



## County Council of Beaufort County

### County Council

#### Chairman

Joseph F. Passiment, JR.

#### Vice Chairman

D. Paul Sommerville

#### Council Members

Michael E. Covert

Gerald Dawson

Brian E. Flewelling

York Glover, SR.

Chris Hervochon

Alice G. Howard

Mark Lawson

Lawrence P. McElynn

Stu Rodman

#### County Administrator

Eric Greenway

#### Clerk to Council

Sarah W. Brock

#### Administration Building

Robert Smalls Complex

100 Ribaut Road

#### Contact

Post Office Drawer 1228

Beaufort, South Carolina 29901-1228

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# County Council Agenda

## County Council of Beaufort County

Monday, October 26, 2020 at 6:00 PM

[This meeting is being held virtually in accordance with Beaufort County Resolution 2020-05] CITIZEN COMMENT- CITIZEN COMMENT AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING AT PO DRAWER 1228, BEAUFORT SC 29901 OR BY WAY OF OUR PUBLIC COMMENT FORM AVAILABLE ONLINE AT [WWW.BEAUFORTCOUNTYSC.GOV](http://WWW.BEAUFORTCOUNTYSC.GOV)

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE AND INVOCATION - COUNCIL MEMBER LARRY MCELYNN
3. *PUBLIC NOTIFICATION OF THIS MEETING HAS BEEN PUBLISHED, POSTED, AND DISTRIBUTED IN COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT*
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES - SEPTEMBER 14, 2020 AND SEPTEMBER 28, 2020

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### CITIZEN COMMENTS

6. CITIZEN COMMENT - CITIZEN COMMENTS AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING AT PO DRAWER 1228, BEAUFORT SC 29901 OR BY WAY OF OUR **PUBLIC COMMENT FORM** AVAILABLE ONLINE AT [WWW.BEAUFORTCOUNTYSC.GOV](http://WWW.BEAUFORTCOUNTYSC.GOV)

***(EVERY MEMBER OF THE PUBLIC WHO IS RECOGNIZED TO SPEAK SHALL LIMIT COMMENTS TO THREE MINUTES WITH THIS PORTION GOING NO LONGER THAN 15 MINUTES)***

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### COMMITTEE REPORTS

7. LIAISON AND COMMITTEE REPORTS
8. CONSENT AGENDA (Page 3)

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### ACTION ITEMS

9. AMENDMENT TO ORDINANCE 2020/36 DECLARING LOUD AND UNNECESSARY VEHICULAR NOISE A PUBLIC NUISANCE AND PROVIDING THAT VIOLATIONS ARE A MISDEMEANOR
10. SECOND READING OF AN ORDINANCE TO REQUIRE INDIVIDUALS TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND LOCATIONS IN

THE LIMITS OF THE COUNTY OF BEAUFORT, SOUTH CAROLINA, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

- [11.](#) THIRD READING AND PUBLIC HEARING OF THE 2021 BUDGET ORDINANCE
- [12.](#) PUBLIC HEARING AND THIRD READING OF AN ORDINANCE REGARDING TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): ARTICLE 5, SECTION 5.6.50.e(2) TO ALLOW FOR MINOR MODIFICATIONS TO BILLBOARDS TO IMPROVE SAFETY STANDARDS DURING HURRICANES AND HIGH WIND EVENTS.
- [13.](#) PUBLIC HEARING AND THIRD READING OF AN ORDINANCE ESTABLISHING THE BEAUFORT COUNTY DISTANCE LEARNING FUND AND OTHER MATTERS RELATED THERETO
- [14.](#) PUBLIC HEARING AND THIRD READING OF AN ORDINANCE FOR THE BEAUFORT COUNTY AIRPORT (AWR) HANGAR GROUND LEASE AGREEMENT
- [15.](#) PUBLIC HEARING AND THIRD READING OF AN ORDINANCE REGARDING ACCOMMODATIONS TAX/ HOSPITALITY TAX RESERVE FUND
- [16.](#) PUBLIC HEARING AND THIRD READING TO AMEND ORDINANCE 2019/56 PENN CENTER RENOVATIONS
- [17.](#) PUBLIC HEARING AND THIRD READING OF AN ORDINANCE REGARDING A *TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): APPENDIX B TO REMOVE THE MAXIMUM LOT SIZE REQUIREMENT FOR MINOR RESIDENTIAL SUBDIVISIONS IN THE D3 GENERAL NEIGHBORHOOD (D3GN), THE D4 MIXED USE (D4MU); THE VILLAGE CENTER (D5VC), AND THE GATEWAY CORRIDOR (D5GC) DISTRICTS ON DAUFUSKIE ISLAND*
- [18.](#) RATIFICATION OF THE COUNTY ADMINISTRATOR'S SEVERANCE PACKAGE

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### BOARDS AND COMMISSIONS

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- [19.](#) CONSIDERATION OF THE REAPPOINTMENT OF DAN AHERN AND THE APPOINTMENT OF THOMAS SHEAHAN TO THE AIRPORTS BOARD

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### CITIZEN COMMENTS

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- 20. CITIZEN COMMENT- CITIZEN COMMENT AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING AT PO DRAWER 1228, BEAUFORT SC 29901 OR BY WAY OR OUR **PUBLIC COMMENT FORM** AVAILABLE ONLINE AT [WWW.BEAUFORTCOUNTYSC.GOV](http://WWW.BEAUFORTCOUNTYSC.GOV)  
***(EVERY MEMBER OF THE PUBLIC WHO IS RECOGNIZED TO SPEAK SHALL LIMIT COMMENTS TO THREE MINUTES WITH THIS PORTION GOING NO LONGER THAN 15 MINUTES)***
- 21. ADJOURNMENT

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## CONSENT AGENDA

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### Items Originating from the Finance Committee

- [1.](#) FIRST READING OF A BEAUFORT COUNTY BUSINESS LICENSE TAX STANDARDIZATION ORDINANCE
- [2.](#) FIRST READING OF AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND AMONG BEAUFORT COUNTY, SOUTH CAROLINA AND PROJECT STONE, PROVIDING FOR THE ISSUANCE OF SPECIAL SOURCE REVENUE CREDITS AND OTHER MATTERS RELATED THERETO.
- [3.](#) AN ORDINANCE TO AUTHORIZE AND APPROVE A MULTI-COUNTY PARK AGREEMENT BY AND BETWEEN BEAUFORT COUNTY AND JASPER COUNTY (PROJECTS STONE, GARDEN, GLASS, AND BURGER); TO REQUIRE THE PAYMENT OF A FEE IN LIEU OF AD VALOREM TAXES BY BUSINESSES AND INDUSTRIES LOCATED IN THE PARK; TO APPLY ZONING AND OTHER LAWS IN THE PARK; TO PROVIDE FOR LAW ENFORCEMENT JURISDICTION IN THE PARK; AND TO PROVIDE FOR THE DISTRIBUTION OF PARK REVENUES WITHIN JASPER COUNTY.
- [4.](#) FEE-IN-LIEU OF PROPERTY TAXES (FILOT)- PROJECT BURGER, PROJECT GARDEN, PROJECT GLASS

### Items Originating from the Natural Resources Committee

- [5.](#) FIRST READING OF AN ORDINANCE TO AMEND BEAUFORT COUNTY NO. 2020/12 TO REFLECT THE APPROPRIATE DOLLAR AMOUNT FOR PURCHASING REAL PROPERTY KNOWN AS THE PORT ROYAL BATTLEFIELD.

### Items Originating from the Public Facilities Committee

- [6.](#) RESOLUTION AUTHORIZING THE INTERIM COUNTY ADMINISTRATOR TO PREPARE AND SUBMIT A COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION FOR THE DETOUR ROAD SIDEWALK EXTENSION PROJECT.
- [7.](#) A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO PURSUE CONDEMNATION FOR PORTIONS OF PARCELS R123 015 000 0551 0000, R123 015 000 116G 0000, and R123 015 000 1002 0000 ASSOCIATED WITH RIGHT OF WAY ACQUISITION FOR SC 802 SAM'S POINT RIGHT TURN LANE PROJECT AS PART OF THE 2018 ONE CENT REFERENDUM
- [8.](#) REQUEST FOR PRIVATE ROAD ACCEPTANCE OF MAXINE LANE INTO COUNTY ROAD SYSTEM
- [9.](#) PETITION FOR COUNTY PORTION OF EDDINGS POINT ROAD TO BE CLASSIFIED AS PRIVATE
- [10.](#) RESOLUTION TO COMMISSION TWO SOLID WASTE AND RECYCLING ENFORCEMENT OFFICERS
- [11.](#) US 278 INDEPENDENT REVIEW

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**END OF CONSENT AGENDA**

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BEAUFORT COUNTY COUNCIL

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**Agenda Item Summary**

**Item Title:**

Approval of Minutes

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**Committee:**

County Council

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**Meeting Date:**

October 26, 2020

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**Committee Presenter (Name and Title):**

Chairman Passiment

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**Issues for Consideration:**

Approval of County Council September 14, 2020

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**Points to Consider:**

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**Funding & Liability Factors:**

None

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**Council Options:**

Approve, Modify, Reject

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**Recommendation:**

Consideration to (Approve, Modify, or Reject) Minutes for County Council September 14, 2020



**County Council of  
Beaufort County  
County Council Meeting**

**Chairman**

Joseph F. Passiment, JR.

**Vice Chairman**

D. Paul Sommerville

**Council Members**

Michael E. Covert  
Gerald Dawson  
Brian E. Flewelling  
York Glover, SR.  
Chris Hervochon  
Alice G. Howard  
Mark Lawson  
Lawrence P. McElynn  
Stu Rodman

**Acting County Administrator**

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# County Council Agenda

## County Council of Beaufort County

**Monday, September 14, 2020 at 6:00 PM**

[This meeting is being held virtually in accordance with Beaufort County Resolution 2020-05]

### CALLED TO ORDER

Chairman Passiment called the meeting to order at 6 PM

### PRESENT

Chairman Joseph F. Passiment  
Vice Chairman D. Paul Sommerville  
Council Member Michael Covert  
Council Member Gerald Dawson  
Council Member Brian Flewelling  
Council Member York Glover  
Council Member Stu Rodman  
Council Member Chris Hervochon  
Council Member Alice Howard  
Council Member Mark Lawson  
Council Member Lawrence McElynn

### Special Guest

Senator Tom Davis  
SCDOT Craig Winn  
Bft. County School District members

### PLEDGE OF ALLEGIANCE

Vice Chairman Sommerville, led the Pledge of Allegiance.

### FOIA

Chairman Passiment noted that the Public Notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act.

### APPROVAL OF AGENDA

Motion: It was moved by Council Member Flewelling, seconded by Council Member Rodman to have items 12,13,14 and 17 be moved before Consent Agenda upon what happens they can be considered a part of the Consent Agenda; for items 19, 20, 21, 22, 22, 23, 27, 29, 30, 31, 32 to amend the agenda. The motion was approved without objection.

Motion: It was moved by Council Member Flewelling, seconded by Council Member Covert to approve amended agenda. The motion was approved without objection.

### APPROVAL OF MINUTES

**Motion:** It was moved made by Council Member Flewelling, seconded by Council Member Howard to approve the minutes of July 1, 2020 and July 17, 2020. The motion is approved without objection.

### **CITIZEN COMMENT**

*(Every member of the public who is recognized to speak shall limit comments to three minutes - Citizens may email sbrock@bcgov.net, or comment on our Facebook Live stream to participate in Citizen Comment)*

Received several emails for citizen comments, regarding the following subjects: road expansion, retired employee health benefits, loud noise ordinance, impact fee emails.

Chairman Passiment read emails regarding the above subjects.

### **COMMITTEE REPORTS**

#### **LIAISON AND COMMITTEE REPORTS**

None

### **DISCUSSION ITEMS**

#### **US 278 CORRIDOR PROJECT UPDATE BY SCDOT**

Craig Wynn, SCDOT \*presents the US 278 Corridor Project Update with a Powerpoint\*

Council Member Hervonchon stated what the preferred alternative was a under the bridge solution.

Craig Wynn stated there is not enough to make the connection back and forth.

**Status:** For Informational Purposes Only

#### **UPDATE FROM SENATOR TOM DAVIS**

Senator Davis presented updated information on the 278 Corridor Project and seeking additional federal funding for the project.

Leland Colvin stated DOT welcomes any comments or independent study that can make life better for everyone.

Council Member Hervochon asked has Senator Davis seen the petition that is in Hilton Head for the independent review.

Senator Davis stated the framework that Mr. rodman provided can be a point of a working draft but you can explicit some things so that there is inclusion in working with the community to make improvements.

Chairman Passiment asked who would be taking the lead for the independent study.

Senator Davis stated Beaufort County should take the lead however Town of Hilton Head should defray some cost.

Council Member Rodman stated the County should do this with the administrator developing a scope of work.

**Motion:** It was moved by Council Member Rodman, seconded by Council Member Glover to develop a scope of work referencing the points raised by discussion on launching an independent view of the corridor project over the next 60 days with a 30 day ( mid-timeframe) review. The motion was approved without objection.

Chairman Passiment stated there is a letter from the Coastal Conservation League, Jessica White regarding the work of Craig Wynn.

**Motion:** It was moved by Council Member Rodman, seconded by Council Member Howard to extend meeting past 8 pm to no later then 9 pm. Voting Yea: Chairman Passiment, Vice Chairman Sommerville, Council Member

Covert, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member McElynn, Council Member Dawson. Voting Nay: Council Member Glover, Council Member Hervochoch, Council Member Flewelling. The motion passed 8:3.

## **PUBLIC HEARING**

### **11. Notice of a Public Hearing Concerning CDBG Application for the Whale Branch Sidewalk Project**

Chairman Passiment stated Notice of the public hearing concerning an application. Notice is by giving that given that on Monday, September 14 at 6:00 pm the Beaufort County Council will hold a virtual Public Hearing Concerning An Application To Be Submitted To The South Carolina Department of Commerce Grants Admission on or before September 18, 2020 for the Community Development block grant. This meeting is not available to the public because of health reasons but is available virtually. Public hearing comments will be accepted in writing to the clerk of council and citizens can also comment during the meeting through Facebook live. Beaufort county is requesting approximately five hundred and sixty eight thousand dollars to us extend a protest pedestrian walkway along Detour Road to Seabrook Road In The Seabrook Area. This Project, If funded will benefit approximately 85 residents of which at least 51 percent are MLMI. Which means low and moderate income persons. This public hearing and the Matters To Be Discussed Are Subject To The Provisions Of The Beaufort County Council's citizen partitions participation plan developed in anticipation of participation in The State Of South Carolina's Community Development Block Grant CDBG program. So that has been duly noted that we're going to do that

**Status:** For Informational Purposes Only

#### **Public Comments**

None

### **12. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE REGARDING A TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): ARTICLE 5, SECTION 5.3.20 APPLICABILITY– TO APPLY ARCHITECTURAL STANDARDS AND GUIDELINES TO TWO-FAMILY (DUPLEX) RESIDENTIAL**

**Status:** For Informational Purposes Only

#### **Public Comments**

None

### **13. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE FINDING THAT THE FRIPP ISLAND PUBLIC SERVICE DISTRICT, SOUTH CAROLINA, MAY ISSUE NOT EXCEEDING \$1,550,000 OF GENERAL OBLIGATION BONDS AND TO PROVIDE FOR THE PUBLICATION OF NOTICE OF THE SAID FINDING AND AUTHORIZATION.**

**Status:** For Informational Purposes Only

#### **Public Comments**

None

### **14. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE AMENDING THE COMMUNITY DEVELOPMENT CODE TO ESTABLISH "SHORT TERM HOME RENTAL" AS A SPECIAL USE**

**Status:** For Informational Purposes Only

#### **Public Comments**

None

**17.PUBLIC HEARING AND SECOND READING OF AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY BEAUFORT COUNTY, SOUTH CAROLINA ACTING THROUGH BEAUFORT COUNTY MEMORIAL HOSPITAL OF NOT EXCEEDING \$20,000,000.00 PROMISSORY NOTE AND A CREDIT AGREEMENT; AUTHORIZING PROPER OFFICERS TO DO ALL THINGS NECESSARY OR ADVISABLE; AND OTHER MATTERS INCIDENTAL THERETO.**

**Status:** For Informational Purposes Only

**Public Comments**

None

Chairman Passiment stated that item 12,13, 17, 19, 20, 21, 22, 23, 27, 29, 30, 31, and 32 will now be moved to consent agenda

**CONSENT AGENDA**

**14.PUBLIC HEARING AND SECOND READING OF AN ORDINANCE AMENDING THE COMMUNITY DEVELOPMENT CODE TO ESTABLISH "SHORT TERM HOME RENTAL" AS A SPECIAL USE**

Council Member Flewelling abstained

**Motion:** It was moved by Council Member McElynn, seconded by Council Member Howard for second reading of ordinance amending the community development code to establish "short term rental" as a special use. Voting Yea: Chairman Passiment, Vice Chairman Sommerville, Council Member Covert, Council Member Glover, Council Member Hervochon, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member McElynn, Council Member Dawson. Voting Abstaining: Council Member Flewelling. The motion was approved with 1 abstaining.

Chairman Passiment stated items 1-8, 12, 13, 17, 19, 20, 21, 22, 23, 27, 29, 30, 31, and 32 will be approved without objection.

**1.THIRD AND FINAL READING OF AN ORDINANCE GRANTING AN EASEMENT TO BEAUFORT JASPER WATER SEWER AUTHORITY ACCESS TO NEW SEWER LINE AT BEAUFORT COUNTY AIRPORT**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**2.APPROVAL OF A CONTRACT AWARD FOR COMMERCIAL RAMP EXPANSION AT HILTON HEAD ISLAND AIRPORT FOR A TOTAL COST OF \$3,307,934.00**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**3.APPROVAL OF CARRYOVER BUDGET FY2021**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**4.RECOMMENDATION FOR EMERGENCY MEDICAL SERVICES (EMS) CONTRACT FOR TWO (2) NEW 2020 REMOUNTED AMBULANCES \$310,878**



Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**5. CONSIDERATION FOR APPROVAL OF HILTON HEAD ISLAND AIRPORT-WETLANDS MITIGATION PAYMENT FOR A TOTAL COST OF \$414,000.00**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**6. APPROVAL OF A CONTRACT AWARD RECOMMENDATION TO PURCHASE A NEW (DEMO) 2020 PUMP TRUCK IN THE AMOUNT OF \$551,200.00 FROM AHRENS-FOX ENGINE COMPANY**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**7. REQUEST FOR PRIVATE ROAD ACCEPTANCE OF A PORTION OF JOHNSON LANDING ROAD INTO COUNTY ROAD SYSTEM**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**8. RECOMMENDATION OF AWARD TO APAC – ATLANTIC, INC. IFB#071020TE SAMS POINT TURN LANE**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection

**12. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE REGARDING A TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): ARTICLE 5, SECTION 5.3.20 APPLICABILITY– TO APPLY ARCHITECTURAL STANDARDS AND GUIDELINES TO TWO-FAMILY (DUPLEX) RESIDENTIAL**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**13. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE FINDING THAT THE FRIPP ISLAND PUBLIC SERVICE DISTRICT, SOUTH CAROLINA, MAY ISSUE NOT EXCEEDING \$1,550,000 OF GENERAL OBLIGATION BONDS AND TO PROVIDE FOR THE PUBLICATION OF NOTICE OF THE SAID FINDING AND AUTHORIZATION.**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**17. PUBLIC HEARING AND SECOND READING OF AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY BEAUFORT COUNTY, SOUTH CAROLINA ACTING THROUGH BEAUFORT COUNTY MEMORIAL HOSPITAL OF NOT EXCEEDING \$20,000,000.00 PROMISSORY NOTE AND A CREDIT AGREEMENT; AUTHORIZING PROPER OFFICERS TO DO ALL THINGS NECESSARY OR ADVISABLE; AND OTHER MATTERS INCIDENTAL THERETO.**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**19.FIRST READING OF AN ORDINANCE TO AUTHORIZE AND APPROVE A MULTI-COUNTY PARK AGREEMENT BY AND BETWEEN BEAUFORT COUNTY AND JASPER COUNTY RELATING TO THE TRASK EAST SOLAR, LLC, PROJECT**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**20.FIRST READING OF AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE AGREEMENT WITH MOBILE COMMUNICATIONS AMERICA.**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**21.FIRST READING OF AN ORDINANCE AUTHORIZING THE ABANDONMENT OF AN EXISTING DRAINAGE EASEMENT AND THE ACCEPTANCE OF A RELOCATED DRAINAGE EASEMENT ON PROPERTY OWNED BY THE GRANTOR**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**22. FIRST READING OF AN ORDINANCE REGARDING TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): APPENDIX B TO REMOVE THE MAXIMUM LOT SIZE REQUIREMENT FOR MINOR RESIDENTIAL SUBDIVISIONS IN THE D3 GENERAL NEIGHBORHOOD (D3GN), THE D4 MIXED USE (D4MU); THE VILLAGE CENTER (D5VC), AND THE GATEWAY CORRIDOR (D5GC) DISTRICTS ON DAUFUSKIE ISLAND**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**23. FIRST READING OF AN ORDINANCE REGARDING ZONING MAP AMENDMENT/REZONING REQUEST FOR 18.3 ACRES (R100 024 000 032A 0000, R100 024 000 0276 0000, R100 024 000 030C 0000, AND R100 024 000 033A 0000) AT THE INTERSECTION OF BAY PINES ROAD AND LAUREL BAY ROAD FROM T2 RURAL AND S1 INDUSTRIAL TO C4-COMMUNITY CENTER MIXED-USE DISTRICT**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**27. CONSIDERATION OF A RESOLUTION APPROVING THE MITCHELVILLE FREEDOM PARK MASTER PLAN**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**29. CONSIDERATION OF THE APPOINTMENT OF GEORGE RAFFERTY TO THE DAUFUSKIE ISLAND FIRE**

**Motion:** It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

**30. CONSIDERATION OF THE APPOINTMENT OF VIRGINIA (GINNIE) KOZAK TO THE BEAUFORT COUNTY TRANSPORTATION COMMITTEE**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

### **31. CONSIDERATION OF THE APPOINTMENT OF DAVID MIXSON TO THE AIRPORTS BOARD**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

### **32. CONSIDERATION OF THE APPOINTMENT OF LYNNE HOOS TO THE ZONING BOARD OF APPEALS**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Howard to approve consent agenda items. The motion approved without objection.

### **15.PUBLIC HEARING AND SECOND READING OF AN ORDINANCE REGARDING AN AMENDMENT TO THE PEPPER HALL AND OKATIE RIVER PARK JOINT DEVELOPMENT AGREEMENT**

Council Member Rodman explained the background of Pepper Hall and Okatie River Park.

Vice Chairman Sommerville stated this is a bad deal.

Council Member Howard stated the deal is not a good deal as well.

Council Member stated the county is giving Graves credit for already using the county's property. The item #9 for reimbursement of the legal cost and cost of establishing feasible investigation was always supposed to be reimbursed by the district.

Council Member Hervochon asked if the Graves family construction going to be doing the work at cost or are they going to be profiting from the work.

Eric Greenway stated there is an expensive spreadsheet that be provided that was done by the Graves Family so that the county could budget accordingly.

#### **Public Comments**

None

Motion: It was moved by Council Member Rodman, seconded by Council Member Covert To Amend Pepper Hall and Okatie River Park Joint Development Agreement effective February 1, 2019, as follows: \*See Council Member Rodman's Amendment\*Voting Yea: Chairman Passiment, Council Member Covert, Council Member Hervochon, Council Member Rodman, Council Member Lawson, Council Member McElynn. Voting Nay: Vice Chairman Sommerville, Council Member Glover, Council Member Howard, Council Member Dawson, Council Member Flewelling. The Motion passed 6:5

**16.SECOND READING OF AN ORDINANCE OF THE COUNTY COUNCIL OF BEAUFORT COUNTY, SOUTH CAROLINA ("COUNCIL") ESTABLISHING AND ADOPTING A SCHOOL DEVELOPMENT IMPACT FEE ("IMPACT FEE") TO BE IMPOSED ON ALL NEW RESIDENTIAL DEVELOPMENT IN THE SOUTH BEAUFORT COUNTY SCHOOL SERVICE AREA PURSUANT TO ORDINANCE NO. 2020/\_\_\_; TO ENSURE THAT SCHOOL FACILITY SYSTEM IMPROVEMENTS WILL BE AVAILABLE AND ADEQUATE TO ACCOMMODATE THE NEED EXPECTED TO BE GENERATED FROM THE SCHOOL CHILDREN IN NEW RESIDENTIAL DEVELOPMENTS IN THE SOUTH BEAUFORT COUNTY SCHOOL SERVICE AREA BASED ON THE SCHOOL DISTRICT'S LEVEL OF SERVICE STANDARDS AND CAPITAL IMPROVMENTS PLAN, AND TO ASSIGN THE COSTS OF SUCH PUBLIC SCHOOL FACILITIES ON A PROPRATIONATE SHARE BASIS TO NEW RESIDENTIAL DEVELOPMENT IN THE SERVICE AREA; AND ESTABLISHMENT OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN BEAUFORT COUNTY AND THE**

**BEAUFORT COUNTY SCHOOL DISTRICT, AND INDIVIDUAL INTERGOVERNMENTAL AGREEMENTS BETWEEN BEAUFORT COUNTY AND THE TOWNS OF BLUFFTON AND HILTON ISLAND AND THE CITY OF HARDEEVILLE TO ENSURE PROPER IMPLEMENTATION AND ADMINISTRATION OF THE SCHOOL DEVELOPMENT IMPACT FEE ORDINANCE**

**Motion:** It was moved by Council Covert, seconded by Council Member Howard to amend motion since there is no IGA at this time. The motion approved without objection.

**Amended Motion:** It was moved by Council Member Covert, seconded by Council Member Howard to move that the second reading of an ordinance of the County Council of Beaufort County, South Carolina ("Council") establishing and adopting a school development impact fee ("impact fee") to be imposed on all new residential development in the South Beaufort County school Service area be postponed until October 12, 2020, to allow County Council to establish intergovernmental agreements between Beaufort County and the Beaufort County School District and individual intergovernmental agreements between Beaufort County and the towns of Bluffton and Hilton Head and the City of Hardeeville to ensure proper implementation and administration of the school impact fee ordinance. The motion was approved without objection.

