cis-1,2-dichloroethylene, methylene chloride, tetrachloroethylene, trichloroethylene, trichlorofluoromethane, and xylenes). However, methylene chloride has been reported as non-detect since April 2005 and trichlorofluoromethane has been reported as non-detect since October 2006.

The only constituent that exceeded an SCDHEC MCL during a 2010 event was trichloroethylene at MW-6, which is typical of the existing groundwater monitoring well program. Trichloroethylene was initially detected at MW-6 in April 2003, and has been confirmed to exceed the SCDHEC MCL (5 ug/L) since the October 2004 event. Since October 2004, concentrations of trichloroethylene have ranged from 5.1 to 8.6 ug/L at MW-6.

A comparison of tabulated VOC data with the SCDHEC MCLs indicates that the corrective measures employed have had a positive influence on the groundwater quality at the monitoring well locations. Trichloroethylene continues to be detected regularly at levels near or above its MCL in interior monitoring well MW-6, however was not confirmed detected at any other site well (including perimeter wells) during the May or December 2010 events.

#### Conclusions & Recommendations

The time versus concentration plots and MCL comparisons indicate that the corrective measures implemented have had a positive influence on the groundwater quality at the MW-7B and MW-15 monitoring well locations. Only trace concentrations of 1,1-dichloroethane have been confirmed detected at well MW-19, with no upward trends. It appears the enhancements to the GCCS have not significantly improved groundwater quality at well MW-6, as demonstrated by the continued MCL exceedances for trichloroethylene at MW-6. However, well MW-6 is located in the interior portion of the site (a non-perimeter well) and is located in close proximity to the Phase 1 and 2 Units. The remaining wells located around the perimeter of the site did not have MCL exceedances in 2010 or exhibit upward trends. Review of MW-6 data indicates that additional enhancements to the GCCS may be needed in effort to improve groundwater quality at this location.

As indicated in previous submittals, landfill gas is the probable source of much of the low level groundwater impacts at the site. Operation of the landfill GCCS systems has been successful in



removing landfill gas from the vadose zone near the groundwater monitoring wells and lowering the low level VOC concentrations in the groundwater. Overall, VOC concentrations are generally decreasing as a result of corrective actions implemented and in 2010 no VOC MCLs were exceeded at the perimeter monitoring wells.

The selected corrective action remedies are fulfilling the objective of returning the site to compliance within a reasonable time period. Success of the overall remedial program is assisted by efforts to aggressively control landfill gas. Continued operation and maintenance of the landfill GCCS will be ongoing. The landfill GCCS components will continue to be evaluated and adjusted to achieve effective operation. Continued operation of the gas extraction system near MW-6 is recommended. The gas extraction system will be evaluated and adjusted as-needed.

Increased gas extraction in the southern portion of the Phase I Unit is recommended to assist in reducing the source of VOCs in this area. The site intends to evaluate additional proactive approaches to accelerate remediation such as supplementary landfill gas extraction.

Herst & Associates, Inc. recommends continued, yearly evaluation of the corrective measures at the site. The effects of the recent GCCS additions and enhancements on groundwater quality appear to show positive effects. These positive effects should become further apparent as the system continues to operate.

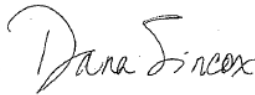
Groundwater quality monitoring is continuing to be conducted semi-annually. The site will continue to monitor the status of corrective measures during the course of routine monitoring. Results of the monitoring program will be reported to the SCDHEC in the regularly scheduled groundwater summary reports and annually in a corrective measures status report.

Below is the required stamp and signature of a qualified professional (i.e. South Carolina registered professional geologist) as outlined in R.61-107.19 Part V, Section 258.50.e. and Part I, Section B.62.

Should you have any questions or concerns, please contact the undersigned at your convenience.

Sincerely,

HERST & ASSOCIATES, INC.



Ward E. Herst, PG  
South Carolina PG No. 2274  
Managing Partner

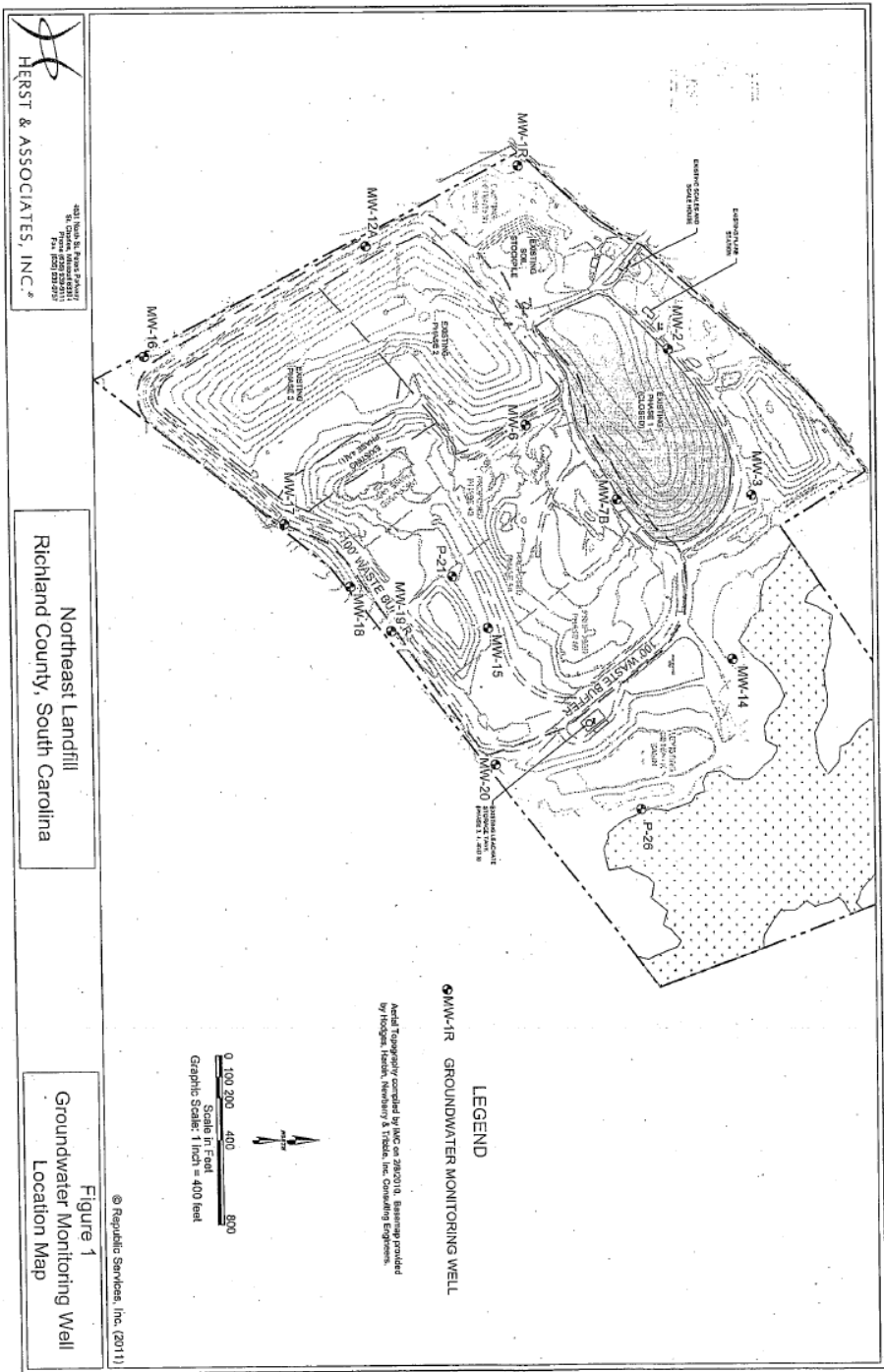


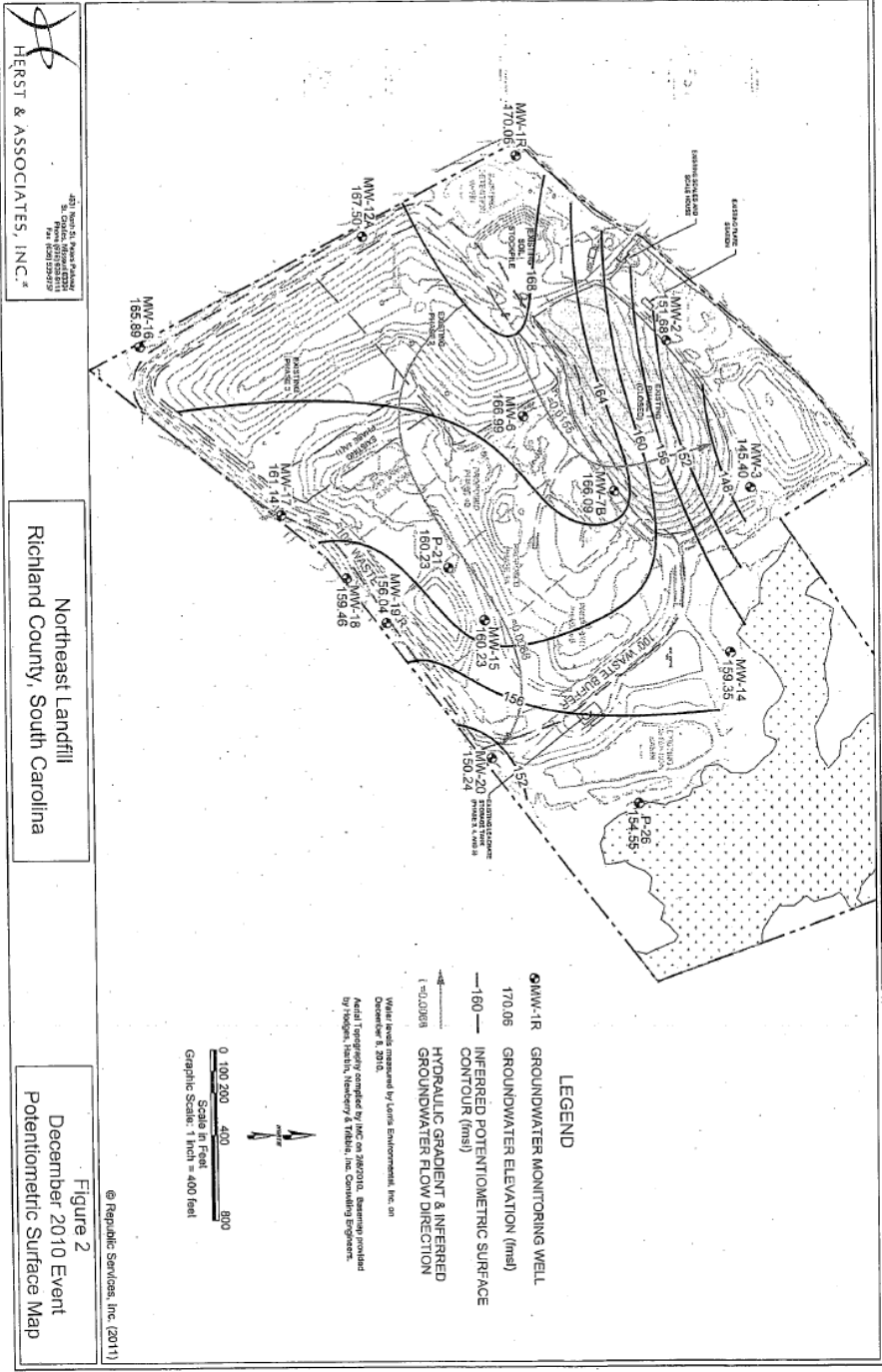
Steve Jett, PG  
South Carolina PG No. 2443  
Senior Hydrogeologist

Attachments: *Figure 1, Groundwater Monitoring Well Location Map*  
*Figure 2, Potentiometric Surface Map*  
*Table 1, VOCs Detected in 2010*  
*Table 2, Historical VOC Summary for Wells with Detections in 2010*  
*Appendix A, Time versus Concentration Plots*

cc: *Clint Courson, Hodges, Harbin, Newberry & Tribble, Inc. (1 Electronic Copy via Email)*  
*Al Peoples, SCDHEC Region 3 (1 Electronic Copy on CD-ROM)*  
*Bart Keller, Northeast Landfill (1 Hardcopy)*  
*Hank Ludwig, Republic Services, Inc. (1 Electronic Copy via Email)*

**FIGURES**





HERST & ASSOCIATES, INC.<sup>®</sup>

4211 South Carolina Highway 170  
 301 South Carolina Highway 170  
 29405-1000 Columbia, SC 29405

Northeast Landfill  
 Richland County, South Carolina

Figure 2  
 December 2010 Event  
 Potentiometric Surface Map

**TABLES**

**Table 1**  
**Detected Volatile Organic Compounds**  
**During 2010**  
**Northeast Landfill**  
**Richland County, South Carolina**

<b>May 2010 Event</b>		
<b>Well</b>	<b>Parameter</b>	<b>Result (ug/L)</b>
MW-6	1,1-Dichloroethane	9.2
	1,4-Dichlorobenzene	27
	Benzene	2.1
	cis-1,2-Dichloroethylene	8.6
	Tetrachloroethylene	2.4
	Trichloroethylene	5.2
	Xylenes (Total)	5.2
MW-19	1,1-Dichloroethane	3.8
	cis-1,2-Dichloroethylene	2.3
<b>December 2010 Event</b>		
<b>Well</b>	<b>Parameter</b>	<b>Result (ug/L)</b>
MW-6	1,1-Dichloroethane	14
	1,4-Dichlorobenzene	64
	Benzene	3.8
	cis-1,2-Dichloroethylene	18
	Tetrachloroethylene	3.6
	Trichloroethylene	7.8
	Xylenes (Total)	11
MW-7B	cis-1,2-Dichloroethylene	2.2
MW-15	1,1-Dichloroethane	2.9
MW-19	1,1-Dichloroethane	2.9

**Table 2**  
**Historical VOC Summary for Wells with Detections in 2010**  
**Monitoring Location MW-6**  
**2010 Evaluation of Corrective Measures**  
**Northeast Landfill**  
**Richland County, South Carolina**

Sampling Date	Volatile Organic Compound Parameters and MCL										Total VOCs
	1,1-Dichloroethene	1,4-Dichlorobenzene	Benzene	cis-1,2-Dichloroethylene	Methylene Chloride	Tetrachloroethylene	Trichloroethylene	Trichlorofluoromethane	Xylenes (Total)	10000	
SCDHEC MCL	NE	75	5	76	5	5	5	NE	10000	—	
10/2/2001	<5	<5	<5	<5	<5	<5	<5	<5	<5	0	
4/22/2002	<5	<5	<5	<5	<5	<5	<5	<5	<5	0	
10/4/2002	<5	<5	<5	<5	<5	<5	<5	<5	<5	0	
4/17/2003	6.4	1.1	<1	<1	5.5	1.2	3.9	1.8	<2	18.9	
10/22/2003	5.8	<1	<1	<1	5.7	2.1	5.2	4.3	<2	23.1	
4/7/2004	8.6	1.4	<1	1.5	3.7	1.9	4.6	1.4	2.5	23.5	
10/19/2004	12.0	5.8	1.2	3.9	2.9	3.4	7.7	2.5	8.9	46.3	
4/14/2005	9.7	6.2	1.1	4.4	<2	2.6	5.5	2.1	9.2	40.8	
8/11/2005	12.0	<1	1.9	8.0	<2	4.1	8.2	1.3	16.7	52.2	
11/22/2005	14.0	13.0	1.8	7.9	<2	3.6	7.8	1.9	14.2	64.0	
4/19/2006	15.0	13.0	2.1	9.4	<2	4.3	8.7	1.4	29	82.9	
10/9/2006	8.9	7.4	<1	5.8	<2	2.3	5.1	<1	8.5	38.0	
4/9/2007	14.9	<1	1.7	7.1	<2	3.4	7.9	<1	14.5	48.7	
10/11/2007	12.1	8.1	1.6	6.5	<2	4.1	6.8	<1	11.4	53.4	
4/15/2008	13.0	11.0	<2	8.0	<5	4.0	8.0	<10	6	48.0	
10/18/2008	14.0	17.0	<2	8.0	<5	4.0	8.0	<10	<5	51.0	
4/9/2009	13.0	18.0	2.1	7.2	<5	3.2	7.2	<10	5.1	55.8	
10/22/2009	13.0	41.0	2.1	13.0	<5	3.7	7.5	<10	17	97.9	
5/10/2010	9.2	27.0	2.1	8.6	<5	2.4	5.2	<10	8.2	122.2	
12/8/2010	14.0	64.0	3.8	18.0	<5	3.6	7.8	<10	11	181.0	

Notes:  
 All units are in µg/L.  
 < - Indicates analyte not detected above laboratory reporting limit.  
 Bolded Blue indicates result greater than the SCDHEC Maximum Contamination Limit (MCL)  
 NE - Denotes MCL not established



[Table 2 (Continued)]  
**Historical VOC Summary for Wells with Detections in 2010**  
**Monitoring Location MW-7B**  
**2010 Evaluation of Corrective Measures**  
**Northeast Landfill**  
**Richland County, South Carolina**  
**Volatile Organic Compound Parameters and MCL**

Sampling Date	1,1-Dichloroethane		1,4-Dichlorobenzene		cis-1,2-Dichloroethene		Methylene Chloride		Tetrachloroethene		Trichloroethene		Trichlorofluoromethane		Xylenes [Total]	Total VOCs
	NE	75	5	70	5	5	5	5	5	5	NE	10000				
4/27/2003	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<2	15.0
12/9/2003	<1	15.0	<1	<1	<2	<1	<1	<1	<1	<1	<1	<1	<1	<2	<2	4.0
4/8/2004	1.0	3.0	<1	<1	<2	<1	<1	<1	<1	<1	<1	<1	<1	<2	<2	7.5
10/19/2004	<5	7.5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	<2	<2	4.5
4/14/2005	<1	3.4	<1	1.1	<2	<1	<1	<1	<1	<1	<1	<1	<1	<2	<2	11.9
1/14/2005	4.5	2.3	<1	1.6	<2	<1	1.3	1.6	<1	1.8	<1	<1	<1	<2	<2	11.7
4/19/2006	3.7	5.5	<1	1.3	<2	<1	<1	1.2	<1	1.2	<1	<1	<1	<2	<2	8.3
10/10/2006	3.7	1.9	<1	1.5	<2	<1	1.5	<1	1.2	<1	<1	<1	<1	<2	<2	34.8
4/4/2007	12.0	9.1	<1	6.2	<2	2.0	4.0	1.5	3.1	1.0	<10	<10	<10	<2	<2	37.1
10/31/2007	8.6	16.1	<1	6.5	<2	1.8	3.1	1.0	<10	<10	<10	<10	<10	<2	<2	5.0
4/14/2008	5.0	<10	<2	<2	<5	<2	<2	<2	<2	<2	<2	<2	<2	<2	<2	8.0
10/16/2008	4.0	<10	<2	2.0	<10	<2	<2	<2	<2	<2	<2	<2	<2	<2	<2	0
4/9/2009	<2	<10	<2	<2	<5	<2	<2	<2	<2	<2	<2	<2	<2	<2	<2	0
10/25/2009	<2	<10	<2	<2	<5	<2	<2	<2	<2	<2	<2	<2	<2	<2	<2	0
5/19/2010	<2	<10	<2	<2	<5	<2	<2	<2	<2	<2	<2	<2	<2	<2	<2	0
12/9/2010	<2	<10	<2	2.2	<5	<2	<2	<2	<2	<2	<2	<2	<2	<2	<2	2.2

Notes:  
 All units are in ug/L  
 < - Indicates analyte not detected above laboratory reporting limit.  
 Bolded Blue indicates result greater than the SCDHEC Maximum Contamination Limit (MCL)  
 NE - Denotes MCL not established

**Table 2 (Continued)**  
**Historical VOC Summary for Wells with Detections in 2010**  
**Monitoring Location MW-15**  
**2010 Evaluation of Corrective Measures**  
**Northeast Landfill**  
**Richland County, South Carolina**  
**Volatil Organic Compound Parameters and MCL**

Sampling Date	1,1-	1,4-	Benzene	o,p-	Methylene Chloride	Tetrachloro ethylene	Trichloro ethylene	Trichlorofluoro methane	Xylenes (Total)	Total VOCs
	Dichloroethane	Dichlorobenzene		Dichlorodicylene						
SCDHEC MCL	NE	76	5	76	5	5	5	NE	15000	—
10/2/2001	<5	<5	<5	<5	<5	<5	<5	<5	<5	0
4/9/2002	5.2	<5	<5	<5	5.0	<5	<5	<5	<5	10.2
10/4/2002	6.6	<5	<5	<5	<5	<5	<5	<5	<5	6.6
4/21/2003	5.1	<1	<1	1.3	4.1	1.6	2.6	<1	<2	14.7
10/22/2003	9.9	<1	<1	<1	4.1	3.5	4.5	4.2	<2	23.2
4/8/2004	9.3	<1	<1	2.4	<2	3.6	4.8	1.1	1.5	21.7
10/19/2004	7.2	1.8	<1	2.2	<2	3.6	3.5	1.0	1.6	20.9
4/14/2005	6.8	1.7	<1	2.2	<2	3.3	2.7	<1	<2	16.7
8/11/2005	4.6	1.4	<1	1.7	<2	2.7	1.6	<1	<2	12.0
11/02/2005	11.0	2.9	<1	3.9	<2	4.6	4.8	<1	1.7	28.9
4/15/2006	10.0	3.7	<1	3.8	<2	4.1	4.1	<1	3.3	29.0
10/10/2006	9.1	3.3	<1	3.9	<2	3.7	3.8	<1	1.3	25.1
4/4/2007	6.5	2.2	<1	2.2	<2	3.1	2.7	<1	<2	16.7
10/01/2007	11.8	4.3	<1	3.8	<2	4.3	4.4	<1	<2	28.4
4/14/2008	7.0	<10	<2	3.0	<5	3.0	3.0	<10	<5	16.0
10/15/2008	6.0	<10	<2	4.0	<5	3.0	<2	<10	<5	15.0
4/8/2009	5.0	<10	<2	2.3	<5	<2	<2	<10	<5	7.3
10/02/2009	5.5	<10	<2	3.4	<5	<2	<2	<10	<5	6.9
5/6/2010	<2	<10	<2	<2	<5	<2	<2	<10	<5	0
12/9/2010	2.9	<10	<2	<2	<5	<2	<2	<10	<5	2.9

Notes:  
 All units are in ug/L.  
 < - Indicates analyte not detected above laboratory reporting limit.  
 Bolded Blue indicates result greater than the SCDHEC Maximum Contamination Limit (MCL).  
 NE - Denotes MCL not established

Table 2 (Continued)										
Historical VOC Summary for Wells with Detections in 2010										
Monitoring Location MW-19										
2010 Evaluation of Corrective Measures										
Northeast Landfill										
Richland County, South Carolina										
Volatile Organic Compound Parameters and MCL										
Sampling Date	11-Dichloroethane	14-Dichlorobenzene	Benzene	cis-1,2-Dichloroethylene	Methylene Chloride	Tetrachloroethylene	Trichloroethylene	Trichlorofluoroethane	Xylenes (Total)	Total VOCs
SCDHEC MCL	NE	75	5	70	5	5	5	NE	10000	—
10/18/2009	4.0	<10	<2	<2	<5	<2	<2	<10	<5	4.0
4/9/2009	3.5	<10	<2	<2	<5	<2	2.2	<10	<5	5.7
10/22/2009	3.0	<10	<2	<2	<5	<2	<2	<10	<5	3.0
5/6/2010	3.8	<10	<2	2.3	<5	<2	<2	<10	<5	6.1
12/9/2010	2.9	<10	<2	<2	<5	<2	<2	<10	<5	2.9

Notes:  
 All units are in ug/L.  
 < - Indicates analyte not detected above laboratory reporting limit.  
 Bolded Blue indicates result greater than the SCDHEC Maximum Contamination Limit (MCL)  
 NE - Denotes MCL not established

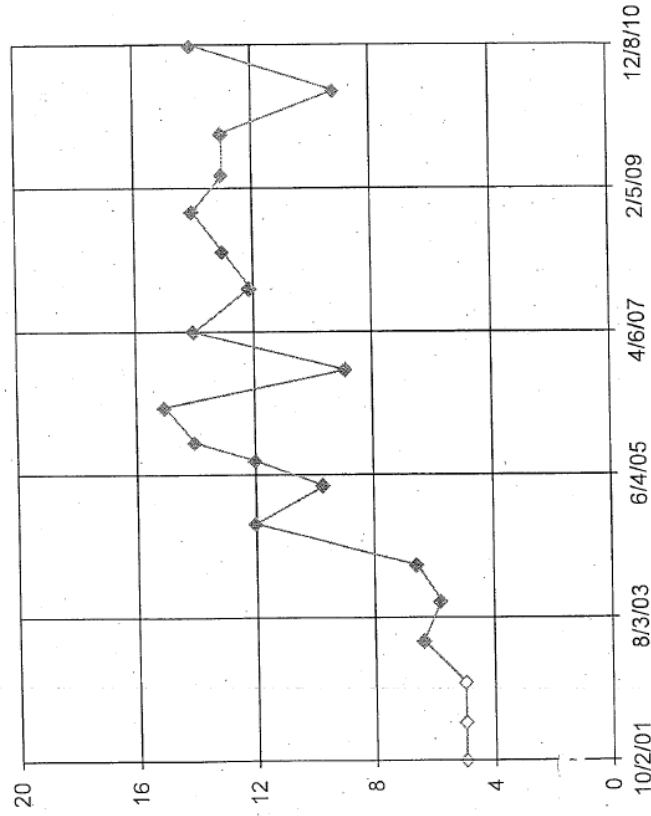
**APPENDICES**

**APPENDIX A  
TIME VS. CONCENTRATION PLOTS**

**Individual Well and Constituent Plots**

v.9.1.21 n/a. JG  
Hollow symbols indicate non-detect values.