**18.SECOND READING OF AN ORDINANCE DECLARING LOUD AND UNNECESSARY VEHICULAR NOISE A PUBLIC NUISANCE AND PROVIDING THAT VIOLATIONS ARE A MISDEMEANOR**

Council Member Hervochon asked how is the Sheriff going to enforce this? This is something we should have learned before this.

**Amended Motion:** It was moved by Council Member Flewelling, seconded by Council Member Glover in paragraph 101 sub paragraph D for the purpose of the article 6, would like to remove vehicle noise from motorcycles, motor scooters and mopeds as. Also add in paragraph E exceptions vehicles delivered from manufacturers. Voting Yea: Chairman Passiment, Council Member Covert, Council Member Hervochon, Council Member Rodman, Council Member Lawson, Vice Chairman Sommerville, Council Member Glover, Council Member Howard, Council Member Flewelling. Voting Nay: Council Member Dawson, Council Member McElynn. The Motion passed 9:2

**Public Comments**

Gibb McKenzie had a comment about the noise ordinance.

**Motion:** It was moved by Council Member McElynn, seconded by Vice Chairman Sommerville approve second reading of noise ordinance. Voting Yea: Chairman Passiment, Council Member Hervochon, Council Member Rodman, Council Member Lawson, Vice Chairman Sommerville, Council Member Glover, Council Member Howard, Council Member Flewelling, Council Member Dawson, Council Member McElynn. Voting Nay: Council Member Covert. The Motion passed 10:1

**24.FIRST READING OF AN ORDINANCE FOR A ZONING MAP AMENDMENT/REZONING REQUEST FOR 3 PARCELS (R600 021 000 0003 0000; R600 021 000 002A 0000; R600 021 000 003A 0000) ON GRAVES ROAD FROM T2 RURAL TO C3 NEIGHBORHOOD MIXED-USE; APPLICANT: JUDY GRAVES, KEVIN GRAVES, JAN MCKIM**

Eric Greenway stated majority of parcels are zoned as C 3.

Council Member Dawson asked if there was any impact on water quality.

Eric Greenway stated there should not be any water impact.

**Motion:** It was moved by Vie-Chairman Summerville, seconded by Council Member Howard AMENDMENT/REZONING REQUEST FOR 3 PARCELS (R600 021 000 0003 0000; R600 021 000 002A 0000; R600 021 000 003A 0000). Voting Yea: Chairman Passiment, Council Member Hervochon, Council Member Rodman,

Council Member Lawson, Vice Chairman Sommerville, Council Member Howard, Council Member Dawson, Council Member Covert. Voting Nay: Council Member Flewelling, Council Member Glover, Council Member McElynn. The motion passed 8:3

**25. FIRST READING OF AN ORDINANCE REGARDING TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): ARTICLE 5, SECTION 5.6.50.E(2) TO ALLOW FOR MINOR MODIFICATIONS TO BILLBOARDS TO IMPROVE SAFETY STANDARDS DURING HURRICANES AND HIGH WIND EVENTS**

Motion: It was moved by Council Member Covert, seconded by Council Member Flewelling first reading of an ordinance regarding text amendment to the community development code (cdc): article 5, section 5.6.50.e(2) to allow for minor modifications to billboards to improve safety standards during hurricanes and high wind events. Voting Yea: Chairman Passiment, Council Member Hervochon, Council Member Rodman, Council Member Lawson, Council Member Dawson, Council Member Covert. Council Member Flewelling, Council Member Glover, Council Member McElynn Voting Nay: Council Member Howard, Vice Chairman Sommerville. The motion passed 9:2

**26.FIRST READING OF AN ORDINANCE TO AUTHORIZE \$575,000.00 FROM THE H-TAX FUND TO THE HISTORIC MITCHELVILLE FREEDOM PARK FOR PHASE I BUILD OUT OF THE MITCHELVILLE FREEDOM PARK MASTER PLAN**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Dawson 1<sup>st</sup> reading. The motion was approved without objection.

**28. RECOMMENDATION OF AWARD TO J. BRAGG CONSULTING, INC. RFQ #040920E RFQ ONE CENT SALES TAX PROGRAM MANAGEMENT**

Motion: It was moved by Council Member Flewelling, seconded by Council Member Dawson. Voting Yea: Chairman Passiment, Vice Chairman Sommerville, Council Member Glover, Council Member Rodman, Council Member Howard, Council Member Lawson, Council Member McElynn, Council Member Dawson, Council Member Flewelling. Voting Nay: Council Member Covert, Council Member Hervochon. The motion passed 9:2

**PUBLIC COMMENT**

County Council receives a comment about the Hilton Head Impact Fee.

**ADJOURNMENT**

The meeting adjourned at 8:55 PM

ORDINANCE No. 2020 / \_\_\_\_\_

AMENDING ORDINANCE No.2020-36

WHEREAS, on October 12, 2020 County Council adopted Ordinance No. 2020-36, adopting and establishing an ordinance pertaining to loud and unnecessary vehicular noise; and

WHEREAS, since that time, it has been determined that it is appropriate to amend the ordinance,

NOW, THEREFORE, be it ordained by Beaufort County Council, that

- 1) Section 101(d) is amended to delete the words “motorcycle” and “moped”.
- 2) Section 102(b) is deleted, and the remaining subsections are relettered accordingly.
- 3) Section 103(c) is amended to add the following sentence: “Warnings are the preferred method for first offenses, and officers should liberally use their discretion to issue warnings.”

THE REMAINDER of Ordinance 2020-36 remains unchanged and is in full force and effect.

ORDERED in meeting duly assembled this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Joe Passiment, Chairman

\_\_\_\_\_  
Attest: Sarah W. Brock, Clerk to Council

**ORDINANCE 2020-\_\_\_****AN ORDINANCE TO REQUIRE INDIVIDUALS TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND LOCATIONS IN THE LIMITS OF THE COUNTY OF BEAUFORT, SOUTH CAROLINA, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE**

**WHEREAS**, it is well recognized the SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and,

**WHEREAS**, on March 13, 2020, the Governor of the State of South Carolina Henry McMaster declared a State of Emergency for the State of South Carolina as a result of the COVID-19 impacts; and,

**WHEREAS**, on March 16, 2020, Beaufort County Council (the “County”) adopted Emergency Ordinance 2020-01, declaring that a State of Emergency exists throughout the County as a result of impacts arising from the COVID-19 pandemic; and,

**WHEREAS**, reported COVID-19 daily cases are on the rise in both the County and the State of South Carolina; and

**WHEREAS**, as of today, the State of Emergency still exists in State of South Carolina and the County; and

**WHEREAS**, the Centers for Disease Control and Prevention (“CDC”) and South Carolina Department of Health and Environmental Control (“SCDHEC”) have advised the use of cloth or other types face coverings to slow the spread of COVID-19; and

**WHEREAS**, the CDC has determined that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and by minimizing personal contact with environments where the virus may be spread; and

**WHEREAS**, the South Carolina Department of Health and Environmental Control (“SCDHEC”) continues to urge all residents of the state to limit activities outside of the home and to practice social distancing at all times to limit the spread of this highly contagious and potentially deadly virus; and

**WHEREAS**, the Centers for Disease Control and Prevention has stated that COVID-19 symptoms may appear as many as fourteen (14) days after exposure and has confirmed that a significant number of people are asymptomatic and that avoiding exposure to these two groups is essential in the reduction of the spread of the virus; and

**WHEREAS**, notwithstanding the spread of COVID-19, businesses remain open and some of their employees must physically be present at the work site, requiring further measures to keep such employees safe; and

**WHEREAS**, there are currently large numbers of people who patronize grocery stores, pharmacies, restaurants, retail establishments and other businesses and buildings open to the public within the unincorporated limits of the County; and

**WHEREAS**, public reporting and other sources reveal that the advice from the Centers for Disease Control and SCDHEC encouraging the wearing of cloth or other types of face coverings is being widely followed; and

**WHEREAS**, in order to protect, preserve, and promote the general health, safety, welfare, and the peace and order of the community, the County has, and will continue, to take steps to try and protect the

citizens, employers, and employees within the County from an increased risk of exposure to and transmission of COVID-19; and,

**WHEREAS**, the County has received a strong message from the medical community, that unless citizens curb the rising spread of COVID-19 through wearing facemasks and following social distancing protocols established by the CDC and included in the Executive Orders of the Governor of South Carolina, the virus could spread more broadly, and,

**WHEREAS**, the County Council finds it is necessary and in the best interest of the County and its citizens that an Ordinance requiring the wearing of cloth or other types of face coverings in certain circumstances be adopted by the County Council;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL FOR THE COUNTY OF BEAUFORT, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED AND BY THE AUTHORITY OF THE SAME, AS FOLLOWS:**

1. For the purpose of this Ordinance, a “Face Covering” is a cloth or other type of masking device that covers the wearer’s nose and mouth.
2. All persons entering any Commercial or Public building open in the County must wear a face covering and maintain social distancing where possible while inside the building.
3. All restaurants, retail establishments of every description, salons, grocery stores, and pharmacies in the limits of the County shall require their employees to wear a Face Covering at all times when employees are within the social distance of the general public, or when the employees must be in close proximity to one another, except as noted in Section 9. This requirement also applies to all persons providing or utilizing public or commercial transportation, including tours; and all businesses or employees while interacting with people in outdoor spaces, including, but not limited to, curbside pickup, delivery, and service calls. Nothing shall prevent an employee from fashioning his or her own cloth facemask. If a worker or customer refuses to wear a cloth face covering for other than medical reasons, a business may decline entry or service to that individual.
4. The following individuals are exempt from this Ordinance: any person under the age of two or at the discretion of the parent, custodian or guardian, or who is unable to safely wear a Face Covering due to age or an underlying health condition, or who is unable to remove the Face Covering without the assistance of others; and any person traveling in a personal vehicle, or when a person is alone or is in the presence of only household members in an enclosed space, and people who are actively drinking or eating. This Ordinance does not relieve business establishments and restaurants from other social distancing requirements imposed by the Governor’s Executive Orders.
5. Education and voluntary compliance are the desired means of enforcement.
6. Repeated violations of this Ordinance at any business or establishment that is subject to this Ordinance are hereby declared a nuisance, and the County may seek a restraining order, preliminary injunction, permanent injunction or any other means authorized under the Laws of the State of South Carolina to abate the nuisance. The County may also seek suspension or revocation of the business license issued by the County to any business or establishment where repeated violations of the Ordinance occur, under the authority of Section 18-62 of the County Code of



Ordinances. Each day of a continuing violation of this ordinance shall be considered a separate and distinct offense.

- 7. Business Owners and Operators shall have responsibility for informing patrons of the above requirements and shall post conspicuous signage at all entrances informing its patrons of the requirements of this Ordinance.
- 8. Should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.
- 9. Exceptions: patrons of a restaurant and/or bar that are actively consuming food and beverages inside; persons, in consultation with their health care provider may remove their mask while receiving medical treatment; and persons actively swimming.
- 10. This Ordinance becomes effective upon passage after third reading.

**MOVED, APPROVED, AND ADOPTED this \_\_\_\_\_ DAY OF OCTOBER 2020.**

\_\_\_\_\_  
Joseph Passiment, Council Chair

ATTEST:

By: \_\_\_\_\_  
Sarah Brock, Clerk to Council

ORDINANCE NO. 2014 / 7

**ORDINANCE TO ADOPT A DEBT RESERVE POLICY  
FOR BEAUFORT COUNTY'S DEBT SERVICE FUND**

WHEREAS, Beaufort County is obligated to make payments on the interest and principal amounts of debt that have been acquired by the County to ensure the adequate provision of various governmental services; and

WHEREAS, since the inception of the Governmental Accounting Standards Board (GASB) Statement 54, Fund Balance Reporting and Governmental type Definitions, which the County adopted in its fiscal year 2011 comprehensive annual financial report (CAFR); and

WHEREAS, the adoption of a Debt Reserve Policy for the County's Debt Service Fund has the potential to increase the County's bond rating, thus allowing the County to save additional funds when it must issue revenue bonds.


NOW, THEREFORE, BE IT RESOLVED at a meeting duly assembled of Beaufort County Council, that there is hereby adopted a Reserve Policy for the County's Debt Service Fund. The Policy shall state that the county will maintain enough fund balance, net of any potential incoming revenue, within its Debt Service Fund and County Purchase Property Fund to cover the County's interest – only payments occurring on August 1 and September 1 of every fiscal year. The additional revenues required to grow the fund balance may be achieved by maintaining all borrowing premium revenues.

Adopted this 14<sup>th</sup> day of April, 2014

COUNTY COUNCIL OF BEAUFORT COUNTY

BY:   
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

  
Joshua A. Gruber, Staff Attorney

First Reading: March 10, 2014  
Second Reading: March 24, 2014  
Public Hearing: April 14, 2014  
Third and Final Reading: April 14, 2104

**ORDINANCE 2018 / 57**

**AN ORDINANCE ESTABLISHING WRITTEN FINANCIAL POLICY GUIDELINES FOR BEAUFORT COUNTY, SOUTH CAROLINA**

**WHEREAS**, on October 22, 2018, the Finance Committee voted to recommend establishing Beaufort County Financial Policy Guidelines to better articulate the use of monies, as well as, provide for greater financial stability for Beaufort County; and

**WHEREAS**, having written financial policies will assist in maintaining Beaufort County bond rating; and

**WHEREAS**, Beaufort County Council has determined it to be in the best interest of its citizens to establish the Beaufort County Financial Guidelines as provided herein.

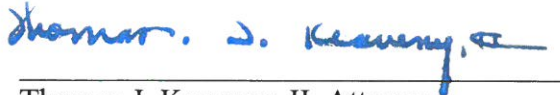
**NOW, THEREFORE, BE IT ORDAINED**, by Beaufort County Council that the Beaufort County Financial Policy Guidelines are hereby established as shown in the attached Exhibit A.

DONE this 10<sup>th</sup> day of December, 2018.

COUNTY COUNCIL OF BEAUFORT COUNTY


By:   
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:



Thomas J. Keaveny, II, Attorney  
County Attorney

ATTEST:

  
Connie L. Schroyer, Clerk to Council

First Reading: October 22, 2018, By Title Only  
Second Reading: November 5, 2018  
Public Hearing: December 10, 2018  
Third and Final Reading: December 10, 2018

**Chronology**

- Third and final reading approved on December 10, 2018 / Vote 10:0
- Second reading approved on November 5, 2018 / Vote 11:0
- Finance Committee reviewed policy on November 5, 2018 / No vote needed
- First reading, by title only, approved on October 22, 2018 / Vote 9:0
- Finance Committee discussed and recommended on October 22, 2018 / Vote 7:0



# Financial Policy Guidelines

*For:*

## Beaufort County, South Carolina

- Authority:** South Carolina Statutes and other Public Finance Law
- Supersedes:** Financial policies existing prior to date of adoption
- Review Responsibility:** Financial Services
- Review Scheduled:** Annually or as needed
- Approval Needed:** County Council (Ordinance # 2018/57)

**Adopted: the 10<sup>th</sup> day of December, 2018**

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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## 1. OBJECTIVES

This fiscal policy is a statement of the guidelines and goals that will influence and guide the financial management practices of Beaufort County, South Carolina. A fiscal policy that is adopted, adhered to, and regularly reviewed is the cornerstone of sound financial management. Effective fiscal policy:

- Contributes significantly to the County's ability to insulate itself from fiscal crisis,
- Enhances short-term and long-term financial credit ability by helping to achieve the highest credit and bond ratings possible,
- Promotes long-term financial stability by establishing clear and consistent guidelines,
- Directs attention to the total financial picture of the County rather than single issue areas,
- Promotes the view of linking long-term financial planning with day to day operations, and
- Provides the County Council, citizens and the County professional management team a framework for measuring the fiscal impact of government services against established fiscal parameters and guidelines.

This comprehensive Financial Policy Guideline combines existing policies with new policies. Existing policies were reviewed for accuracy and completeness. Additionally, numerous other jurisdictions financial policies were studied to identify new policy guidelines that are appropriate for Beaufort County. With the above objectives as a guide, the following fiscal policy guideline is presented.

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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## 2. OPERATING BUDGET

1. The County will develop the Budget in conjunction with a stated program of performance objectives and measures in which to gauge progress toward meeting those objectives.
2. The Financial Services Department will maintain a system for monitoring the County's budget during the fiscal year. This system will provide opportunity for departments and management to monitor and evaluate monthly financial information on expenditures and performance at both the department and fund level. Included will be provisions for amending the budget during the year in order to address unanticipated needs, emergencies, or compliance with State of South Carolina budgetary statutes.
3. The County shall continue to focus on using one-time, non-recurring, or other special revenues for funding special one-time projects.
4. The County will continue to pursue an aggressive policy seeking the collection of delinquent rescue collections, permits and other fees due to the County.
5. For services that benefit specific users, the County shall establish and collect fees to recover the costs of those services. The County Council shall determine the appropriate cost recovery level when establishing user fees. Where feasible and desirable, the County shall seek to recover full direct and indirect costs. User fees shall be reviewed on a regular basis to calculate their full cost recovery attainment levels, to compare them to the current fee structure, and to recommend adjustments where necessary.
6. The County shall endeavor to reduce its reliance on property tax revenues by revenue diversification, implementation of user fees, and economic development. The County shall also strive to minimize the property tax burden on Beaufort County residents.
7. In order to maintain a stable level of services, the County shall use an anticipated, conservative, objective, and analytical approach when preparing revenue estimates. The process shall include analysis of probable economic changes and resulting impacts on revenues, historical collection rates, and trends in revenues. This approach should reduce the likelihood of actual revenues falling short of budget estimates during the year and should help avoid the need for mid-year service reductions.

## 2. OPERATING BUDGET (continued)



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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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8. The County shall take immediate corrective actions if at any time during the fiscal year expenditure and revenue updates are such that an operating deficit (i.e., projected expenditures in excess of projected revenues) is projected at year-end. Corrective actions can include a hiring freeze, furloughs, lay-offs, forced days off, expenditure reductions, fee increases, or use of fund balance. Expenditure deferrals into the following fiscal year, short-term loans, or use of one-time revenue sources shall be avoided to balance the budget for recurring expenditures.
9. The tax rate will be set each year in accordance with state law and based on the cost of providing general governmental services and paying debt service. Consideration will be given to future net revenue requirements for capital improvement projects, operational expenditure impacts and programmed debt service.
10. Expenditure budgets are reviewed by staff, the County Administrator, and County Council prior to adoption and are continually monitored throughout the budget year. Budgeted funds will be spent for the categorical purposes for which they were intended. The annual operating budget ordinance defines staff authorization for operating budget adjustments. No appropriations of the proceeds of a debt instrument will be made except for the purpose for which such debt instrument was issued. Donations will be spent only toward the intent for which they were given.
11. Annually, the County will update a three-year period forecast (for both revenues and expenditures). This forecast will assist in taking a long-term view of the financial planning of the General Fund and will assist with the preparation of the County's strategic biennial budget.

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# Financial Policy Guidelines

Beaufort County, South Carolina

Adopted *December 10, 2018*

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## 3. CAPITAL IMPROVEMENT PROJECTS (CIP) BUDGET

1. The County will prioritize all capital improvements in accordance with an adopted capital improvement program (CIP) and South Carolina law.
2. The County will develop a five-year plan for capital improvements and review and update the plan at least annually. The County conducts a needs assessment and projects are ranked according to priority. The estimated costs and potential funding sources for each capital project proposal will be identified before it is submitted for approval within the Capital Improvement Program (CIP) budget. The estimated costs will include consideration for inflation; the inflation rate to be determined annually in the budget process and disclosed in the capital budget. Additional projects can be added to the CIP without ranking, but funding for projects added in this manner are subject to normal operating budget constraints.
3. The County will enact a capital budget every year based on the five-year capital improvement plan. Future capital expenditures necessitated by changes in population, changes in real estate development, or changes in economic base will be calculated and included in capital budget projections.
4. In general, effective maintenance and operations of capital facilities should be given priority over acquisition of new facilities, unless a cost/benefit analysis indicates to the contrary. In addition, state or federal mandates or new service demands may require acquisition of new facilities even when maintenance needs are not fully met. The County shall have an on-going 10-year facilities improvement plan to respond to maintenance and operational needs timely.
5. The County will coordinate development of the capital improvement budget with development of the operating budget. Future operating costs associated with new capital improvements will be projected and included in operating budget forecasts.
6. The County will seek intergovernmental assistance to finance those capital improvements that are consistent with the capital improvement plan and County priorities, and whose operating and maintenance costs have been included in operating budget forecasts.
7. The County will maintain all its assets at a level adequate to protect the County's capital investment and to minimize future maintenance and replacement costs. The County will maintain accurate information on the condition, lifespan and estimated replacement cost of its major physical assets to assist in long term planning.

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# Financial Policy Guidelines

Beaufort County, South Carolina  
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# Financial Policy Guidelines

Beaufort County, South Carolina  
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## 3. CAPITAL IMPROVEMENT PROJECTS (CIP) BUDGET (continued)

8. The County will identify the estimated costs and potential funding sources for each capital project proposed before it is submitted for approval.
9. The County will attempt to determine the most cost effective and flexible financing method for all new projects.
10. The County will match the financing of major capital assets to the debt schedules that closely assign payments with the expected major asset life span to insure intergenerational equity.
11. The capitalization for fixed asset purchases shall be \$10,000. Fixed assets will only be capitalized if they have a useful life of at least two years following the date of acquisition.

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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## 4. FINANCIAL RESERVES POLICIES

In 2014 the County adopted a General Fund Balance Policy. It is found in Beaufort County's Code of Ordinances Section 2-403 through 2-405.

### A. General Fund Reserve Policy

1. The County will establish and maintain an unassigned General Fund Reserve to pay for needs caused by unforeseen emergencies. This reserve will be maintained within a range of seventeen percent (17%, approximately two months of operations) and thirty percent (30%) of the total General Fund expenditures for the previous fiscal year and will be measured at the end of each fiscal year.
2. The General Fund Reserve balance should only be used in certain limited situations such as to stabilize revenues, mitigate a projected deficit in the current operating period, retire or defease outstanding bonds or notes of the County, fund one-time or unanticipated expenditures, and pay judgments or otherwise settle legal disputes and claims.
3. Any action that results in reducing the General Fund Reserve balance below the seventeen percent (17%, approximately two months of operations) threshold shall contain a provision specifically authorizing the use of such funds.
4. The County Administrator or Finance Director shall inform the Council, with as much advance time as may be practical under the circumstances, whenever the County has obligations that would reasonably be expected to result in the General Fund balance to decline below the minimum seventeen percent (17%, approximately two months of operations) threshold.
5. At any time that the Council determines that the use of the General Fund Reserve balance within the seventeen (17%, approximately two months of operations) to thirty percent (30%) range is needed for one or more of the reasons provided for in this section, the Council shall, by ordinance, authorize the use of such reserves.
6. At no time shall County Council take action which shall have the effect of reducing the General Fund balance to an amount below seventeen percent (17%, approximately two months of operations) of total General Fund expenditures for the previous fiscal year without first declaring that an emergency exists within the County thereby necessitating the use of such funds.
7. Beaufort County shall, during the August through October hurricane season, maintain available cash and/or cash equivalents readily available equal to a minimum of seventeen (17%, approximately two months of operations) of the General Fund Appropriation. Funding sources may include, but are not limited to, credit instruments, bond anticipation notes and tax anticipation notes.
8. The General Fund Reserve balance should be reported to County Council quarterly and be reviewed annually or as needed.

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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## **B. Debt Service Fund Reserve Policy**

1. The County will confine long-term borrowing to capital improvement or projects that cannot be paid for from current revenues or fund balance except where approved justification is provided.
2. The County will utilize a balanced approach to capital funding utilizing debt financing, draws on capital reserves and/or fund balances in excess of policy targets, and current-year (pay-as-you-go) appropriations.
3. When the County finances capital improvements or other projects by issuing bonds or entering into capital leases, it will repay the debt within a period not to exceed the expected useful life of the project. Target debt ratios will be calculated at least every two years and included in the review of financial trends.
4. Where feasible, the County will explore the usage of special assessment, revenue, or other self-supporting bonds instead of general obligation bonds.
5. Prior to the issuance of new General Obligation (GO) debt, consideration shall be given to forecasted tax rate requirements, ratio of net GO debt to assessed taxable value, net GO debt per capita, and debt service payments to General Fund operating budget.
6. Direct net debt as a percentage of total market value of taxable property should not exceed 2.5%. Direct net debt is defined as all debt issued in accordance with Article X, Section 14, Paragraph 7(a) of the South Carolina Constitution, an amount not exceeding eight percent (8%) of the assessed value of all taxable property of such political subdivision.
7. The ratio of direct debt service expenditures as a percent of total governmental fund expenditures will be targeted to remain at or below 15.0% but in any case should not exceed 18.0%.
8. The County recognizes the importance of underlying and overlapping debt in analyzing financial condition. The County will regularly analyze total indebtedness including underlying and overlapping debt.
9. The County may employ municipal finance professionals to assist in developing a bond issuance strategy, preparing bond documents, and marketing bonds to investors.
10. The County shall use the Comprehensive Annual Financial Report (the "CAFR") as the disclosure document for meeting its financial reporting obligations.

# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

## B. Debt Service Fund Reserve Policy (continued)

11. The County will use fixed rate debt in most cases to finance its capital needs; however, the County may issue variable rate debt when necessary if deemed in the best interest of the County.
12. Debt structures that result in significant “back loading” of debt should be avoided.
13. The Chief Financial Officer (CFO) will maintain good communications with bond rating agencies:
  - a. The CFO will provide periodic updates on the County’s financial condition.
  - b. Required disclosures on every financial report and bond prospectus will be followed.
  - c. The County may request ratings prior to the sale of securities from the major rating agencies for bond issues.
14. The County will strive to achieve and maintain the highest credit rating awarded by the bond rating agencies.
15. The County may undertake refinancing of outstanding debt:
  - a. When such refinancing allows the County to realize significant debt service savings (net present value savings equal to at least 2.0 percent of the refunded par amount) without lengthening the term of refinanced debt and without increasing debt service in any subsequent year; or
  - b. When the public policy benefits outweigh the costs associated with the issuance of new debt and any increase in annual debt service; or
  - c. When a restrictive covenant is removed to the benefit of the County.
16. The CFO shall maintain a system of record keeping and reporting to meet the arbitrage rebate compliance requirements for the federal tax code.
17. The County will maintain enough fund balance, net of any potential incoming revenue, within its Debt Service Fund and County Purchase Property Fund to cover the County’s interest-only payments occurring on August 1 and September 1 of every fiscal year. The additional revenues required to grow the fund balance may be achieved by maintaining all borrowing premium revenues. (Ordinance No. 2014/7)

## V. CASH MANAGEMENT AND INVESTMENT POLICY

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# Financial Policy Guidelines

Beaufort County, South Carolina

Adopted December 10, 2018

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The Treasurer serves as the County's chief banker and investment officer, charged with the responsibility of investing funds that are not needed for immediate expenditures. The Following is the investment policy of the Beaufort County and the Beaufort County Treasurer's Office. The scope of this investment policy applies to all moneys and other financial resources available for deposit and investment by the Beaufort County Treasurer's Office on behalf of Beaufort County and on behalf of any other agency.

1. The primary objectives of the Treasurer's Office investment activities are, in priority order:
  - a. To conform with all applicable federal, state and other legal requirements (legality);
  - b. Adequately safeguard principal (safety);
  - c. To provide sufficient liquidity to meet all operating requirements (liquidity) and;
  - d. To obtain a reasonable rate of return (yield).
2. To appropriately meet these objectives, the Treasurer's Office will make investment decisions based on current and ongoing cash flow needs.
3. All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence. Investments shall be made with prudence, diligence, skill, judgment and care, under circumstances then prevailing, which knowledge and prudent persons acting in like capacity would use, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.
4. All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair their ability to make impartial investment decisions.
5. It is the policy of Beaufort County and the Treasurer's Office to diversify its deposits and investments by financial institution, by investment instrument, and by maturity schedule. Diversification of deposit and investment assets should be determined with the utmost care, with safety and liquidity being the primary objectives. As portfolios may range in size by account and purpose, depositories and investment managers should seek to invest as prudently as possible, with no investment representing more than 5% of the total portfolio value; including all accounts.



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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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As some accounts may be smaller in size, 5% of the total portfolio value may not be prudent from a diversification standpoint. With these types of accounts special care must be taken to ensure liquidity and safety. Under no circumstance should any investment in smaller accounts represent more than 20% of its portfolio value.

6. It is the policy of Beaufort County and the Treasurer's Office for all moneys collected by any officer or employee of Beaufort County, with the exception of certain special revenues and funds maintained by certain countywide elected officials, to transfer those funds to the Treasurer's Office, or the financial institution designated by the Treasurer's Office, within two (2) business days of receipt, or within the time period specified in law, whichever is shorter.

The Treasurer is responsible for establishing and maintaining internal control procedures to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, and managed in compliance with applicable laws and regulations.

Except as may otherwise be provided in a contract with bondholders or noteholders, any moneys invested may be commingled for investment purposes, provided that any investment of commingled moneys shall be payable or redeemable at the time the proceeds are needed to meet expenditures for which such moneys were obtained. The separate identity of the sources of these funds shall be maintained at all times through the general ledger and any income received shall be credited on a pro rata basis to the general ledger fund or account from which the moneys were invested.

7. The Treasurer may utilize the services of any bank, trust company, or savings and loan association authorized to do business within the State of South Carolina.
8. All deposits and investments at a bank, trust company, or savings and loan association (hereinafter, collectively referred to as "depository"), including all demand deposits, certificates of deposit and special time deposits (hereinafter, collectively referred to as "deposits") made by the Treasurer's Office that are in excess of the amount of insured under the provisions of the Federal Deposit Insurance Act, including pursuant to a Deposit Placement Program in accordance with law, shall be secured by the depository in accordance with South Carolina State Statute 6-5-15, which dictates the securing and collateralization of public funds.

## Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

9. As provided by the State of South Carolina Code of Laws Section 6, the Treasurer will invest moneys not required for immediate expenditure, for terms not to exceed its projected cash flow needs, in investments that adhere with South Carolina State Statutes 6-5-10 and 12-45-220.

The Beaufort County Treasurer may also deposit public monies in excess of current needs into the South Carolina State Treasurer's Local Government Investment Pool.

Repurchase agreements (referred to as REPOs) are complex transactions that can expose the investing local government to significant risks. If utilized, the Treasurer must submit the agreement to Beaufort County's legal counsel for review and approval; have the resources to negotiate the agreement with trading partners and custodial banks or trust companies, and monitor the investment daily. At a minimum, any repurchase agreement must comply with the requirements listed in Appendix A.

10. Some investments, although in conformity with South Carolina Code of Laws, may be in conflict with the County and the Treasurer's primary objectives of safety and liquidity. As such, the following investments are not permitted:
- a. Interest-only Mortgage Securities
  - b. Principal-only Mortgage Securities
  - c. Z-Traunch Collateralized Mortgage Obligations (CMO's)
  - d. Floating Rate CMO's, including Inverse Floaters

11. All financial institutions and dealers with which the Treasurer's Office transacts business shall be creditworthy, and have an appropriate level of experience, capitalization, size and other factors that make the financial institution or the dealer capable and qualified to transact business with and hold public funds. The Treasurer shall evaluate the financial position and maintain a listing of proposed depositories, trading partners, and custodians.

If the Treasurer elects to utilize the services of a financial advisor, that advisor should have at least ten (10) years of experience managing public funds, five (5) years of which should be experience in managing funds within the State of South Carolina, and, at a minimum, should be a registered investment advisor. At least annually, the advisor must provide to the Treasurer their ADV forms, part I and II, filed with the Securities and Exchange Commission.

The Treasurer shall maintain a list of financial institutions and dealers approved for investment purposes. To maximize safety, the Treasurer's Office could

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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purchase through, deliver to and hold in custody of a bank or trust company all obligations, unless registered or inscribed in the name of the applicable government agency.

12. The Treasurer shall review this investment policy annually, or as needed, and shall have the power to amend this policy at any time. County Council shall regularly request reporting from the Treasurer regarding the status of investments and changes in investment policy.

Investment performance should be evaluated at least semi-annually and be taken into consideration when reviewing the investment policy. Investment performance benchmarks may include time weighed return, net of fees, on individual accounts as well as the overall portfolio.

13. The State Treasurer is authorized to assist the Treasurer's Office in investing funds that are temporarily in excess of operating. This can be accomplished by explaining investment opportunities through publication and other appropriate means; acquainting the Treasurer's Office with the State's practice and experience in investing short-term funds; and providing technical assistance in investment of idle funds when such assistance is requested.

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# Financial Policy Guidelines

Beaufort County, South Carolina  
Adopted *December 10, 2018*

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## Appendix A- Repurchase Agreements

At a minimum, a repurchase agreement must comply with the following:

1. Trading partners should be limited to creditworthy banks or trust companies located and authorized to do business in the State of South Carolina or to registered primary dealers.
2. Unless the obligations that are purchased pursuant to the repurchase agreement are registered or inscribed in the name of the local government, obligations must be purchase through, delivered to and held in the custody of a bank or trust company located and authorized to do business in the State of South Carolina. The custodial bank or trust company may not be the seller of the obligations that are the subject of the repurchase agreement.
3. A Master Repurchase Agreement must be entered into, outlining the basic responsibilities and liabilities of the buyer and seller and a written agreement with the custodial bank or trust company, outlining the basic responsibilities and liabilities of the buyer, seller and custodian.
4. The custodial agreement should provide that the custodian takes possession and maintains custody of the obligations exclusively for the local government, that the obligations are free of any claims against the trading partner, and that any claims by the custodian are subordinate to the local government's claims or rights to those obligations.
5. The obligations must be credited to Beaufort County, or the applicable agency, on the records of the custodial bank or trust company, and the transaction must be confirmed in writing to the local government by the custodial bank or trust company.
6. The obligations purchased may only be sold or presented for redemption of payment by the custodian upon written instructions of the Treasurer.
7. A perfected security interest must be obtained in the obligation.
8. Agreements may be for no more than 30 days.
9. Agreements must specify whether to include margin requirements.
10. No substitution of obligations is permitted.
11. Payment for the purchased obligations should not be made by the custodial bank or trust company until the obligations are actually received, preferably done simultaneously.

Beaufort County  
 Review of Purchase of Real Property mill  
 10/23/2020

### Fiscal Year 2020 Fund Balance Analysis

The below is a calculation of the required fund balance for the Purchase of Real Property debt fund, also known as the Rural and Critical Land, per Beaufort County's financial policies. As shown below, Fiscal Year 2020 ended on June 30, 2020 with a fund balance in excess of what is required by County policy.

For the convenience of the reader, excerpts from the applicable State law as well as Council Ordinance are also provided below.

<u>Debt Payment Due Date</u>	<u>Debt to be Paid</u>	<u>Total Interest Payment</u>	<u>R&amp;C Portion</u>	<u>R&amp;C Interest Payments</u>
AUG / FEB	2010C Bonds	\$ 119,000	0.00%	\$ -
SEP / MAR	2011 Bonds	299,825	100.00%	299,825
SEP / MAR	2012A Bonds	271,400	39.22%	106,443
AUG / FEB	2012C Bonds	795,650	65.57%	521,708
SEP / MAR	2013C Bonds	968,925	0.00%	-
SEP / MAR	2014A Bonds	544,544	0.00%	-
SEP / MAR	2014B Bonds	854,175	41.02%	350,383
SEP / MAR	2016A Bonds	406,350	78.43%	318,700
AUG / FEB	2017A GO BONDS	1,920,338	39.22%	753,157
SEP / MAR	2019A GO BONDS	418,341	0.00%	-
		\$ 6,598,548		\$ 2,350,215
			<b>Required Fund Balance</b>	<b>\$ 2,350,215</b>
			<b>Actual Fund Balance as of 6/30/2020</b>	<b>2,673,597</b>
			<b>Excess Fund Balance</b>	<b>\$ <u>323,382</u></b>

*Excerpt from Beaufort County Council Ordinance 2018.57 - Financial Policies Ordinance regarding the maintenance and calculation of minimum debt fund balances.*

17. The County will maintain enough fund balance, net of any potential incoming revenue, within its Debt Service Fund and County Purchase Property Fund to cover the County's interest-only payments occurring on August 1 and September 1 of every fiscal year. The additional revenues required to grow the fund balance may be achieved by maintaining all borrowing premium revenues. (Ordinance No. 2014/7)

Beaufort County  
 Review of Purchase of Real Property mill  
 10/23/2020

### Fiscal Year 2021 Analysis and Comparison

The below is a calculation comparing the financial position of the Purchase of Real Property (PRP) debt fund using the 4.8 mil rate approved by Council's Ordinance and the 5.8 mil rate calculated by the Beaufort County Auditor. The revenues indicated below do not include any potential delinquent taxes collected during the fiscal year. The reader will note the following:

- A 4.8 mil rate will result in the PRP debt fund being able to cover all debt obligations during the fiscal year, with a small reduction in fund balance.
- A 5.8 mil rate yields \$1.8 million more in revenues than are necessary to cover the debt obligations and will contribute a sizable increase to the fund balance.

Clicking the "+" along the left side of the spreadsheet will allow the reader to expand the spreadsheet and view the detail behind the totaled numbers below. For the convenience of the reader, excerpts from the applicable State law as well as Council Ordinance are also provided below.

	4.8 Millage Rate	5.8 Millage Rate	Difference/Excess
<b>Total Projected Revenues</b>	\$ 10,207,693	\$ 12,292,369	\$ 2,084,676
Total Fiscal Year 2021 Debt Payments	(10,490,932)	(10,490,932)	
Net Change in Fund Balance	(283,238.43)	1,801,437	2,084,676
Actual Fund balance 06/30/2020	2,673,597	2,673,597	2,673,597
<b>Projected fund balance 06/30/2021</b>	<u>2,390,359</u>	<u>4,475,034</u>	<u>2,084,676</u>
<b>Required Fund Balance at Fiscal Year End per Ord. 2018.57</b>	\$ 2,568,628	\$ 2,568,628	
<b>Difference between Projected and Required Fund Balance</b>	<u>\$ (178,270)</u>	<u>\$ 1,906,406</u>	<u>\$ 2,084,676</u>

*South Carolina Statute § 4-15-150 regarding the methodology to be used for calculating the tax levy (or millage) for debt service.*

#### **SECTION 4-15-150.** Pledge of credit for payment; levy and collection of tax therefor.

For the payment of the principal and interest on such bonds as they respectively mature and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the county are irrevocably pledged and there shall be levied annually by the county auditor and collected by the county treasurer in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the county sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

HISTORY: 1962 Code Section 14-525; 1952 Code Section 14-525; 1951 (47) 763.

*Excerpt from Beaufort County Council Ordinance 2018.57 - Financial Policies Ordinance regarding the methodology to be used for calculating the tax rate (or millage) for debt service.*

9. The tax rate will be set each year in accordance with state law and based on the cost of providing general governmental services and paying debt service. Consideration will be given to future net revenue requirements for capital improvement projects, operational expenditure impacts and programmed debt service.

Beaufort County  
 Review of Purchase of Real Property mill  
 10/23/2020

### Fiscal Year 2021 Fund Balance Analysis

The below is being provided to give the reader information on the future financial position of the Purchase of Real Property (PRP) debt fund and the required fund balance per Beaufort County's financial policies.

For the convenience of the reader, excerpts from the applicable State law as well as Council Ordinance are also provided below.

<u>Debt Payment Due Date</u>	<u>Debt to be Paid</u>	<u>Total Interest Payment</u>	<u>R&amp;C Portion</u>	<u>R&amp;C Interest Payments</u>
AUG / FEB	2010C Bonds	\$ 81,000	0.00%	\$ -
SEP / MAR	2011 Bonds	294,425	100.00%	294,425
SEP / MAR	2012A Bonds	206,000	39.22%	80,793
AUG / FEB	2012C Bonds	709,150	65.57%	464,990
SEP / MAR	2013C Bonds	849,525	0.00%	-
SEP / MAR	2014A Bonds	512,544	0.00%	-
SEP / MAR	2014B Bonds	854,175	41.02%	350,383
SEP / MAR	2016A Bonds	374,850	78.43%	293,995
AUG / FEB	2017A GO BONDS	1,920,338	39.22%	753,156
SEP / MAR	2019A GO BONDS	406,931	0.00%	-
SEP / MAR	2020 GO BONDS	330,887	100.00%	330,887
		<u>\$ 6,539,824</u>		<u>\$ 2,568,628</u>
			<b>Required Fund Balance</b>	<b>\$ 2,568,628</b>

*Excerpt from Beaufort County Council Ordinance 2018.57 - Financial Policies Ordinance regarding the maintenance and calculation of minimum debt fund balances.*

17. The County will maintain enough fund balance, net of any potential incoming revenue, within its Debt Service Fund and County Purchase Property Fund to cover the County's interest-only payments occurring on August 1 and September 1 of every fiscal year. The additional revenues required to grow the fund balance may be achieved by maintaining all borrowing premium revenues. (Ordinance No. 2014/7)

Beaufort County  
 Review of Purchase of Real Property mill  
 10/23/2020

### Fiscal Year 2022 Analysis and Comparison

The below is being provided to give the reader information on the future financial position of the Purchase of Real Property (PRP) debt fund, assuming a mil rate of 4.8 is used in fiscal year 2021. The revenues indicated below assume a 3% growth rate and do not include any potential delinquent taxes collected during the fiscal year. The reader will note the following:

- The projection indicates that a slight mil rate increase will be necessary in Fiscal Year 2022. A mil rate of 4.95, an increase of .15 mils, would be "sufficient" and cover "the cost" of the debt service while maintaining the fund balance required by the County's financial policy. It is acknowledged that a mil rate using the hundredths place is no longer used by Beaufort County.

Clicking the "+" along the left side of the spreadsheet will allow the reader to expand the spreadsheet and view the detail behind the totaled numbers below. For the convenience of the reader, excerpts from the applicable State law as well as Council Ordinance are also provided below.

	<u>4.95 Millage Rate</u>
<b>Total Projected Revenues</b>	\$ 10,829,969
Total Fiscal Year 2021 Debt Payments	(10,461,500)
Net Change in Fund Balance	368,469.25
Projected fund balance 06/30/2021	2,390,359
<b>Projected fund balance 06/30/2022</b>	<u><u>2,758,828</u></u>
<b>Required Fund Balance at Fiscal Year End per Ord. 2018.57</b>	\$ 2,671,427
<b>Difference between Projected and Required Fund Balance</b>	<u><u>\$ 87,401</u></u>

*South Carolina Statute § 4-15-150 regarding the methodology to be used for calculating the tax levy (or millage) for debt service.*

#### **SECTION 4-15-150.** Pledge of credit for payment; levy and collection of tax therefor.

For the payment of the principal and interest on such bonds as they respectively mature and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the county are irrevocably pledged and there shall be levied annually by the county auditor and collected by the county treasurer in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the county sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

HISTORY: 1962 Code Section 14-525; 1952 Code Section 14-525; 1951 (47) 763.

*Excerpt from Beaufort County Council Ordinance 2018.57 - Financial Policies Ordinance regarding the methodology to be used for calculating the tax rate (or millage) for debt service.*

9. The tax rate will be set each year in accordance with state law and based on the cost of providing general governmental services and paying debt service. Consideration will be given to future net revenue requirements for capital improvement projects, operational expenditure impacts and programmed debt service.



Beaufort County  
 Review of Purchase of Real Property mill  
 10/23/2020

### Fiscal Year 2022 Fund Balance Analysis

The below is being provided to give the reader information on the future financial position of the Purchase of Real Property (PRP) debt fund and the required fund balance per Beaufort County's financial policies.

For the convenience of the reader, excerpts from the applicable State law as well as Council Ordinance are also provided below.

<u>Debt Payment Due Date</u>	<u>Debt to be Paid</u>	<u>Total Interest Payment</u>	<u>R&amp;C Portion</u>	<u>R&amp;C Interest Payments</u>
AUG / FEB	2010C Bonds	41,400.00	0.00%	-
SEP / MAR	2011 Bonds	261,275.00	100.00%	261,275.00
SEP / MAR	2012A Bonds	139,600.00	39.22%	54,751.12
AUG / FEB	2012C Bonds	624,350.00	65.57%	409,386.30
SEP / MAR	2013C Bonds	688,275.00	0.00%	-
SEP / MAR	2014A Bonds	479,344.00	0.00%	-
SEP / MAR	2014B Bonds	685,375.00	41.02%	281,140.83
SEP / MAR	2016A Bonds	341,450.00	78.43%	267,799.24
AUG / FEB	2017A GO BONDS	1,920,338.00	39.22%	753,156.56
SEP / MAR	2019A GO BONDS	387,931.00	0.00%	-
SEP / MAR	2020 GO BONDS	643,917.50	100.00%	643,917.50
		\$ 6,213,255.50		\$ 2,671,426.54
			<b>Required Fund Balance</b>	<b>\$ 2,671,426.54</b>

*Excerpt from Beaufort County Council Ordinance 2018.57 - Financial Policies Ordinance regarding the maintenance and calculation of minimum debt fund balances.*

17. The County will maintain enough fund balance, net of any potential incoming revenue, within its Debt Service Fund and County Purchase Property Fund to cover the County's interest-only payments occurring on August 1 and September 1 of every fiscal year. The additional revenues required to grow the fund balance may be achieved by maintaining all borrowing premium revenues. (Ordinance No. 2014/7)

**Mil Rates for R&C Land Bonds by Tax Year**

<u>Tax Year</u>	<u>Mil Rate</u>
2019	5.5
2018	4.8
2017	4.8
2016	4.9
2015	4.9
2014	4.9
2013	4.34
2012	3.87

**R&C Land Debt Fund - Equity in Pooled Cash**

<u>Fiscal Year</u>	<u>Year End Balance</u>
2017	618,305
2018	748,898
2019	804,492
2020	2,680,979

**R&C Land Debt Fund - Delinquent Tax Revenues**

<u>Fiscal Year</u>	<u>Year End Balance</u>
2014	268,709
2015	245,019
2016	316,564
2017	356,578
2018	410,983
2019	192,924
2020	213,073



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
<i>Ordinance - Text Amendment to The Community Development Code (CDC): Article 5, Section 5.6.50.E(2) To Allow for Minor Modifications to Billboards to Improve Safety Standards During Hurricanes and High Wind Events.</i>
<b>MEETING NAME AND DATE:</b>
<i>Beaufort County Council Meeting – September 14, 2020</i>
<b>PRESENTER INFORMATION:</b>
<i>Eric Greenway, AICP, Community Development Director (5 minutes)</i>
<b>ITEM BACKGROUND:</b>
<i>Planning Commission voted 5 for and 3 against to recommend the amendment at their July 6, 2020 meeting. Natural Resources Committee voted 8 for and 2 against to recommend the amendment to County Council at their August 31, 2020 meeting.</i>
<b>PROJECT / ITEM NARRATIVE:</b>
<i>The applicant is proposing to amend the ordinance to allow modifications to billboards that would make them more resistant to high winds. The changes would remove the solid sign panel and replace it with a steel framework overlaid with a vinyl sign face. During a hurricane, the vinyl would blow off the hurricane frame and leave the main structure intact.</i>
<b>FISCAL IMPACT:</b>
<i>None</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
<i>It is staff's position that the main aim of this amendment is to prolong the life of the billboard which is not consistent with the County's policies concerning billboards over the last 30 years. Staff recommends denial of the amendment.</i>
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>Motion to Approve a text Amendment to The Community Development Code (CDC): Article 5, Section 5.6.50.E(2) To Allow for Minor Modifications to Billboards to Improve Safety Standards During Hurricanes and High Wind Events.</i>  <i>Motion to deny the Text Amendment to The Community Development Code (CDC): Article 5, Section 5.6.50.E(2) To Allow for Minor Modifications to Billboards to Improve Safety Standards During Hurricanes and High Wind Events.</i>

ORDINANCE No. 2020 / \_\_\_\_\_

ESTABLISHING THE BEAUFORT COUNTY DISTANCE LEARNING FUND AND OTHER MATTERS RELATED THERETO

WHEREAS,); Due to the COVID-19 pandemic, most aspects of “normal life” are far from normal, with one major area of continued concern being educating our young people; and

WHEREAS, the Beaufort County School District continues to monitor the COVID-19 metrics, and will continue to offer a virtual learning option, among other options; utilizing its own resources and community not-for-profit organizations and

WHEREAS, a large number of students are struggling with distance learning. There are many challenges including lack of internet access and lack of parental supervision as parents must report to work outside of the home; and

WHEREAS Beaufort County Council (“County Council”) has many areas of concern, including the education of our children and future workforce members; and

WHEREAS, County Council from time to time may make appropriations of public funds for public purposes;

NOW, THEREFORE, be it ordained by Beaufort County Council,

1. That \$200,000 is hereby appropriated for the purpose of supporting distance learning programs (the “Funds”).
2. That the Funds shall be allocated to the Coastal Community Foundation (the “Foundation”) in order for the Foundation to make grants to suitable not-for-profit organizations which shall conduct appropriate distance learning programs for students in Beaufort County Schools. The Foundation may use up to 3% of the Funds for its administrative costs.
3. The Funds shall be disbursed to the Foundation in two increments of \$100,000 each. The second payment will not be made until the first half of the money has been awarded to grant recipients.
4. The County Administrator is hereby authorized to enter into a suitable agreement with the Foundation which sets forth eligibility, operating, disbursement and reporting requirements for the use of the Funds.

ORDERED in meeting duly assembled this 12th day of October, 2020

\_\_\_\_\_  
Joe Passiment, Chairman

\_\_\_\_\_  
Attest: Sarah W. Brock, Clerk to Council



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
Beaufort County Airport – Hangar Ground Lease Agreement
<b>MEETING NAME AND DATE:</b>
County Council – September 28, 2020
<b>PRESENTER INFORMATION</b>
Jared Fralix, P.E. ACA- Engineering John Rembold, Airports Director (Alternate) (Time Needed for Item Discussion = 5 minutes)
<b>ITEM BACKGROUND:</b>
September 17, 2020 – This item was unanimously approved by the Airports Board September 21, 2020 – This item was unanimously approved at Public Facilities Committee
<b>PROJECT / ITEM NARRATIVE:</b>
As a result of the growth of general aviation at the airport, there is a need and an interest for increased hangar space in our area. Therefore, Beaufort County Airport will like to offer long term ground leases on vacant land for the construction of aircraft hangars.
<b>FISCAL IMPACT:</b>
Construction will be privately funded. Risk Management has been consulted regarding insurance requirements.
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Approve the hangar ground lease agreement for aircraft storage at ARW Airport.
<b>OPTIONS FOR COUNCIL MOTION:</b>
Motion to approve the first reading of the ordinance for Beaufort County Airport (AWR) Hangar Ground Lease Agreement and bring forward to the second reading at the next County Council meeting.  Motion to deny the first reading of the ordinance for Beaufort County Airport (AWR) Hangar Ground Lease Agreement and bring forward to the second reading at the next County Council meeting.
<b>(Next Step – Bring ordinance to next County Council meeting for 2<sup>nd</sup> reading)</b>



COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT
106 Industrial Village Road, Bldg. 2, Post Office Drawer 1228
Beaufort, South Carolina 29901-1228

David L Thomas, Purchasing Director
dthomas@bcgov.net 843.255.2353

TO: Councilman Chris Hervochon, Chairman, Finance Committee

FROM: David L Thomas. CPPO. Purchasing Director

SUBJ: Negotiate a Contract
Recommendation for Approval: ARW Hangar Ground Lease Agreement

DATE: 09/21/2020

BACKGROUND:

As a result of the growth of general aviation at the airport, there is a need for increased hangar space in our area. Therefore, Beaufort County Airport will like to offer long term ground leases on vacant land for the private construction of aircraft hangars. Several parties have indicated strong interest in developing hangar space at the airport. This agreement gives the airport the tool it needs to proceed. The benefit to the airport and to the county is an increase in economic activity at the airport and in the community through fuel sales, tax revenues, and local private investment.

Hangars will be privately developed via private capital so the airport will not be required to invest significant capital in this project.

VENDOR INFORMATION:

Privately developed hangars via private capital

COST:

\$ 0.00

Insert Addition Vendor Info.

FUNDING:

N/A

Funding approved: Yes By: raymond.williams Date: 09/14/2020

FOR ACTION: Finance Committee meeting occurring September 21, 2020.

RECOMMENDATION:

The Finance Committee approve and recommend to County Council approval of the hangar ground lease agreement.

Attachment: HangarGroundLeaseAgreement.pdf 10.35 MB

Click here to attach a file

cc: Ashley Jacobs, County Administrator

Approved: Yes Date: 09/16/2020

Check to override approval: Overridden by:

Override Date:

Raymond Williams, Finance Director

Approved: Yes Date: 09/14/2020

Item 14.

Jared Fralix, Assistant County Administrator, Engineering  Approved: Yes  Date: 09/14/2020   
Check to override approval:  Overridden by:  Override Date:  ready for admin:

Jon Rembold, Director, Airports Department  Approved: Yes  Date: 09/14/2020   
Check to override approval:  Overridden by:  Override Date:  ready for admin:

CC others

Approved by Committee:    
Approved by Council:

After Initial Submission, Use the Save and Close Buttons



TO: Councilman Brian Flewelling, Chairman, Beaufort County Public Facilities Committee

FROM: Howard Ackerman, Chairman, Beaufort County Airports Board

SUBJ: Recommendation for approval: ARW Hangar Ground Lease Agreement

DATE: September 21, 2020

**BACKGROUND:**

As a result of the growth of general aviation at the airport, there is a need for increased hangar space in our area. Therefore, Beaufort County Airport will like to offer long term ground leases on vacant land for the construction of aircraft hangars. The director’s goal is to develop a good land-use plan for ARW that will provide environmentally acceptable, functional, and aesthetically pleasing facilities for the general aviation customer. This is an opportunity for a positive economic development at the airport.

The Beaufort County Airports Board strongly endorses this plan and requests County Council support.

Hangars will be privately developed via private capital so the airport will not be required to invest significant capital in this project.

**FOR ACTION:**

Public Facilities Committee meeting occurring September 21, 2020.

**RECOMMENDATION:**

The Public Facilities Committee approve and recommend to County Council approval of the hangar ground lease agreement.

**Encl:** ARW Hangar Ground Lease Agreement  
 Site Exhibit  
 Example of Typical Hangars





TO: Councilman Brian Flewelling, Chairman, Beaufort County Public Facilities Committee

FROM: Jon Rembold, Airports Director

SUBJ: Recommendation for approval: ARW Hangar Ground Lease Agreement

DATE: September 21, 2020

**BACKGROUND:**

As a result of the growth of general aviation at the airport, there is a need for increased hangar space in our area. Therefore, Beaufort County Airport will like to offer long term ground leases on vacant land for the private construction of aircraft hangars. Several parties have indicated strong interest in developing hangar space at the airport. This agreement gives the airport the tool it needs to proceed. The benefit to the airport and to the county is an increase in economic activity at the airport and in the community through aviation fuel sales, tax revenues, and local private investment.

Hangars will be privately developed via private capital so the airport will not be required to invest significant capital in this project.

**FOR ACTION:**

Public Facilities Committee meeting occurring September 21, 2020.

**RECOMMENDATION:**

The Public Facilities Committee approve and recommend to County Council approval of the hangar ground lease agreement.

**Encl:** ARW Hangar Ground Lease Agreement  
Site Exhibit  
Example of Typical Hangars

**ORDINANCE 2020/\_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO ENTER INTO LEASE AGREEMENTS WITH AIRCRAFT OWNERS WHO DESIRE TO CONSTRUCT AN AIRCRAFT HANGAR IN DESIGNATED AREAS AT THE BEAUFORT COUNTY AIRPORT**

**WHEREAS**, the Beaufort County Airport (“Airport”) has a Master Plan and Airport Layout Plan with changes that depict areas for future hangar development; and

**WHEREAS**, by entering into ground leases, “Exhibit A”, allowing private development at the airport, Beaufort County saves significant capital investment while still achieving the goal of hangar construction; and

**WHEREAS**, multiple aircraft owners have expressed a desire to develop “box” or “executive” type aircraft hangars similar to those shown in “Exhibit B” for their aircraft; and

**WHEREAS**, a significant source of revenue for the airport is fuel sales, therefore it is to the economic benefit of the airport to lease land to develop such hangars as they typically house aircraft which tend to purchase more fuel; and

**WHEREAS**, in the development area, there is adequate acreage for multiple hangar buildings, as shown in “Exhibit C”, attached hereto and incorporated herein by reference; and

**WHEREAS**, County Council finds that it is in the best interest of the citizens and residents of Beaufort County for the County Administrator to enter into leases with the future developers of the leased areas for the long-term benefit of the Beaufort County Airport.

**NOW, THEREFORE, BE IT RESOLVED** that Beaufort County Council, duly assembled, does hereby authorize the County Administrator to enter into lease agreements with the future developers of areas designated for the construction of aircraft hangars at the Beaufort County Airport.

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

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

**EXHIBIT A**

**BEAUFORT COUNTY AIRPORT**

**AIRCRAFT HANGAR AGREEMENT AND GROUND LEASE**

**WITH**

---

**[name of tenant]**

**BEAUFORT COUNTY AIRPORT  
AIRCRAFT HANGAR AGREEMENT AND GROUND LEASE**

THIS AGREEMENT AND GROUND LEASE (“Agreement”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the COUNTY of BEAUFORT, a political subdivision of the State of South Carolina (the “County”), and \_\_\_\_\_ [name of tenant] a \_\_\_\_\_ [state of organization and type of legal entity] (the “Lessee”).

**WITNESSETH:**

WHEREAS, the County is owner and operator of the Beaufort County Airport (hereinafter “Airport”) including vacant land all of which is located at 39 Airport Circle in Beaufort County, South Carolina; and

WHEREAS, Lessee is the owner or operator of an aircraft which it wishes to base at the Airport; and

WHEREAS, County has land available at the Airport which is suitable for the erection and use of an aircraft storage hangar (the “Site”); and

WHEREAS, Lessee wishes to lease the Site from County and to construct a hangar thereon, and County is willing to lease the Site to Lessee on the terms and conditions provided and set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants, agreements and conditions set forth below, County does hereby agree to lease the Site set forth below to Lessee, and Lessee does hereby agree to lease the Site from County.

## ARTICLE I

### LEASED PREMISES

Section 1.1 Leased Premises. County hereby demises and lets to Lessee and Lessee hereby takes and accepts from County a leasehold interest in that portion of the Airport ("Site") depicted on Exhibit "A" hereto, consisting of \_\_\_\_\_ acres, more or less and located at \_\_\_\_\_ [address if applicable]. The Site, along with the improvements to be constructed thereon pursuant to this Agreement in Section 1.2 below ("Leasehold Improvements") shall be called the "Leased Premises".

Section 1.2 Improvements by Lessee. Lessee will cause to be erected, constructed, or installed on the Leased Premises such improvements as Lessee shall determine are reasonably necessary or desirable to serve as the storage hangar for Lessee's aircraft (the "Leasehold Improvements"). Upon the expiration or other termination of this Agreement, Lessee shall surrender to County possession of all Leasehold Improvements except personal property and trade fixtures of Lessee then existing on or within the Leased Premises.

Section 1.3 Design of Improvements. Unless otherwise agreed by the parties in writing, Lessee shall, within sixty (60) days of the execution of this Agreement by all parties submit to County plans for constructing, erecting and installing the Leasehold Improvements on the Leased Premises. The plans shall be in final form and shall consist of (1) working drawings, (2) technical specifications, (3) bid documents and (4) schedule for accomplishing improvements. Construction shall be completed within eighteen (18) months of inception of lease unless otherwise approved by the Airports Director.

Section 1.4 Architectural Requirements. Architecture ("Leasehold Improvements") will have to be "approved" by the appropriate committee of the Airports Board. All structural improvements, signs, equipment and interior design and decor constructed or installed by

Lessee, its agents or contractors, including the plans and specifications therefor, shall conform in all respects to applicable statutes, ordinances, building codes and rules and regulations.

Section 1.5 Bonds or Letter of Credit. To ensure that mechanic's liens are not placed on airport property, and to ensure that capital improvements once initiated are completed and not abandoned before completion, County requires Lessee to provide either payment and performance bonds or Letters of Credit in an amount equal to the anticipated costs of construction plus ten (10) percent for contingencies.

Section 1.6 Construction of Improvements. Upon written approval of its plans and specifications by the County, Lessee shall have the right and obligation to enter the Leased Premises, take possession thereof and commence constructing the Leasehold Improvements. Unless otherwise agreed by the parties in writing, such construction shall begin within thirty (30) days after the later of (i) the date of County's written approval of Lessee's plans or (ii) the granting of all necessary permits and approvals by all governmental bodies in charge of the approval processes, and shall be continuous and expedited so that the Leasehold Improvements shall be completed as soon as practicable. All contractors shall maintain general liability and worker's compensation/employer's liability insurance coverage reasonably satisfactory to the County. Lessee shall provide builder's risk insurance naming the lender and the County as loss payees with respect to 100% in value of the improvements to be provided under such contracts. No Leasehold Improvements, unattached fixtures or equipment shall be subject to any liens whether created by operation of law or by agreement. All construction shall, in all material respects, conform to and comply with all applicable statutes, ordinances, building codes, rules and regulations of such authorities as may have jurisdiction over any aspect of said construction. Lessee, at its sole cost and expense, shall also procure all building, safety, fire and other permits necessary for any construction.

Section 1.7 As Built Drawings; Cost Certification. Within thirty (30) days of completion of construction of the Leasehold Improvements, hereby defined as the date of Lessee's Certificate of Completion, Lessee shall deliver to County a complete set of as-built drawings.

Section 1.8 Encumbrances on Leased Premises. The Leased Premises shall be accepted by Lessee subject to any and all then existing easements or other encumbrances, and County shall have the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections, water, oil or gas pipelines, and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient in connection therewith, over, in, upon, through, across and along the Leased Premises, or any part thereof, and to enter thereupon at reasonable times for any and all such purposes; provided, however, that no right of County provided for in this section shall be so exercised as to interfere unreasonably with the Lessee's use of the property and improvements pursuant to this Lease.

Section 1.9 Condition of Leased Premises. Lessee accepts the Site in "as is" condition.

Section 1.10 Title to Leased Premises in County. Lessee agrees and acknowledges that title to the Leased Premises is, and shall remain, in County. Lessee agrees that its sole interest in the Leased Premises is and shall be that of a tenant.

Section 1.11 Utilities. Lessee agrees to pay for all utilities used by or attributed to it at, or in connection with its use of, the Leased Premises, including, but not limited to, service deposits, meter deposits and all service charges. No such payment shall be considered a payment of rent entitling the Lessee to a credit under any other provision of this Agreement. In all instances of any damages to any utility service line caused by Lessee, its employees, contractors, suppliers, agents or invitees, Lessee shall be responsible for the cost of repair. If other Lessees subsequently tie into infrastructure which was previously installed by another Lessee ("original Lessees"), the original Lessee(s) shall be entitled to a pro-rata reimbursement of the costs of installing the infrastructure which is being tied into.

Section 1.12 Rights on Airport. County hereby grants to Lessee the right to store its aircraft ("aircraft") in and on the Leased Premises. In connection with its rights to use and occupy the Leased Premises, Lessee shall have the additional following rights:

(a) Access to and From Airfield. The right (which shall extend to Lessee's employees, patrons, guests and invitees), in common with others, of free ingress and egress by aircraft from the Leased Premises to the airfield.

(b) Use of Apron as Taxiway. The right to taxi its aircraft across the aircraft aprons appurtenant to the public general aviation terminal at the Airport ("FBO Aprons"), as needed to access the airfield in common with others to which County has granted a similar right. Lessee agrees to abide by any apron taxi lanes established by the County from time to time to regulate the movement of aircraft on and over the FBO Aprons and to conduct Lessee's operations in such a manner so as not to interfere with the use thereof by other lessees, licensees or permittees of the County. The provisions of this paragraph shall extend to Lessee's employees, patrons, guests and invitees in connection with the aircraft.

(c) Public Aircraft Facilities. The right, in common with others, to use existing and future facilities on the Airport that provide for the landing, taking off and taxiing of aircraft including navigational aids, hazard designation and warning devices, air field security roads and fences, lighting and clear zone areas, subject to the applicable fees set from time to time by the County. The provisions of this paragraph shall extend to Lessee's employees, patrons, guests and invitees in connection with the aircraft.

(d) Common Facilities. The right, in common with others, to use the public portions of the Airport and appurtenances thereto. The provisions of this paragraph shall extend to Lessee's employees, patrons, guests and invitees in connection with the aircraft.

(e) Ingress and Egress. The right, in common with others, of free ingress to and egress from the Leased Premises over Airport roads, driveways and common areas,



as the same shall be specified as such from time to time by the County; provided, however, the foregoing is not intended in any way to relieve Lessee of its obligations to comply with the Airport's Security Plan (as described in Section 2.12 hereof) in force from time to time as required by the United States or its departments and agencies. Accordingly, Lessee shall be responsible for, among other things, controlling access to aircraft parked, stored or otherwise located on the Leased Premises and the air operations area. Lessee shall be responsible for payment of all fines or penalties resulting from violations of the Security Plan, whether published or in force by virtue of local, state or federal law or regulation. The provisions of this paragraph shall extend to Lessee's employees, patrons, guests and invitees.

(f) Signs. The right to install identification and directional signs on and about the Leased Premises, subject to prior written approval of the Airports Director, which approval shall not be unreasonably withheld, unless the Director shall have provided such signs as part of an overall sign program, and in all events, such signs shall conform to any overall sign program of the County.

Section 1.13 County's Right to Enter and Inspect. Upon reasonable notice to Lessee (except for emergency or safety matters, in which event, no notice shall be required) the County shall have the right to enter any part of the Leased Premises at reasonable or necessary times for the purposes of inspection, protection or exercising any rights under this Agreement. It shall also have the right, upon reasonable notice to Lessee, to show the Leased Premises at any time within six (6) months prior to the termination of this Agreement.

Section 1.14 County's Right to Install Utilities. The County shall have the right to enter any part of the Leased Premises at reasonable or necessary times for the purposes of installing any utility lines or related equipment necessary for the Lessee or other users of the Airport.

Section 1.15 Surrender of Leased Premises at Termination. Upon termination, default or other expiration of this Agreement, Lessee shall immediately surrender the Leased Premises to County. Any and all capital improvements and fixtures shall become part of the Leased Premises and shall be surrendered to the County in good condition reasonable wear and tear

excepted. Lessee's failure to surrender the Leased Premises to County within sixty (60) days of County's request for the same based on termination, default of expiration of the Agreement shall constitute surrender unless Lessee initiates legal action to prevent the same within forty five (45) days of County's request for the same.

## ARTICLE II

### LEASE TERM AND RESTRICTIONS ON USE

Section 2.1 Effective Date/Commencement Date. The Commencement Date shall be the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Section 2.2 Term; Option to Extend. The term of this Agreement ("Term") shall be twenty-five (25) years and shall commence on the Commencement Date and, unless terminated earlier pursuant to law or the provisions hereof, shall continue until midnight on January 31, 20\_\_\_\_ ("Termination Date"). Lessee may elect to extend the lease one (1) time for an additional five-year term at a rate to be determined by the Airports Director.

Section 2.3 Holding Over. Should Lessee hold over on any part of the Leased Premises with respect to which this Agreement has terminated, such holding over shall be deemed merely a month-to-month tenancy, but otherwise on all the terms and conditions herein provided.

Section 2.4 Right of County to Terminate by Cancellation. If, at any time during the original term or any renewal term hereof, County requires the use of the Leased Premises for airfield related purposes, including, but not limited to, expansion of runways and taxiways and compliance with any safety, clearance, or setback requirements that may be promulgated by FAA or any successor agency, this Agreement may be canceled by the County. Should the County elect to so cancel this Agreement it shall (i) advise Lessee as soon as possible when the issue arises and (ii) give Lessee written notice of cancellation and the purpose therefor at least one hundred eighty (180) days prior to the effective date of such cancellation ("Cancellation Date"). Upon such notice and the expiration of such notice period this Agreement shall automatically terminate and be of no further force and effect. Upon any such cancellation the County shall reimburse to Lessee an amount calculated by multiplying Lessee's certificated Cost of Leasehold

Improvements by a fraction, the numerator of which shall be the number of months remaining on the Term hereof as of the date of termination and the denominator of which shall be three-hundred (300).

Section 2.5 Restrictions on Use. The Leased Premises and the Leasehold Improvements and all other property located thereon shall be used solely and exclusively as the base for Lessee's owned or leased aircraft and for no other business or activity whatsoever. It shall be a violation of this Lease for Lessee to use the property for any illegal use or for the purpose of furthering any illegal activity. Lessee shall not store aircraft that it does not own, lease and operate; Lessee shall not store itinerant aircraft in or on the Leased Premises except for such time as the owners or operators thereof are short-term guests, defined as less than fourteen (14) days per calendar year, of the Lessee. Lessee may service, and perform light maintenance on Lessee's aircraft in the hangar. Any service or maintenance required for any Aircraft belonging to or operated by guests or invitees of Lessee at the Leased Premises or elsewhere on the Airport shall be obtained from the FBO Manager or a licensed aircraft maintenance company located on the Airport, if possible.

Lessee is prohibited from engaging in any commercial activity whatsoever, aeronautical or otherwise, on or in the Leased Premises or elsewhere on the Airport except pursuant to a separate commercial business lease agreement granted to lessee by the Airports Director.

Section 2.6 Aviation Fuel/Aircraft Servicing. County operates the FBO on the Airport, including the General Aviation Terminal, hangars and aircraft parking aprons, and maintains and operates aviation fuel storage and delivery facilities from which it sells and dispenses aviation fuel to based aircraft owners and operators and itinerant aircraft owners and operators. Fuel will be sold to and pumped into Lessee's aircraft by County's FBO Staff. The fueling of tenant aircraft shall be provided by the FBO. All fuel shall be purchased from the FBO.

Section 2.7 Abandonment. Unless agreed to by the parties in writing, the failure of Lessee to utilize the Leased Premises over a continuous period in excess of one-hundred twenty (120) days for reasons which are not otherwise excused under this Agreement shall be deemed an abandonment of the Leased Premises by Lessee and therefore a failure to perform Lessee's

obligations under this Agreement. Upon such abandonment, County shall have the right, but not the obligation, to give notice of default under Section 9.1(d) hereof. The mere occupancy of the Leased Premises by an employee of Lessee without the storage of aircraft in the Hangar shall not mitigate the requirements of this section.

Section 2.8 Garbage and Refuse Storage and Removal. Lessee shall be responsible for garbage and refuse storage and removal in compliance with all Airport and other applicable rules and regulations regarding the disposal of trash and garbage, and at Lessee's expense.

Section 2.9 Noise, Waste, Odor, Vibrations and Annoyances. Lessee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste (which includes failing to maintain improvements to standards established by the County and allowing capital improvements to deteriorate) at the Leased Premises or annoy, disturb or be offensive to others at the Airport, and shall take all reasonable measures, using the latest known and most practicable devices and means, to prevent waste and to eliminate any unusual, nauseous or objectionable smoke, gases, vapors, odors, or any vibrations tending to damage any Leasehold Improvements or interfere with activities at the Airport, and to maintain a sound level in its operations that is in compliance with any applicable governmental rules and regulations.

Section 2.10 Prohibited Acts. In connection with the exercise of its rights to use and occupy the Leased Premises, or otherwise in its use of or on the Airport, Lessee shall not:

- (a) Conduct its operations in a manner that deprives the public of its rightful, equal and uniform use of Airport property;
- (b) Conduct its operations in a manner that interferes with reasonable use by others of common facilities;
- (c) Conduct its operations in such a way as to hinder police, firefighting or other emergency personnel in the discharge of their duties or as to constitute a hazardous condition that would increase the risks normally attendant upon the operations contemplated under this Agreement;

(d) Conduct or facilitate illegal activities on Airport property or use the aircraft for illegal purposes or to further illegal activities; or

(d) Store bulk aviation gasoline (AVGAS), kerosene, automobile gasoline, oils, or other petroleum liquids in or at the Leased Premises without prior permission of the Airport Director.

Section 2.11 Environmental Representation and Covenants.

(a) Except as is necessary for the normal and ordinary use of the Leased Premises, as set forth in Section 2.5 above, Lessee shall not cause, permit or suffer any Hazardous Materials (as defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Leased Premises or any portion thereof, by Lessee, its agents, employees, contractors, invitees or permitted subtenants or assigns, except in strict compliance with the Environmental Laws, as defined below. For purposes of this Agreement and this section, the term "Hazardous Materials" shall mean and include, without limitation, all types of chemical substances, petroleum products, flammable explosives, radioactive materials, urea, formaldehyde, PCB's, asbestos or material containing asbestos, and any other illegal, regulated, hazardous, toxic, dangerous or otherwise harmful waste, substance or material. For purposes of this Agreement and this paragraph, the term "Environmental Laws" shall mean and include, without limitation, any and all federal, state, county, city or other law, statute, ordinance, treaty, code, rule, regulation, order or decree as may now or at any other time be or have been in effect, regulating, establishing liens for the cleanup of, imposing liability or standards of conduct concerning, or in any manner relating to any Hazardous Materials. For purposes of this Agreement and this paragraph, the term "Release" shall mean and include, without limitation, any and all discharging, spilling, leaking, dumping, emitting, emptying, seeping, injecting, escaping, leaching, disposing and the like.

(b) Lessee shall not cause, permit or suffer the existence or the commission by Lessee, its agents, employees, contractors or invitees, or by any other person, of a violation of any Environmental Laws upon, about or beneath the Leased Premises or any portion thereof.

(c) Lessee shall not create or suffer to exist with respect to the Leased Premises, or permit any of its agents, employees, contractors, or invitees to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind arising out of any Environmental Laws. Should any such lien, security interest or other charge or encumbrance be filed against the Leased Premises, Lessee shall cause said lien, security interest or other charge or encumbrance to be removed from the Leased Premises or shall provide a bond satisfactory to County for the payment or satisfaction thereof. Said actions shall be taken by Lessee as soon as practicable; provided that said actions shall be taken in no event later than thirty (30) days from the filing, posting or notice of such lien, security interest or other charge or encumbrance.

(d) Lessee covenants and agrees, at its sole cost and expense, to defend, indemnify and hold harmless County from and against any and all damages (including without limitation all foreseeable and unforeseeable consequential damages), losses, liabilities, obligations, penalties, costs (including without limitation, the cost of any required or necessary inspection, audit, cleanup or detoxification and the preparation of any closure or other required plans, consent orders, license applications, or the like), personal injury or death, damage to property, claims, litigation costs, disbursements or expenses including, without limitation, attorneys and experts reasonable fees and disbursements which may at any time be imposed upon, incurred by or asserted or awarded against County, and arising from or out of (i) the use, generation, storage, disposal of or the release of any Hazardous Materials by Lessee, its employees, agents and contractors upon, about, beneath or affecting all or any portion of the Leased Premises or any surrounding areas, where such surrounding areas have been contaminated as a result of the use or Release of Hazardous Material by Lessee, its

employees, agents and contractors on the Leased Premises, or (ii) the enforcement of this Agreement as to matters concerning this Section 2.10 arising after the Commencement Date, whether or not any claims prove to be true or false.

(e) Lessee shall, upon demand of County, and at its sole cost and expense, promptly take all remedial actions with respect to the Leased Premises which are required by any federal, state or local governmental agency or political subdivision or which are reasonably necessary to remove any Hazardous Materials from the Leased Premises and restore the Leased Premises to compliance with the Environmental Laws, which remedial action is necessitated from the presence upon, about or beneath the Leased Premises of any Hazardous Material because of, or violation of any Environmental Laws by, Lessee, its agents, employees, contractors, invitees or permitted subtenants or assigns. Lessee shall take all actions necessary to restore the Leased Premises to the condition existing prior to the Commencement Date, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. Any such remediation shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business conducted at the Leased Premises.

(f) Should Lessee have heretofore caused or permitted from the Commencement Date, or cause or permit subsequent to the Commencement Date, any intentional or unintentional Release of Hazardous Materials upon, about or beneath the Leased Premises, whether or not such Release results in damage to soil, surface water, ground water, flora, fauna or humans on the Leased Premises, or within waters of the State or the United States, or on other properties, it shall promptly notify all federal, state and local regulatory agencies of the release as required by law and shall notify County of the release, in writing, within seven (7) days of determining that a Release has occurred. Lessee shall further notify County within seven (7) days after the receipt by Lessee of notice of any demand or claim or the commencement of any action, suit or proceeding in respect of any of the matters referenced in this paragraph. It is expressly understood and agreed that failure by County to object to any actions taken by Lessee hereunder shall not

be construed to be an approval by County of Lessee's actions, nor shall it be construed as a waiver by County of any right related thereto.

(g) County shall, at all times, be free to inspect the Leased Premises and may independently establish to its satisfaction and in its absolute discretion the existence or non-existence of any fact or facts, the existence or non-existence of which is relevant to any claim or defense of any matter related herein, and Lessee shall allow County or its agents access to the Leased Premises as is reasonably necessary to establish such facts.

(h) Should Lessee fail to perform or observe any of its obligations or covenants contained in this paragraph, then County shall have the right, but not the duty, without limitation upon any of the other rights of County pursuant to this Agreement, to enter the Leased Premises itself or through its agents, consultants or contractors and perform the same. Lessee agrees to indemnify County for the costs thereof and liabilities therefrom as set forth in subsection (d) above. The provisions of this Section 2.11 shall survive the termination of this Agreement.