### Time Series



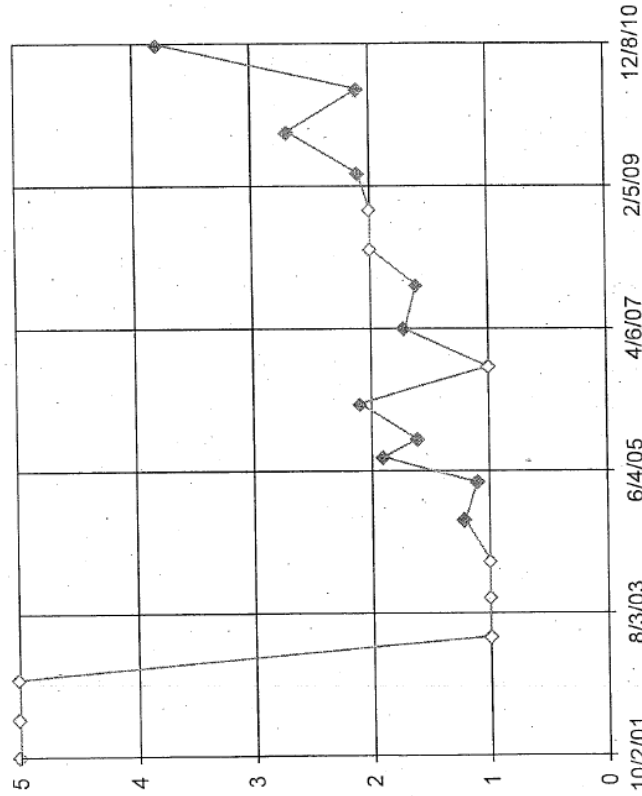
MW-6

Constituent: 11-Dichloroethane Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



v.9.1.21 n/a. JG  
Hollow symbols indicate non-detect values.

### Time Series



ug/l

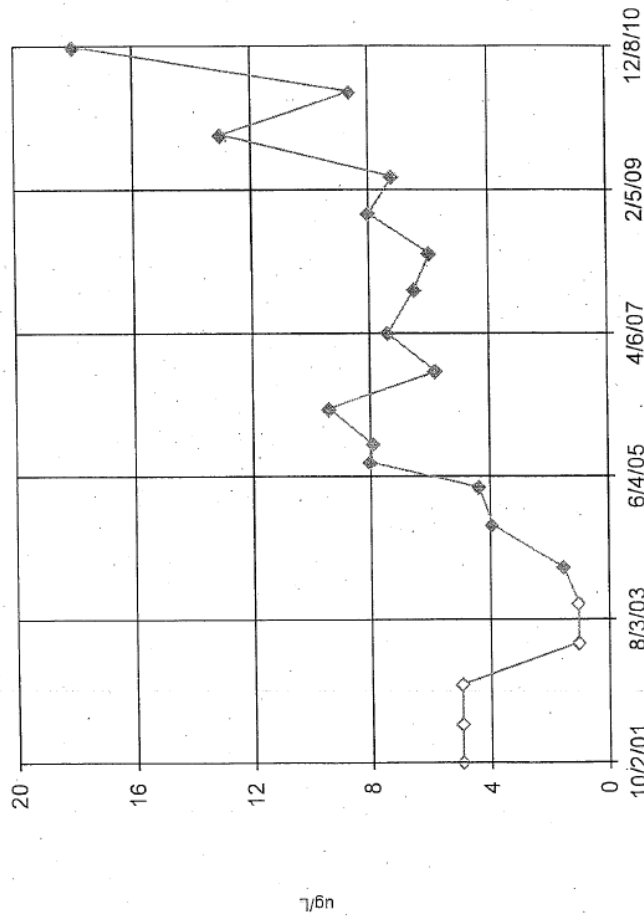
Constituent: Benzene Analysis Run 3/8/2011 9:58 AM

Facility: Northeast LF Client: Northeast LF Data File: Northeast



Time Series

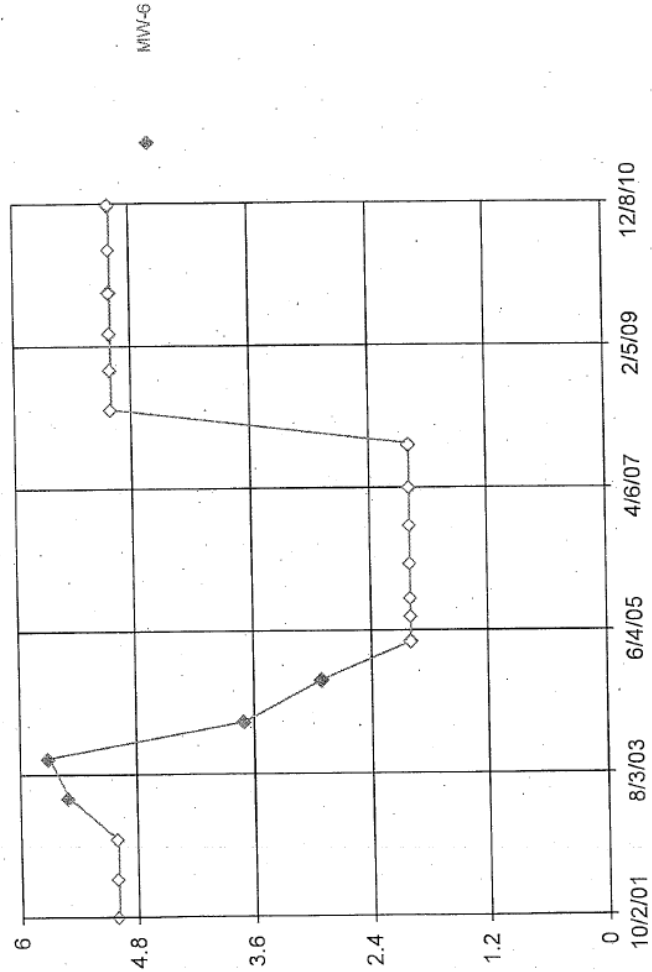
v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.



Constituent: cis-12-Dichloroethylene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
 Hollow symbols indicate non-detect values.

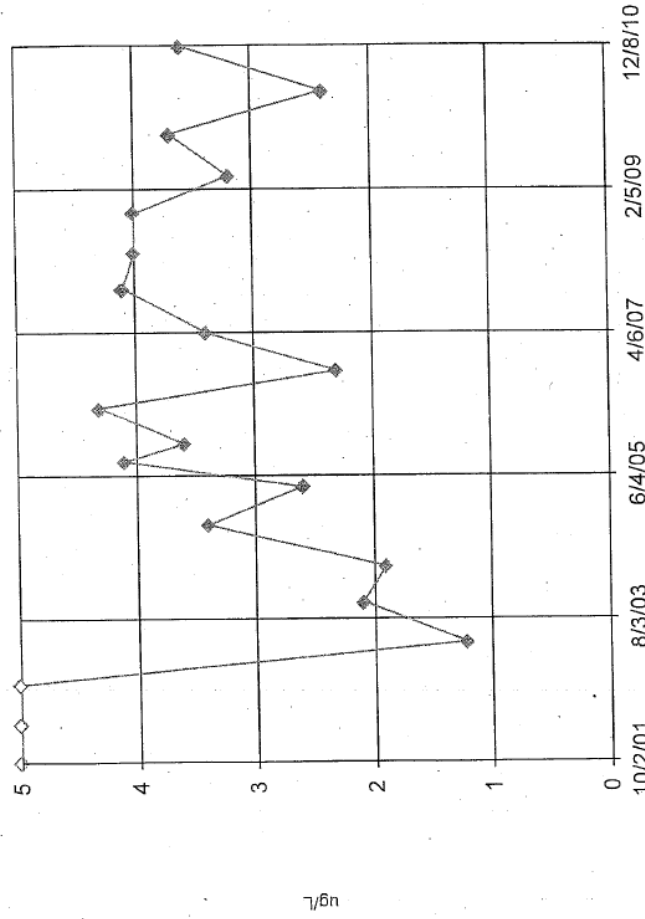
Time Series



Constituent: Methylene chloride Analysis Run 3/8/2011 9:58 AM  
 Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

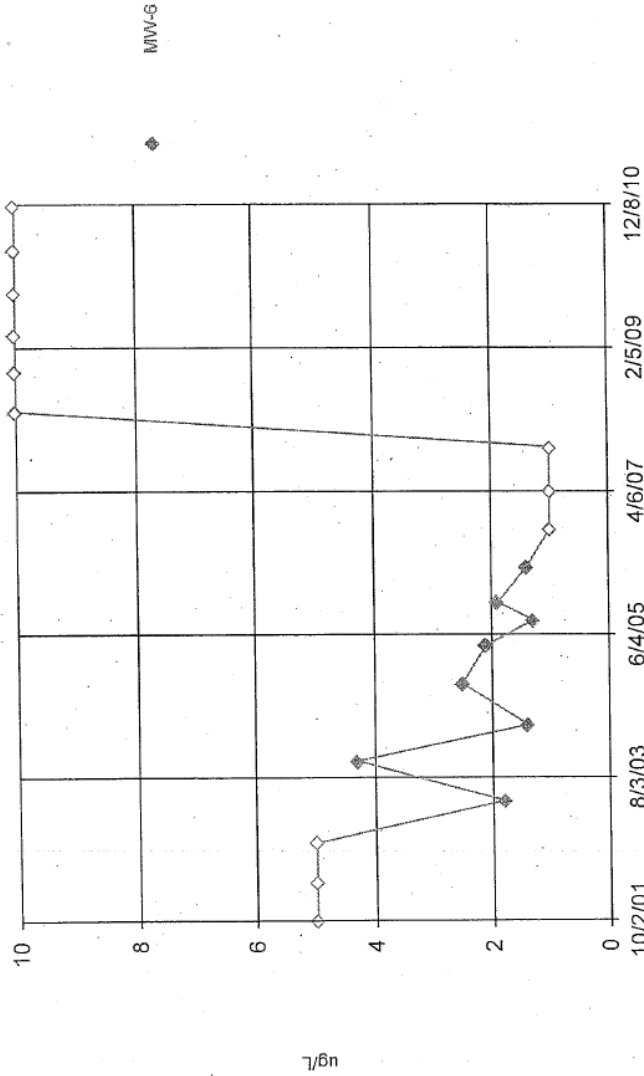
### Time Series



Constituent: Tetrachloroethylene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 na. UG  
 Hollow symbols indicate non-detect values.

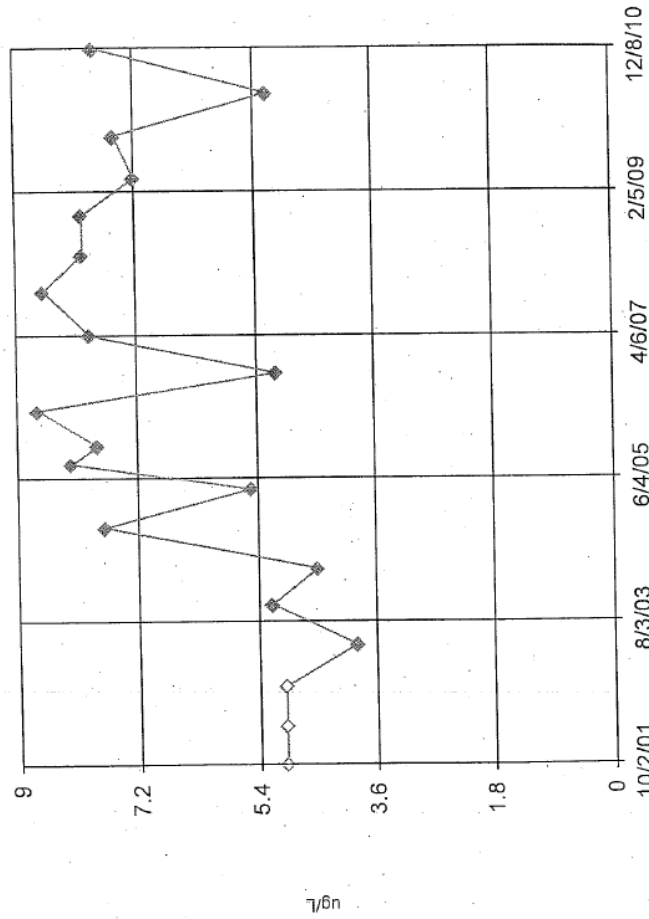
Time Series



Constituent: Trichlorofluoromethane Analysis Run 3/8/2011 9:58 AM  
 Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

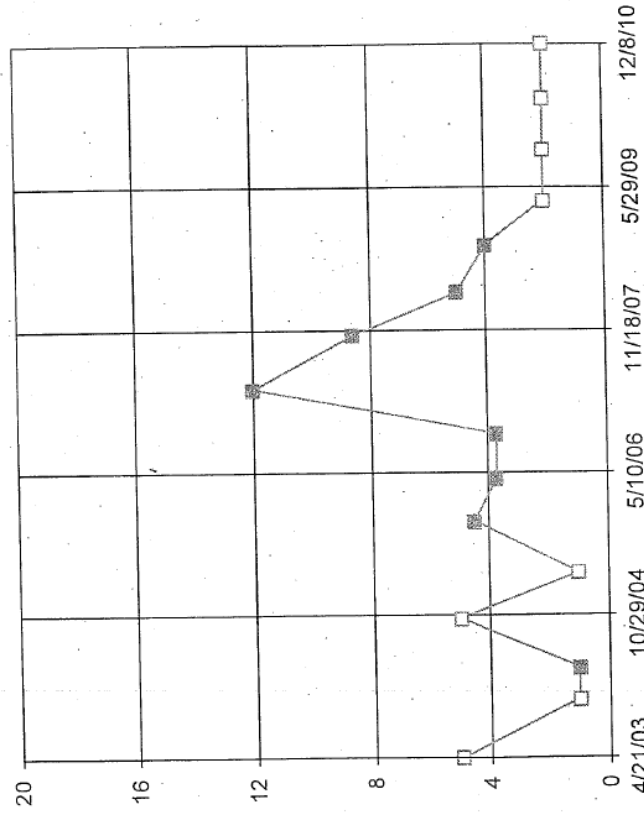


Constituent: Trichloroethylene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



v.9.121 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

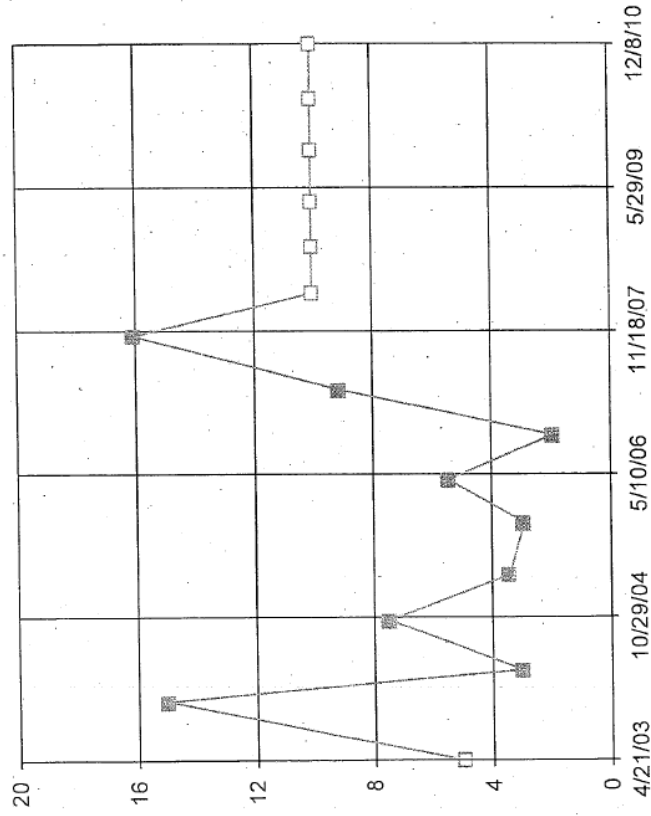


1/6n

Constituent: 11-Dichloroethane Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series



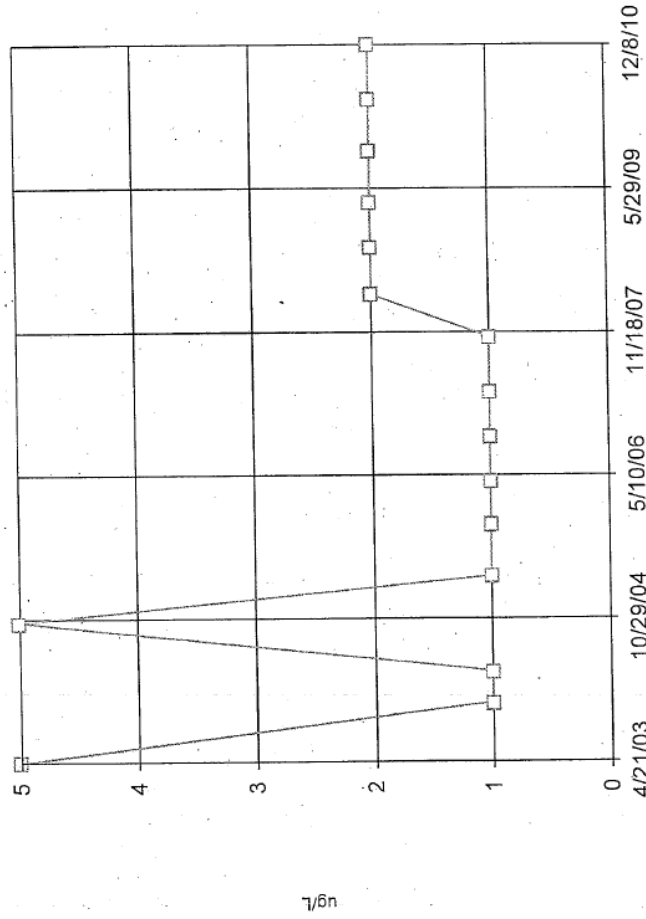
MMW-7B

Constituent: 14-Dichlorobenzene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



v.9.1.21 m.a. UG  
Hollow symbols indicate non-detect values.

### Time Series

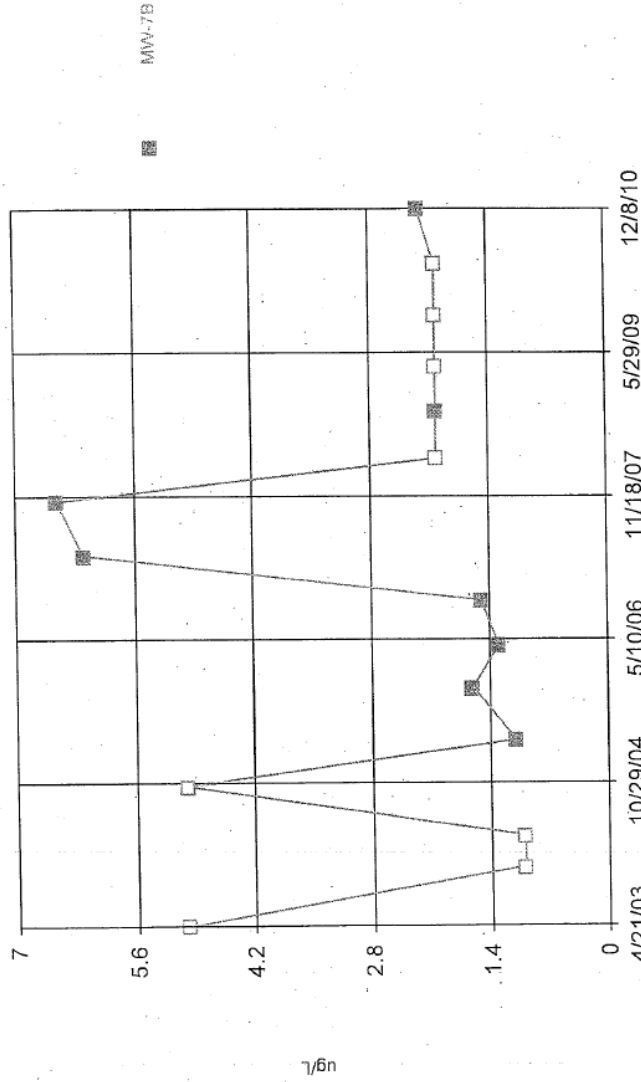


MW-7B

Constituent: Benzene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v9.1.21 n/a UG  
Hollow symbols indicate non-detect values.

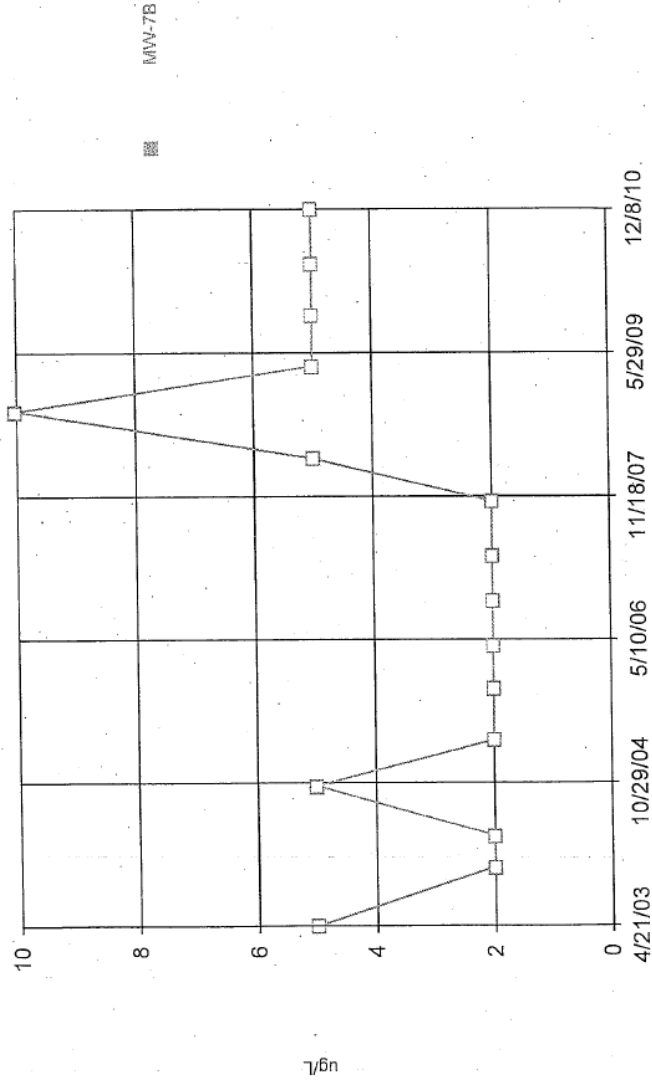
### Time Series



Constituent: cis-12-Dichloroethylene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

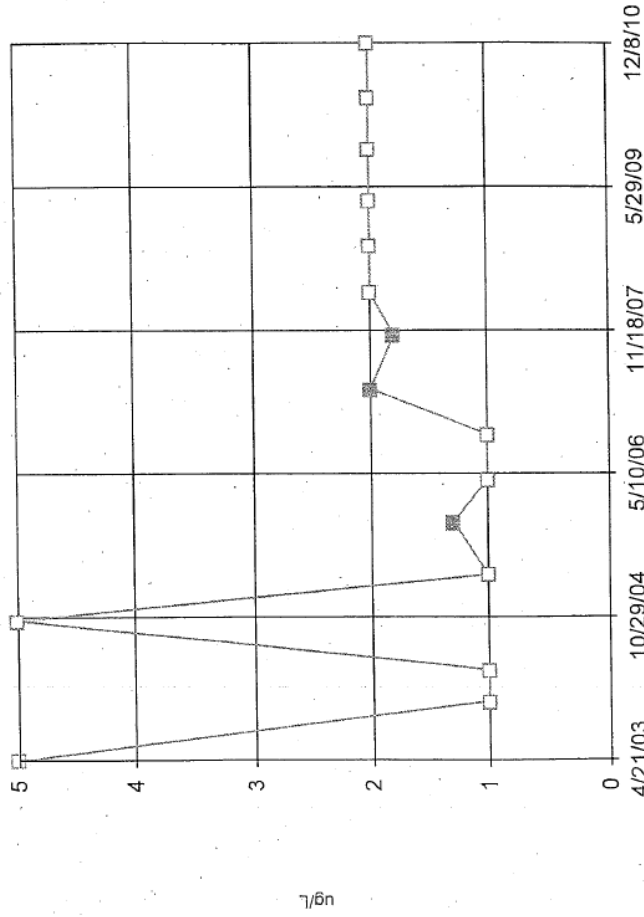
### Time Series



Constituent: Methylene chloride Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

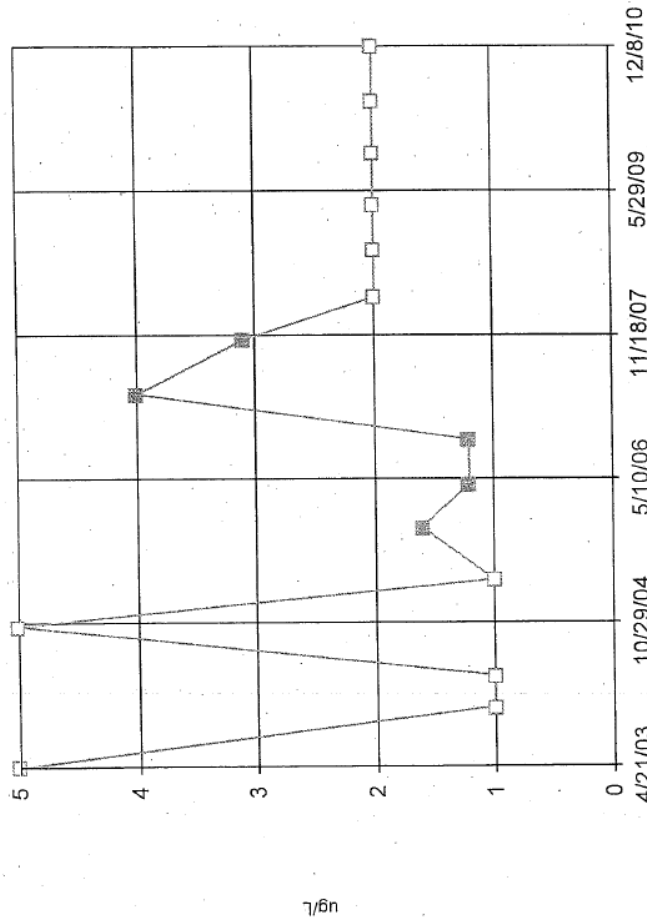
### Time Series



Constituent: Tetrachloroethylene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

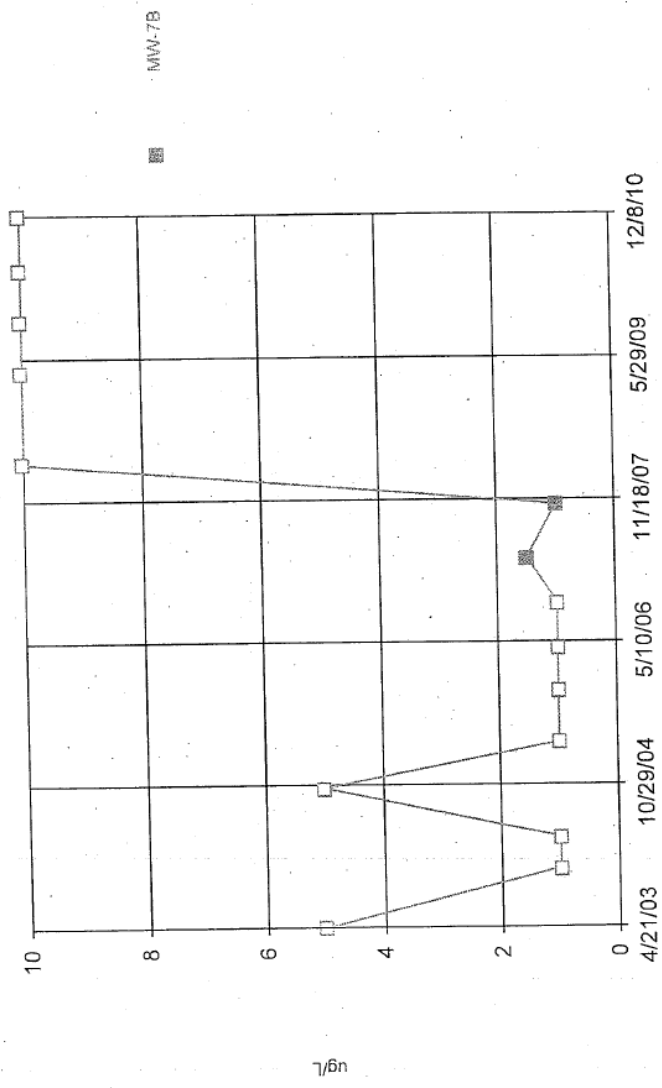
### Time Series



Constituent: Trichloroethylene Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a, UG  
Hollow symbols indicate non-detect values.

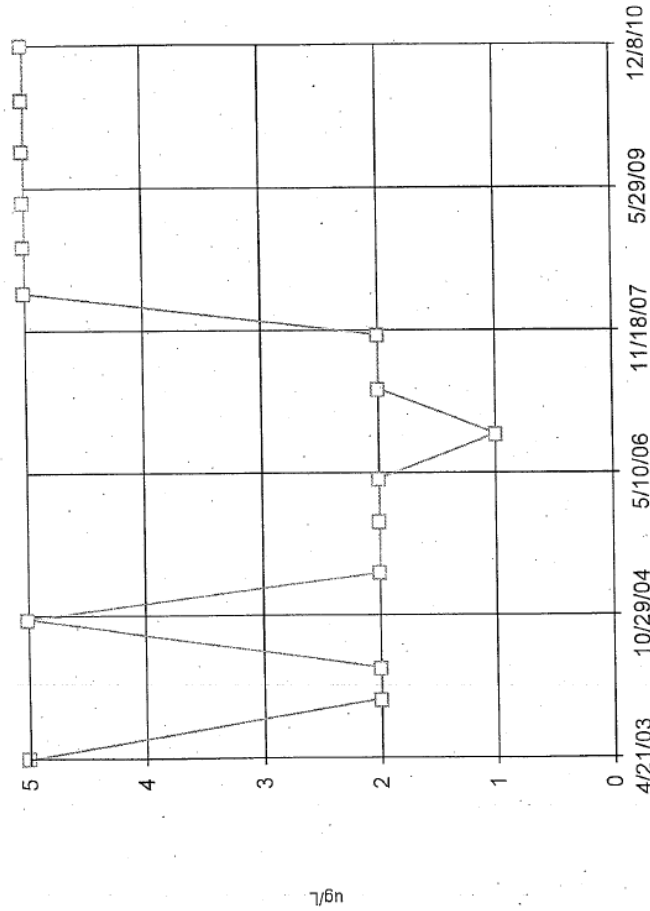
### Time Series



Constituent: Trichlorofluoromethane Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

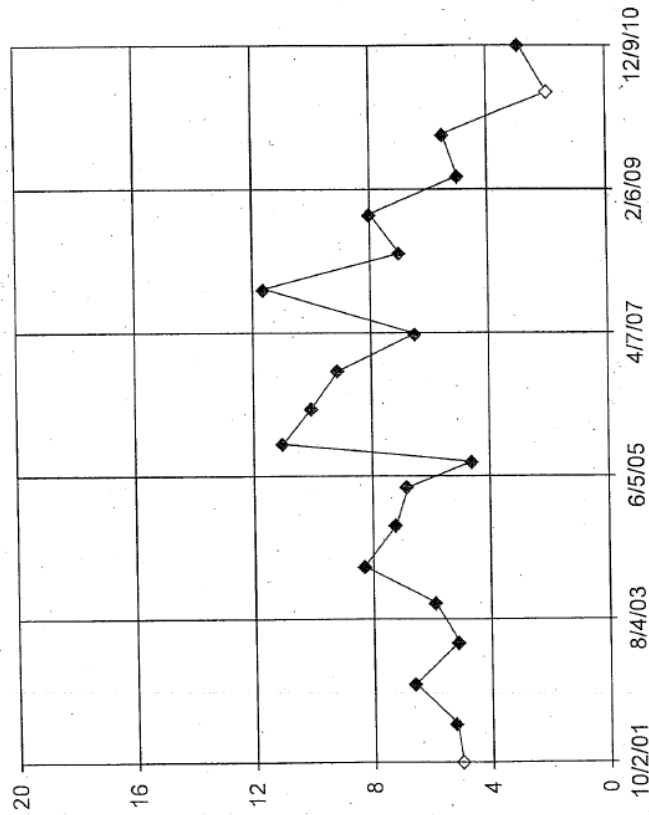
### Time Series



Constituent: Xylenes [Total] Analysis Run 3/8/2011 9:58 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series



MW-15

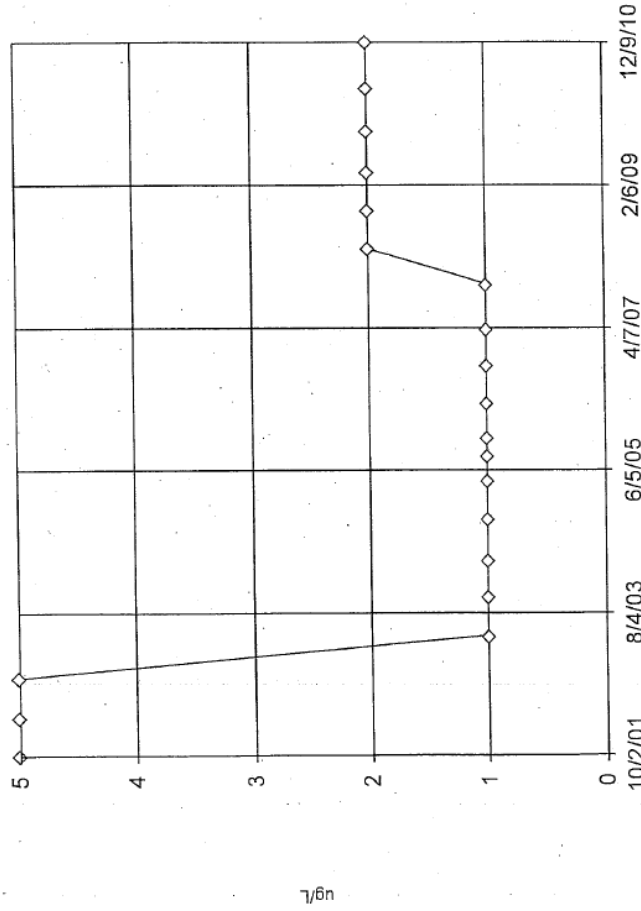
Constituent: 11-Dichloroethane Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast





v.9.1.21 m/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

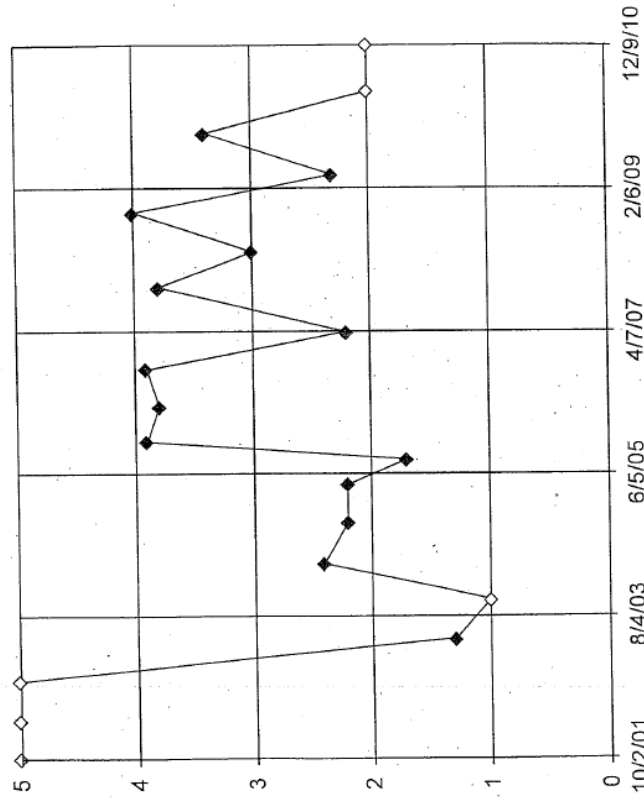


MW-15

Constituent: Benzene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 m/a. UG  
Hollow symbols indicate non-detect values.

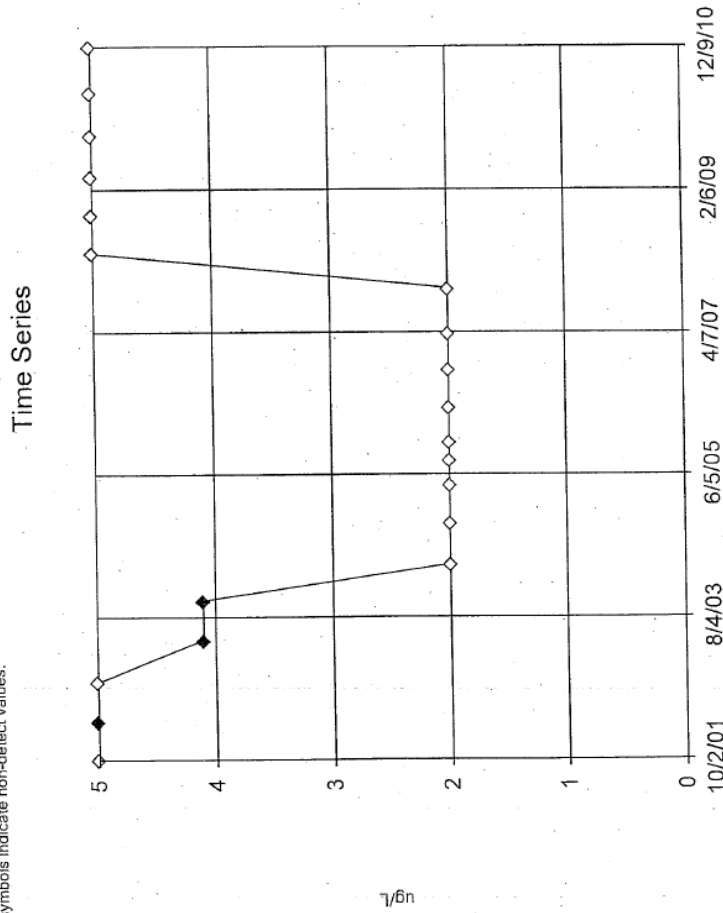
### Time Series



MW-15

Constituent: cis-12-Dichloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a, UG  
Hollow symbols indicate non-detect values.



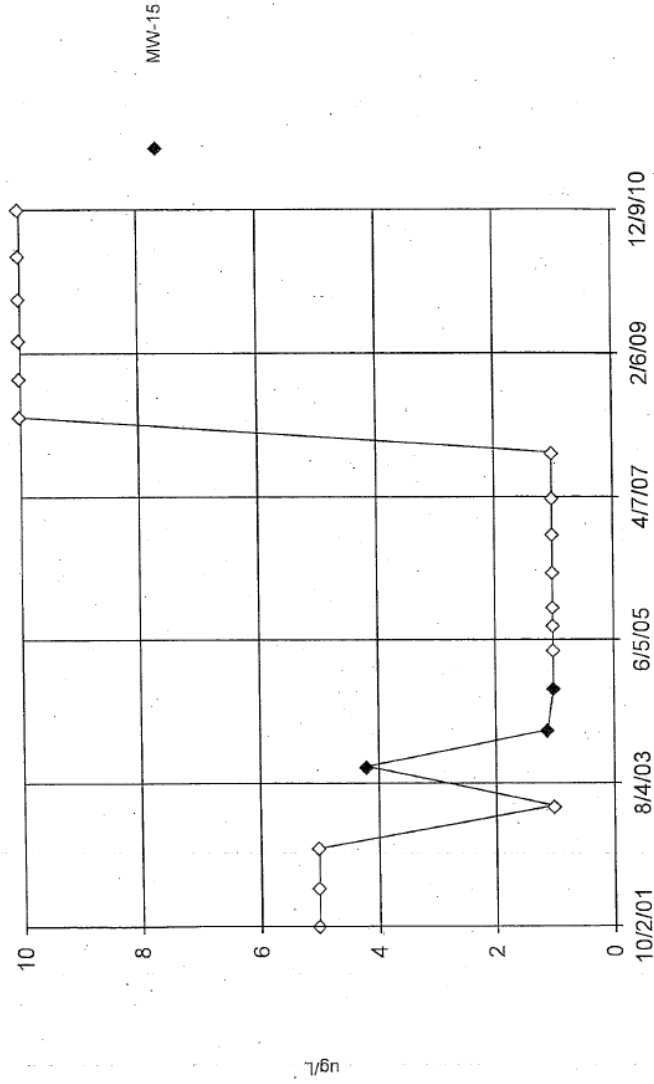
MW-15

Constituent: Methylene chloride Analysis Run 3/8/2011 9:59 AM  
 Facility: Northeast LF Client: Northeast LF Data File: Northeast



v9.121 n/a. UG  
 Hollow symbols indicate non-detect values.

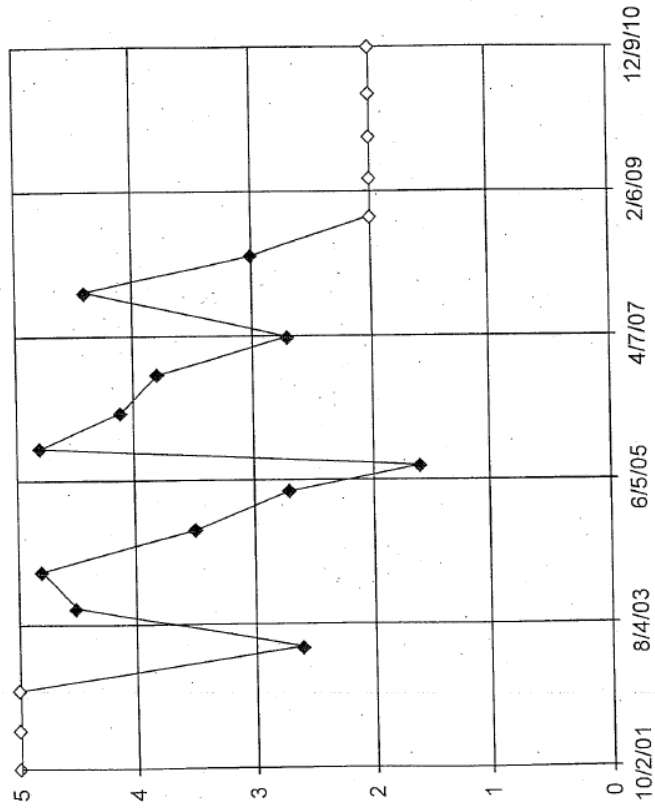
Time Series



Constituent: Trichlorofluoromethane Analysis Run 3/8/2011 9:59 AM  
 Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 m/a, UG  
Hollow symbols indicate non-detect values.