Section 2.12 Airport Security. Lessee acknowledges that the Airport may have certain security requirements imposed upon it by the United States, including the Department of Homeland Security and the Transportation Security Administration. Lessee agrees that its use and occupancy of the Leased Premises will be bound and constrained by any such security requirements that it is given Notice of, and that, upon notification by the Airport, it will abide by and comply with all such restrictions, constraints, rules, regulations, orders, plans or decrees (collectively "Security Plan") enacted by, or imposed upon County, by the United States and its security agencies in, on and about the Leased Premises and the Airport. Lessee further agrees that the requirement to comply with any such Security Plan shall not entitle Lessee to damages or the right to terminate or modify this Agreement.

Section 2.13 Additional Compliance Requirements. It is intended that the standards, obligations and duties imposed by this Article II shall be maintained and complied with by Lessee in addition to its compliance with all applicable governmental laws, ordinances and regulations, and in the event that any of said laws, ordinances and regulations shall be more stringent than



the standards, duties and obligations imposed on Lessee hereunder, then Lessee shall comply with such laws, ordinances and regulations in its operations under this Agreement. Noncompliance with any governmental law, ordinance or regulation, the validity of which shall be contested in good faith and with reasonable promptness, shall not be interpreted as a violation of this covenant until such contest shall have been abandoned or the time for objection or appeal has expired.

### **ARTICLE III**

#### **RENTS, FEES AND CHARGES**

Section 3.1 Ground Rent. For each twelve (12) month period beginning on the Commencement Date ("Lease Year"), Lessee shall pay to County, for the premises and privileges granted hereunder, the amount of twenty-five (.25¢) cents per square foot of leased property.

The annual rental shall, by agreement of the parties each year, be payable in lump sum at the beginning of each twelve-month period or be payable in twelve (12) equal monthly installments of \$ \_\_\_\_\_, in advance and without demand, on the first day of each month. All such payments are to be made in lawful money of the United States of America.

Section 3.2 Rental Adjustments. The annual rent payable by Lessee for the Leased Premises shall be increased (but not decreased) at the beginning of the third anniversary of the Commencement Date. The annual lease payment ("rent") set forth above shall increase three (3%) percent beginning three (3) years from the date the lease commences and continuing each year thereafter throughout the life of this Agreement.

Section 3.4 Reserved.

Section 3.5 Method and Manner of Payment. All payments required to be made by Lessee hereunder shall be made in lawful money of the United States of America in the offices of the Airport Director at the FBO or to such other location as the Airport Director may designate in writing to Lessee.

Section 3.6 Delinquent Payments. Without waiving any other right of action available to the County, should Lessee be delinquent in paying the County any payment required by this Agreement for a period of ten (10) days or more, Lessee shall pay the County interest thereon at the rate of eighteen percent (18%) per year from the date such amount was due and payable until paid.

Section 3.7 Fees and Taxes. The Lessee agrees to pay, when due, all fees, taxes and assessments charged, assessed or levied by any governmental authority on the Leased Premises and lessee's personal; property therein and thereon, or in order to carry on Lessee's business at the Leased Premises. No such payment shall be considered a payment of rent, fees or use charges entitling the Lessee to a credit under any other provision of this Agreement. The failure to pay any tax, license, fee, or assessment, the validity of which shall be contested in good faith and with reasonable promptness, shall not be interpreted as a violation of this covenant until such contest shall have been resolved in the taxing authority's favor or abandoned or the time for objection or appeal has expired.

Section 3.8 Triple Net Lease. This Agreement shall be without cost to County during the Term and any subsequently granted renewal terms, continuance, replacement lease or hold over. It is the intent of County and Lessee that this Agreement be defined, interpreted and enforced as a triple net lease to County and Lessee shall pay all costs and expenses associated with occupancy and use of the Leased Premises, except as expressly set forth herein.

## **ARTICLE IV**

### **MAINTENANCE, ALTERATIONS, REPAIRS AND UPKEEP**

Section 4.1 Maintenance of the Leased Premises. The provisions of Section 3.8 hereof notwithstanding:

- (a) Lessee shall be obligated, without cost to the County, to maintain the Leased Premises and every part thereof in good appearance, repair and safe condition. Lessee shall maintain the Leasehold Improvements, and all interior finishes, furnishings, unattached fixtures and equipment located on the Leased Premises.

(b) The County shall be the sole judge of the quality of maintenance. The County or its authorized agents may at any time, without notice, enter upon the Leased Premises to determine if maintenance satisfactory to the County is being accomplished. If County determines in its sole and absolute discretion that the maintenance of the Leased Premises is deficient, it may mitigate the deficiency at Lessee's expense and the cost of such mitigation shall be billed to Lessee by County, and paid by Lessee, as additional rent hereunder. Lessee shall remit the amount of such additional rent to County within fifteen days of receipt of County's documented statement of the cost of such mitigation.

Section 4.2 Repairs. The Lessee agrees to make all reasonably necessary repairs and replacements of the Leasehold Improvements. All such repairs and replacements shall be of quality equal to the original in materials and workmanship. Should Lessee fail to make such repairs, County shall have the right to enter the Leased Premises and make such repairs, or cause them to be made, and the cost thereof shall be chargeable to Lessee as additional rent hereunder. Lessee shall remit the amount of such costs to County within fifteen days of receipt of County's documented statement of the cost of such repairs.

Section 4.3 Condition at Termination. Lessee agrees to surrender and deliver up the Leased Premises at the termination of this Agreement in good order and condition, reasonable wear and tear excepted. Upon termination of this Agreement, Lessee shall have the right to remove all of its removable personal property and trade fixtures from the Leased Premises provided such removal is done within thirty (30) days of such termination and in a manner so as not to deface or otherwise adversely affect the physical appearance of the Leased Premises.

Section 4.4 Alterations to Leased Premises. Before making alterations to the Leasehold Improvements Lessee shall first obtain the written consent of the Airport Director, such consent not to be unreasonably withheld or delayed. All alterations to the Leased Premises made by the Lessee shall be made at the Lessee's expense and shall be made in a workmanlike manner without damage to the Leased Premises, except such that is repaired or corrected by the Lessee. The Airport Director shall have the right to review and approve in writing the plans and

specifications for such alterations and to impose requirements for permits, insurance and bonding for such improvements and alterations.

## ARTICLE V

### **INDEMNIFICATION AND INSURANCE**

Section 5.1 Indemnification - County Held Harmless. It is an express condition of this Agreement that, except where caused solely by its negligence, County, its elected officials, officers, agents and employees shall be free from any and all claims, debts, demands, liabilities or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury or damage to any person or persons or damage or destruction of property or loss of use thereof, whether it be the person or property of Lessee, its agents or employees, or of any third persons, from any cause or causes whatsoever arising from any event or occurrence in or upon the Leased Premises or any part thereof, or otherwise arising from Lessee's operations under and during the term of this Agreement; and Lessee shall indemnify, defend and save harmless the County, its elected officials, officers, agents and employees against and from any and all such claims, demands, debts, liabilities and causes of action (including attorneys' fees and costs). In any circumstances in which Lessee provides a defense to the County, it shall employ attorneys for such defense that are reasonably acceptable to County. The provisions of this indemnity shall survive the termination of this Agreement.

Section 5.2 Liability Insurance. Lessee shall maintain an insurance policy on all aircraft that shall occupy the leased hanger. This policy shall have minimum limits of coverage in the amount of one million dollars (\$1,000,000). Beaufort County shall be named as an additional insured under the policy. Prior to (or within fifteen (15) days after the effective date of this Agreement, Lessee shall provide County with a certificate showing proof of such insurance. Said certificate shall be obtained from the underwriter and not the agent. Lessee shall notify County of any changes in the insurance coverage and shall do so within fifteen (15) days of the effective date of the change.

All liability policies shall be occurrence based.

Section 5.4 Fire and Extended Coverage. Lessee, at its own cost and expense, shall insure for fire and extended coverage risks all Leasehold Improvements on the Leased Premises. Such insurance shall be in an amount equal to the full insurable value of such improvements. All fire insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder. Lessee agrees that any payments received from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of the Leasehold Improvements or paid to the County in accordance with Article VI hereof.

Section 5.5 Certificates Evidencing Coverage: Insurer Acceptable to County. A certificate evidencing all insurance coverage required of Lessee under this Article V shall be filed with the County on or prior to the Commencement Date, and such certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the County. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with the County. If such insurance coverage is canceled or reduced, the Lessee shall within fifteen (15) days after receipt of written notice from the County of such cancellation or reduction in coverage, file with the County a certificate showing the required insurance has been reinstated or provided through another insurance company or companies. The company or companies furnishing insurance pursuant to this Article V shall be qualified to issue insurance effective in the State of South Carolina and be of sound and adequate financial responsibility to fulfill their obligations hereunder, and to that end the selection of such insurance companies shall be subject to the approval of County, which approval shall not be unreasonably withheld.

Section 5.6 Waiver of Subrogation. County and Lessee mutually agree that with respect to any loss which is covered by insurance then being carried by them respectively, or required to be carried hereunder, to the extent permitted by the applicable insurance policy or policies, the party carrying or required to carry such insurance and suffering any such loss hereby releases the other of and from any and all claims with respect to such loss and County's and Lessee's insurance

companies shall have no right of subrogation against the other or any party hereto on account thereof.

## ARTICLE VI

### **DAMAGE OR DESTRUCTION TO LEASED PREMISES**

In the event of damage or casualty to any part of the Leased Premises including the Leasehold Improvements, Lessee shall be required to repair or replace damaged property. If Lessee elects to terminate the Lease, Lessee shall pay to County the amount of insurance proceeds it receives for such damage or casualty.

## ARTICLE VII

### **ASSIGNMENT AND SUBLETTING**

Lessee shall neither assign nor transfer this Lease, or any right or leasehold interest granted to it by this Agreement, without the written consent of the Airports Director such consent not to be unreasonably withheld. Any such assignment or sublease shall be in writing and promptly upon the execution thereof, Lessee shall furnish a copy to the County.

## ARTICLE VIII

### **DEFAULT BY LESSEE**

Section 9.1 **Default**. The happening of any one or more of the following listed events and the expiration of any notice and cure periods herein provided (which events, upon such expiration, are hereinafter referred to singularly as “Event of Default” and plurally as “Events of Default”) shall constitute a breach of this Agreement on the part of Lessee, namely:

- (a) The filing by, on behalf of, or against Lessee of any petition or pleading to declare Lessee a bankrupt, voluntary or involuntary, under any Bankruptcy Act or law, which is not dismissed within sixty (60) days after the date of filing.

(b) The commencement in any court or tribunal of any proceeding, voluntary or involuntary, to declare Lessee insolvent or unable to pay its debts, which is not dismissed within sixty (60) days after the date of filing.

(c) The failure of Lessee to pay any rent or any other amount payable under this Agreement within ten (10) days after written notice by the County that the same is due and payable.

(d) The failure in any material respect of Lessee to comply with or to perform, fully and promptly, any act required of it under the terms of this Agreement, or otherwise to comply with any term or provision hereof within the shorter of -- (i) the time specifically required, or (ii) thirty (30) days after written notice by the County to the Lessee to do so, unless such default cannot be cured within such period and Lessee has in good faith commenced and is prosecuting the cure thereof, in which case the Lessee shall have a reasonable extension of such period in order to cure such default.

(e) The appointment by any court or under any law of a receiver, trustee or other custodian of the property, assets or business of Lessee, who is not dismissed within sixty (60) days after the date of appointment.

(f) The assignment by Lessee of all or any part of its property or assets for the benefit of creditors.

(g) The failure of Lessee to comply with the requirements of any component or requirement of Section 2.5 and Section 2.12 above.

Section 9.2 Waiver. No Waiver by the County of default by the Lessee of any terms, covenants, or conditions hereof kept and to be performed, preserved by the Lessee shall be construed to be a waiver of any subsequent default. The acceptance of rental or the performance of all or any part of this Agreement by the County for or during any period or periods after default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Lessee, shall not be deemed a waiver of any right on the part of the County to declare a default or cancel this Agreement for a subsequent breach thereof.

## ARTICLE IX

### EFFECT OF DEFAULT

Upon the occurrence of any Event of Default as defined in Article IX above and the failure of the Lessee to cure such default in the time period set forth in said Article IX, the County shall have the right to terminate this Agreement by written notice to the Lessee, which termination shall be effective as of the date of said written notice. Upon any such termination, whether by lapse of time or otherwise, Lessee shall promptly surrender possession and vacate the Leased Premises and deliver possession thereof to the County, and Lessee hereby grants to the County full and free license to enter into and upon the Leased Premises in such event and with or without process to expel or remove Lessee and any others who may be occupying the Leased Premises and to remove therefrom any and all property, using for such purpose such force as may be necessary without being guilty or liable for trespass, eviction, or forcible entry or detainer and without relinquishing the County's right to the rent due from Lessee or any other right given to the County hereunder or by operation by law. Except as otherwise expressly provided in this Agreement, Lessee hereby expressly waives the service of demand for the payment of rent or for possession of the Leased Premises or to re-enter the Leased Premises, including any and every form of demand and notice prescribed by any statute or other law.

## ARTICLE X

### TERMINATION BY CANCELLATION AND DEFAULT BY COUNTY

Section 11.1 Right of Lessee to Terminate by Cancellation. Provided that Lessee is not in default, Lessee may terminate this Agreement for any reason with six (6) months' notice to the Lessor and cancel all of its obligations hereunder by giving written notice to County in the manner as hereinafter provided upon or after the happening of any one of the following events:

- (a) The inability of the Lessee to use the Leased Premises for a period in excess of sixty (60) days, because of the issuance of any order, rule or regulation by the United States or an instrumentality thereof preventing the Lessee from operating at the Leased Premises for cause or causes not constituting a default under this Agreement;



(b) The default by the County in the performance of any covenant or agreement herein required to be performed by the County and the failure of the County to remedy such default for a period of sixty (60) days after receipt from the Lessee of written notice to remedy the same, unless such default cannot be cured within such sixty (60) day period and the County has in good faith commenced and is prosecuting the cure thereof, in which case the County shall have a reasonable extension of such period in order to cure such default; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if the County shall have remedied the default prior to receipt of the Lessee's notice of cancellation;

(c) The assumption by the United States or an instrumentality thereof of the operation, control or use of the Airport or any substantial part thereof in such a manner as

to substantially restrict the Lessee for a period of at least ninety (90) days from operating its business at the Airport; or

(d) The issuance by any court of competent jurisdiction of an injunction restraining the use of the Airport or the Leased Premises if said injunction shall remain in force for more than ninety (90) days and is not caused in whole or in part by the acts or failures to act of Lessee.

Section 11.2 Waiver. The Lessee's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants or conditions hereof to be performed, kept or observed by the County, or the occurrence of such other event as may excuse performance, shall not be deemed a waiver of any right on the part of Lessee (i) to cancel this Agreement for failure by the County so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed, or by reason of such occurrence, or (ii) to enforce any other right that the Lessee may have by reason of such failure or occurrence. No waiver by the Lessee of any of the terms, covenants or conditions hereof shall be construed to be or act as a waiver by Lessee of any subsequent default or occurrence.

## ARTICLE XI

### GENERAL PROVISIONS

Section 12.1 Restrictions and Regulations. The activities conducted by Lessee pursuant to this Agreement shall be subject to:

(a) Any and all applicable rules, regulations, orders and restrictions which are now in force or which may be adopted hereafter by County with respect to the operation of the Airport, including restrictions on arrivals and departures;

(b) Any and all orders, directions or conditions issued, given or imposed by, the County with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas or public areas on the Airport; and

(c) Any and all applicable laws, ordinances, rules, statutes, regulations or orders, including, but not limited to, environmental statutes, regulations or orders of any governmental authority, federal, state or municipal, lawfully exercising authority over the Airport or Lessee's operations, including restrictions on airline schedules of arrivals and departures.

County shall not be liable to Lessee for any diminution or deprivation of Lessee's rights hereunder on account of the exercise of any such authority, nor, except as elsewhere expressly provided in this Agreement, shall Lessee be entitled to terminate the whole or any portion of this Agreement by reason thereof unless the exercise of such authority shall so interfere with Lessee's use and enjoyment of the Leased Premises as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of South Carolina.

Section 12.2 Waiver of Claims. Lessee hereby waives any claim against the County and its elected officials, officers, agents or employees for loss of anticipated profits caused by any suit or proceeding attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part hereof.

Section 12.3 Waivers. Every provision herein imposing an obligation upon County or Lessee is a material inducement and consideration for the execution of this Agreement. No waiver by County or Lessee of any of the terms, covenants or conditions of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, covenant or condition herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the County to re-enter the Leased Premises or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of fees then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or acquiescence therein. No notice by County shall be required to restore or revive time as being of the essence hereof after waiver by County of default in one or more instances.

Section 12.5 Situs and Service of Process. This agreement shall be governed by and interpreted in accordance with the laws of the State of South Carolina. In the event of a dispute relating to the terms of this agreement, any resulting action shall be instituted and prosecuted in the appropriate courts in Beaufort County, South Carolina.

Section 12.6 Agreement Binding Upon Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

Section 12.7 Time of Essence. Time is expressly agreed to be of the essence of this Agreement.

Section 12.8 Applicable Law. This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of South Carolina.

Section 12.9 Quiet Enjoyment. The County agrees that Lessee, upon payment of all fees, charges and other payments required under the terms of this Agreement and observing and keeping the conditions and covenants of this Agreement on its part to be observed and kept, shall lawfully acquire and hold, use and enjoy the Leased Premises during the Term of this Agreement.

Section 12.10 Lessee’s Dealings with County. Whenever in this Agreement, the Lessee is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the County, the Lessee shall deal with the County’s authorized representative; and unless or until the County shall give Lessee written notice to the contrary, the County’s authorized representative shall be the Airport Director.

Section 12.11 Notices, Consents and Approval. All notices, consents and approvals required or authorized by this Agreement to be given by or on behalf of either party to the other shall be in writing and signed by a duly designated representative of the party by or on whose behalf they are given, and shall be deemed given at the time a registered or certified letter properly addressed, postage prepaid, is deposited in any United States post office.

(a) Notice to the County shall be addressed to it and delivered in person or by U.S. Mail to the office of the Airport Director, Beaufort County Airport, 39 Airport Circle, Beaufort South Carolina 29907, either by registered or certified mail, postage prepaid, or at such other office as it may hereafter designate by notice to the Lessee in writing.

(b) Notice to the Lessee shall be addressed to the attention of:

\_\_\_\_\_

[address]

Beaufort, SC 29907

either by registered or certified mail, postage prepaid, or at such other office in the continental United States as it may hereafter designate by notice to the County in writing.

Section 12.12 Drug-Free Workplace. Lessee will provide a Drug-Free Workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of controlled substance is prohibited in the

facilities and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Notifying the employee in the statement required by Section 12.12(a) that, as a condition of employment, the employee will:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

(c) Notifying the County within ten (10) days after receiving notice under subparagraph (b)(2) from any employee or otherwise receiving actual notice of such conviction.

(d) Taking one of the following actions within thirty (30) days of receiving notice under subparagraph (b)(2) with respect to any employee who is so convicted:

(i) Taking appropriate personnel action against such employee up to and including termination; or

(ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health law enforcement or other appropriate agency.

(e) Making a good faith effort to continue to maintain a Drug-Free Workplace through implementation of subparagraphs (a) through (d).

Section 12.13 Independent Contractor. The parties hereto agree that the Lessee is an independent contractor and not subject to direction or control by the County, except as specified in this Agreement, and except by general rules and regulations adopted for the control and regulation of the Airport and its facilities.

Section 12.14 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either County or Lessee. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of provisions of this Agreement. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

Section 12.15 Memorandum of Lease in Lieu of Recording. The parties agree that should either desire that adequate legal notice of this Agreement be given on the public records of Beaufort County, South Carolina, the other will agree to the execution of a memorandum of this Agreement containing a sufficient description of the parties, the Leased Premises and Term of this Agreement to comply with the minimum requirements for the giving of such notice.

Section 12.16 Warranty of Title. The County represents and warrants that it has good and merchantable fee simple title to the Site and has full right to lease the Site to Lessee.

Section 12.17 Entire Agreement. The provisions of this Agreement contain the entire understanding between the parties. This Agreement supersedes any and all verbal representations, communications and/or prior writings between the parties. This Agreement may not be changed, altered, modified or amended except in writing and with the mutual consent of the parties.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed, in duplicate, with all the formalities required by law.

**Lessee:**

WITNESS

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

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

\_\_\_\_\_

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

**County of Beaufort as Lessor:**

WITNESS:

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

[Title]

\_\_\_\_\_

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

**(LEASE) EXHIBIT A - DEPICTION OF LEASED PREMISES**

**(LEASE) EXHIBIT B - LEASED PARCEL DESCRIPTION, BEAUFORT COUNTY AIRPORT**



**EXHIBIT B**  
**TYPICAL HANGARS**



80' x 80'



180' x 50'

**EXHIBIT C**





# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
<i>Accommodations Tax/ Hospitality Tax reserve fund ordinance</i>
<b>MEETING NAME AND DATE:</b>
County Council 09/28/2020
<b>PRESENTER INFORMATION:</b>
<i>Hayes Williams Interim CFO 15 minutes</i>
<b>ITEM BACKGROUND:</b>
<i>The motion was approved at the Finance Committee meeting on 09/21/2020. Beaufort County Council wishes to have a method to access ATax and HTax funds in case of a disaster, pandemic or other occurrence on a case by case basis.</i>
<b>PROJECT / ITEM NARRATIVE:</b>
This ordinance would allow County Council to approve a resolution to allocate ATax and/or HTax reserves/ funds for purposes that are permitted under their related statute.
<b>FISCAL IMPACT:</b>
<i>Funding would be available from fund balance related to ATax or HTax funds.</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Staff recommends Council to approve the ordinance.
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>Motion to approve the County ordinance related to the ATax/ Htax reserve funding.</i>

**ORDINANCE 2020-\_\_\_\_\_**

**AN ORDINANCE TO PROVIDE FOR A METHOD FOR ALLOCATING RESERVE ACCOMMODATIONS TAX AND/OR HOSPITALITY TAX REVENUES; AND OTHER MATTERS RELATING THERETO.**

**WHEREAS**, Beaufort County (the “County”), collects and administers a 3% local accommodations tax pursuant to SC Code Sections 4-9-30 and 6-1-500 et seq. and as provided in Beaufort County Code Section 66-42 et seq. (the “ATax”); and

**WHEREAS**, pursuant to Beaufort County Code Section 66-47(c)(1), twenty percent of collections over and above those allocated for specific enumerated uses are allocated to establish a reserve fund for emergency or unforeseen needs; and

**WHEREAS**, the County collects and administers a 2% local hospitality tax pursuant to SC Code Sections 4-9-30 and 6-1-700 et seq. and as provided in Beaufort County Code Section 66-531 et seq. (the “Htax”); and

**WHEREAS**, Beaufort County Council is desirous of establishing procedures for allocating certain of these funds in emergency situations;

**NOW, THEREFORE, BE IT ORDAINED BY BEAUFORT COUNTY COUNCIL**, in meeting duly assembled as follows:

1. By approval of a resolution by County Council, funds may be allocated out of ATax and/or Htax reserves for permitted use of funds by statute in cases of, a) a near miss of a hurricane, b) for response to a declared disaster, and c) for other such targeted needs as determined by Council on a case-by-case basis,
  
2. Section 66-44(b) of the Beaufort County Code of Ordinances, entitled “Permitted uses of local (3%) accommodations tax funds” is amended to read:  
 “Authorization to utilize any funds from the County of Beaufort, South Carolina, Local Accommodations Tax Account, shall be by ordinance duly adopted by the county council for the County of Beaufort, South Carolina, except for expenditures following an emergency as provided in Ordinance 2020-\_\_\_\_, which may be authorized by approval of a resolution.”
  
3. Beaufort County Code Section 66-537 is amended to read as follows:  
 Sec. 66-537. - Management and use of hospitality tax.
  - (a) Fund the approved annual operating expenditures of the program at an amount not to exceed eight percent of the funds collected;
  - (b) Allocate the remaining balance through the county’s annual budget process; except
  - (c) County Council may make emergency appropriations as provided in 2020 Ordinance number \_\_\_\_\_ by approval of a resolution.

ADOPTED IN MEETING DULY ASSEMBLED this \_\_\_\_ day of \_\_\_\_\_ 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:  
\_\_\_\_\_  
Sarah Brock, Clerk to Council

First Reading:  
Second Reading:  
Public Hearing:  
Third and Final Reading:



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
<i>Discussion and action item to Amend Ordinance 2019/56 Penn Center Renovations</i>
<b>MEETING NAME AND DATE:</b>
County Council 09/28/2020
<b>PRESENTER INFORMATION:</b>
<i>Ashley Jacobs County Administrator 10 Minutes</i>
<b>ITEM BACKGROUND:</b>
<i>This amended Ordinance was approved at the 09/21/2020 Finance Committee meeting. Ordinance 2019/56 allocated funds for Phase I of the Penn Center Renovations totaling \$822,000. The ordinance specifies Oceana Design as the architect and assigning responsibility to the firm for reviewing and approving invoices.</i>
<b>PROJECT / ITEM NARRATIVE:</b>
Penn Center is not satisfied with Oceana Design’s work, and requests an amendment to Ordinance 2019/56 that removes Oceana Design and allows for an RFQ from other architectural firms to be issued in order to complete the necessary renovations at Penn Center.
<b>FISCAL IMPACT:</b>
<i>No new funds required</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Staff recommends amending the ordinance to have Beaufort County Purchasing issue an RFQ and award the contract with input and assistance from Penn Center.
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>Motion to Amend Ordinance 2019/56 to remove Oceana Design and authorize Beaufort County Purchasing to issue an RFQ for architectural services.</i>

2020-\_\_

**AN ORDINANCE APPROPRIATING FUNDS NOT TO EXCEED \$ 822,000 FROM THE 3% LOCAL ACCOMMODATIONS TAX FUNDS TO PENN CENTER, INC. TO ASSIST WITH PHASE I BUILDING PRESERVATION, RENOVATION AND RESTORATION OF HISTORIC BUILDINGS ON THE PENN CENTER CAMPUS AND OTHER MATTERS RELATED THERETO**

**WHEREAS**, Penn Center, Inc. ("Penn") is a 501(c)(3) non-profit organization. Its mission is to promote, preserve and protect Penn Center's history and culture through education, community development and social justice. It operates Penn Center one of the most significant African American historical and cultural institutions in existence today. It is a prominent historic tourist destination . It is located on Martin Luther King Drive (TMS No. R300016 000 0094 0000). Penn seeks financial assistance from the County to fund its efforts to preserve, protect, renovate and restore historically significant buildings on Penn Center's campus which currently serve, and will continue to serve for years to come, as a destination for tourists, visitors and scholars to Beaufort; and

**WHEREAS**, to facilitate and guide this effort, Penn has established a two-phase building preservation, renovation and restoration plan. Phase I improvements are described on Penn Center Building Restoration and Maintenance Plan (Exhibit " A"). This phase is estimated to cost approximately \$822,000. Penn seeks assistance from the County for this phase of the project; and

**WHEREAS**, Beaufort County Council finds that it is in the best interest of its citizens, residents, visitors and tourists to provide assistance to Penn in this effort.