### Time Series

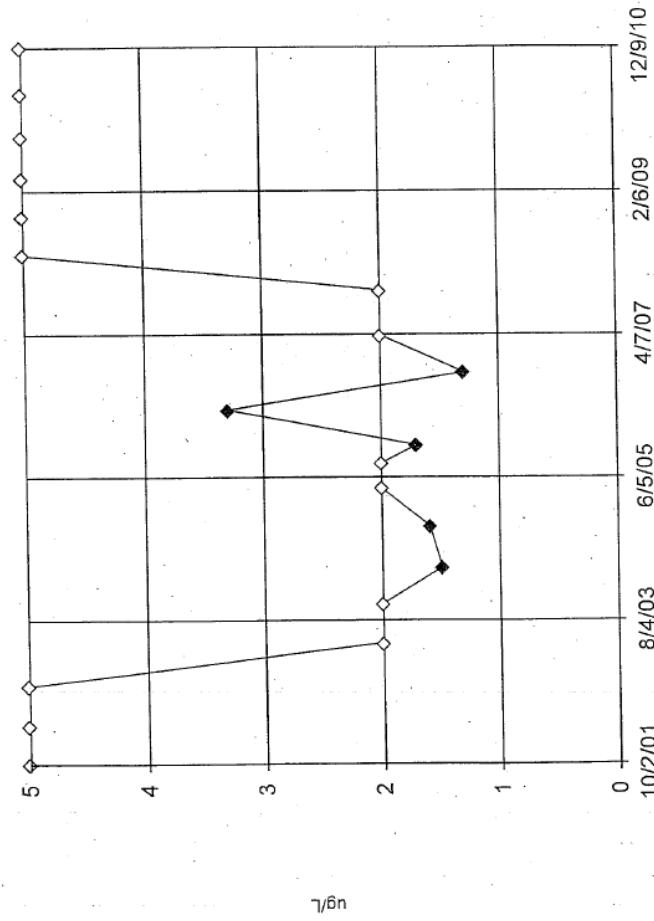


MW-15

Constituent: Trichloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

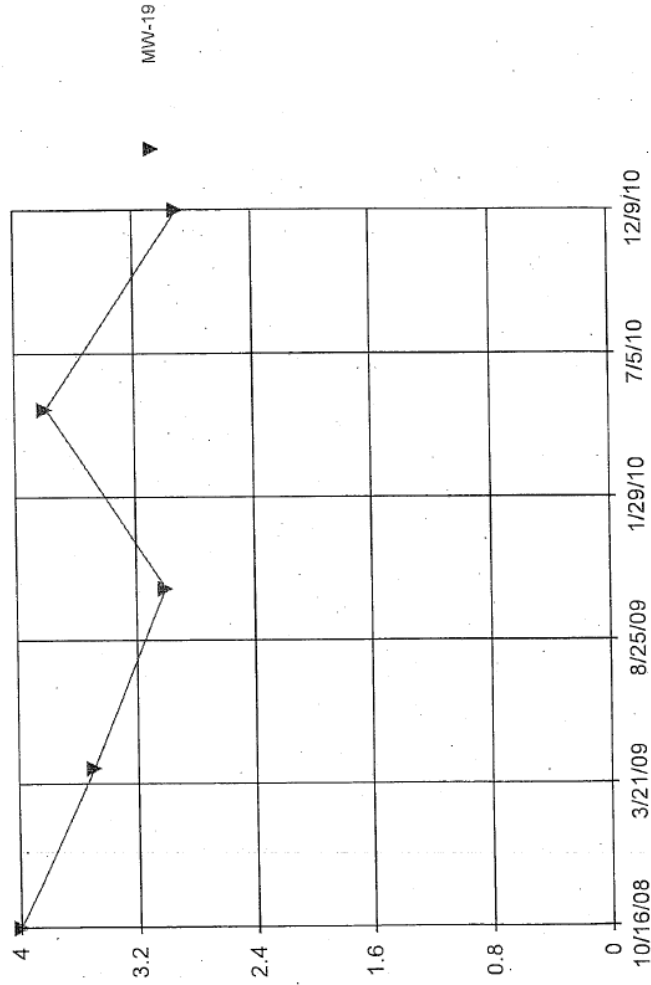


Constituent: Xylenes [Total] Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



v9.1.21 n/a. UG

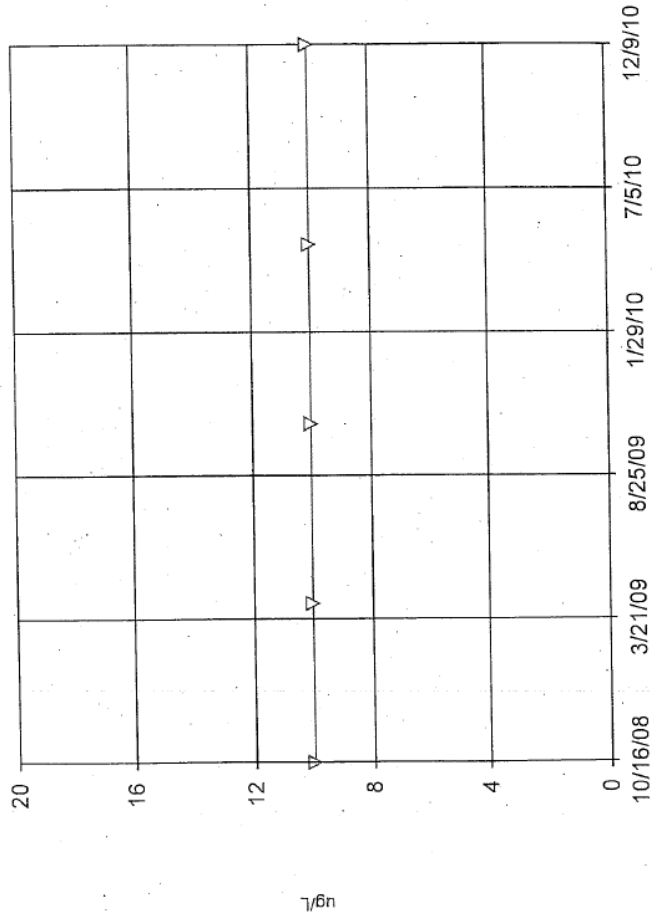
### Time Series



Constituent: 11-Dichloroethane Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 na. UG  
Hollow symbols indicate non-detect values.

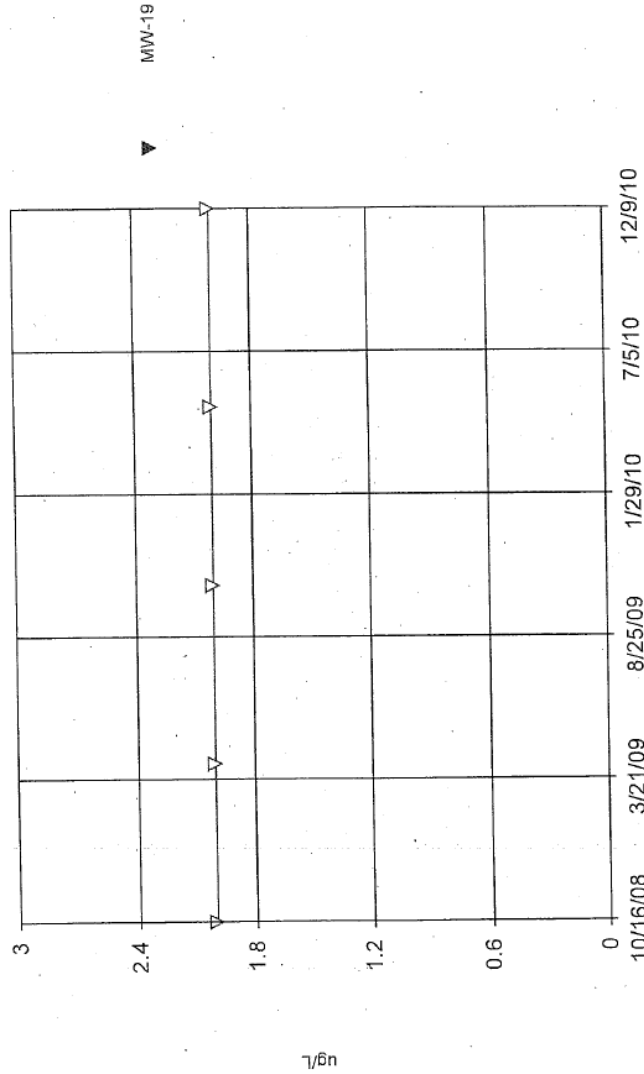
### Time Series



Constituent: 14-Dichlorobenzene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a.UG  
Hollow symbols indicate non-detect values.

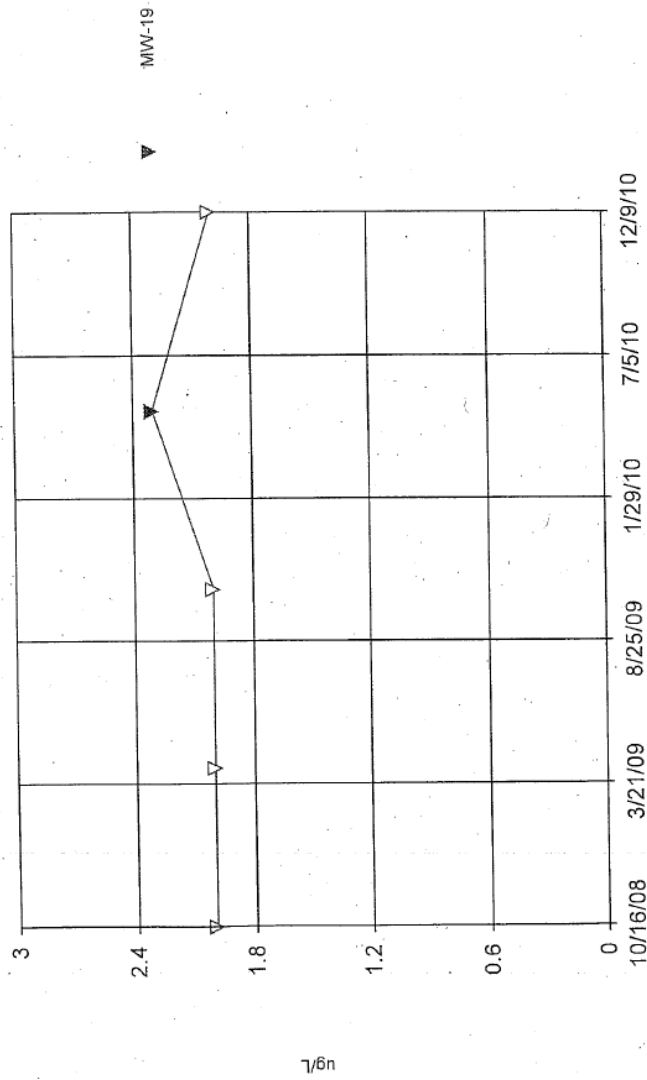
### Time Series



Constituent: Benzene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.s. 1.21 mg, UG  
Hollow symbols indicate non-detect values.

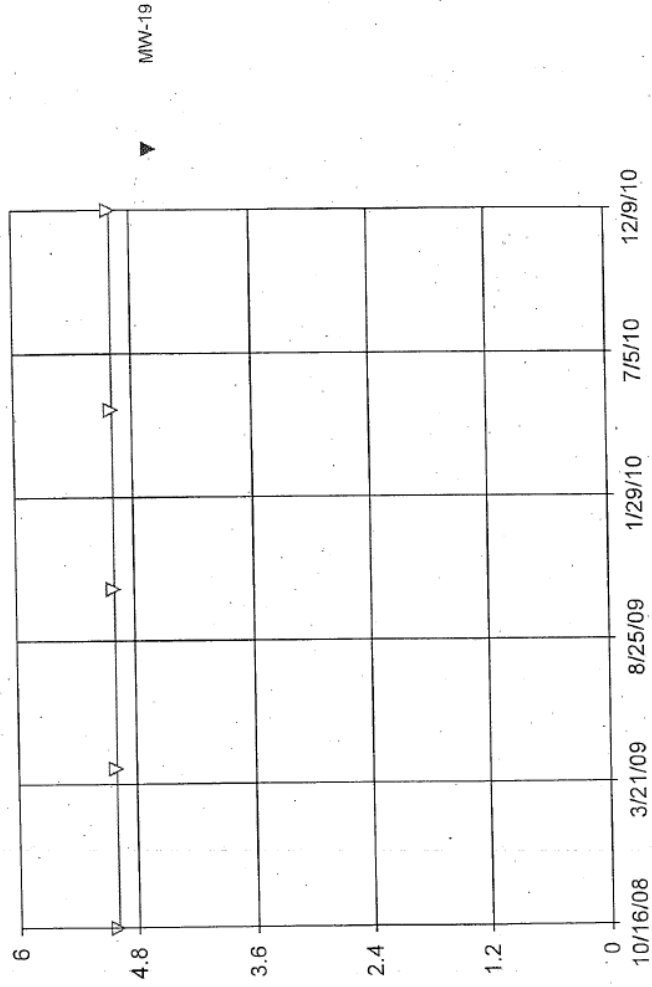
### Time Series



Constituent: cis-12-Dichloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a. UG  
Hollow symbols indicate non-detect values.

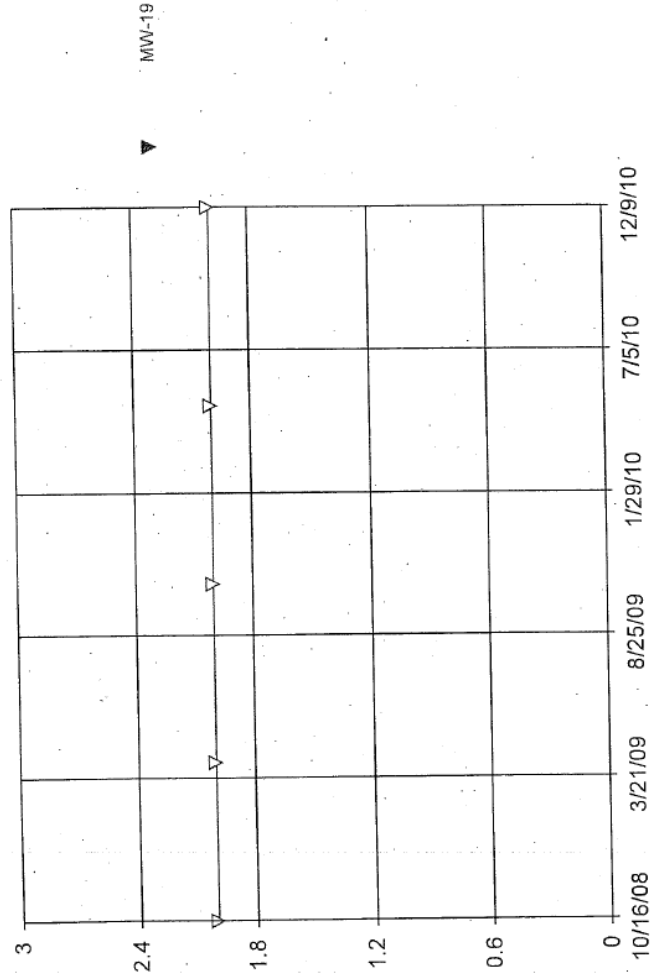
### Time Series



Constituent: Methylene chloride Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

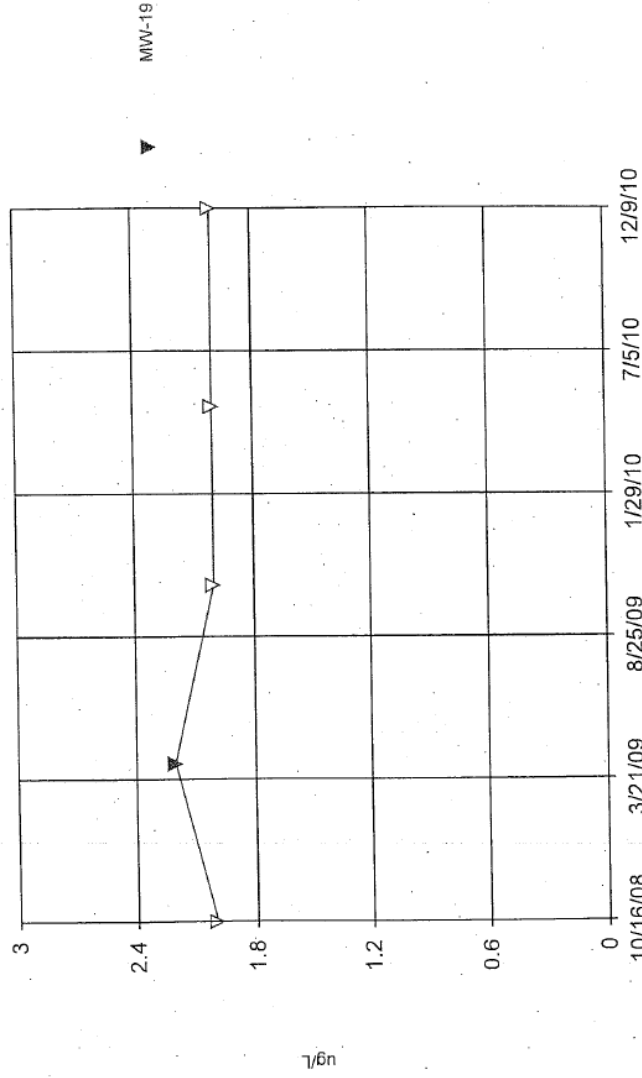


7/6n

Constituent: Tetrachloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

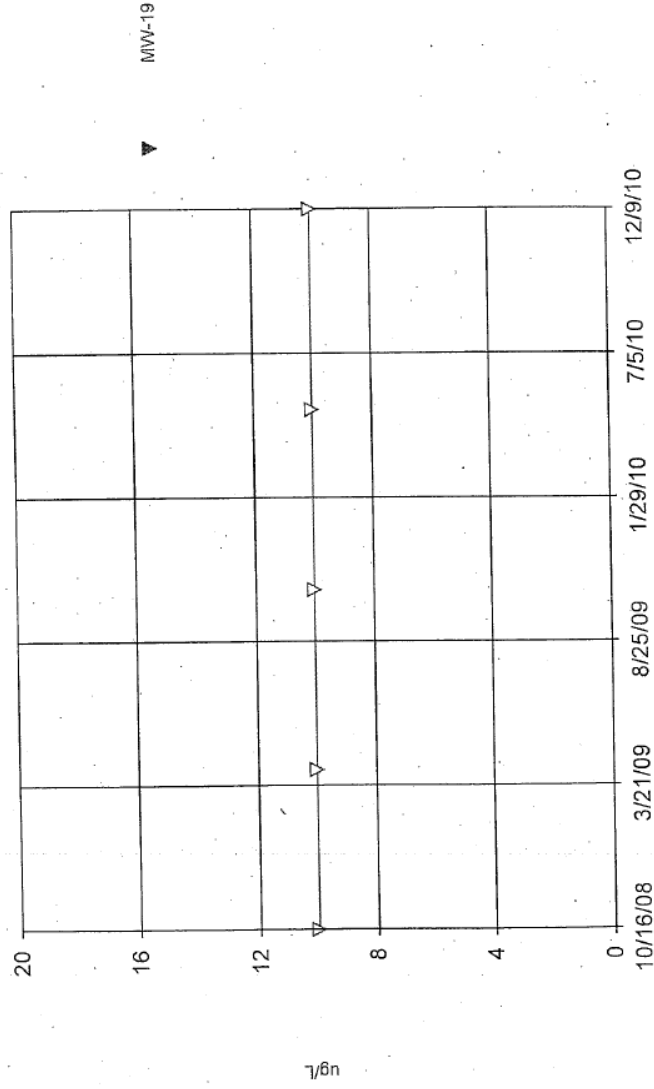
### Time Series



Constituent: Trichloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a, UG  
Hollow symbols indicate non-detect values.

### Time Series

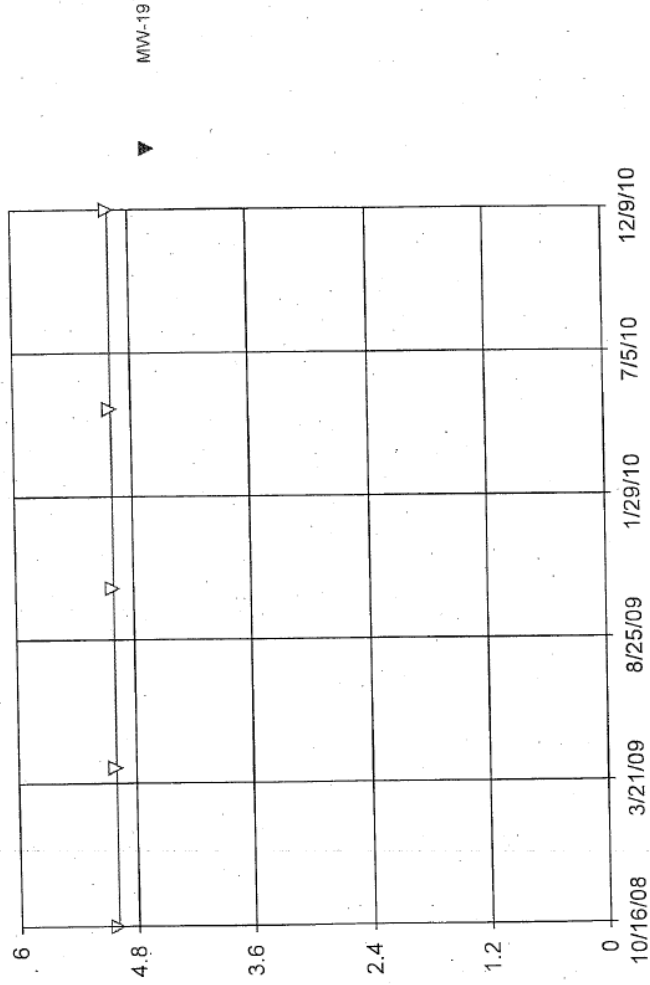


Constituent: Trichlorofluoromethane Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

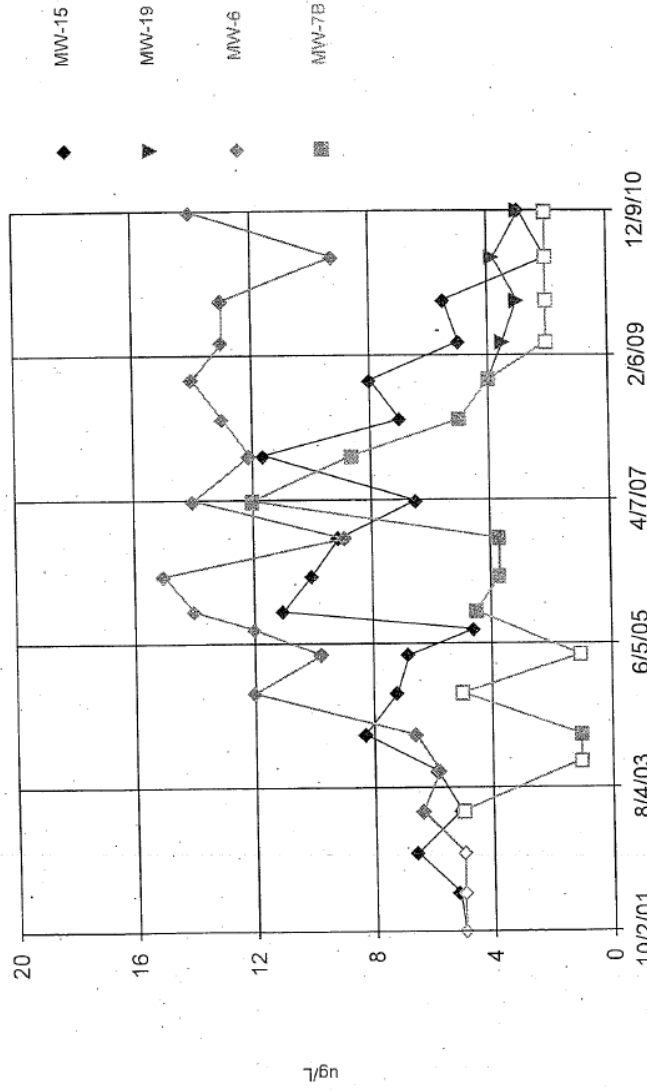


Constituent: Xylenes [Total] Analysis Run: 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

**Individual Constituent and Multiple-Well Plots**

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

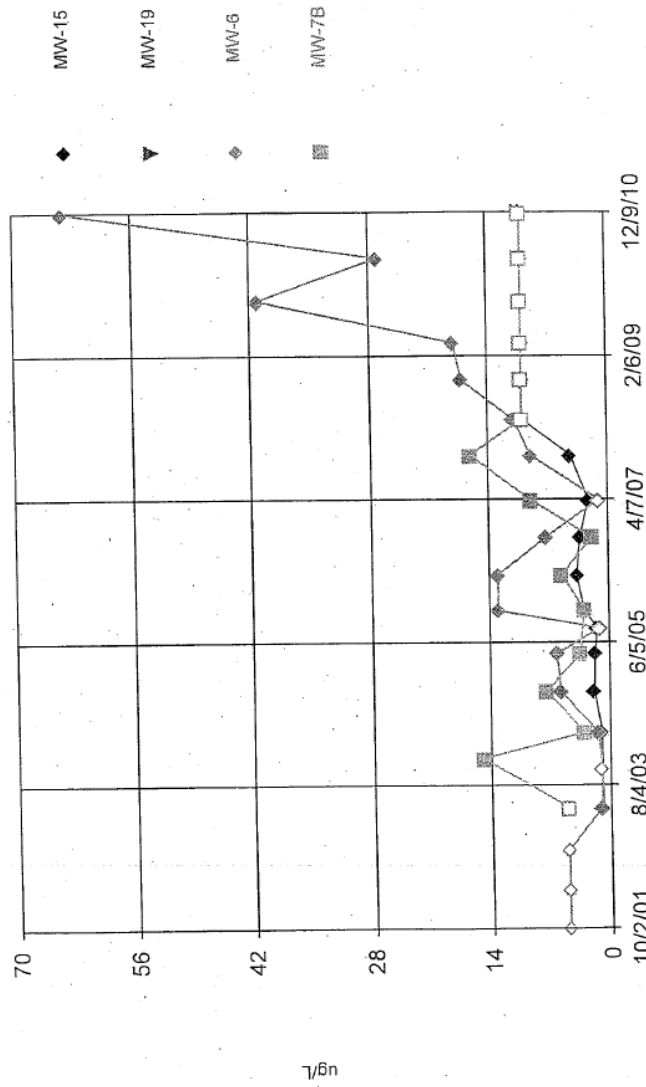
### Time Series



Constituent: 11-Dichloroethane Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 m/a, UG  
Hollow symbols indicate non-detect values.

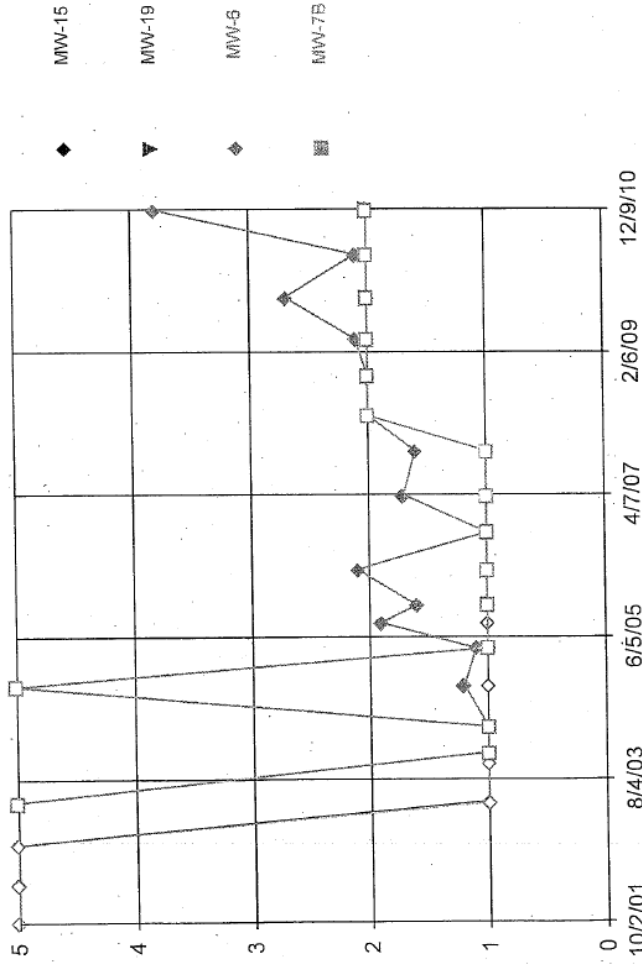
### Time Series



Constituent: 14-Dichlorobenzene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series



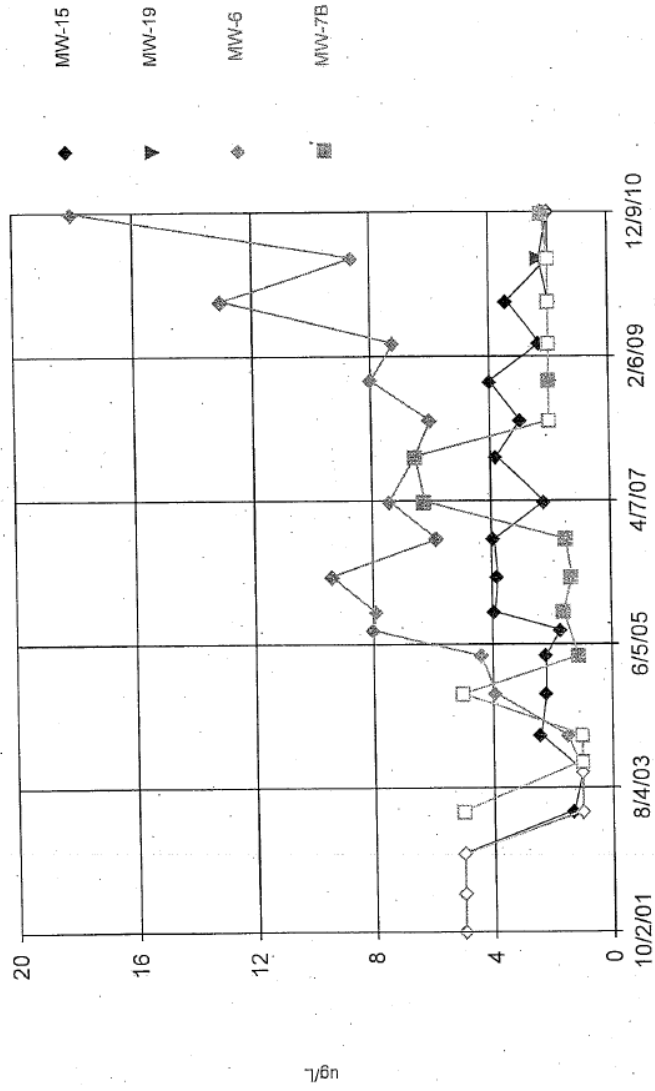
ug

Constituent: Benzene Analysis Run 3/8/2011 9:59 AM

Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.1.21 n/a, UG  
Hollow symbols indicate non-detect values.

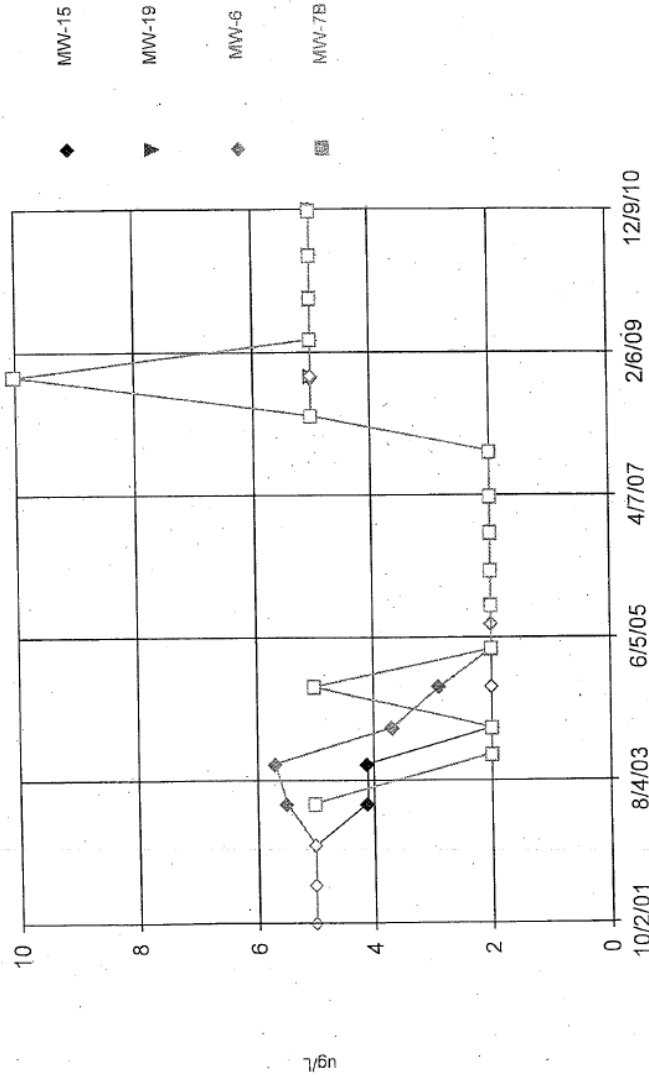
### Time Series



Constituent: cis-12-Dichloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.6.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

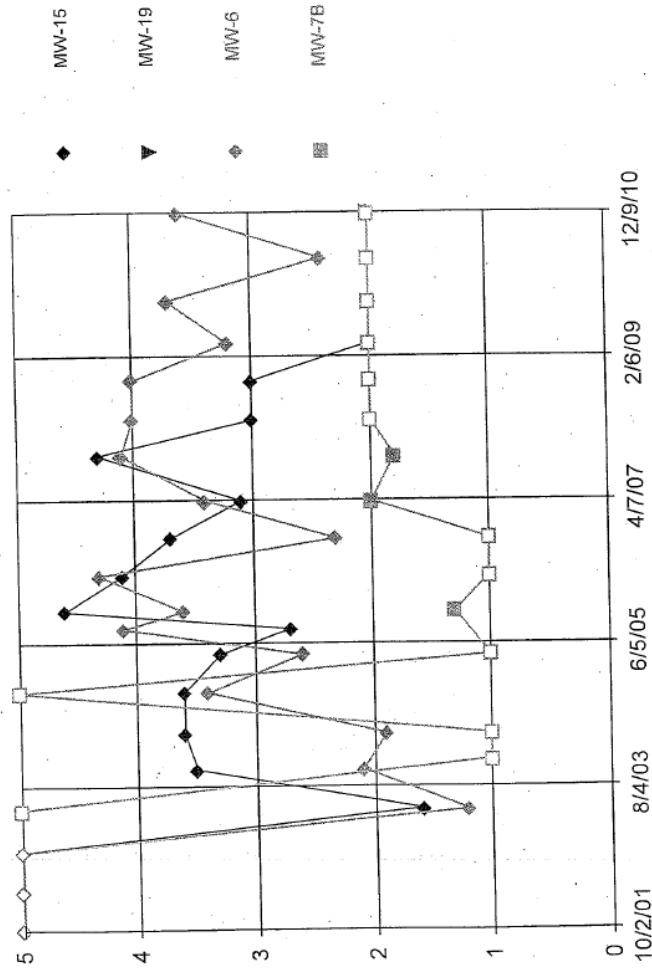
### Time Series



Constituent: Methylene chloride Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.3.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

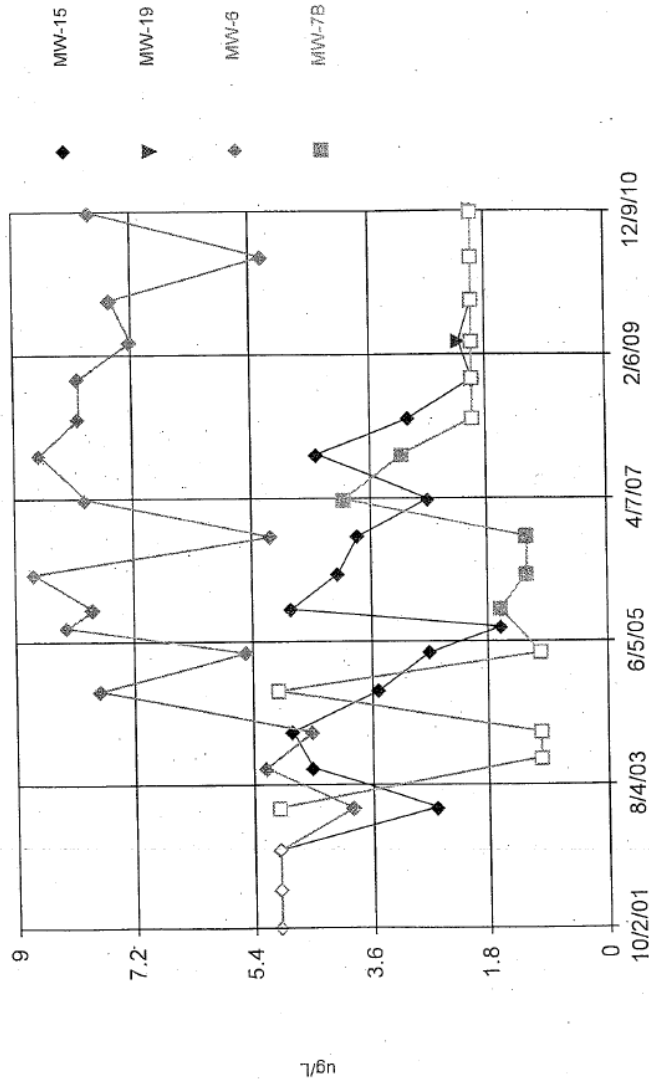


Constituent: Tetrachloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

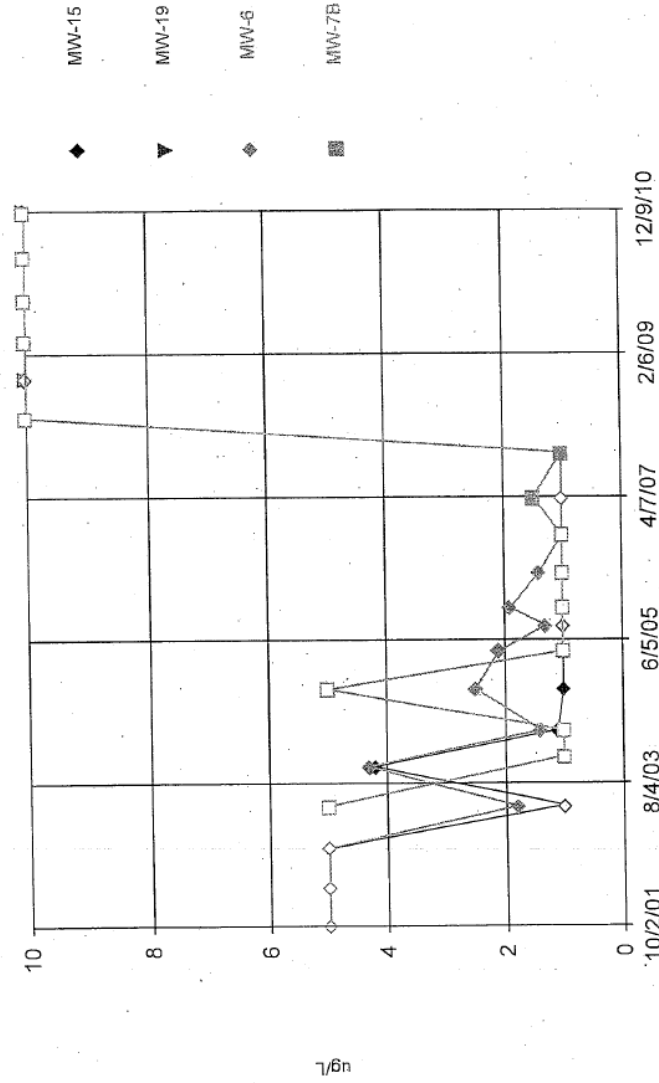
### Time Series



Constituent: Trichloroethylene Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.9.121 n/a. UG  
Hollow symbols indicate non-detect values.

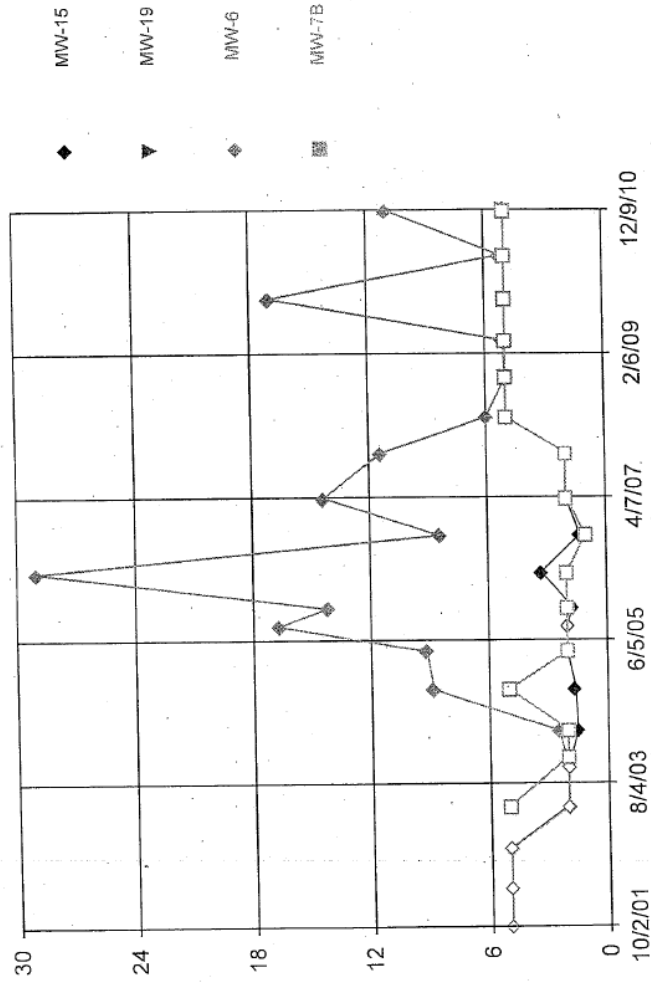
### Time Series



Constituent: Trichlorofluoromethane Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

v.8.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series



7/6n

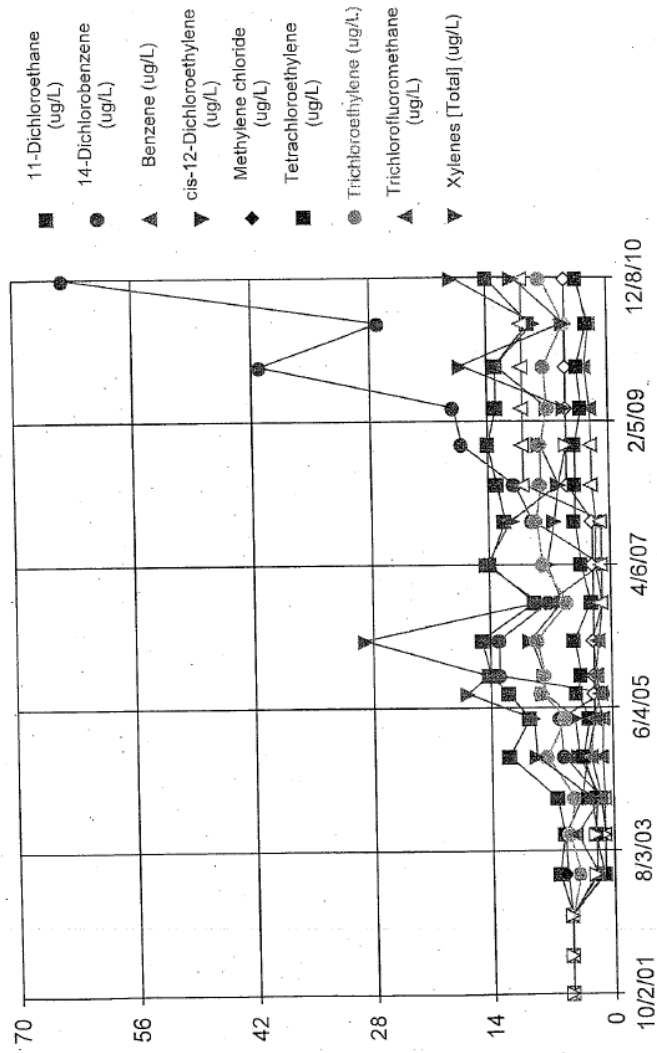
Constituent: Xylenes [Total] Analysis Run 3/8/2011 9:59 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

**Well and Multiple-Constituent Plots**

v.9.1.21 r/e. JG  
Hollow symbols indicate non-detect values.

### Time Series

MW-6



Analysis Run 3/8/2011 9:56 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

### Multiple-Constituent Time Series

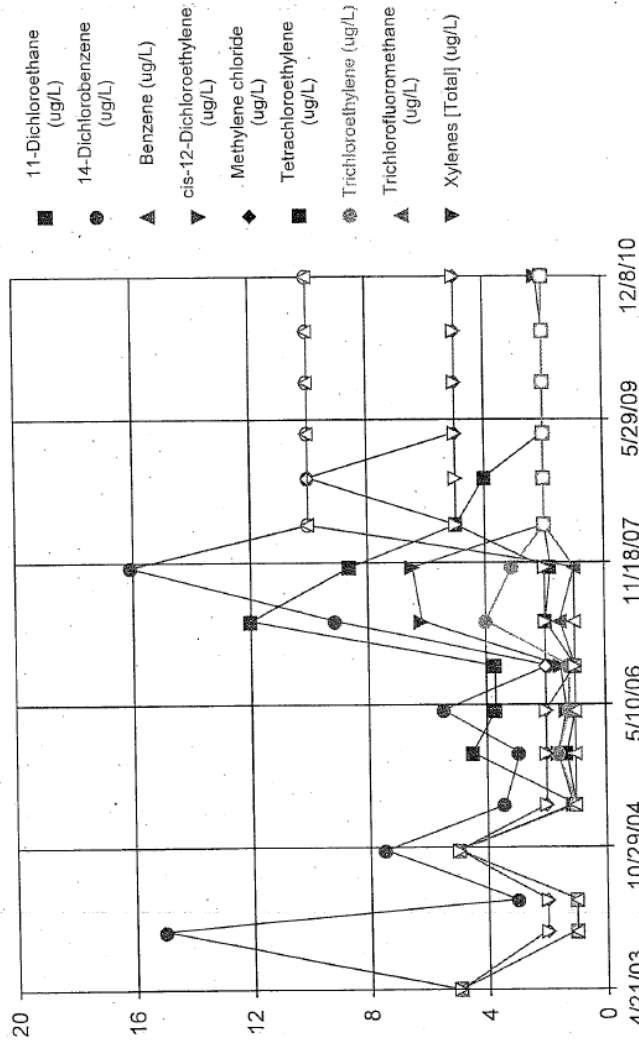
Constituent: Xylenes [Total] (ug/L)    Analysis Run 3/8/2011 9:56 AM  
 Facility: Northeast LF    Client: Northeast LF    Data File: Northeast

	11-Dichloro...	14-Dichloro...	Benzene (ug/L)	cis-12-Dichlo...	Methylene chl...	Tetrachloroel...	Trichloroethy...	Trichlorofluo...	Xylenes (Tota...
10/2/2001	<5	<5	<5	<5	<5	<5	<5	<5	<5
4/2/2002	<5	<5	<5	<5	<5	<5	<5	<5	<5
10/4/2002	<5	<5	<5	<5	<5	<5	<5	<5	<5
4/17/2003	6.4	1.1	<1	<1	5.5	1.2	3.9	1.8	<2
10/22/2003	5.8	<1	<1	<1	5.7	2.1	5.2	4.3	<2
4/7/2004	6.6	1.4	<1	1.5	3.7	1.9	4.5	1.4	2.5
10/19/2004	12	5.8	1.2	3.9	2.9	3.4	7.7	2.5	8.9
4/14/2005	9.7	6.2	1.1	4.4	<2	2.6	5.5	2.1	9.2
8/11/2005	12	<1	1.9	8	<2	4.1	8.2	1.3	16.7
11/2/2005	14	13	1.6	7.9	<2	3.6	7.8	1.9	14.2
4/19/2006	15	13	2.1	9.4	<2	4.3	8.7	1.4	29
10/9/2006	8.9	7.4	<1	5.8	<2	2.3	5.1	<1	8.5
4/5/2007	14	<1	1.7	7.4	<2	3.4	7.9	<1	14.3
10/31/2007	12.1	9.1	1.6	8.5	<2	4.1	8.8	<1	11.4
4/15/2008	13	11	<2	6	<5	4	8	<10	6
10/15/2008	14	17	<2	8	<5	4	8	<10	<5
4/8/2009	13	16	2.1	7.2	<5	3.2	7.2	<10	5.1
10/22/2009	13	41	2.7	13	<5	3.7	7.5	<10	17
5/10/2010	9.2	27	2.1	8.6	<5	2.4	5.2	<10	5.2
12/8/2010	14	64	3.8	16	<5	3.6	7.8	<10	11

v.9.1.21 n/a. UG  
Hollow symbols indicate non-detect values.