**NOW THEREFORE, BE IT ORDAINED** by Beaufort County Council that an appropriation to Penn Center, Inc. in an amount not to exceed \$ 822,000 is hereby authorized from the 3% Local Accommodations Tax fund to assist with Phase I building preservation, renovation and restoration as set forth in Exhibit A (collectively the "Work") which is incorporated herein by reference. This appropriation is contingent upon each of the following conditions:

1. Receipt of a properly completed local A-tax application and review of the same pursuant to Resolution 2019 /31;
2. contracts for the Work shall be awarded through the Beaufort County procurement process;
3. Penn shall contract with an architectural/engineering firm hired through a Beaufort County RFQ process, to provide architectural review and contract administration services for all work which is performed utilizing these funds;
4. The architectural/engineering firm shall review, approve and submit to Beaufort County, directly, all Applications for Payment;
5. Beaufort County shall retain the funds in their entirety and shall make payment only upon receipt of approved Applications for Payment from the architectural/engineering firm and only upon the terms specified therein; and
6. Funds will be utilized solely for the capital improvement projects which are identified in Exhibit " A" and solely for the purposes specified therein; and

7. Penn shall comply with all reporting requirements which Beaufort County recently adopted relating to 3% Local A-Tax appropriations which are set forth in Resolution 2019/31.

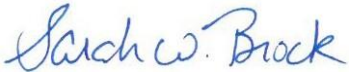
**DONE this \_\_\_\_ day of \_\_\_\_\_ 2020.**

COUNTY COUNCIL OF BEAUFORT COUNTY

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

Joseph Passiment, Chairman

ATTEST:



\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

- First Reading:
- Second Reading:
- Public Hearing:
- Third and Final Reading:





# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
<i>Ordinance - Text Amendment to the Community Development Code (CDC): Appendix B to remove the maximum lot size requirement for minor residential subdivisions in the D3 General Neighborhood (D3GN), the D4 Mixed Use (D4MU); the Village Center (D5VC), and the Gateway Corridor (D5GC) districts on Daufuskie Island</i>
<b>MEETING NAME AND DATE:</b>
<i>Beaufort County Council Meeting – September 14, 2020</i>
<b>PRESENTER INFORMATION:</b>
<i>Eric Greenway, AICP, Community Development Director (5 minutes)</i>
<b>ITEM BACKGROUND:</b>
<i>Planning Commission voted 7 for and 1 against to recommend the amendment at their July 6, 2020 meeting. Natural Resources Committee voted unanimously to recommend to County Council at their August 31, 2020 meeting.</i>
<b>PROJECT / ITEM NARRATIVE:</b>
<i>Planning staff is recommending to keep the maximum lot size requirement, but only make it applicable to major subdivisions (5 or more lots). This would remove the burden for small subdivisions while insuring that larger developments that will have an impact on the character of the area, will develop at the intended density.</i>
<b>FISCAL IMPACT:</b>
<i>None</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
<i>Staff recommends approval</i>
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>Motion to approve a Text Amendment to the Community Development Code (CDC): Appendix B to remove the maximum lot size requirement for minor residential subdivisions in the D3 General Neighborhood (D3GN), the D4 Mixed Use (D4MU); the Village Center (D5VC), and the Gateway Corridor (D5GC) districts on Daufuskie Island;</i>  <i>Or</i>  <i>Motion to deny a Text Amendment to the Community Development Code (CDC): Appendix B to remove the maximum lot size requirement for minor residential subdivisions in the D3 General Neighborhood (D3GN), the D4 Mixed Use (D4MU); the Village Center (D5VC), and the Gateway Corridor (D5GC) districts on Daufuskie Island;</i>

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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

**Item Title:**

Ratification of Severance Package for Ashley Jacobs

**Council Committee:**

County Council

**Meeting Date:**

October 26, 2020

**Committee Presenter (Name and Title):**

Kurt Taylor, County Attorney  
5 mins

**Issues for Consideration:**

Ashley Jacobs employment contract contains provisions for severance upon leaving employment. It is recommended that council ratify those terms in order for there to be a record of approval. They include: payment of regular salary (minus all required withholdings through October 19, 2021, paid at normal payroll installment dates; payment for unused and unforfeited annual leave; and continuation of health, dental and eye insurance for one year or until she is reemployed, whichever comes first. Ms. Jacobs will execute a general release and covenant not to sue.

**Points to Consider:**

Severance is reasonable per the employment contract.

**Funding & Liability Factors:**

Funding would come from the Administrator's budget

**Council Options:**

Approve or disapprove the severance package

**Recommendation:**

Approve the severance package

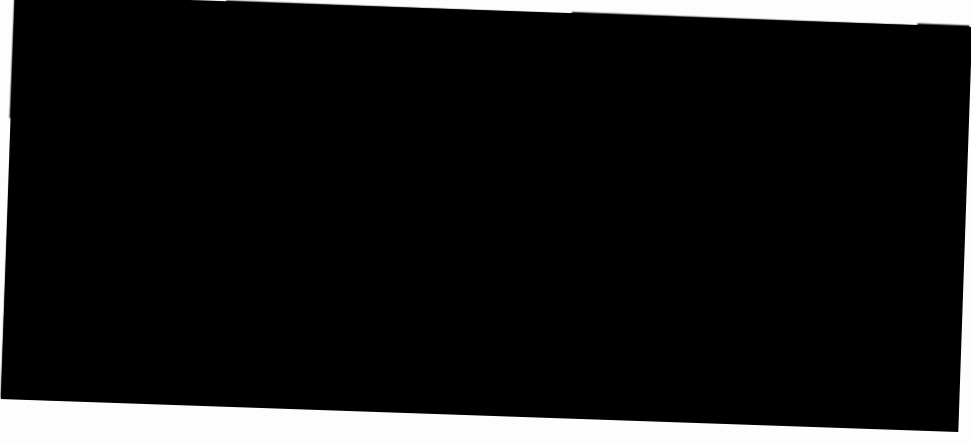
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# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
CONSIDERATION OF THE APPOINTMENT AND REAPPOINTMENT TO THE AIRPORTS BOARD.
<b>MEETING NAME AND DATE:</b>
COUNTY COUNCIL MEETING OCTOBER 26, 2020
<b>PRESENTER INFORMATION:</b>
CHAIRMAN PASSIMENT
<b>ITEM BACKGROUND:</b>
-APPOINTMENT OF THOMAS SHEAHAN FOR ACTIVE/RECENTLY RETIRED COMMERCIAL PILOT - APPROVED ON OCTOBER 19, 2020 -WITHDRAW RESIGNATION/REAPPOINTMENT TO DAN AHERN FOR PROXIMITY 3 MILE RADIUS TO LI AIRPORT - APPROVED ON OCTOBER 19, 2020 .
<b>PROJECT / ITEM NARRATIVE:</b>
-CONSIDERATION TO THE APPOINTMENT OF THOMAS SHEAHAN -CONSIDERATION OF THE REAPPOINTMENT OF DAN AHERN TO THE AIRPORTS BOARD UNTIL REPLACEMENT IS FOUND.
<b>FISCAL IMPACT:</b>
N/A
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
APPROVE, MODIFY OR REJECT
<b>OPTIONS FOR COUNCIL MOTION:</b>
-MOTION TO (APPROVE, MODIFY, OR REJECT) REAPPOINTMENT OF DAN AHERN TO THE AIRPORTS BOARD -MOTION TO (APPROVE, MODIFY, OR REJECT) APPOINTMENT OF THOMAS SHEAHAN TO THE AIRPORTS BOARD

Dan Ahern



Clerk to Council Office  
100 Ribaut Road  
Beaufort, SC 29902

To Whom it may concern:

This is a statement to verify the intention that I, Dan Ahern am seeking reappointment and withdraw my resignation from the Airports Board until a replacement is found. This is a temporary reappointment since I will only be serving, as I stated in my original resignation letter, to the end of this calendar year.

Sincerely,

Dan Ahern

A handwritten signature in cursive script that reads "Dan Ahern".

9-22-2020



COUNTY COUNCIL OF BEAUFORT COUNTY  
County Boards, Agencies, Commissions, Authorities and Committees

Item 19.

County Council of Beaufort County selects citizens for service on Council appointed Boards, Agencies, Commissions, Authorities and Committees from a roster of individuals who have either volunteered or have been recommended for appointment. The Clerk to Council uses this form to keep an up-to-date roster of volunteers and to provide Council basic information about each volunteer.

**Top Three Priorities:** Please indicate by placing a "1", "2", or "3" alongside your choices.

**BOARDS AND COMMISSIONS**

- Accommodations Tax (2% State)
- Airports
- Alcohol and Drug Abuse
- Assessment Appeals
- Beaufort County Transportation
- Beaufort-Jasper Economic Opportunity
- Beaufort-Jasper Water & Sewer
- Beaufort Memorial Hospital
- Bluffton Township Fire
- Burton Fire
- Coastal Zone Management Appellate (inactive)
- Construction Adjustments and Appeals
- Daufuskie Island Fire
- Design Review
- Disabilities and Special Needs
- Economic Development Corporation
- Forestry (inactive)
- Historic Preservation Review
- Keep Beaufort County Beautiful
- Lady's Island / St. Helena Island Fire
- Library
- Lowcountry Council of Governments
- Lowcountry Regional Transportation Authority
- Parks and Recreation
- Planning \*
- Rural and Critical Lands Preservation
- Sheldon Fire
- Social Services (inactive)
- Solid Waste and Recycling
- Southern Beaufort County Corridor Beautification
- Stormwater Management Utility
- Zoning

DATE: 9-21-20 NAME: THOMAS W. SHEAHAN

BEAUFORT COUNTY VOTER REGISTRATION NUMBER: \*

OCCUPATION: RETIRED

TELEPHONE: (Home) [REDACTED] EMAIL: [REDACTED]

HOME ADDRESS: [REDACTED] STATE: [REDACTED] ZIP CODE: [REDACTED]

MAILING ADDRESS: [REDACTED] STATE: [REDACTED] ZIP CODE: [REDACTED]

COUNTY COUNCIL DISTRICT: 1  2  3  4  5  6  7  8  9  10  11

ETHNICITY: Caucasian  African American  Other

Are you presently serving on a Board, Agency, Commission, Authority or Committee? Yes  No

If "yes", what is the name of the board and when does term expire? \_\_\_\_\_

- Please return completed form and a brief resume' either Email or U.S. Mail:
  - Email: [boardsandcommissions@bcgov.net](mailto:boardsandcommissions@bcgov.net)
  - U.S. Mail: Clerk to Council, County Council of Beaufort County, P.O. Drawer 1228, Beaufort, SC 29901
- Applications without a brief resume' cannot be considered.
- Applications will be held **three (3) years** for consideration.
- All information contained on this application is subject to public disclosure.

**YOU MUST BE A BEAUFORT COUNTY REGISTERED VOTER TO APPLY**  
**YOU MUST ATTACH YOUR RESUME' WITH THIS APPLICATION TO BE CONSIDERED**  
**An incomplete application will be returned**

\* Anyone submitting an application to serve on the Planning Commission must fill out the questionnaire on page 2.

Applicant's Signature: Thomas W. Sheahan

Submit by Email

\* RETIRED SEP 1, 2020 FROM DELTA AIR LINES. IN PROCESS OF CHANGING RESIDENCY FROM GEORGIA TO SOUTH CAROLINA

# THOMAS SHEAHAN



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## EXPERIENCE

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### DELTA AIRLINES

PILOT | 1986-2020

- Flight Engineer B727, L1011
- First Officer B727, L1011
- Captain MD88, B767/B757

### UNITED STATES AIR FORCE

FIGHTER PILOT F4E/G | 1980-1986

- Osan Air Base – South Korea
- Moody Air Force Base – Valdosta, Georgia
- Spangdahlem Air Base – Germany

MCDONNELL DOUGLAS F4 TRAINING – HOMESTEAD AIR FORCE BASE | 1979-1980

UNDERGRADUATE PILOT TRAINING – REESE AIR FORCE BASE | 1978-1979

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## EDUCATION

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United States Air Force Academy | BS Aeronautical Engineering | 1974-1978

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## PROFESSIONAL HIGHLIGHTS

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23 years as a Captain at a Major Airline

Pilot ratings:

- Flight Engineer
- Commercial Pilot
- Air Transport pilot

**Vaughn, Tithanie**

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**From:** Thomas Sheahan <sheahan78@gmail.com>  
**Sent:** Wednesday, October 14, 2020 11:58 AM  
**To:** Vaughn, Tithanie  
**Subject:** Re: Airports board application

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at [helpdesk@bcgov.net](mailto:helpdesk@bcgov.net) or to 843-255-7000.

Tithanie,

I have received a voter registration number. Reg no. [REDACTED] Thank you for your patience.

Best regards,  
Tom Sheahan

On Tue, Sep 22, 2020 at 11:04 AM Vaughn, Tithanie <[tithanie.vaughn@bcgov.net](mailto:tithanie.vaughn@bcgov.net)> wrote:

Citizens are encouraged to call or e-mail before driving to a Beaufort County Office. Visit us online at [www.beaufortcountysc.gov](http://www.beaufortcountysc.gov).  
Effective July 17, all Beaufort County buildings are closed to the public until further notice to minimize opportunities to spread COVID-19 in our community.

Good Morning Mr. Sheahan,

We have received your application to serve as a member on the Airports Board for Active/retired commercial pilot.

As soon as you get your voter's registration number please email me so that we can submit your application to serve in the place of Barry Wilbur. We want to thank you for your willingness to be a part of our team.

Please, feel free to contact me if you have any questions.

Thank You,



### Beaufort County

Class	Base	Inside Rate per \$1,000	Outside Rate per \$1,000	current	proposed	difference	% change	total count	Declining scale	Declining scale increment		
	<b>35.00</b>	<b>0.37</b>	0.00						Step 1	<b>100%</b>	\$2,000 - \$1,000,000	
	<b>5</b>	<b>0.10</b>							Step 2	<b>100%</b>	\$1,000001 - \$2,000,000	
1	\$ 35.00	\$ 0.37	\$ 0.74	\$ 430,366	\$ 435,692	\$ 5,326	1.2%	537	Step 3	<b>100%</b>	\$2,000001 - \$3,000,000	
2	\$ 40.00	\$ 0.47	\$ 0.94	\$ 107,760	\$ 126,113	\$ 18,353	17.0%	364	Step 4	<b>100%</b>	\$3,000001 - \$4,000,000	
3	\$ 45.00	\$ 0.57	\$ 1.14	\$ 172,741	\$ 160,653	\$ (12,088)	-7.0%	819	Step 5	<b>100%</b>	\$4,000001 - \$5,000,000	
4	\$ 50.00	\$ 0.67	\$ 1.34	\$ 417,128	\$ 395,370	\$ (21,758)	-5.2%	1208	Step 6	<b>100%</b>	\$5,000001 - \$6,000,000	
5	\$ 55.00	\$ 0.77	\$ 1.54	\$ -	\$ -	\$ -	0.0%	0	Step 7	<b>100%</b>	\$6,000001 - \$7,000,000	
6	\$ 60.00	\$ 0.87	\$ 1.74	\$ -	\$ -	\$ -	0.0%	0	Step 8	<b>100%</b>	\$7,000001 - \$8,000,000	
7	\$ 65.00	\$ 0.97	\$ 1.94	\$ 274,070	\$ 279,976	\$ 5,906	2.2%	459	Step 9	<b>100%</b>	\$8,000001 - \$9,000,000	
				<b>Sub Total</b>	<b>\$ 1,402,065</b>	<b>\$ 1,397,803</b>	<b>\$ (4,261)</b>	<b>-0.30%</b>	<b>3387</b>	Step 10	<b>100%</b>	\$9,000001 - \$10,000,000
									Step 11	<b>100%</b>	>\$10,000000	
									Step 12			

Contractor  
railroad  
telephone  
cable  
junk/scrap  
pawn  
auto/motor  
peddlers  
peddlers seasonal  
insurance  
coin machine gross receipts  
coin oper per machine  
amusement per machine  
amusement gross receipts  
bingo  
carnivals / circus  
pool hall

8.10	\$ 40.00	\$ 0.47	\$ 0.94	\$ 572,465	\$ 587,164	\$ 14,699	2.6%	1709
8.20			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.30	\$ -		\$ -	\$ -	\$ -	\$ -	0.0%	0
8.40			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.41			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.42	\$ 35.00	\$ 0.37	\$ 0.74	\$ 577	\$ 308	\$ (269)	-46.7%	2
8.50	\$ 35.00	\$ 0.37	\$ 0.74	\$ 157,581	\$ 153,332	\$ (4,248)	-2.7%	16
8.60	\$ 35.00	\$ 0.37	\$ 0.74	\$ 4,575	\$ 3,790	\$ (785)	-17.2%	64
8.61			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.70			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.80			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.81			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.82			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.83			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.91			\$ -	\$ -	\$ -	\$ -	0.0%	0
8.92	\$ 35.00	\$ 0.37	\$ 0.74	\$ 88	\$ 70	\$ (18)	-20.0%	2
8.94	\$ 35.00	\$ 0.37	\$ 0.74	\$ 3,735	\$ 595	\$ (3,140)	-84.1%	15
				<b>Sub Total</b>	<b>\$ 739,020</b>	<b>\$ 745,259</b>	<b>\$ 6,239</b>	<b>1808</b>

<b>TOTAL</b>	<b>\$ 2,141,085</b>	<b>\$ 2,143,062</b>	<b>\$ 1,978</b>	<b>0.09%</b>	<b>5,195</b>
	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		
<b>Target Revenue #</b>	<b>\$ 2,141,085</b>	<b>\$ 2,143,062</b>	<b>\$ 1,978</b>	<b>0.1%</b>	

Impact Summary	# of Licensees	% of Total	Decrease	% with Decrease
>	<b>10.0%</b>	1271	24.5%	3,148
>	<b>\$250</b>	161	3.1%	Increase
>	<b>BOTH</b>	160	3.1%	2,032

## 2019 MODEL BUSINESS LICENSE ORDINANCE

### **Section 1. License Required.**

Every person engaged or intending to engage in any calling, business, occupation or profession, in whole or in part, within the limits of the County of Beaufort, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

### **Section 2. Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meaning ascribed herein:

“*Business*” means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly.

“*Charitable Organization*” means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. section 501 (c) (3), (4), (6), (7), (8), (10) or (19).

“*Charitable Purpose*” means a benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization.

“*Classification*” means that division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

“*Gross Income*” means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the County, excepting therefrom income earned outside of the County on which a license tax is paid by the business to some other municipality or a county and fully reported to the County. Gross income for agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums written. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies.

“*License Official*” means a person designated by the County to administer this ordinance and the License Official’s designees and agents.

“Licensee” means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

“Council” means Beaufort County Council.

“County” means the County of Beaufort, South Carolina.

“Person” means any individual, firm, partnership, LLP, LLC, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

**Section 3. Purpose and Duration.**

The business license levied by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each yearly license shall be issued for the twelve-month period of May 1 to April 30. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

**Section 4. License Tax.**

A. The required license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified.

B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year. The initial tax for an annexed business shall be prorated for the number of months remaining in the license year. No refund shall be made for a business that is discontinued.

**Section 5. Registration Required.**

A. The owner, agent or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the County, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

B. Application shall be on a form provided by the License Official which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the business name as reported on the South Carolina income tax return, and all information about the applicant and the Licensee and the business deemed appropriate to carry out the purpose of this ordinance by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.

C. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments, personal property taxes on business property and other monies due and payable to the County have been paid.

**Section 6. Deductions, Exemptions, and Charitable Organizations.**

A. No deductions from gross income shall be made except income earned outside of the County on which a license tax is paid by the business to some other municipality or a county and fully reported to the County, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to State or Federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the County, unless exempted by State or Federal law. The License Official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by State law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.

C. A Charitable Organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A Charitable Organization, or any for-profit affiliate of a Charitable Organization, that reports income from for-profit activities, or unrelated business income, for Federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

A Charitable Organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a Charitable Organization as defined in this ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a Charitable Purpose as defined in this ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

**Section 7. False Application Unlawful.**

It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license, or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

**Section 8. Display and Transfer.**

A. All persons shall display the license issued to them on the original form provided by the License Official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.

B. A change of address must be reported to the License Official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the License Official and compliance with zoning and building codes. Failure to obtain the approval of the License Official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

**Section 9. Administration of Article.**

The License Official shall administer the provisions of this article, collect license taxes, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or suspension and revocation procedures, report violations to the county attorney, assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

**Section 10. Inspection and Audits.**

A. For the purpose of enforcing the provisions of this ordinance, the License Official or other authorized agent of the County is empowered to enter upon the premises of any person subject to this ordinance to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.

B. The License Official shall have the authority to make inspections and conduct audits of businesses within the County to insure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the License Official shall not release the amount of license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, State or Federal law, or proper judicial order. Statistics compiled by classifications are public records.

**Section 11. Assessments, Payment under Protest, Appeal.**

A. If a person fails to obtain a business license or to furnish the information required by this ordinance or the License Official, the License Official shall examine such records of the business or any other available records as may be appropriate, and conduct such investigations and statistical surveys as the License Official may deem appropriate to assess a license tax and penalties as provided herein.

B. A notice of assessment shall be served by certified mail or personal service. An application for adjustment of the assessment may be made to the License Official within five (5) days after the notice is mailed or personally served or the assessment will become final. The License Official shall establish a uniform procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

C. A final assessment may be appealed to the Council only by payment in full of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment pursuant to the provisions of this ordinance relating to appeals to Council.

**Section 12. Delinquent License Taxes, Partial Payment.**

A. For non-payment of all or any part of the correct license tax, the License Official shall levy and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license tax remains unpaid for sixty (60) days after its due date, the License Official shall report it to the municipal attorney for appropriate legal action.

B. Partial payment may be accepted by the License Official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

**Section 13. Notices.**

The License Official may, but shall not be required to, mail written notices that license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

**Section 14. Denial of License.**

The License Official shall deny a license to an applicant when the License Official determines:

A. The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or

B. The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accidens; or

C. The applicant, Licensee or prior Licensee or the person in control of the business has been convicted, within the previous ten years, of an offense under a law or ordinance regulating

business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

D. The applicant, Licensee or prior Licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the County or in another jurisdiction; or

E. The applicant, Licensee or prior Licensee or the person in control of the business is delinquent in the payment to the County of any tax or fee; or

F. The license for the business or for a similar business of the Licensee in the County or another jurisdiction has been denied, suspended or revoked in the previous license year.

A decision of the License Official shall be subject to appeal to Council as herein provided. Denial shall be written with reasons stated.

### **Section 15. Suspension or Revocation of License.**

When the License Official determines:

A. A license has been mistakenly or improperly issued or issued contrary to law; or

B. A Licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance; or

C. A Licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or

D. A Licensee has been convicted, within the previous ten years, of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

E. A Licensee has engaged in an unlawful activity or nuisance related to the business; or

F. A Licensee is delinquent in the payment to the County of any tax or fee,

the License Official shall give written notice to the Licensee or the person in control of the business within the County by personal service or certified mail that the license is suspended pending a hearing before Council for the purpose of determining whether the license should be revoked.

The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

### **Section 16. Appeals to Council.**

A. Any person aggrieved by a decision, final assessment, proposed revocation, suspension, or a denial of a business license by the License Official may appeal the decision to the Council by written request stating the reasons therefore, filed with the License Official within ten (10) days after service by mail or personal service of the notice of decision, final assessment, proposed revocation, suspension or denial.

B. An appeal or a hearing on proposed revocation shall be held by the Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. Council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the Municipality.

**Section 17. Consent, franchise or license required for use of streets.**

A. It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the municipality any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees and conditions for use.

B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by State law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

**Section 18. Confidentiality.**

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of the license ordinance.

**Section 19. Violations.**

Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein.



**Section 20. Severability.**

A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions.

**Section 21. Classification and Rates.**

A. The classifications of businesses included in each rate class are listed with United States North American Industry Classification System (NAICS) codes, by sector, sub-sector, group or industry. The Business License Class Schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a license tax. The business classification, pursuant to the most recent version of the Business License Class Schedule adopted by the council, most specifically identifying the subject business, shall be applied to the business. The License Official shall have the authority to make the determination of the business classification most specifically applicable to a subject business...

B. The license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current Business License Rate Schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council. A copy of the Class Schedule and Rate Schedule shall be filed in the office of the County clerk.

**APPENDIX A**

**RATE SCHEDULE**

<b><u>RATE CLASS</u></b>	<b><u>INCOME: \$0 - \$2,000 BASE RATE</u></b>	<b><u>INCOME OVER \$2,000 Rate per Thousand or fraction thereof</u></b>
1	\$ .00	\$
2	\$ .00	\$
3	\$ .00	\$
4	\$ .00	\$
5	\$ .00	\$
6	\$ .00	\$
7	\$ .00	\$
8.1	\$ .00	\$
8.2	\$ set by State statute	
8.3	MASC Telecommunications	
8.41	\$ .00	\$
8.42	\$ .00	\$
8.5	\$ .00	\$
8.61	\$ .00	\$
8.62	\$ .00	\$
8.7	MASC Insurance	
8.81	\$12.50 + \$12.50 per machine	
8.82	\$ .00	\$
8.83	\$12.50 + \$12.50 per machine	
8.91	\$ .00	\$
8.92	\$ .00	\$
8.93	\$ .00	\$
8.10	\$ .00 + \$5.00 per table	\$

**NON-RESIDENT RATES**

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the municipality.

**DECLINING RATES**

Declining Rates apply in all Classes for gross income in excess of \$1,000,000, unless otherwise specifically provided for in this ordinance.

<b><u>Gross Income in \$ Millions</u></b>	<b><u>Percent of Class Rate for each additional \$1,000</u></b>
0 - 1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
OVER 4	60%

**CLASS 8 RATES**

Each NAICS Number designates a separate sub-classification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined rates. Non-resident rates do not apply except where indicated.

- 8.1 NAICS 230000 - Contractors, Construction, All Types** [Non-resident rates apply]  
 Having permanent place of business within the municipality  
 Minimum on first \$2,000.....\$ \_\_\_\_\_ PLUS  
 Each additional 1,000.....\$ \_\_\_\_\_

A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

The total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year.

No contractor shall be issued a business license until all state and county qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

- 8.2 NAICS 482 - Railroad Companies** – (See S.C. Code § 12-23-210)

**8.3 NAICS 517311, 517312 - Telephone Companies:**

A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services", as defined in S. C. Code Section 58-9-2200, shall be at the maximum rate authorized by S. C. Code Section 58-9-2220, as it now provides or as provided by amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.

B. In conformity with S.C. Code Section 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

C. The business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

D. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

E. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

F. Nothing in this Ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this Ordinance.

H. As authorized by S. C. Code Section 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S. C. Code Section 58-9-2200 shall continue in effect.

**8.41**    **NAICS 423930 - Junk or Scrap Dealers** [Non-resident rates apply]  
Minimum on first \$2,000 .....\$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 ..... \$ \_\_\_\_\_

**8.42**    **NAICS 522298 - Pawn Brokers** - All Types  
Minimum on first \$2,000 ..... \$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 ..... \$ \_\_\_\_\_

**8.5**      **NAICS 4411, 4412 - Automotive, Motor Vehicles, Boats, Farm Machinery or Retail**  
(except auto supply stores - see 4413)  
Minimum on first \$2,000 .....\$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_\_

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

**NAICS 454390 - Peddlers, Solicitors, Canvassers, Door-To-Door Sales**

direct retail sales of merchandise. [Non-resident rates apply]

**8.61** Regular activities [more than two sale periods of more than three days each per year]  
Minimum on first \$2,000 .....\$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_\_

**8.62** Seasonal activities [not more than two sale periods of not more than three days each year, separate license required for each sale period]  
Minimum on first \$2,000 .....\$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_\_

Applicant for a license to sell on private property must provide written authorization from the property owner to use the intended location.

**8.7 NAICS 5241 - Insurance Companies:**

Except as to fire insurance, “gross premiums” means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the county, regardless of where the property or risk is located, provided no tax has been paid to another county in which the property or risk is located based on the same premium.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the county, regardless of whether or not an office is maintained in the county.

As to fire insurance, “gross premiums” means gross premiums (1) collected in the county, and/or (2) realized from risks located within the limits of the county.

Gross premiums shall include all business conducted in the prior calendar year.

Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.

Declining rates shall not apply.

**NAICS 52411 - Life, Health and Accident** ..... 0.75% of Gross Premiums

**NAICS 524126 - Fire and Casualty**..... 2% of Gross Premiums

**NAICS 524127 - Title Insurance** ..... 2% of Gross Premiums

Notwithstanding any other provisions of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Pursuant to S.C. Code Ann. §§ 38-45-10 and 38-45-60, the Municipal Association of South Carolina, by agreement with the municipality, is designated the municipal agent for purposes of administration of the municipal broker’s premium tax. The agreement with the Association for administration and collection of current and delinquent license taxes from insurance companies as authorized by S.C. Code § 5-7-300.

[The South Carolina General Assembly, in order to ensure consistency with the federal Non-admitted and Reinsurance Reform Act of 2010 (“NRRA”), ratified an act (Rat# 283) on June 28, 2012, amending S.C. Code §§ 38-7-16 and 38-45-10 through 38-45-195. The act establishes a blended broker’s premium tax rate of 6 percent comprised of a 4 percent state broker’s premium tax and a 2 percent municipal broker’s premium tax. The act states a municipality may not impose on brokers of non-admitted insurance in South Carolina an additional license fee or tax based upon a percentage of premiums.]

**NAICS 713120 - Amusement Machines, coin operated (except gambling) -**

Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) – **[Type I and Type II]**

**8.81** Operator of machine .....\$12.50/machine PLUS  
.....\$12.50 business license  
for operation of all machines (not on gross income).[§12-21-2746]

**8.82** Distributor selling or leasing machines  
(not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.]  
Minimum on first \$2,000 ..... \$ \_\_\_\_\_ PLUS  
Per \$1,000 or fraction over \$2,000 .....\$ \_\_\_\_\_

**NAICS 713290 - Amusement Machines, coin operated, non-payout**

Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [Type III]

**8.83** Operator of machine .....\$12.50/machine PLUS  
.....\$12.50 business license  
for operation of all machines (not on gross income). [§12-21-2720(B)]

**8.82** - Distributor selling or leasing machines (not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.] -Minimum on first \$2,000..... \$ \_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_

**8.91** NAICS 713290 - Bingo halls, parlors –  
Minimum on first \$2,000 .....\$ \_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_

**8.92** NAICS 711190 - Carnivals and Circuses -  
Minimum on first \$2,000 .....\$ \_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_

**8.93** NAICS 722410 - Drinking Places, bars, lounges, cabarets (Alcoholic beverages consumed on premises)  
Minimum on first \$2,000 .....\$ \_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

**8.10** NAICS 713990 - Billiard or Pool Rooms, all types ..... \$5.00 or \$12 per table PLUS  
Minimum on first \$2,000 .....\$ \_\_\_\_ PLUS  
Per \$1,000, or fraction, over 2000.....\$ \_\_\_\_

NAICS 22112 - Electric Power Distribution..... See Consent or Franchise

NAICS 22121 – Natural Gas Distribution .....See Consent or Franchise

NAICS 517110 – Television: Cable or Pay  
Services using public streets.....See Franchise

## **Business License Class Schedule by NAICS Code**

### **Appendix B**

**This appendix will be updated annually based on the latest available IRS statistics. The updated Business License Class Schedule may be accessed at <http://www.masc.sc/SiteCollectionDocuments/Finance/BL-AppxB.pdf>**



## Session 123 - (2019-2020)

### H 3187 General Bill, By G.R. Smith and Oremus

#### Summary: Lodging marketplace

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 1, TITLE 6 SO AS TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY MAY NOT PROHIBIT VACATION RENTALS OR SHORT-TERM RENTALS, TO PROVIDE THAT THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY MAY NOT ENACT CERTAIN REGULATIONS, TO PROVIDE THAT A LODGING MARKETPLACE MAY REGISTER WITH THE DEPARTMENT OF REVENUE FOR A LICENSE FOR THE COLLECTION AND REMITTANCE OF ALL TAXES, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY MAY NOT LEVY CERTAIN FEES OR TAXES, AND TO PROVIDE FOR CERTAIN DISCLOSURE REQUIREMENTS.

**12/18/18 House Prefiled**

**12/18/18 House Referred to Committee on Ways and Means**

**01/08/19 House Introduced and read first time (House Journal-page 121)**

**01/08/19 House Referred to Committee on Labor, Commerce and Industry (House Journal-page 121)**

**03/03/20 House Member(s) request name added as sponsor: Oremus**

**South Carolina General Assembly**  
123rd Session, 2019-2020

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~~Indicates Matter Stricken~~

Indicates New Matter

**H. 4431**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Jordan, Fry, Rose, Forrest, Anderson, Hyde, B. Cox, Elliott, Morgan, B. Newton, Rutherford, Long, Magnuson, Clemmons, Davis, Taylor, Hewitt, Pope, Ligon, Tallon and D.C. Moss

Document Path: I:\council\bills\rt\17613sa19.docx

Introduced in the House on April 9, 2019

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: SC Business License Tax Reform

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
4/9/2019	House	Introduced and read first time ( <a href="#">House Journal-page 27</a> )
4/9/2019	House	Referred to Committee on <b>Labor, Commerce and Industry</b> ( <a href="#">House Journal-page 27</a> )
4/11/2019	House	Member(s) request name added as sponsor: Anderson, Hyde
4/23/2019	House	Member(s) request name removed as sponsor: Daning
4/24/2019	House	Member(s) request name added as sponsor: B.Cox, Elliott, Morgan
4/25/2019	House	Member(s) request name added as sponsor: B.Newton
5/7/2019	House	Member(s) request name added as sponsor: Rutherford
5/20/2019	House	Member(s) request name added as sponsor: Long, Magnuson, Clemmons, Davis, Taylor
5/21/2019	House	Member(s) request name added as sponsor: Hewitt, Pope
1/15/2020	House	Member(s) request name removed as sponsor: Atkinson
1/15/2020	House	Member(s) request name added as sponsor: Ligon, Tallon, D.C.Moss

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## VERSIONS OF THIS BILL

[4/9/2019](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

### A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 4 TO CHAPTER 1, TITLE 6 SO AS TO PROVIDE BUSINESS LICENSE TAX REFORM, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE WAY IN WHICH A BUSINESS LICENSE TAX IS COMPUTED, TO PROVIDE FOR THE WAY IN WHICH TO PURCHASE A BUSINESS LICENSE, TO PROVIDE THAT A TAXING JURISDICTION SHALL ADOPT THE LATEST STANDARDIZED BUSINESS LICENSE CLASS SCHEDULE, TO PROVIDE THE WAY IN WHICH A BUSINESS LICENSE OFFICIAL SHALL SERVE NOTICE OF ASSESSMENT OF BUSINESS LICENSE TAX DUE; TO AMEND SECTIONS [4-9-30](#) AND [5-7-30](#), RELATING TO THE DESIGNATION OF POWERS IN COUNTY GOVERNMENT AND THE POWERS CONFERRED UPON MUNICIPALITIES, RESPECTIVELY, SO AS TO PROVIDE THAT A BUSINESS LICENSE TAX MUST BE GRADUATED ACCORDING TO THE BUSINESS TAXABLE INCOME AND THAT A WHOLESALER DELIVERING GOODS IN CERTAIN INSTANCES IS NOT SUBJECT TO THE BUSINESS LICENSE TAX; TO AMEND SECTION [6-1-120](#), RELATING TO THE CONFIDENTIALITY OF COUNTY OR MUNICIPAL TAXPAYER INFORMATION, SO AS TO ALLOW THE SHARING OF CERTAIN DATA AND CERTAIN BUSINESS LICENSE TAXES; TO AMEND SECTION [12-4-310](#), RELATING TO THE DEPARTMENT OF REVENUE'S POWERS AND DUTIES, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL MAKE CERTAIN RECORDS AVAILABLE TO CERTAIN AUTHORITIES LEVYING A TAX BASED ON BUSINESS TAXABLE INCOME.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the "South Carolina Business License Tax Reform Act".

SECTION 2. Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Article 4  
South Carolina Business License Tax Reform

Section [6-1-400](#). (A)(1) Unless specifically provided by state law, a county or municipality which levies a business license tax must comply with the provisions of this article.

(2) As used in this article:

(a) 'Business license' means a license issued to a taxpayer by a county or municipality for the privilege of doing business in that county or municipality.

(b) 'Taxing jurisdiction' means any county or municipality that levies a business license tax.

(c) 'Taxpayer' means any individual, firm, partnership, limited liability partnership, limited liability corporation, or corporation.

(B)(1) For purposes of this article, unless otherwise provided, 'business taxable income' means gross receipts, if reported on a cash basis, or gross revenues, if reported on an accrual basis, from the performance of services and from the sale, lease, or rental of goods or other property in the ordinary course of business.

(2) 'Business taxable income' does not include:

(a) costs of goods sold or other business expenses;

(b) wages and cash compensation paid to employees;

(c) dividends or other distributions received by a corporation, or proceeds from borrowings, the sale of a capital asset, the repayment of the principal portion of a loan, the issuance of stock or other equity investments or capital contributions, or the undistributed earnings of subsidiary entities;

(d) royalties and revenue derived from intellectual property;

(e) taxes, funds, or fees collected for and remitted to a governmental entity;

(f) escrow or trust funds or other funds that are the property of a third party;

(g) sales tax paid by a contractor on building materials or supplies;

(h) sales tax paid on the purchase of materials or supplies which become a component of a product manufactured, produced, or constructed for sale;

- (i) revenue received from reimbursements from clients or customers in which the business charges no fee or interest for providing funds upfront to a client or customer;
  - (j) revenue earned from engaging in business in another taxing jurisdiction where an additional business license tax is paid; or
  - (k) the trade in value of a vehicle, equipment, or merchandise.
- (3) Business taxable income for real estate brokers-in-charge is gross commissions retained.
- (4) Business taxable income for manufacturers of goods or materials with a location in a taxing jurisdiction is the lesser of gross receipts or gross revenues collected from business done at the location as determined in accordance with Section [12-6-2280](#)(A) and (B) but applicable only to sales in a taxing jurisdiction or the amount of taxable income allocated and apportioned to that location for purposes of the business's state income tax return as determined in accordance with Section [12-6-2280](#)(A) and (B) but applicable only to sales in a taxing jurisdiction. Manufacturers include those taxpayers reporting a 'manufacturing' principal business activity code on their respective federal income tax return.
- (C)(1) A business license must be issued to a taxpayer for a twelve-month period beginning May first and ending April thirtieth. A business license tax must be paid by the taxpayer to the taxing jurisdiction. A taxing jurisdiction may impose penalties if the tax is not paid before June first. If a business license is issued on a construction contract, the taxpayer may elect to have the business license expire at the completion of either the entire construction project or a phase of the construction project.
- (2) The business license tax must be computed based on the business taxable income for the calendar year preceding May first or the business's twelve-month fiscal year preceding May first. For a new business license, the business license tax must be computed based on the estimated business taxable income for the calendar year preceding May first or the business's twelve-month fiscal year preceding May first. The use of a calendar year or twelve-month fiscal year must be determined by the basis used by the taxpayer in its most recently filed federal income tax return. A business license related to construction contract projects may be issued on an individual project basis at the option of the taxpayer.
- (D) A taxing jurisdiction that requires a business license shall accept a standard business license application as established and provided by the Secretary of State.

(E)(1) A taxing jurisdiction shall establish a 2020 Business License Tax Rate Schedule using business license tax revenue collected for a twelve-month period in the 2018 business license year so that the aggregate county or municipal business license tax calculated for 2020 does not exceed the aggregate county or municipal business license tax collected in 2018, adjusted for inflation, from the same businesses.

(2) If the rate for a North American Industry Classification System (NAICS) sector, subsector, or industry is unchanged from 2018 to 2019, then the business license tax collections may be excluded from the calculation provided for in item (1).

(3) Beginning January 1, 2022, the 2020 Business License Tax Rate Schedule may be adjusted by majority vote of the county or municipal council.

(F) A taxing jurisdiction may not refuse to issue a certificate of occupancy for a building due to nonpayment of the business license tax by subcontractors. An ongoing highway construction operation may not be impeded by a taxing jurisdiction for nonpayment of the business license tax by a contractor or subcontractor.

(G) A taxpayer is entitled to a refund if it submits a business license tax payment that is greater than the amount owed. The refund must be requested by the taxpayer before June first. The taxing jurisdiction shall issue the refund to the taxpayer within thirty days of the taxpayer's request for the refund.

(H)(1) Any special ordinance or formal or informal agreement entered into between a taxing jurisdiction and a taxpayer regarding rate classes or the calculation of business license taxes which was adopted by ordinance or agreed to before January 1, 2020, is considered valid upon the approval of the taxpayer. A taxpayer may prove the existence and terms of an agreement through direct or circumstantial evidence, including evidence of prior payment accepted.

(2) This section does not impair or affect any special business license ordinance passed for economic stimulus or any formal or informal agreement between a county or a municipality and a taxpayer regarding the calculation of taxes entered into before January 1, 2020.

(I) For the purposes of levying a business license tax, a taxpayer performing a single act of a limited or isolated nature does not, in itself, constitute doing business in that taxing jurisdiction.

(J) Eleemosynary organizations are exempt from the business license tax. If an eleemosynary organization reports income from for-profit activities or unrelated

business income for federal income tax purposes to the Internal Revenue Service, then it is considered a taxpayer subject to the business license tax on the part of its business taxable income from the for-profit activities or unrelated business income.

Section [6-1-420](#). (A) A taxing jurisdiction shall allow the purchase of a business license as provided by Section [6-1-400](#) or a delivery license by any taxpayer that has no other physical presence within the taxing jurisdiction for the privilege of delivering its merchandise therein. The amount of the delivery license may not exceed one hundred dollars. A taxing jurisdiction may require by ordinance the purchase of a decal by the taxpayer for each delivery vehicle making deliveries within the taxing jurisdiction. The charge for the decal may not exceed the taxing jurisdiction's actual cost of the decal.

(B) As used in this section, 'delivery license' means a fixed rate business license issued by a taxing jurisdiction for the limited privilege of delivering and requisite set-up and installation, by the taxpayer's employees or agents, of the taxpayer's own merchandise in that taxing jurisdiction, by means of delivery vehicles owned, leased, or contracted by the taxpayer; provided that the gross receipts derived from the sale and any requisite set-up or installation of all merchandise so delivered into the taxing jurisdiction may not exceed seventy-five thousand dollars during the delivery license year, and any set-up or installation must relate only to that required by the contract between the taxpayer and the customer or as may be required by state or local law, and the merchandise so delivered. A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others may not be entitled to purchase a delivery license.

(C) If at any time during the delivery license year the taxpayer fails to meet the criteria specified in this section, then within forty-five days after any of the criteria have been violated or exceeded, the taxpayer shall purchase a delivery license or other appropriate license from the taxing jurisdiction and may be subject to a penalty not to exceed ten dollars.

Section [6-1-430](#). (A)(1) By December thirty-first of every even year, a taxing jurisdiction shall adopt, by ordinance, the latest Standardized Business License Class Schedule as provided by the Secretary of State.

(2) The Secretary shall determine and revise the Standardized Business License Class Schedule every odd year using the latest available nationwide Internal Revenue Service statistics for the calculation of profitability of businesses and using the business classification codes of the latest North American Industry Classification System. The class schedule must be determined further by use of an index of profitability derived by ratios based on division of net profit as the numerator and

gross profit as the denominator. This index must be determined for each active and pertinent classification and subclassification, ranked from lowest ratio to highest ratio, and divided into seven classes. Pursuant to Section [6-1-400\(E\)](#), a taxing jurisdiction is authorized to establish the rate applicable to each license class in the Standardized Business License Class Schedule.

(3) A taxing jurisdiction, upon a finding of a rational basis as explained in its ordinance and by a positive majority vote of the county or municipal council, may provide for additional reasonable subclassifications based upon particularized considerations as needed for economic stimulus or the enhanced or disproportionate demands by specific business subclassifications on county or municipal services or infrastructure. The county or municipal council may review proposed additional subclassifications while in executive session but must adopt any new subclassifications on the record in a meeting open to the public. The details of proposed subclassifications discussed during executive session are exempt from Chapter 4, Title 30, the Freedom of Information Act, providing an exemption for efforts to attract business or industry to invest within South Carolina. Any subclassifications adopted by a county or municipal council expires upon the establishment by the Secretary of State of a revised Standard Business License Class Schedule every odd year unless the county or municipal council agree upon a different length of time, in which case the length of time agreed upon by the county or municipal council and the taxpayer is controlling.

(4) A taxing jurisdiction shall provide thirty days' notice to the public before holding a public meeting to adopt a business license subclassification or rate class.

(B) A taxing jurisdiction shall provide access to taxpayers for the reporting, calculation, and payment of business license taxes through the business license tax portal managed by the Office of the Secretary of State, subject to the availability and capability of the portal. Any limitations in portal availability or capability do not relieve taxpayers from existing business license or business license tax obligations. Any audit of income or assessment of tax reported through the business license tax portal must be undertaken by the taxing jurisdiction. Data obtained through the business license tax portal may not be used by the Secretary, the Municipal Association of South Carolina (MASC), or any other party for statewide analytics or any other purpose not specified in this section. The Secretary of State and the MASC are prohibited from auditing a taxpayer using the business license tax portal. In addition to allowing a payment through the business license tax portal, a taxing jurisdiction shall allow a taxpayer to file and pay its business license tax in person at a location within the taxing jurisdiction, by telephone, or by mail.



(C) The Secretary of State is authorized to contract with software providers and payment processors for the purposes of implementing the provisions of this section. The Secretary may promulgate regulations to carry out the provisions of this section.

(D) The Secretary of State may retain an amount not more than one quarter of one percent of the revenue collected, as approved by the Business License Class Schedule Board, to defray the administrative costs of administering the business license tax program, but the Secretary of State may not retain more than its actual administrative costs.

(E) The Secretary of State is authorized to expend any funds carried forward from previous fiscal years for the purpose of implementing the provisions of this section. Expenditures may not exceed the actual cost of implementing the provisions of this section.

Section [6-1-440](#). (A) The county or municipal business license official shall serve notice of assessment of business license tax due on the taxpayer by mail or personal service. Within thirty days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment. An informal conference between the county or municipal business license official and the taxpayer must be held within fifteen days of the receipt of the request, at which the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the county or municipal business license official shall issue a notice of final assessment and serve the taxpayer by mail or personal service with the notice and provide a form for any further appeal of the assessment by the taxpayer.

(B) Within thirty days after the date of postmark or personal service, the taxpayer may appeal from the notice of final assessment by filing the completed appeal form with the county or municipal business license official by mail or personal service, and by paying to the county or municipality in protest at least eighty percent of the business license tax based on the final assessment. The appeal must be heard and determined by the county or municipal council or its designated appeals officer or appeals board. The county or municipal council or its designee shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the county or municipal council or its designee. The hearing must be held within thirty days after receipt of the appeal form unless continued to another date by agreement of the parties. A hearing by the county or municipal council, or its designee, or appeals board must be held at a regular or special meeting of the county or municipal council or appeals board. At the appeals hearing, the taxpayer and the county or municipality have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The hearing must be

recorded and must be transcribed at the expense of the party so requesting. The county or municipal council, or its designee, or appeals board shall decide the assessment by majority vote. The county or municipal council, or its designee, appeals board, or designated appeals officer shall issue a written decision explaining the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court. The written decision must be filed with the county or municipal business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the county or municipality on the assessment.

(C) Within thirty days after the date of postmark or personal service of the county's or municipality's written decision on the assessment, a taxpayer may appeal the decision to the Administrative Law Court in accordance with the rules of the Administrative Law Court. The court may affirm, reverse, or remand the decision on assessment."

SECTION 3. Section [4-9-30](#)(12) of the 1976 Code is amended to read:

"(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of ~~any such~~ an exempt entity. No county license fee or tax may be levied on insurance companies. The license tax must be graduated according to the gross business taxable income of the person or business taxed. A wholesaler delivering goods to retailers in a county is not subject to the business license tax unless he maintains within the corporate limits of the county a warehouse or mercantile establishment for the distribution of wholesale goods. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. For the purpose of assessing the business license tax, 'business taxable income' has the same meaning as provided in Section [6-1-400](#)(B). If the person or business taxed pays a license tax to another county or to a municipality, the gross business taxable income for the purpose of computing the tax must be reduced by the amount of gross business taxable income taxed in the other county or municipality."

SECTION 4. Section [5-7-30](#) of the 1976 Code is amended to read:

"Section 5-7-30. (A) Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of ~~such a~~ a contiguous municipality or the county, including agreement as to the boundaries of ~~such~~ the police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this ~~shall~~ may not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax ~~on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax;~~ borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross business taxable income for the purpose of computing the tax must be reduced by the amount of gross business taxable income taxed in the other county or municipality.

(B) A wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods. A

business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality. An entity which is exempt from the license tax under another law or a subsidiary or affiliate of an exempt entity is not subject to the business license tax. For the purpose of assessing the business license tax, 'business taxable income' has the same meaning as provided in Section 6-1-400(B).

(C) For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two-thirds of the persons paying a business license tax in the area and who paid not less than one-half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty-five or more parking spaces for customer use is required to pay not more than twenty-five percent of a surtax levied pursuant to the provisions of this paragraph subsection."

SECTION 5. Section [6-1-120](#) of the 1976 Code is amended to read:

"Section [6-1-120](#). (A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality, ~~or the agent of such an officer or employee to~~ divulge or make known in any manner the financial information, or ~~other information indicative of units of goods or services sold, provided by a taxpayer included~~ any particulars set forth or disclosed in a report, tax return, or application required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:

- (1) tax authorized under Article 5 or Article 7;
  - (2) business license tax authorized under Section [4-9-30](#)(12) or Section [5-7-30](#);
  - (3) fee the measure of which is:
    - (a) gross proceeds of sales of goods or services; or
    - (b) paid admissions to a place of amusement.
- (B) Nothing in this section prohibits the:

- (1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them;
- (2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, ~~or an agent retained by an officer or employee~~, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application;
- (3) sharing of data between public officials or employees in the performance of their duties, including the specific sharing of data as provided in Article 8 of this chapter, the Fairness in Lodging Act.
- (C) Notwithstanding any other provision of law, a city or county may not share or disclose any information relating to business license tax returns with any third party, specifically including a private sector auditor or auditing firm who is paid on a contingency fee or success basis and it is against the public policy of this state for a city or county to pay business license tax auditors on a contingency fee basis.
- (D) A business license application and tax return is not subject to Chapter 4, Title 30, the Freedom of Information Act. A business license application and tax return, as well as the right of inspection, may not be shared, transferred, assigned, or contracted to any other entity, agency, department, or other organization.
- (E) A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. In addition, if the person convicted is an officer or employee of the county or municipality, the offender must be dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction."