### Time Series

MW-7B



Analysis Run 3/8/2011 9:56 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

### Multiple-Constituent Time Series

Constituent: Xylenes [Total] (ug/L)    Analysis Run 3/8/2011 9:56 AM  
 Facility: Northeast LF    Client: Northeast LF    Data File: Northeast

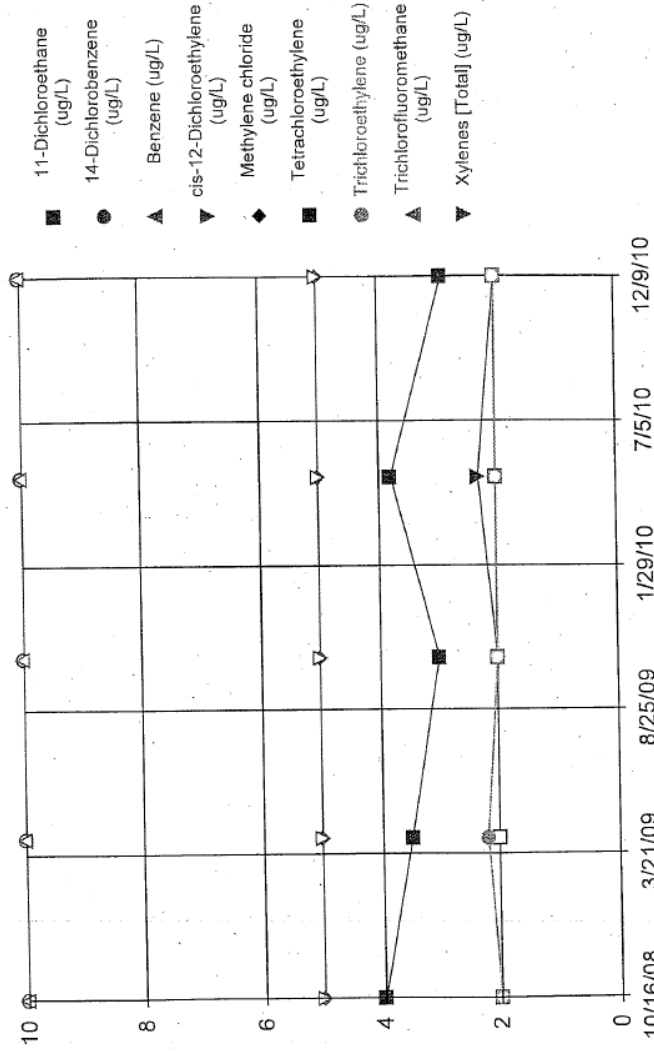
	11-DichloroeL...	14-Dichlorobe...	Benzene (ug/L)	cis-12-Dichlo...	Methylene chl...	TetrachloroeL...	Trichloroethy...	Trichlorofluo...	Xylenes [Tota...
4/21/2003	<5	<5	<5	<5	<5	<5	<5	<5	<5
12/9/2003	<1	15	<1	<1	<2	<1	<1	<1	<2
4/8/2004	1	3	<1	<1	<2	<1	<1	<1	<2
10/19/2004	<5	7.5	<5	<5	<5	<5	<5	<5	<5
4/14/2005	<1	3.4	<1	1.1	<2	<1	<1	<1	<2
11/4/2005	4.5	2.9	<1	1.6	<2	1.3	1.6	<1	<2
4/19/2006	3.7	5.5	<1	1.3	<2	<1	1.2	<1	<2
10/10/2006	3.7	1.9	<1	1.5	<2	<1	1.2	<1	<1
4/4/2007	12	9.1	<1	6.2	<2	2	4	1.5	<2
10/31/2007	8.6	16.1	<1	6.5	<2	1.8	3.1	1	<2
4/14/2008	5	<10	<2	<2	<5	<2	<2	<10	<5
10/16/2008	4	<10	<2	2	<10	<2	<2		<5
4/8/2009	<2	<10	<2	<2	<5	<2	<2	<10	<5
10/22/2009	<2	<10 (D)	<2	<2	<5	<2	<2	<10	<5
5/10/2010	<2	<10	<2	<2	<5	<2	<2	<10	<5
12/8/2010	<2	<10	<2	2.2	<5	<2	<2	<10	<5



v.9.1.21 n/a, UG  
Hollow symbols indicate non-detect values.

### Time Series

MW-19



Analysis Run 3/8/2011 9:57 AM  
 Facility: Northeast LF Client: Northeast LF Data File: Northeast

### Multiple-Constituent Time Series

Constituent: Xylenes [Total] (ug/L) Analysis Run 3/8/2011 9:57 AM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

	11-Dichloroel...	14-Dichloroba...	Benzene (ug/L)	ds-12-Dichlo...	Methylene chl...	Tetrachloroet...	Trichloroethy...	Trichlorofluo...	Xylenes [Tota...
10/16/2008	4	<10	<2	<2	<5	<2	<2	<10	<5
4/9/2009	3.5	<10	<2	<2	<5	<2	2.2	<10	<5
10/22/2009	3	<10	<2	<2	<5	<2	<2	<10	<5
5/6/2010	3.8	<10	<2	2.3	<5	<2	<2	<10	<5
12/9/2010	2.9	<10	<2	<2	<5	<2	<2	<10	<5



# Time Series

Constituent: TVOC (ug/L) Analysis Run: 3/8/2011 1:09 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

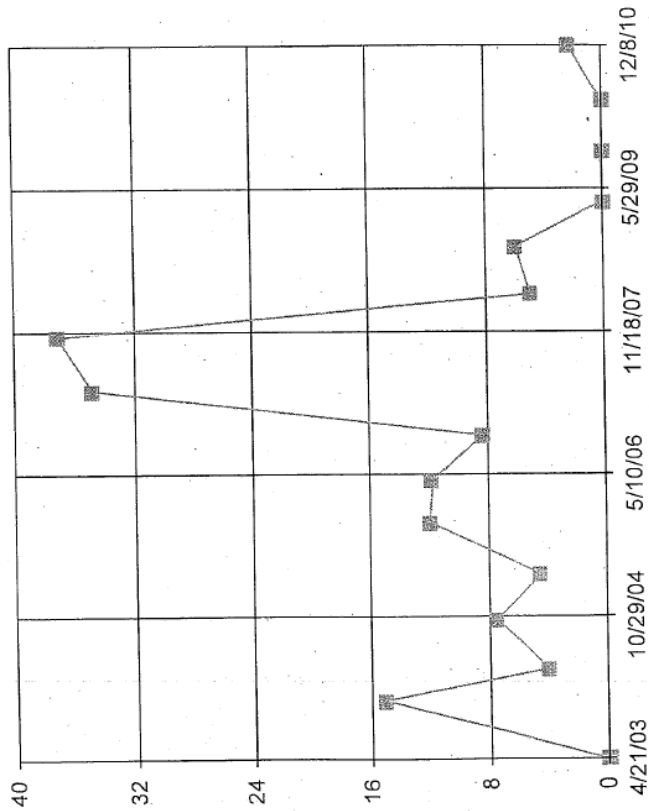
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	MW-6
10/2/2001	0
4/2/2002	0
10/4/2002	0
4/17/2003	19.9
10/22/2003	23.1
4/7/2004	23.5
10/19/2004	48.3
4/14/2005	40.8
8/11/2005	52.2
11/2/2005	64
4/19/2006	82.9
10/9/2006	38
4/5/2007	48.7
10/31/2007	53.4
4/15/2008	48
10/16/2008	51
4/8/2009	55.8
10/22/2009	97.9
5/10/2010	122.2
12/8/2010	181

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v.8.1.21 n/a..UG

### Time Series



MW-7B

Constituent: TVOC Analysis Run 3/8/2011 1:11 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

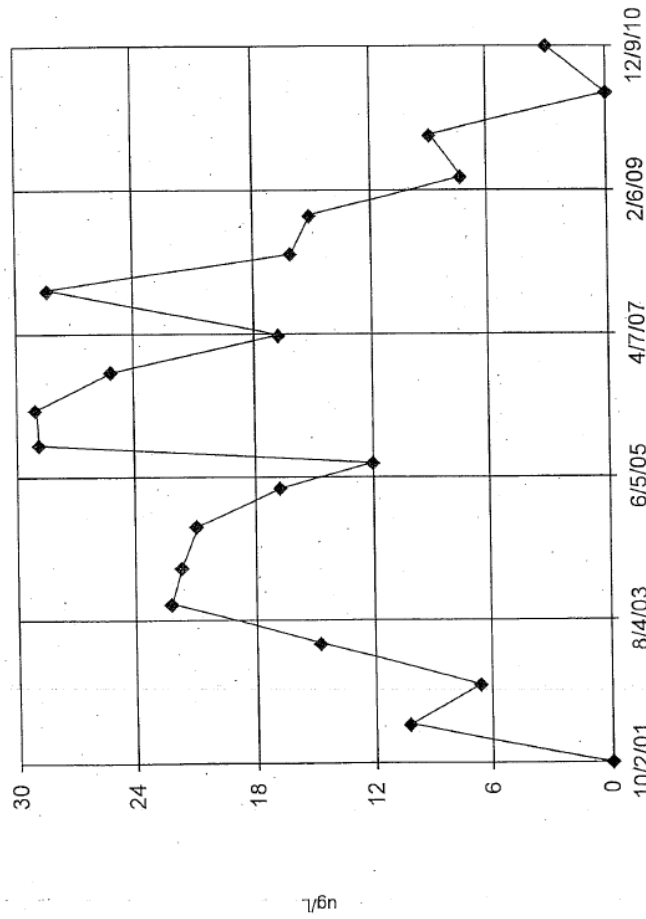
# Time Series

Constituent: TVOC (ug/L) Analysis Run 3/8/2011 1:11 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

	MW-7B
4/21/2003	0
12/9/2003	15
4/8/2004	4
10/19/2004	7.5
4/14/2005	4.5
11/4/2005	11.9
4/19/2006	11.7
10/10/2006	8.3
4/4/2007	34.8
10/31/2007	37.1
4/14/2008	5
10/16/2008	6
4/8/2009	0
10/22/2009	0 (D)
5/10/2010	0
12/8/2010	2.2

v.9.1.21 n/a. UG

### Time Series



MW-15

Constituent: TVOC Analysis Run 3/8/2011 1:22 PM

Facility: Northeast LF Client: Northeast LF Data File: Northeast

## Time Series

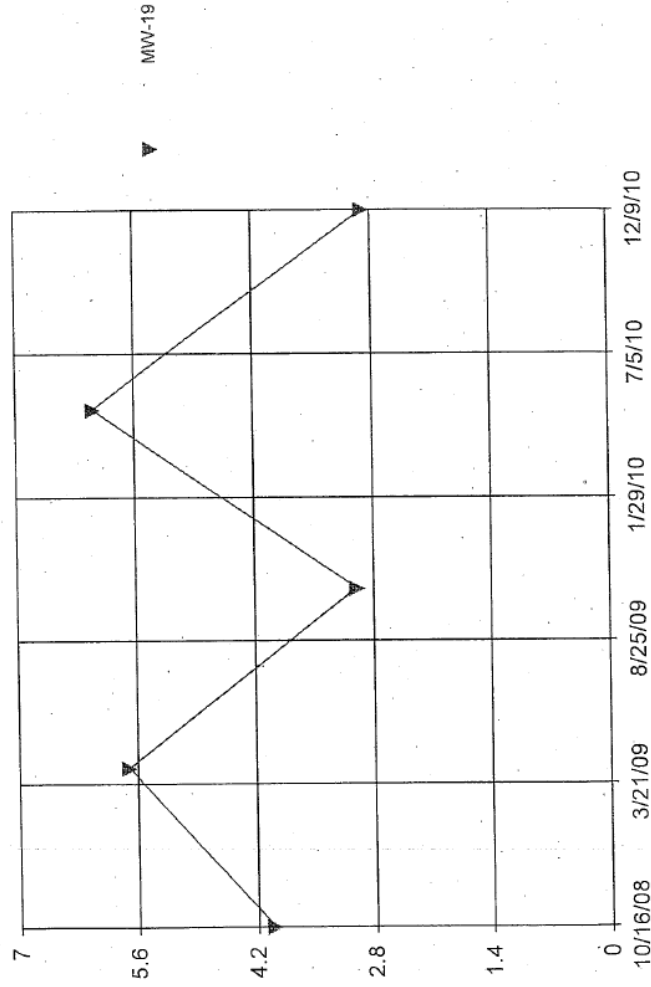
Constituent: TVOC (µg/L) Analysis Run 3/8/2011 1:22 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

	MW-15
10/2/2001	0
4/3/2002	10.2
10/4/2002	6.6
4/21/2003	14.7
10/23/2003	22.2
4/8/2004	21.7
10/19/2004	20.9
4/14/2005	16.7
8/11/2005	12
11/3/2005	28.9
4/19/2006	29
10/10/2006	25.1
4/4/2007	16.7
10/31/2007	28.4
4/14/2008	16
10/15/2008	15
4/9/2009	7.3
10/22/2009	8.9
5/6/2010	0
12/9/2010	2.9



v.9.1.21 n/a. UG

### Time Series



MW-19

Constituent: TVOC Analysis Run 3/8/2011 1:26 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

# Time Series

Constituent: TVOC (ug/L) Analysis Run: 3/8/2011 1:26 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

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	MW-19
10/16/2008	4
4/8/2009	5.7
10/22/2009	3
5/8/2010	6.1
12/8/2010	2.9

1. ANALYTICAL DATA SHEET - ANALYST: [illegible] DATE: [illegible]

2. ANALYTICAL DATA SHEET - ANALYST: [illegible] DATE: [illegible]

**TVOC Plots**



### Time Series

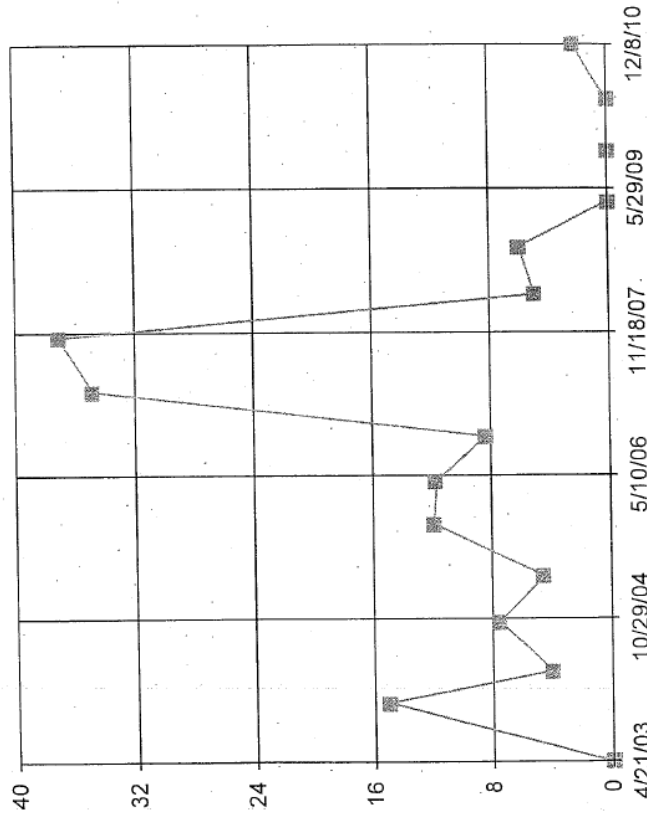
Constituent: TVOC (ug/L) Analysis Run 3/8/2011 1:09 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

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	MW-6
10/2/2001	0
4/2/2002	0
10/4/2002	0
4/17/2003	19.9
10/22/2003	23.1
4/7/2004	23.5
10/19/2004	48.3
4/14/2005	40.6
8/11/2005	52.2
11/2/2005	64
4/19/2006	82.9
10/9/2006	38
4/5/2007	48.7
10/31/2007	53.4
4/15/2008	48
10/18/2008	51
4/8/2009	55.8
10/22/2009	97.9
5/10/2010	122.2
12/8/2010	181

v.5.1.21 n/a. UG

### Time Series



Constituent: TVOC Analysis Run 3/8/2011 1:11 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

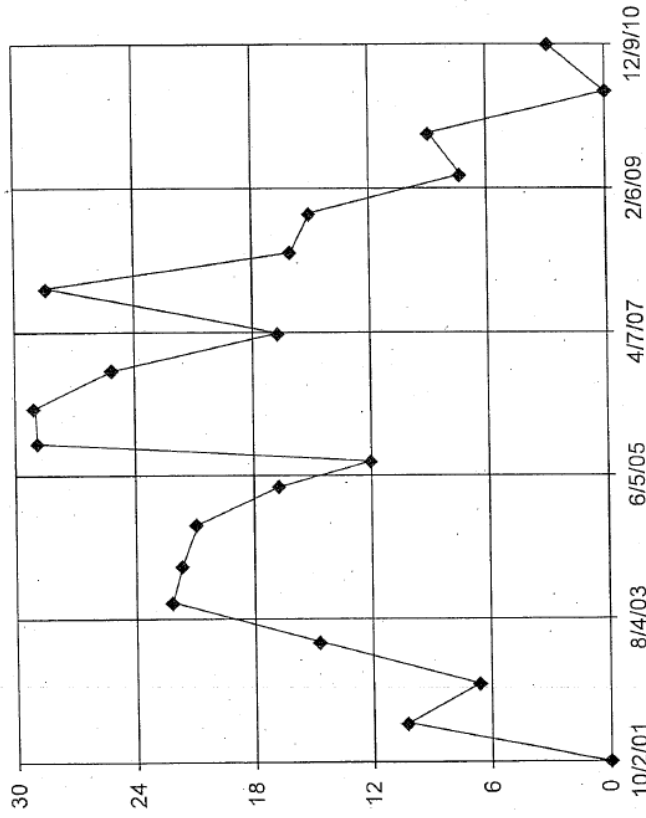
# Time Series

Constituent: TVOC (ug/L) Analysis Run 3/8/2011 1:11 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

	MVI-7B
4/21/2003	0
12/9/2003	15
4/8/2004	4
10/19/2004	7.5
4/14/2005	4.5
11/4/2005	11.9
4/19/2006	11.7
10/10/2006	8.3
4/4/2007	34.8
10/31/2007	37.1
4/14/2008	5
10/16/2008	6
4/8/2009	0
10/22/2009	0 (D)
5/10/2010	0
12/9/2010	2.2

v.9.1.21 n/a. UG

Time Series



Constituent: TVOC Analysis Run 3/8/2011 1:22 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast



# Time Series

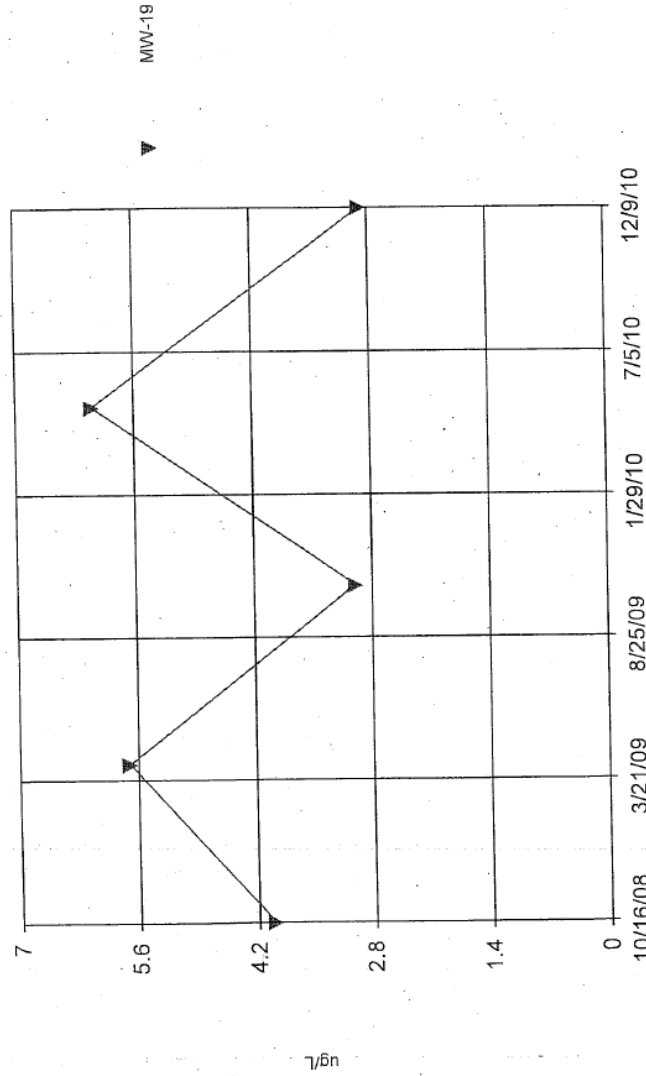
Constituent: TVOC (ug/L) - Analysis Run 3/8/2011 1:22 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

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	MW-15
10/2/2001	0
4/3/2002	10.2
10/1/2002	6.6
4/21/2003	14.7
10/22/2003	22.2
4/8/2004	21.7
10/19/2004	20.9
4/14/2005	16.7
8/11/2005	12
11/3/2005	28.9
4/19/2006	29
10/10/2006	25.1
4/4/2007	16.7
10/31/2007	28.4
4/14/2008	16
10/15/2008	15
4/9/2009	7.3
10/22/2009	8.9
5/6/2010	0
12/9/2010	2.9

v.9.1.21 n/a.UG

### Time Series



MW-19

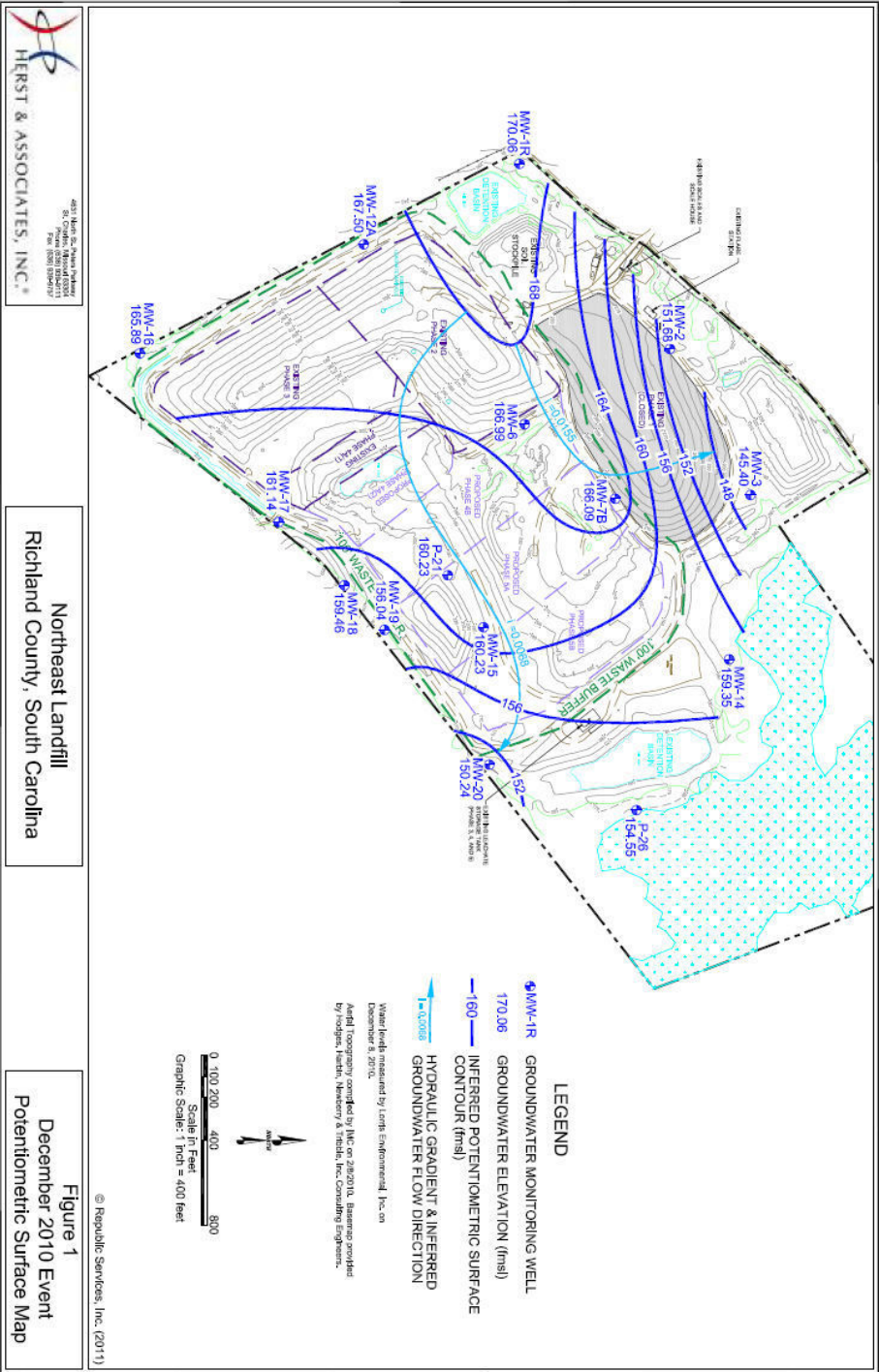
Constituent: TVOC Analysis Run 3/8/2011 1:26 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

# Time Series

Constituent: TVOC (ug/L) - Analysis Run 3/6/2011 1:26 PM  
Facility: Northeast LF Client: Northeast LF Data File: Northeast

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	MW-19
10/16/2008	4
4/8/2009	5.7
10/22/2009	3
5/6/2010	6.1
12/9/2010	2.9



# Richland County Council Request of Action

## **Subject**

Old LRADAC Building Environmental Remediation and Demolition Project [PAGES 469-472]

## **Notes**

November 22, 2011 - The committee recommended that Council approve the award of a contract to Neo Corporation for the demolition of the LRADAC Building in the amount of \$349,600. The committee further recommended that an additional 25% contingency, which would be \$87,400, be included in this project. The vote was in favor.

# **Richland County Council Request of Action**

**Subject:** Old LRADAC Building Environmental Remediation and Demolition Project

## **A. Purpose**

Council is requested to authorize the Procurement Director to award a contract to the recommended contractor to perform the required Environmental Remediation and Demolition of the old LRADAC building located at 1325 Harden Street within the Administration Facility Complex.

## **B. Background / Discussion**

The design work, as well as the bid documents for this project, was completed by the Dennis Corporation. The process completed by Dennis included substantial inspection and analysis of the building structural components as well as sampling and analysis of the building materials that were utilized during construction. Much of the materials utilized during the construction contain components that are deemed as hazardous by today's standards. This review and design process was lengthy due to the complexity of identifying and quantifying the hazardous materials. The Dennis Corporation will oversee the environmental remediation and demolition to ensure that the selected contractor meets all bid specifications, operates in a safe and environmentally responsible manner, meets all SC-DHEC air quality and hazard material removal requirements, the County's needs and expectations, and all OSHA and code requirements. This process will require air samples to be taken from multiple locations several times a day. These samples will be tested overnight for use in pre-work meetings each morning with Support Services, the engineer and contractor to ensure the current methods of containing all hazardous material are successful. Our goal is to ensure the safety of all persons in and around the project site as well as ensure no contaminants reach the environment before being properly contained, transported, and disposed of. The Environmental Remediation and Demolition of this project is expected to have a duration of 120 days, once the Notice to Proceed is issued by the Procurement Department.

The Contractor is to perform the work in a manner that will not create a negative impact the day to day operations provided by the County from the surrounding complex beyond any impacts approved throughout the design process.

Support Services has also worked to schedule this project so not to be in process concurrently with the improvements currently underway in the parking garage.

The result of the bid responses is as follows:

### **Bid summary by Contractor:**

<b>Contractor</b>	<b>Base Bid</b>
Neo Corporation	\$349,600.00
Carolina Wrecking Inc.	\$362,058.00
Clear Site Industrial, LLC	\$363,200.00

Neo Corporation was recommended for contract award by Dennis Corporation based on their review of all returned bid packets, as well as being the lowest responsible bidder whose bid complies materially with the specifications and requirements as publicized.

### C. Financial Impact

Project funding was budgeted for this project and exists within the Support Services budget. No additional funding is requested.

### D. Alternatives

1. Approve the request to award the contract to Neo Corporation, the lowest responsive and responsible bidder whose bid complies materially with the specifications and requirements as publicized utilizing the funding available within the Support Services budget.
2. Direct staff to award the bid to one of the alternate bid responders.
3. Do not approve the request to award a contract at this time and leave the LRADAC facility in its current condition. This option will place the building at risk to further deterioration from water intrusion and possibly lead to higher demolition cost in the future. Additionally, if the building is not removed, it will continue to present a risk to the public with potential environmental hazards due to the presence of asbestos, PCB's, and lead paint within the building. The facility also creates an ongoing security hazard due to the building being abandoned and intrusions by unauthorized persons.

### E. Recommendation

It is recommended by Support Services that Council authorize alternative 1.

Recommended by: John Hixon Department: Support Services Date: 11/3/11

### F. Reviews

(Please **SIGN** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

#### Finance

Reviewed by: Daniel Driggers

Date: 11/4/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Budget funds are appropriated for the project.

#### Procurement

Reviewed by: Rodolfo Callwood

Date: 11-04-11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Approve award of a contract to NEO Corporation the lowest, responsive and responsible bid which complies

materially with the specifications publicized. Additionally recommend a twenty (20%) contingency.

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

**Administration**

Reviewed by: Tony McDonald

Date: 11/7/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommend approval of the award of a contract to Neo Corporation for the demolition of the LRADAC Building. Further recommend a 25% contingency, which would be an additional \$87,400. Funding for the contract award, as well as the contingency, has been budgeted; no additional funds are required.



# Richland County Council Request of Action

**Subject**

Action to Make Certain Department Heads with Contractual Responsibility At Will Employment Status **[TO TABLE]**  
**[PAGES 473-476]**

**Notes**

November 22, 2011 - The committee recommended tabling this item. The vote was in favor.

## **Richland County Council Request of Action**

**Subject:** Action to Make Certain Department Heads with Contractual Responsibility on At Will Employment Status

### **A. Purpose**

The goal is to increase the level of accountability of Department Heads who deal with contracts that have direct contact with the public and those who have financial impact on the County. (If there is a problem relating to fairness, Mr. Jackson is willing to include all Department Heads and let the Committee sort this out.) This action is aimed to make Department Heads who have responsibility relating to contractual matters more responsive and responsible to the citizens of Richland County.

### **B. Background / Discussion**

Council Member Jackson is seeking to increase the level of accountability Department Heads who have contract responsibilities. Mr. Jackson is seeking to ensure these Department Heads are more responsive to the citizens of Richland County. Mr. Jackson has attempted to address his concern through the County Administrator. However, Mr. Jackson was informed that current County policies don't permit his concerns to be adequately addressed. Mr. Jackson said he does not think the issue is that anyone is breaking the procurement rules. His effort is to improve accountability of Department Heads and their responsiveness to the citizens of Richland County.

Mr. Jackson is seeking to remove the grievance rights of Department Heads who have contractual responsibility. That would enable the County Administrator to take disciplinary action without such Department Heads having rights of the grievance process. Mr. Jackson believes this would increase the level of accountability and responsiveness of the Department Heads who have contractual responsibility.

### **C. Financial Impact**

Revision to the County's Employee Handbook and revision to the County's HR Guidelines. Informing the Department Heads of the changes approved by the County Council.

### **D. Alternatives**

1. Approved the amendment to the County's Employee Handbook and HR Guidelines.
2. Not approve the amendments to the County's Employee Handbook and HR Guidelines.

### **E. Recommendation**

It is recommended that County Council approve option # 1.

Recommended by: Council Member Norman Jackson

Date:

## F. Reviews

(Please **SIGN** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

### Finance

Reviewed by: Daniel Driggers

Date: 9/16/11

Recommend Council approval

Recommend Council denial

✓ Council Discretion (please explain if checked)

Comments regarding recommendation: This is a policy decision for Council. Since the recommendation includes a change to the employee handbook, I would recommend that the HR Director be included for comment.

### Procurement

Reviewed by: Rodolfo Callwood

Date: 9/17/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: This is a policy decision for County Council.

### Human Resources

Reviewed by: Dwight Hanna

Date:

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Human Resources supports appropriate accountability for all levels of the County's workforce. As it relates to this specific proposal, Human Resources foresees some potential legal hurdles if all department heads are not included and/or clear business reasons are not used to identify which departments will be included or excluded. Therefore Human Resources suggests there be clear bona fide business reason(s) communicated to department heads so it is full understanding of the reason for the policy change and which department heads are affected. Because this change would remove an existing right, to file a grievance, the specific language in the proposed policy change should be reviewed and coordinated with Legal Department's input.

### Legal

Reviewed by: Elizabeth McLean

Date: 9/21/11

Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Legal comments provided in separate Attorney-Client Memo for Council/Committee Members and Authorized Staff

### Administration

Reviewed by: Tony McDonald

Date: 9/22/11

Recommend Council approval

✓ Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommend denial for reasons specified in the County Attorney's written opinion, which has been provided under separate cover.

# Richland County Council Request of Action

**Subject**

Responses from RFP to Medicare Retiree Group Health Insurance Benefit Services (*Possible Executive Session Item*)  
**[PAGES 477-480]**

**Notes**

November 22, 2011 - The committee voted to send this item to Council without a recommendation. The vote in favor was unanimous.

## Richland County Council Request of Action

**Subject:** Responses from RFP to Medicare Retiree Group Health Insurance Benefit Services

### **A. Purpose**

County Council is being asked to approve and authorize staff to negotiate and award a contract to the recommended vendor in response to an RFP. Vendors responded to the RFP seeking to provide Medicare retiree group health insurance benefit services to Richland County.

### **B. Background / Discussion**

The County authorized Human Resources to hire a consultant, Wells Fargo Insurance Services, to assist with developing, publishing, collecting, analyzing, and making recommendations on responses to an RFP for several employee services and Medicare retiree group health insurance benefit services. WFIS has now received and analyzed responses from vendors for Medicare retiree services. The responding vendors for each service were narrowed down to a list of finalists that included the incumbent vendor.

Medicare operates on a calendar year, January – December. The CMS (Center for Medicare & Medicaid Services) does not release information on Medicare until later in the calendar year, therefore, vendors were not able to provide responses earlier in the calendar year because they had not received information from CMS relating to federal Medicare contributions.

County Staff is not proposing revisions to the Medicare retiree health plan. Human Resources requested the consultant complete a detailed and comprehensive comparative analysis. The comparison was done by comparing the current plan and each finalist vendor's proposal.

Medicare retirees will have the opportunity to participate and earn the same wellness incentives as employees and early retirees. After years of research and study, the County is now prepared and proposes to implement and integrate into our health plan an optional wellness incentive program as a strategic part of our health insurance plan. An eligible employee or retiree can continue to receive health insurance paid by the County up to 100% (based on the percentage they now qualify for the County to pay) contingent upon them completing a few items that have been identified as being beneficial to the employee's or retiree's personal health by health care professionals. Medicare retirees who decide not to participate in the incentive plan will pay \$50.00 per month (in addition to any other premiums due, see attachment for details). The wellness incentive plan does not exclude any retiree based on a medical condition, illness, injury, or disability. However, if it is unreasonably difficult due to a medical condition for a Medicare retiree to achieve these goals, or if it is medically inadvisable for the Medicare retiree to achieve these goals, they can call Human Resources. Human Resources will work with the Medicare retiree to develop a solution.

### **C. Financial Impact**

See Attachment

Specific vendor names along with their specific cost responses relating to potential contractual proposal will be provided to County Council during executive session.

**D. Alternatives**

1. Approve and authorize staff to implement wellness incentive program for Medicare retirees and negotiate and award contract to the recommended vendor.
2. Approve vendor other than recommended vendor and authorize staff to implement wellness incentive plan.

**E. Recommendation**

It is recommended that County Council approve option # 1 based on the recommendation and justification provided by the consultant, WFIS and the actions that have been approved for employees and early retirees.

Recommended by: Human Resources Department

Date: October 27, 2011

**F. Reviews**

(Please ***SIGN*** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Finance**

Reviewed by: Daniel Driggers

Date: 11/14/11

✓  Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

**Procurement**

Reviewed by: Rodolfo Callwood

Date: 11/14/11

✓  Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation:

**Legal**

Reviewed by: Larry Smith

Date:

✓  Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommendation of approval is based on understanding from HR that our health care provider has determined that the wellness incentive program meets all of the requirements of federal law.

**Administration**

Reviewed by: Tony McDonald

Date: 11/17/11

✓  Recommend Council approval

Recommend Council denial

Council Discretion (please explain if checked)

Comments regarding recommendation: Recommend approval as proposed by the Human Resources Director.



# Richland County Government -2012 Medicare Advantage Market Analysis

BENEFITS	BCSSC Current Plan		Humana	
	In Network	Out of Network	In Network	Out of Network
Annual Deductible	\$350	\$500	\$350	\$500
Out of Pocket Maximum (excludes deductible)	\$2,000	\$4,000	\$2,000	\$4,000
Out of Pocket Maximum (includes deductible)	\$2,350	\$4,500	\$2,350	\$4,500
Lifetime Maximum	Unlimited		Unlimited	
<b>Physician Services</b>				
Primary Care Office Visits	\$20 Copay	70% after deductible	\$20 Copay	70% after deductible
Specialist Office Visits	\$35 Copay	70% after deductible	\$35 Copay	70% after deductible
Preventive Care	100%	70%	100%	70%
Eye Exam (not routine)	\$35 Copay	70% after deductible	\$35 Copay	70% after deductible
Hospital Visits	80% after deductible	70% after deductible	80% after deductible	70% after deductible
<b>Outpatient Hospital Services</b>				
Emergency Room	\$50 Copay	\$50 Copay	\$50 Copay	\$50 Copay
Urgent Care	80% after deductible	70% after deductible	80% after deductible	70% after deductible
Lab	80% after deductible	70% after deductible	80% after deductible	70% after deductible
X-ray	80% after deductible	70% after deductible	80% after deductible	70% after deductible
MRI, CT, and PET Scans	80% after deductible	70% after deductible	80% after deductible	70% after deductible
Surgery	80% after deductible	70% after deductible	80% after deductible	70% after deductible
<b>Inpatient Hospital Services</b>				
Room/Board	80% after deductible	70% after deductible	80% after deductible	70% after deductible
<b>Prescription Drug Services</b>				
Generic	\$10 Copay		\$10 Copay	
Preferred BrandName	\$35 Copay		\$35 Copay	
Non-preferred BrandName	\$55 Copay		\$55 Copay	
Mail-Order	\$20/\$80/\$140		\$20/\$80/\$140	
Specialty Pharmaceuticals	\$75 Copay		\$75 Copay	
<b>Mental Health</b>				
Inpatient	80% after deductible	70% after deductible	80% after deductible	70% after deductible
Outpatient	\$20 Copay	70% after deductible	\$20 Copay	70% after deductible
<b>Other Services</b>				
Ambulance	80% after deductible	80% after deductible	80% after deductible	80% after deductible
DME	80% after deductible	70% after deductible	80% after deductible	70% after deductible
Home Health - limited to 60 visits per calendar year	80% after deductible	70% after deductible	80% after deductible	70% after deductible
Skilled Nursing Facilities - limited to 100 days	80% after deductible	70% after deductible	80% after deductible	70% after deductible
<b>Current Enrollment</b>				
Employee Only:	172	\$384.00	\$384.00	\$347.00
Spouse:	10	\$384.00	\$384.00	\$347.00
Per Child	2	\$384.00	\$384.00	\$347.00
Family:				
<b>Total Monthly Premium:</b>	\$70,656	\$70,656	\$63,848	\$63,848
<b>Total Annual Premium:</b>	\$847,872	\$847,872	\$766,176	\$761,760
<b>% Increase/Decrease over Current:</b>		0.0%	-9.6%	-10.2%
<b>\$ Increase/Decrease over Current:</b>		\$0	-\$81,696	-\$86,112

Red Denotes Plan Change with Lesser Benefit  
 Blue Denotes Plan Change with Increased Benefit



# Richland County Council Request of Action

**Subject**

Business Service Center Appeals Board-1 [Vincent K. Bartley, January 22, 2012\*]

\* This person is eligible for reappointment

# Richland County Council Request of Action

**Subject**

Township Auditorium Board-1 [Angela M. Kirby, May 15, 2012 *Resigned*]

# Richland County Council Request of Action

**Subject**

Accommodations Tax Committee-4 [positions are for 2 persons in Hospitality and 2 employed with Lodging]; no applications were received.

# Richland County Council Request of Action

**Subject**

Airport Commission-3; applications were received from the following: J. Russell Goudeock, II\*; Stuart C. Hope; Don Purcell\* **[PAGES 484-490]**

\* Signifies incumbent



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

**Applicant must reside in Richland County.**

Name: J. Russell Goudelock, II

Home Address: 37 Braddock Point, Columbia, SC 29209

Telephone: (home) 803-782-2024 (work) 803-227-2222

Office Address: 1320 Main Street, 10th Floor, Meridian Bldg., Columbia, SC 29201

Email Address: rgoudelock@mgclaw.com

Educational Background: B.S. Bus. Admin, The Citadel, 1982; J.D. Law, U.S.C., 1986

Professional Background: Attorney, 1986-present

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

Name of Committee in which interested: Richland County Airport Commission

Reason for interest: I am completing my term on RCAC and have served county actively and effectively for 3 years. I am a licensed pilot with aircraft based at the airport.

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

I have been a private pilot for 34 years. I have an aircraft based at the airport. I am a business owner with experience in budgeting, operations and allocation of resources.

Presently serve on any County Committee, Board or Commission? Yes; RCAC

Any other information you wish to give? None

Recommended by Council Member(s): Yes; Gregory Pierce

Hours willing to commit each month: At least 10+ hours; more, when necessary

**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.*

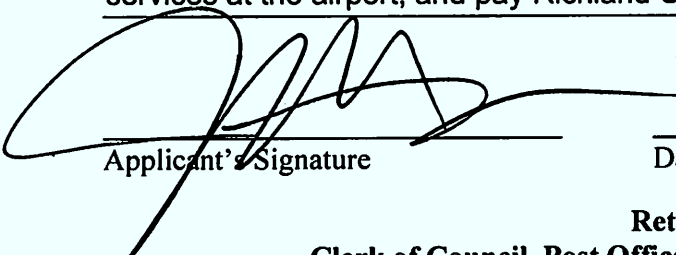
Yes \_\_\_\_\_ No **X** \_\_\_\_\_

**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 **X** \_\_\_\_\_ No \_\_\_\_\_

If so, describe: I am a shareholder in Columbia Aircraft, Inc. It is a corporation that owns an aircraft based at the airport. The corporation pays hangar rent, buys fuel and other services at the airport, and pay Richland County Personal Property taxes for its aircraft.

 \_\_\_\_\_  
Applicant's Signature

11/15/11  
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: _____	Received by: _____
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	

2



APPLICATION FOR SERVICE ON RICHLAND COUNTY  
COMMITTEE, BOARD OR COMMISSION

Applicant must reside in Richland County.

Name: STUART C. HOPE JR.

Home Address: 180 WATERGEE AVE COLUMBIA SC 29205

Telephone: (home) 929-2600 (work) 771-7766

Office Address: 2901 MILLWOODS AVE COLUMBIA SC 29205

Email Address: SHOPE@HOPEAVIATION.COM

Educational Background: BS BUSINESS ADM - USC

Professional Background: AVIATION INSURANCE BROKER

Male  Female

Age: 18-25  26-50  Over 50

Name of Committee in which interested: RICHLAND COUNTY AIRPORT COMMISSION

Reason for interest: I AM A PILOT, LEARNED TO FLY AT OWENS FIELD PRIOR TO THE NEW RUNWAY/AIRPORT, AND HAVE FLOWN A BUSINESS AIRCRAFT OUT OF THE AIRPORT, ALL OF MY ADULT LIFE. I LOVE THIS AIRPORT AND WANT TO SEE IT OBTAIN THE GREATNESS IT IS CAPABLE OF

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

I AM AN AIRCRAFT TRANSPORT PILOT AND HAVE FLOWN FROM THIS AIRPORT + 30 YEARS. I AM INTIMATELY FAMILIAR WITH THE PROBLEMS/OPPORTUNITIES, I ALSO SERVED PREVIOUSLY ON THE RICHLAND COUNTY CONSERVATION COMMISSION  
Presently serve on any County Committee, Board or Commission? NO

Any other information you wish to give? NO

Recommended by Council Member(s): GREG PEARCE, VAC HUTCHINSON,

Hours willing to commit each month: WHAT IT TAKES (REASONABLE HRS)

CONFLICT OF INTEREST POLICY

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*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 SEA

### 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: I AM AN AVIATION INSURANCE BROKER AND WRITE THE LIABILITY INSURANCE ON THE AIRPORT (+ TO YES) DAVID CHAMBERS IS CONTACT. HAPPY TO GIVE UP THE ACCOUNT IF CONSIDERED A CONFLICT

[Signature]  
Applicant's Signature

9-28-2010  
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: _____	Received by: _____
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: Don Purcell  
Home Address: 216 Pebble Creek Rd Columbia SC 29223  
Telephone: (home) 803 736-0628 (work) 803-788-1345  
Office Address: 105 Burmaster Dr. Columbia SC 29229  
Email Address: dwp@sc.rr.com  
Educational Background: BBA - University of Texas  
Professional Background: Pres. Spring Valley Auto Group  
Male  Female  Age: 18-25  26-50  Over 50   
Name of Committee in which interested: Airport Commission  
Reason for interest: Currently serving on Commission as  
Vice Chairman & Chairman of Operations  
Your characteristics/qualifications, which would be an asset to Committee, Board or  
Commission:  
Pilot, current commission member, Past Pres & Board  
member Colo Chamber of Commerce & NE Area Council  
Presently serve on any County Committee, Board or Commission? Airport  
Any other information you wish to give? \_\_\_\_\_  
Recommended by Council Member(s): Valerie Hutchinson, James Manning  
Hours willing to commit each month: 20+

CONFLICT OF INTEREST POLICY

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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.

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*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

  11 / 11 / 11    
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: _____	Received by: _____
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	

# Richland County Council Request of Action

**Subject**

Appearance Commission-2 [positions needed are 1 horticulturalist and 1 landscaper]; no applications were received.

# Richland County Council Request of Action

**Subject**

Board of Assessment Control-1; no applications were received

# Richland County Council Request of Action

**Subject**

Building Codes Board of Adjustments-3 [positions needed: 1 electrician and 2 persons from the fire protection industry]; no applications were received

# Richland County Council Request of Action

**Subject**

Business Service Center Appeals Board-1 [CPA preferred]; no applications were received

# Richland County Council Request of Action

**Subject**

Internal Audit Committee-1; one application was received from Sandra C. Manning [**PAGES 495-497**]



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

**Applicant must reside in Richland County.**

Name: Sandra D. Manning

Home Address: 4531 Briarfield Rd. Columbia, SC 29206

Telephone: (home) 787-0030 (work) 736-8740

Office Address: E.L. Wright Middle School

Email Address: DrSandraManning@AOL.com

Educational Background: Ph.D. School Psychology

Professional Background: School Psychologist at Richland Two

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

Name of Committee in which interested: Internal Audit

Reason for interest: Quality Assurance of County Services  
is very important

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

Have Ph.D. and 12 years elected services for the  
community on Richland One School Board

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: 5-10

**CONFLICT OF INTEREST POLICY**

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*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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sandra C. Manning  
Applicant's Signature

11-7-11  
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: _____	Received by: _____
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	

# Richland County Council Request of Action

**Subject**

Lexington/Richland Alcohol and Drug Abuse Council-2; applications were received from Marilyn M. Matheus\* and Timothy D. Harbeson\* **[PAGES 498-502]**

\* Signifies incumbent



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

**Applicant must reside in Richland County.**

Name: Timothy D. Harbison  
Home Address: 320 Bullenline Estates Rd, Irmo, SC 29063  
Telephone: (home) 749-3224 (work) 354-9809  
Office Address: 6334 St. Andrews Rd., Suite 101, Columbia, SC 29212  
Email Address: harbison4@bellsouth.net  
Educational Background: J. D.  
Professional Background: Private practice attorney  
Male  Female  Age: 18-25  26-50  Over 50   
Name of Committee in which interested: CRADAC  
Reason for interest: Current Board member and wish to  
continue service  
Your characteristics/qualifications, which would be an asset to Committee, Board or  
Commission:  
  
  
Presently serve on any County Committee, Board or Commission? Yes, CRADAC  
Any other information you wish to give? \_\_\_\_\_  
Recommended by Council Member(s): \_\_\_\_\_  
Hours willing to commit each month: 4

**CONFLICT OF INTEREST POLICY**

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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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]   
Applicant's Signature

12/1/11   
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: _____	Received by: _____
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: Marilyn M. Matheus

Home Address: 3703 Maybank Street

Telephone: (home) 803-754-6340 (work) 803-898-7858

Office Address: 1535 Confederate Ave.

Email Address: mackmina@aol.com

Educational Background: BA Telecommunications Kent State University, Kent Ohio &  
MFA candidate, Counseling, South University, Columbia, SC

Professional Background: 24 years experience with SC DSS, Public Affairs & Constituent  
Services

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

Name of Committee in which interested: LRADAC

Reason for interest: I'd like to continue my support of this incredible organization and assist  
them in helping the many individuals and families in Lexington and Richland County become  
healthy and productive citizens.

Your characteristics/qualifications, which would be an asset to Committee/Board/ Commission:  
I will soon be certified counselor. I have witnessed the work of this organization on many levels.  
I have a wealth of experience in human services and at-risk behavior. My commitment to  
helping families out of crisis is proven and respected statewide.

Presently serve on any County Board/Commission/Committee? LRADAC

Any other information you wish to give? \_\_\_\_\_

Recommended by Council Member(s): \_\_\_\_\_

Hours willing to commit each month: 5-20 hours or whenever necessary



# Richland County Council Request of Action

**Subject**

Richland Memorial Hospital Board-4; applications were received from the following: James Edward "Ward" Bradley, Rosalyn Woodson Frierson\*; Gerald Isreal, Jr.\*; Boyd Summers [**PAGES 503-514**]

\* Signifies incumbent



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

**Applicant must reside in Richland County.**

Name: James Edward "Ward" Bradley

Home Address: 3601 Devereaux Road, Columbia, SC 29205

Telephone: (home) (803) 256-6796 (work) (803) 796-9160

Office Address: 1700 Sunset Blvd., West Columbia, SC 29169

Email Address: ward@mhlaw.com

Educational Background: Irmo HS 1986; Davidson College, B.A. 1990; USC School of Law, J.D. 1993

Professional Background: Attorney - Previously at McNair Law Firm; Currently at Moore, Taylor & Thomas

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

Name of Committee in which interested: Richland Hospital Board

Reason for interest: I had the honor of serving on the Children's Hospital Board and would like the opportunity to serve on the Hospital Board.

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

Commission:  
I have extensive experience in the legal field as it relates to Hospitals and the medical profession especially regarding malpractice defense law.

Presently serve on any County Committee, Board or Commission? NO

Any other information you wish to give? please see attached letter and resumé

Recommended by Council Member(s): Gregory Pearce and Seth Rose

Hours willing to commit each month: what is required by job

**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.*

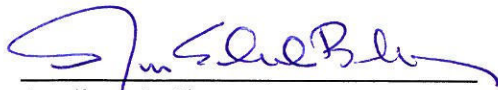
Yes \_\_\_\_\_ No  \_\_\_\_\_

#### 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: I do not have any personal or financial conflict, but I do wish to disclose that my wife Betsy Bradley works in the legal department at Richland



Applicant's Signature

10/11/11  
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.**

Staff Use Only	
Date Received: _____	Received by: _____
Date Sent to Council: _____	
Status of Application: <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> On file	

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**JAMES EDWARD BRADLEY**  
Moore, Taylor & Thomas, P.A.  
P.O. Box 5709  
West Columbia, South Carolina 29171  
(803) 796-9160

**PERSONAL:** Born Chapel Hill, North Carolina, December 18, 1967  
Son of James Bradley, Jr. and Nancy Jones Bradley  
Married to Elizabeth Holderman: 3 children – ages 8, 6, and 6

**EDUCATION:** **UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW**  
Columbia, South Carolina  
J.D., *Cum Laude*, May 1993  
**Honors and Activities**  
Order of the Coif; Publications Editor, South Carolina Law Review; Associate Justice, Moot Court Bar; National Moot Court Team; Order of the Barrister; Order of the Wig and Robe; Dean's List; Legal Writing Instructor; Elected Representative, Student Bar Association; Karen Lee Scholarship; John Belton O'Neal Inn of Court; Academic Standing Committee and Dean's Advisory Counsel

**DAVIDSON COLLEGE**  
Davidson, North Carolina  
B.A., Economics, May 1990

**LEGAL EXPERIENCE:** **UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW**  
Columbia, South Carolina  
Adjunct Professor, Legal Writing 1998-2000

**McNAIR LAW FIRM**  
Columbia, South Carolina  
Associate, Commercial Litigation 1995-1997

**THE HONORABLE G. ROSS ANDERSON, JR.**  
**Federal District Court Judge for the District of South Carolina**  
Law Clerk 1994-1995

**THE HONORABLE DON S. RUSHING**  
**Resident Circuit Judge for the Sixth Judicial Circuit**  
Law Clerk 1993-1994

**NELSON, MULLINS, RILEY & SCARBOROUGH**  
Columbia, South Carolina  
Summer Associate, Summers 1991 and 1992

**PUBLICATIONS:** *Carolina Research and Development Foundation Considered Public Body Under Freedom of Information Act*, 44 SCLR 127 (1992)  
*Cameras in the Courtroom Revisited*, South Carolina Lawyer, March/April 1994 at 33  
*Daubert! Small Impact on South Carolina Evidence Law*, South Carolina Trial Lawyer Bulletin, Fall 1994 at 12

**PROFESSIONAL ORGANIZATIONS:** American Board of Trial Advocates 2007-2011  
Chairman, South Carolina Bar Judicial Qualifications Committee 2010-2011  
South Carolina Bar Judicial Qualification Committee 2007-2011  
President USC School of Law Alumni Association 2008-2011  
Richland County Bar Association Memorials Chair 2009

Richland County Bar Newsletter Editor 2010-2011  
Executive Committee Richland County Bar 2011  
11<sup>th</sup> Circuit Representative, South Carolina Bar House of Delegates 2002-2011  
11<sup>th</sup> Circuit Representative, Young Lawyers Division 2001-2002  
5<sup>th</sup> Circuit Representative, Young Lawyers Division 1995-1997  
Chairman, Tolerance Project 1994-1995  
Chairman, Law School for Nonlawyers Project 1995-1997  
Editor, *The Bar Tab*, South Carolina Publication 1997  
Board of Editors, *The Young Lawyer*, ABA Publication 1996-1998

**COMMUNITY INVOLVEMENT:** Shandon Presbyterian Church, Sunday School Teacher 1997-2011  
Salkehatchie Summer Service Project Board of Directors 1997-2011  
Richland County Children's Hospital Board 2004-2007  
Leadership Columbia 1997

**PRESENTATIONS:** *Civil Court Judicial Forum*  
Moderator  
Columbia, South Carolina  
September 30, 2009

*The Art of Depositions: Powerful Techniques to Maximize Your Success*  
Columbia, South Carolina  
October 30, 2008

*Advanced Discovery and Evidence*  
Columbia, South Carolina  
November 30, 2007

*Preserving Objections and Making Post-Trial Motions*  
South Carolina Defense Trial Attorneys' Association  
Asheville, North Carolina  
July 27, 2007

*Building Your Civil Trial Skills*  
Columbia, South Carolina  
December 19, 2006

*Winning Your First Civil Trial in South Carolina: What They Didn't Teach You in Law School*  
Columbia, South Carolina  
March 22, 2006

*The Fundamentals of Construction Contracts: Understanding the Issues*  
Columbia, South Carolina  
February 10, 2006

*Conducting Depositions in South Carolina: Practical Strategies That Win Cases*  
Columbia, South Carolina  
December 15, 2005

*How to Litigate Your First Civil Trial in South Carolina*  
Columbia, South Carolina  
December 20, 2004

*Superior Deposition Strategies in South Carolina Civil Trial Practice*  
Columbia, South Carolina  
December 9, 2004



**APPLICATION FOR SERVICE ON RICHLAND COUNTY  
COMMITTEE, BOARD OR COMMISSION**

**Applicant must reside in Richland County.**

Name: Rosalyn Woodson Frierson

Home Address: 1320 Ashland Drive, Columbia, S.C. 29229

Telephone: (home) (803) 735-0439 (work) (803) 734-1802

Office Address: 1015 Sumter Street, Ste. 200, Columbia, SC 29201

Email Address: rwfriers@yahoo.com

Educational Background: Juris Doctor, USC School of Law; BS Business Administration, USC

Professional Background: State Court Administrator, S.C. Judicial Department, member S.C. Bar

Male      Female    X                      Age:    18-25                      26-50                      Over 50    X

Name of Committee in which interested: Palmetto Health Richland Board of Trustees

Reason for interest: As a lifelong resident of Columbia and Richland County, I continue to have an interest in serving this community and in helping to protect the public interest as it relates to the health of individuals in our community.

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission: My years experience in the public sector and my nearly 4 years service on the RMH Board will aid me in keeping the public interest at the forefront. Also, my ability to work well with others would be an asset.

Presently serve on any County Committee, Board or Commission? Yes

Palmetto Health Richland Board of Trustees

Any other information you wish to give? \_\_\_\_\_

Recommended by Council Member(s): Gregory Pearce

Hours willing to commit each month: 5 hours or more as needed

**CONFLICT OF INTEREST POLICY**

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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: N/A

  
Applicant's Signature

November 11, 2011  
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.**

Staff Use Only			
Date Received: _____	Received by: _____		
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: Gerald Isreal, Jr.

Home Address: 210 Buckthorn Circle, Elgin SC, 29045

Telephone: (home) 803-788-8940 (work) 803-264-5596

Office Address: 4101 Percival Rd, Columbia SC, 29223, Mail code AX-740

Email Address:

Gerald.isreal@bcbsc

Educational Background: BS, Pharmacy, University of South Carolina

Professional Background: Senior Director, Pharmacy Services, BlueCross BlueShield of SC

Male  Female  Age: 18-25  26-50  Over 50

Name of Committee in which interested: Palmetto Richland Board of Trustees

Reason for interest: I want very much to continue serving as current member of this Board. I want to be a part of the continuing efforts to help this institution and the Alliance remain the best it can be!

Your characteristics/qualifications, which would be an asset to Committee, Board or Commission:

I have been an active member of this board for 3 years. I feel my professional background (pharmacist, health care industry), as well as my deep personal and medical connections in the community this hospital and Alliance serves, motivates and drives me to serve and support Palmetto Richland's leadership so we provide the best care possible to our patients.

Presently serve on any County Committee, Board or Commission? No

Any other information you wish to give? Not at this time

Recommended by Council Member(s): \_\_\_\_\_

Hours willing to commit each month: Flexible

**CONFLICT OF INTEREST POLICY**

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*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

11-16-2011 \_\_\_\_\_  
Date

**Return to:**  
**Clerk of Council, Post Office Box 192, Columbia, SC 29202.**  
**For information, call 576-2060.**

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**Applications are current for one year.**

<b>Staff Use Only</b>		
Date Received: _____	Received by: _____	
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: Boyd Summers
Home Address: 301 Dean Hall Lane Columbia, SC 29209
Telephone: (home) 695-1660 (work) 240-8433
Office Address: 1301 Gervais Street, Suite 600
Email Address: boyd.summers@colliers.com
Educational Background: Masters - USC BA - Clemson
Professional Background: Colliers Intl. - Broker SCT Corp - Sr. Mgr
Male [checked] Female [ ] Age: 18-25 [ ] 26-50 [checked] Over 50 [ ]

Name of Committee in which interested: Richland Memorial Hospital Board of Trustees
Reason for interest: Strong interest in Healthcare and Health care Policy.

I consider healthcare one of the most important issues facing our community.

Your characteristics/qualifications, which would be an asset to Committee, Board or

Commission:
Masters Degree in Administration. Several level corporate management experience. I would also bring a wealth of commercial real estate knowledge to the board.
Presently serve on any County Committee, Board or Commission? No

Any other information you wish to give? I would consider it an honor to serve Richland County on this board.
Recommended by Council Member(s): Greg Peasce, Damon Jeter, Seth Rose
Hours willing to commit each month: As many hours as it takes to get the job done.

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.

My wife, Janet Summers, is a part-time employee of Palmetto Health.

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.

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*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: My wife, Janet Summers, works part time  
for Palmetto Health

[Signature]  
Applicant's Signature

11-7-11  
Date

**Return to:**  
**Clerk of Council, Post Office Box 192, Columbia, SC 29202.**  
**For information, call 576-2060.**

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<b>Staff Use Only</b>		
Date Received: _____	Received by: _____	
Date Sent to Council: _____		
Status of Application:	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied <input type="checkbox"/> On file

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# Richland County Council Request of Action

**Subject**

Motion that Council rules be amended such that when 5 or fewer people are signed up to speak on a non-agenda item they be allowed to speak after those speaking to an agenda item have finished (towards the beginning of the meeting). If 6 or more people are signed up to speak on a non-agenda item then Council's current rule will take affect [**HUTCHINSON, JACKSON, ROSE**]

# Richland County Council Request of Action

**Subject**

**REPORT OF THE CLERK'S OFFICE ORGANIZATION AD HOC COMMITTEE[PAGES 516-519]**

**RICHLAND COUNTY, SOUTH CAROLINA  
CLASS DESCRIPTION**

**CLASS TITLE: EXECUTIVE CLERK TO COUNCIL  
COUNCIL SERVICES DEPARTMENT**

**GENERAL DESCRIPTION OF CLASS**

The purpose of the class is to provide responsible administrative and managerial support to ensure effective and efficient operations and activities of the County Council. Plans, organizes, directs and coordinates office staff, programs and activities to ensure that objectives are attained, plans are fulfilled and Council needs are met. Responsibility for relieving Council members of various administrative duties. Maintains effective internal and external relationships through management, leadership and communications to achieve economical, technical and productive performance. The class works within a general outline of work to be performed, and develops work methods that are general in nature and for which there are precedents. Work is performed under general supervision of the County Council.

**ESSENTIAL TASKS**

*The tasks listed below are those that represent the majority of the time spent working in this class. Computer related tasks require knowledge of and some proficiency with PC Windows-based software. Council may assign additional tasks related to the type of work of the class as necessary.*

Ensures that all mandated and statutory responsibilities related to County Council functions and requirements are met and done so within specified time requirements.

Recommends and participates in formation of Council rules and makes decisions within policies as approved by Council.

Implements decisions of the Council not delegated to the County Administrator or committees.

Tracks Council meeting motions and provides periodic reports on the status of those motions.

Receives Freedom of Information requests related to Council or individual Council members and forwards them to the County Attorney.

Develops and maintains record distribution, filing, retrieval and retention schedules for council records that comply with state statutes and Council policies and directives.

Conducts comprehensive and complex research to assist Council in preparing motions or as follow-up to Council requests.

Plans, prepares and manages the budget and financial reports for Council and clerk's office.

Ensures comprehensive orientation of new council members to Council, as well as County policies and procedures.

Ensures there are adequate supplies and equipment for council activities.

Recruits and retains competent personnel to staff positions. Sustains or improves staff performance by setting goals and objectives, evaluating progress and providing feedback. Promotes training and development opportunities for self and staff members.

Assists with special projects, programs and other duties as assigned.

### **INVOLVEMENT WITH DATA, PEOPLE, AND THINGS**

#### **DATA INVOLVEMENT:**

Requires gathering, organizing, examining, analyzing, monitoring and/or evaluating data or information and may prescribe action based on such data or information.

#### **PEOPLE INVOLVEMENT:**

Requires giving information, guidance and/or assistance to people to directly facilitate task accomplishment; to include providing directions or assignments to subordinates.

#### **INVOLVEMENT WITH THINGS:**

Requires handling or using machines, tools or equipment requiring brief instruction or experience, such as computers for data entry, fax machines, copiers, telephones or similar equipment.

### **COGNITIVE REQUIREMENTS**

#### **REASONING REQUIREMENTS:**

Requires ability to acquire overall understanding of the work environment and process, and performing skilled work involving set procedures and rules but with frequent problems.

#### **MATHEMATICAL REQUIREMENTS:**

Requires using addition and subtraction, multiplication and division, and/or calculating ratios, rates and percentages.

#### **LANGUAGE REQUIREMENTS:**

Requires reading technical instructions, procedures, manuals and charts to solve practical problems; composing routine and specialized reports, forms and business letters with proper format; speaking compound sentences using proper grammar and word form. This includes hard copy and electronic copy.

#### **MENTAL REQUIREMENTS:**

Requires doing profession tasks requiring a wide range of procedures and requiring intensive understanding of a restricted field or complete familiarity with the functions of a unit or small division of an operating agency; requires normal attention with short periods of concentration for accurate results or occasional exposure to unusual pressure.

## **VOCATIONAL/EDUCATIONAL AND EXPERIENCE PREPARATION**

### **VOCATIONAL/EDUCATIONAL PREPARATION AND EXPERIENCE REQUIREMENTS:**

Masters Degree with two years of experience or a Bachelor's Degree with four years of additional professional experience.

### **SPECIAL CERTIFICATIONS AND LICENSES:**

Must possess a valid state driver's license and be eligible to obtain Notary Public certification.

### **EXPERIENCE REQUIREMENTS:**

Requires at least two years of professional experience in government, administration/management, law or community education for those with a Masters degree or four years of experience for those with a Bachelor's Degree.

Experience in state or local government and/or supervisory experience preferred.

## **AMERICANS WITH DISABILITIES ACT REQUIREMENTS**

### **PHYSICAL AND DEXTERITY REQUIREMENTS:**

Requires sedentary work that involves walking or standing some of the time and involves exerting up to 10 pounds of force on a recurring basis or routine keyboard operations.

### **ENVIRONMENTAL HAZARDS:**

The job risks exposure to no known environmental hazards.

### **SENSORY REQUIREMENTS:**

The job requires normal visual acuity and field of vision, hearing and speaking ability, color perception.

## **JUDGMENTS AND DECISIONS**

### **JUDGMENTS AND DECISIONS:**

Responsible for guiding and advising others, requiring decisions affecting subordinates; works in a fluid environment with some written/oral instructions, but with many variations from the routine.

## **ADA COMPLIANCE**

Richland County is an Equal Opportunity Employer. ADA requires the County to provide reasonable accommodations to qualified individuals with disabilities. Prospective and current employees are invited to discuss accommodations.

# Richland County Council Request of Action

**Subject**

**REPORT OF THE FIRE AD HOC COMMITTEE[PAGE ]**



# Richland County Council Request of Action

**Subject**

A Resolution to appoint and commission George William Catoe, Jr. as a code enforcement officer for the proper security, general welfare, and convenience of Richland County **[PAGES 521-522]**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**A RESOLUTION OF THE  
RICHLAND COUNTY COUNCIL**

**A RESOLUTION TO APPOINT AND COMMISSION GEORGE WILLIAM CATOE, JR. AS A CODE ENFORCEMENT OFFICER FOR THE PROPER SECURITY, GENERAL WELFARE, AND CONVENIENCE OF RICHLAND COUNTY.**

**WHEREAS**, the Richland County Council, in the exercise of its general police power, is empowered to protect the health and safety of the residents of Richland County; and

**WHEREAS**, the Richland County Council is further authorized by Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended, to appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the County;

**NOW, THEREFORE, BE IT RESOLVED THAT** George William Catoe, Jr. is hereby appointed and commissioned a Code Enforcement Officer of Richland County for the purpose of providing for the proper security, general welfare, and convenience of the County, replete with all the powers and duties conferred by law upon constables, in addition to such duties as may be imposed upon him by the governing body of this County, including the enforcement of the County's hazardous materials and fire prevention regulations, and the use of an ordinance summons, and with all the powers and duties conferred pursuant to the provisions of Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended. Provided, however, George William Catoe, Jr. shall not perform any custodial arrests in the exercise of his duties as a code enforcement officer. This appointment shall remain in effect only until such time as George William Catoe, Jr. is no longer employed by Richland County to enforce the County's hazardous materials and fire prevention regulations.

**ADOPTED THIS THE 6<sup>th</sup> DAY OF DECEMBER, 2011.**

\_\_\_\_\_  
Paul Livingston, Chair  
Richland County Council

Attest: \_\_\_\_\_  
Michelle Onley  
Assistant Clerk of Council

# Richland County Council Request of Action

**Subject**

A Resolution to appoint and commission Karl L. Kinard as a code enforcement officer for the proper security, general welfare, and convenience of Richland County **[PAGES 523-524]**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**A RESOLUTION OF THE  
RICHLAND COUNTY COUNCIL**

**A RESOLUTION TO APPOINT AND COMMISSION KARL L. KINARD AS A  
CODE ENFORCEMENT OFFICER FOR THE PROPER SECURITY,  
GENERAL WELFARE, AND CONVENIENCE OF RICHLAND COUNTY.**

**WHEREAS**, the Richland County Council, in the exercise of its general police power, is empowered to protect the health and safety of the residents of Richland County; and

**WHEREAS**, the Richland County Council is further authorized by Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended, to appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the County;

**NOW, THEREFORE, BE IT RESOLVED THAT** Karl L. Kinard is hereby appointed and commissioned a Code Enforcement Officer of Richland County for the purpose of providing for the proper security, general welfare, and convenience of the County, replete with all the powers and duties conferred by law upon constables, in addition to such duties as may be imposed upon him by the governing body of this County, including the enforcement of the County's hazardous materials and fire prevention regulations, and the use of an ordinance summons, and with all the powers and duties conferred pursuant to the provisions of Section 4-9-145 of the Code of Laws of South Carolina 1976, as amended. Provided, however, Karl L. Kinard shall not perform any custodial arrests in the exercise of his duties as a code enforcement officer. This appointment shall remain in effect only until such time as Karl L. Kinard is no longer employed by Richland County to enforce the County's hazardous materials and fire prevention regulations.

**ADOPTED THIS THE 6<sup>th</sup> DAY OF DECEMBER, 2011.**

\_\_\_\_\_  
Paul Livingston, Chair  
Richland County Council

Attest: \_\_\_\_\_  
Michelle Onley  
Assistant Clerk of Council

# Richland County Council Request of Action

## **Subject**

- a. Based on Councilwoman Dickerson's motion to return the CMRTA to the City of Columbia, I make a motion to direct staff to determine the financial impact on Richland County of such action on an annual basis with a projection out to 5 years [MALINOWSKI]
- b. Resolution honoring the Recreation Commission on being reaccredited by CAPRA [WASHINGTON]
- c. Develop a Capital Projects Sales Tax for November 2012, with collections beginning May 1, 2013. The Capital Projects Sales Tax is a 1% increase, with 100% of the proceeds going towards identified capital projects in both the City, County and adjacent municipalities. It is a seven year tax, through 2019, expected to generate over \$400,000,000. A Priority Investment Element inventories potential funding sources and forecasted revenues available to finance planning initiatives, capital improvements, and other quality of life projects in the community should be used. Planning for roads, new parks, or new schools is the easy part; figuring out a long range capital plan to pay for them is the true challenge. New growth and development demand additional public services, roads, and utilities. Managing available revenue sources and enumerating project needs helps ensure that adequate capacity is available to serve the magnitude and timing of anticipated development.  
  
In essence, the Priority Investment Element would be a catalyst for the development of a more formalized Capital Improvement Planning Process and the incorporation of capital planning elements in our annual budgets that looks beyond year to year budget cycles. The Element would require improved coordination across multiple disciplines; Land Use, Transportation, Schools, and other Public Facilities would be planned and programmed not in a vacuum, but in a manner which anticipates the impacts each has on the other. Plans, programs, policies, and capital projects recommended in the Priority Investment Act (PIA) address needs highlighted throughout the Comprehensive Plan for Richland County and the City of Columbia as well as related entities. [JACKSON]
- d. Remove the 400ft separation between bars to have a more safe and friendly effective pedestrian environment. [JACKSON]
- e. Permanently finance the bus by a \$5 vehicle registration fee for noncommercial vehicles and \$10 for commercial vehicles. [JACKSON]
- f. Sheriff's Department Salary Increase Request [LIVINGSTON]
- g. Rezoning of Ridgeway Street from split commercial to residential [LIVINGSTON]

# Richland County Council Request of Action

**Subject**

Must Pertain to Items Not on the Agenda