SECTION 6. Section [12-4-310](#)(10) and (11) of the 1976 Code is amended to read:

"(10) make available to the authorities of a municipality or county in this State levying a tax based on ~~gross receipts~~ business taxable income or net taxable sales, any records indicating the amount of ~~gross receipts~~ business taxable income or net taxable sales reported to the department; provided, however, that income tax records may be made available only if the department first has satisfied itself that the gross receipts reported to the municipality or county were less than the gross receipts as indicated by the records of the department; and

(11) provide data and assistance to municipalities and counties, or their agents, in which Article 8, Chapter 1, Title 6, the Fairness in Lodging Act, and Section 4-1-190, Section 5-7-320, and Article 4, Chapter 1, Title 6, the South Carolina Business License Tax Reform Act, is are implemented."

SECTION 7. This act takes effect January 1, 2020.

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This web page was last updated on January 15, 2020 at 4:10 PM



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
Beaufort County Business License Tax Standardization ( <i>Ordinance</i> )
<b>MEETING NAME AND DATE:</b>
County Council October 26, 2020
<b>PRESENTER INFORMATION:</b>
<i>(Edra Stephens)</i> <i>(10 minutes)</i>
<b>ITEM BACKGROUND:</b>
<i>Prior Business License Ordinance 99-36</i>
<b>PROJECT / ITEM NARRATIVE:</b>
SC Business License Tax Standardization Act, signed into law by Gov. Henry McMaster, this requires all licensing bodies to accept the act.
<b>FISCAL IMPACT:</b>
<i>(Rate class 8 is divide into sub-categories, rates will need to be establish)</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
To pass ordinance in its entirety.
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>Motion to approve new rates for Ordinance</i>

## 2019 MODEL BUSINESS LICENSE ORDINANCE

### **Section 1. License Required.**

Every person engaged or intending to engage in any calling, business, occupation or profession, in whole or in part, within the limits of the County of Beaufort, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

### **Section 2. Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meaning ascribed herein:

“*Business*” means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly.

“*Charitable Organization*” means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. section 501 (c) (3), (4), (6), (7), (8), (10) or (19).

“*Charitable Purpose*” means a benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization.

“*Classification*” means that division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

“*Gross Income*” means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the County, excepting therefrom income earned outside of the County on which a license tax is paid by the business to some other municipality or a county and fully reported to the County. Gross income for agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums written. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies.

“*License Official*” means a person designated by the County to administer this ordinance and the License Official’s designees and agents.



“Licensee” means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

“Council” means Beaufort County Council.

“County” means the County of Beaufort, South Carolina.

“Person” means any individual, firm, partnership, LLP, LLC, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

**Section 3. Purpose and Duration.**

The business license levied by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each yearly license shall be issued for the twelve-month period of May 1 to April 30. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

**Section 4. License Tax.**

A. The required license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified.

B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year. The initial tax for an annexed business shall be prorated for the number of months remaining in the license year. No refund shall be made for a business that is discontinued.

**Section 5. Registration Required.**

A. The owner, agent or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the County, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

B. Application shall be on a form provided by the License Official which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the business name as reported on the South Carolina income tax return, and all information about the applicant and the Licensee and the business deemed appropriate to carry out the purpose of this ordinance by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.

C. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments, personal property taxes on business property and other monies due and payable to the County have been paid.

**Section 6. Deductions, Exemptions, and Charitable Organizations.**

A. No deductions from gross income shall be made except income earned outside of the County on which a license tax is paid by the business to some other municipality or a county and fully reported to the County, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to State or Federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the County, unless exempted by State or Federal law. The License Official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by State law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.

C. A Charitable Organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A Charitable Organization, or any for-profit affiliate of a Charitable Organization, that reports income from for-profit activities, or unrelated business income, for Federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

A Charitable Organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a Charitable Organization as defined in this ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a Charitable Purpose as defined in this ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

**Section 7. False Application Unlawful.**

It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license, or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

**Section 8. Display and Transfer.**

A. All persons shall display the license issued to them on the original form provided by the License Official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.

B. A change of address must be reported to the License Official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the License Official and compliance with zoning and building codes. Failure to obtain the approval of the License Official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

**Section 9. Administration of Article.**

The License Official shall administer the provisions of this article, collect license taxes, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or suspension and revocation procedures, report violations to the county attorney, assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

**Section 10. Inspection and Audits.**

A. For the purpose of enforcing the provisions of this ordinance, the License Official or other authorized agent of the County is empowered to enter upon the premises of any person subject to this ordinance to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.

B. The License Official shall have the authority to make inspections and conduct audits of businesses within the County to insure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the License Official shall not release the amount of license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, State or Federal law, or proper judicial order. Statistics compiled by classifications are public records.

**Section 11. Assessments, Payment under Protest, Appeal.**

A. If a person fails to obtain a business license or to furnish the information required by this ordinance or the License Official, the License Official shall examine such records of the business or any other available records as may be appropriate, and conduct such investigations and statistical surveys as the License Official may deem appropriate to assess a license tax and penalties as provided herein.

B. A notice of assessment shall be served by certified mail or personal service. An application for adjustment of the assessment may be made to the License Official within five (5) days after the notice is mailed or personally served or the assessment will become final. The License Official shall establish a uniform procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

C. A final assessment may be appealed to the Council only by payment in full of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment pursuant to the provisions of this ordinance relating to appeals to Council.

**Section 12. Delinquent License Taxes, Partial Payment.**

A. For non-payment of all or any part of the correct license tax, the License Official shall levy and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license tax remains unpaid for sixty (60) days after its due date, the License Official shall report it to the municipal attorney for appropriate legal action.

B. Partial payment may be accepted by the License Official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

**Section 13. Notices.**

The License Official may, but shall not be required to, mail written notices that license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

**Section 14. Denial of License.**

The License Official shall deny a license to an applicant when the License Official determines:

A. The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or

B. The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accidens; or

C. The applicant, Licensee or prior Licensee or the person in control of the business has been convicted, within the previous ten years, of an offense under a law or ordinance regulating

business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

D. The applicant, Licensee or prior Licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the County or in another jurisdiction; or

E. The applicant, Licensee or prior Licensee or the person in control of the business is delinquent in the payment to the County of any tax or fee; or

F. The license for the business or for a similar business of the Licensee in the County or another jurisdiction has been denied, suspended or revoked in the previous license year.

A decision of the License Official shall be subject to appeal to Council as herein provided. Denial shall be written with reasons stated.

**Section 15. Suspension or Revocation of License.**

When the License Official determines:

A. A license has been mistakenly or improperly issued or issued contrary to law; or

B. A Licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance; or

C. A Licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or

D. A Licensee has been convicted, within the previous ten years, of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

E. A Licensee has engaged in an unlawful activity or nuisance related to the business; or

F. A Licensee is delinquent in the payment to the County of any tax or fee,

the License Official shall give written notice to the Licensee or the person in control of the business within the County by personal service or certified mail that the license is suspended pending a hearing before Council for the purpose of determining whether the license should be revoked.

The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

**Section 16. Appeals to Council.**

A. Any person aggrieved by a decision, final assessment, proposed revocation, suspension, or a denial of a business license by the License Official may appeal the decision to the Council by written request stating the reasons therefore, filed with the License Official within ten (10) days after service by mail or personal service of the notice of decision, final assessment, proposed revocation, suspension or denial.

B. An appeal or a hearing on proposed revocation shall be held by the Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. Council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the Municipality.

**Section 17. Consent, franchise or license required for use of streets.**

A. It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the municipality any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees and conditions for use.

B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by State law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

**Section 18. Confidentiality.**

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of the license ordinance.

**Section 19. Violations.**

Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein.

**Section 20. Severability.**

A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions.

**Section 21. Classification and Rates.**

A. The classifications of businesses included in each rate class are listed with United States North American Industry Classification System (NAICS) codes, by sector, sub-sector, group or industry. The Business License Class Schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a license tax. The business classification, pursuant to the most recent version of the Business License Class Schedule adopted by the council, most specifically identifying the subject business, shall be applied to the business. The License Official shall have the authority to make the determination of the business classification most specifically applicable to a subject business...

B. The license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current Business License Rate Schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council. A copy of the Class Schedule and Rate Schedule shall be filed in the office of the County clerk.

**APPENDIX A**

**RATE SCHEDULE**

<b><u>RATE CLASS</u></b>	<b><u>INCOME: \$0 - \$2,000 BASE RATE</u></b>	<b><u>INCOME OVER \$2,000 Rate per Thousand or fraction thereof</u></b>
1	\$ .00	\$
2	\$ .00	\$
3	\$ .00	\$
4	\$ .00	\$
5	\$ .00	\$
6	\$ .00	\$
7	\$ .00	\$
8.1	\$ .00	\$
8.2	\$ set by State statute	
8.3	MASC Telecommunications	
8.41	\$ .00	\$
8.42	\$ .00	\$
8.5	\$ .00	\$
8.61	\$ .00	\$
8.62	\$ .00	\$
8.7	MASC Insurance	
8.81	\$12.50 + \$12.50 per machine	
8.82	\$ .00	\$
8.83	\$12.50 + \$12.50 per machine	
8.91	\$ .00	\$
8.92	\$ .00	\$
8.93	\$ .00	\$
8.10	\$ .00 + \$5.00 per table	\$

**NON-RESIDENT RATES**

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the municipality.

**DECLINING RATES**

Declining Rates apply in all Classes for gross income in excess of \$1,000,000, unless otherwise specifically provided for in this ordinance.

<b><u>Gross Income in \$ Millions</u></b>	<b><u>Percent of Class Rate for each additional \$1,000</u></b>
0 - 1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
OVER 4	60%



**CLASS 8 RATES**

Each NAICS Number designates a separate sub-classification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined rates. Non-resident rates do not apply except where indicated.

- 8.1 NAICS 230000 - Contractors, Construction, All Types** [Non-resident rates apply]  
 Having permanent place of business within the municipality  
 Minimum on first \$2,000.....\$ \_\_\_\_\_ PLUS  
 Each additional 1,000.....\$ \_\_\_\_\_

A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

The total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year.

No contractor shall be issued a business license until all state and county qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

- 8.2 NAICS 482 - Railroad Companies** – (See S.C. Code § 12-23-210)

**8.3 NAICS 517311, 517312 - Telephone Companies:**

A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services", as defined in S. C. Code Section 58-9-2200, shall be at the maximum rate authorized by S. C. Code Section 58-9-2220, as it now provides or as provided by amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.

B. In conformity with S.C. Code Section 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

C. The business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

D. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

E. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

F. Nothing in this Ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this Ordinance.

H. As authorized by S. C. Code Section 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S. C. Code Section 58-9-2200 shall continue in effect.

**8.41 NAICS 423930 - Junk or Scrap Dealers** [Non-resident rates apply]  
Minimum on first \$2,000 .....\$\_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 ..... \$\_\_\_\_\_

**8.42 NAICS 522298 - Pawn Brokers** - All Types  
Minimum on first \$2,000 ..... \$\_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 ..... \$\_\_\_\_\_

**8.5 NAICS 4411, 4412 - Automotive, Motor Vehicles, Boats, Farm Machinery or Retail**  
(except auto supply stores - see 4413)  
Minimum on first \$2,000 .....\$\_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_\_

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

**NAICS 454390 - Peddlers, Solicitors, Canvassers, Door-To-Door Sales**

direct retail sales of merchandise. [Non-resident rates apply]

**8.61** Regular activities [more than two sale periods of more than three days each per year]  
Minimum on first \$2,000 .....\$\_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_\_

**8.62** Seasonal activities [not more than two sale periods of not more than three days each year, separate license required for each sale period]  
Minimum on first \$2,000 .....\$\_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_\_

Applicant for a license to sell on private property must provide written authorization from the property owner to use the intended location.

**8.7 NAICS 5241 - Insurance Companies:**

Except as to fire insurance, “gross premiums” means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the county, regardless of where the property or risk is located, provided no tax has been paid to another county in which the property or risk is located based on the same premium.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the county, regardless of whether or not an office is maintained in the county.

As to fire insurance, “gross premiums” means gross premiums (1) collected in the county, and/or (2) realized from risks located within the limits of the county.

Gross premiums shall include all business conducted in the prior calendar year.

Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.

Declining rates shall not apply.

**NAICS 52411 - Life, Health and Accident** ..... 0.75% of Gross Premiums

**NAICS 524126 - Fire and Casualty**..... 2% of Gross Premiums

**NAICS 524127 - Title Insurance** ..... 2% of Gross Premiums

Notwithstanding any other provisions of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Pursuant to S.C. Code Ann. §§ 38-45-10 and 38-45-60, the Municipal Association of South Carolina, by agreement with the municipality, is designated the municipal agent for purposes of administration of the municipal broker’s premium tax. The agreement with the Association for administration and collection of current and delinquent license taxes from insurance companies as authorized by S.C. Code § 5-7-300.

[The South Carolina General Assembly, in order to ensure consistency with the federal Non-admitted and Reinsurance Reform Act of 2010 (“NRRA”), ratified an act (Rat# 283) on June 28, 2012, amending S.C. Code §§ 38-7-16 and 38-45-10 through 38-45-195. The act establishes a blended broker’s premium tax rate of 6 percent comprised of a 4 percent state broker’s premium tax and a 2 percent municipal broker’s premium tax. The act states a municipality may not impose on brokers of non-admitted insurance in South Carolina an additional license fee or tax based upon a percentage of premiums.]

**NAICS 713120 - Amusement Machines, coin operated (except gambling) -**

Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) – [Type I and Type II]

**8.81** Operator of machine .....\$12.50/machine PLUS  
.....\$12.50 business license  
for operation of all machines (not on gross income).[§12-21-2746]

**8.82** Distributor selling or leasing machines  
(not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.]  
Minimum on first \$2,000 ..... \$\_\_\_\_\_ PLUS  
Per \$1,000 or fraction over \$2,000 .....\$\_\_\_\_\_

**NAICS 713290 - Amusement Machines, coin operated, non-payout**

Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [Type III]

**8.83** Operator of machine .....\$12.50/machine PLUS  
.....\$12.50 business license  
for operation of all machines (not on gross income). [§12-21-2720(B)]

**8.82** - Distributor selling or leasing machines (not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.] -Minimum on first \$2,000..... \$\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_

**8.91** NAICS 713290 - Bingo halls, parlors –  
Minimum on first \$2,000 .....\$\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_

**8.92** NAICS 711190 - Carnivals and Circuses -  
Minimum on first \$2,000 .....\$\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_

**8.93** NAICS 722410 - Drinking Places, bars, lounges, cabarets (Alcoholic beverages consumed on premises)  
Minimum on first \$2,000 .....\$\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$\_\_\_\_

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

**8.10** NAICS 713990 - Billiard or Pool Rooms, all types ..... \$5.00 or \$12 per table PLUS  
Minimum on first \$2,000 .....\$\_\_\_\_ PLUS  
Per \$1,000, or fraction, over 2000.....\$\_\_\_\_

NAICS 22112 - Electric Power Distribution..... See Consent or Franchise

NAICS 22121 – Natural Gas Distribution .....See Consent or Franchise

NAICS 517110 – Television: Cable or Pay  
Services using public streets.....See Franchise

## **Business License Class Schedule by NAICS Code**

### **Appendix B**

**This appendix will be updated annually based on the latest available IRS statistics. The updated Business License Class Schedule may be accessed at <http://www.masc.sc/SiteCollectionDocuments/Finance/BL-AppxB.pdf>**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT ) **ORDINANCE**

**ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND AMONG BEAUFORT COUNTY, SOUTH CAROLINA AND PROJECT STONE, PROVIDING FOR THE ISSUANCE OF SPECIAL SOURCE REVENUE CREDITS AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Beaufort County (the “County”), a public body corporate and politic under the laws of the State of South Carolina, desires to enter into a Special Source Revenue Credit Agreement (the “SSRC Agreement”) with a company being identified as Project Stone (the “Company”), which shall provide special source revenue credits for a project qualifying under the provisions of Section 4-29-68 and Title 1, Chapter 4, Sections 170 through 175 of the Code of Laws of South Carolina 1976, as amended (the “Act”);

**WHEREAS**, the County and the Company desire to enter into the SSRC Agreement concerning the expansion of a manufacturing facility in the County through the acquisition of a building and related improvements thereon and/or therein; the construction of additional improvements; and/or the acquisition of personal property, including, but not limited to, all equipment, machinery, and/or furnishings, the cost of which is estimated to be \$3,200,000 over five years, and which is anticipated to create approximately 21 new, full-time jobs in the County (the “Project”); and

**WHEREAS**, the Project is expected to provide significant economic benefits to the County and surrounding areas; and

**WHEREAS**, in order to induce the Company to locate the Project in the County, the County has agreed to make available to the Company certain benefits intended by the Act; and

**WHEREAS**, the Company has caused to be prepared and presented to the Beaufort County Council, the governing body of the County (the “County Council”), the SSRC Agreement, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, it appears that the SSRC Agreement 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.** The County Council has made and hereby makes the following findings:

(a) 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;

(b) The purposes to be accomplished by the Project are proper governmental and public purposes;

(c) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$3,200,000;

(d) The benefits of the Project to the public are greater than the costs to the public;

(e) 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.

**Section 2.** In order to promote industry, develop trade and utilize the manpower, products, and natural resources of the State of South Carolina, the form, terms, and provisions of the SSRC Agreement which is attached hereto are hereby approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the SSRC Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the SSRC Agreement to the Company, together with such changes as are not materially adverse to the County.

**Section 3.** The Chair of County Council 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 SSRC Agreement and the performance of all obligations of the County under and pursuant to the SSRC Agreement.

**Section 4.** The consummation of all transactions contemplated by the SSRC Agreement is hereby approved.

**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.

(SIGNATURE PAGE TO FOLLOW)



Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT         )

I, the undersigned, Clerk to County Council of Beaufort County, South Carolina (“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 \_\_\_\_\_. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on \_\_\_\_\_, and notice of the public hearing was published in *The Morning News* on \_\_\_\_\_. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws, 1976, in connection with said meetings of County Council.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Beaufort County Council, South Carolina, as of this \_\_\_\_ day of \_\_\_\_\_, 2020.

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

**EXHIBIT A**  
**SSRC AGREEMENT**



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

**Item Title:**

Special Source Revenue Credit - Project Stone

**Council Committee:**

County Council

**Meeting Date:**

County Council October 26, 2020

**Committee Presenter (Name and Title):**

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

**Issues for Consideration:**

Providing a Special Source Revenue Credit to Project Stone - this SSRC will act as a base FILOT equivalent - allowing the company to pay the equivalent of a 6% tax rate over a 20 year period.

**Points to Consider:**

Project Stone is moving into an existing 37,000 sq. ft. facility in Port Royal. Due to the facility being existing versus new construction, they are not eligible for a FILOT agreement. In order to offer benefits on par with a base FILOT, the BCEDC would like to pursue a special source revenue credit that is the tax equivalent to a base FILOT - 6% tax rate over a 20 year period. The company is expected to invest \$3.2 million and create 21 new jobs.

**Funding & Liability Factors:**

Company will be offered equivalent to base FILOT - 6% over 20 year period.

**Council Options:**

Recommend SSRC agreement to full County Council for approval.

**Recommendation:**

The BCEDC recommends moving forward with SSRC for Project Stone.

SPECIAL SOURCE REVENUE CREDIT AGREEMENT

by and between

PROJECT STONE

and

BEAUFORT COUNTY, SOUTH CAROLINA

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

## SPECIAL SOURCE REVENUE CREDIT AGREEMENT

This SPECIAL SOURCE REVENUE CREDIT AGREEMENT (“Credit Agreement”) is made and entered into as of \_\_\_\_\_, 2020, by and among BEAUFORT COUNTY, SOUTH CAROLINA (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), acting by and through the Beaufort County Council (“County Council”) as the governing body of the County and a company currently identified as PROJECT STONE (“Company”).

### WITNESSETH:

WHEREAS, pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (“MCIP Act”), the County is authorized to develop multi-county industrial parks with other qualifying counties and, in its discretion, include within the boundaries of such parks the property of qualifying industries. The County has created or will create with Jasper County, South Carolina a multi-county industrial park (“Park”) pursuant to a multi-county industrial park agreement (“Park Agreement”) entered into pursuant to the terms of the MCIP Act; and

WHEREAS, in accordance with Article VIII, Section 13 of the South Carolina Constitution, real and personal property having a situs in a multi county industrial park, are exempt from all ad valorem taxation, however, the owners or lessees of such real and personal property are obligated to make, or cause to be made, annual payments in lieu of taxes to the County in the total amount equivalent to the ad valorem property taxes or other fee-in-lieu-of-taxes that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within such park (each, a “Fee Payment”); and

WHEREAS, the County, acting by and through its County Council is authorized by Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended, including Sections 4-1-170 and 4-1-175 thereof, and Title 4, Chapter 29 of the Code of Laws of South Carolina 1976, as amended, including Section 4-29-68 (collectively, the “SSRC Act”), and Article VIII, Section 13 of the South Carolina Constitution (i) to provide credits (“Special Source Revenue Credits” (“SSRC”)) for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County or the Project (defined herein) and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise, all to enhance the economic development of the County; and (ii) to expand, in conjunction with one or more other counties, a multi-county industrial park in order to facilitate the grant of SSRCs; and

WHEREAS, the Company is planning an investment consisting of the expenditure of approximately \$3,200,000 in taxable investment (“Investment”) in connection with the acquisition by construction, lease, and/or purchase of certain land, buildings, furnishings, fixtures, and/or equipment and the creation of approximately 21 new, full-time jobs for the purpose of expanding a manufacturing facility in the County (collectively, the “Project”); and

WHEREAS, the Project will comprise a portion of real property located entirely in the County of Beaufort, with improvements thereon, which is described more fully in Exhibit A, attached hereto (“Project Site”); and

WHEREAS, the County Council has determined that the Credit Agreement is an appropriate instrument to induce the Company to invest in the Project and create jobs in the County.

NOW, THEREFORE, IN CONSIDERATION of the respective representations and agreements contained in this Credit Agreement, the parties agree to the following:

**Section 1. Representations of the Company and County.**

Section 1.1 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 duly organized, validly existing, and in good standing, under the laws of the State of South Carolina, has power to enter into this Credit Agreement, and by proper corporate action has been duly authorized to execute and deliver this Credit Agreement.

(b) The Company is or intends to become the owner of the Project Site.

(c) This Credit Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally.

(d) Neither the execution and delivery of this Credit Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Credit Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Credit Agreement.

(e) The agreement of the County to enter into this Credit Agreement and provide the SSRCs has been instrumental in inducing the Company to make the Investment in the Project.

Section 1.2 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 which acts through the County Council as its governing body and by the provision of the Act is authorized and empowered to enter into the transactions contemplated by the Credit Agreement

and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Credit Agreement and any and all other agreements described herein or therein.

(b) Neither the execution and delivery of this Credit Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Credit Agreement, will result in a material breach of any of the terms, conditions, or provisions of any agreement or instrument to which the County is now a party or by which it is bound, or will constitute a default under any of the foregoing

**Section 2. Fee Payments and SSRCs.**

The County grants an annual SSRC to the Company, for a period of twenty (20) years (“Credit Period”) against each annual Fee Payment due for Investment made in the Project that has been placed into service beginning in 2020 and by December 31, 2025 (“Investment Period”). Any SSRC provided under this Credit Agreement shall be used to reimburse the Company for eligible expenditures, as permitted by the SSRC Act, which includes the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Project and Project Site, for improved or unimproved real estate, or for machinery and equipment. In no event shall the aggregate amount of SSRCs received as of any point in time exceed the amount of the Company’s aggregate amount of expenses toward such eligible expenditures as of such time. The SSRCs shall be calculated as follows:

Real Property Ad Valorem Tax Payment calculated as a standard property tax without regard to this Credit Agreement	Real Property Ad Valorem Tax Payment
Personal Property Ad Valorem Tax Payment calculated as a standard property tax without regard to this Credit Agreement	Personal Property Ad Valorem Tax Payment
Real Property Value (as it would be defined in Section 12-44-50 using gross cost as the applicable fair market value) x 6% Assessment Ratio x Fixed Millage Rate of 0.2731 =	Real Property FILOT Tax Payment
Personal Property Value (as it would be defined in Section 12-44-50 including the applicable statutory depreciation) x 6% Assessment Ratio x Fixed Millage Rate of 0.2731 =	Personal Property FILOT Tax Payment
(Real Property Ad Valorem Tax Payment + Personal Property Ad Valorem Tax Payment) – (Real Property FILOT Tax Payment + Personal Property FILOT Tax Payment) =	<b>Annual SSRC</b>

In calculating the Real Property Ad Valorem Tax Payment and Personal Property Ad Valorem Tax Payment, the Company agrees to waive Section 3(g) of Article X of the South Carolina Constitution as well as Section 12-37-220 (B)(32) and (34) of the Code of Laws of South Carolina. **[NOTE TO COUNTY AUDITOR: IN PREPARING OR REVIEWING ANNUAL CALCULATIONS, APPLY THE FULL MILLAGE RATE, WITHOUT REDUCTION FOR ANY ABATEMENT, TO BOTH THE “EXEMPT” AND “NON-EXEMPT” AMOUNTS CERTIFIED BY DOR IN CALCULATION THE AD VALOREM TAX AMOUNTS.]**

In order to assist the County in preparing the annual tax bills, the Company shall file an annual certification with the County Auditor on or before August 1 of each year in the form attached

hereto as Exhibit B. Further, the Company shall file a separate schedule with its annual PT-300 filing (or successor form) with the South Carolina Department of Revenue to include only assets placed in service in the Investment Period described above. This separate schedule should be clearly and unambiguously designated as “BEAUFORT COUNTY 2020 SSRC ASSETS,” and a copy of the schedule should be provided to the County Auditor each year in connection with the filing of Exhibit B. Failure to file Exhibit B shall constitute a waiver of the SSRC for the applicable year.

The County shall credit the annual SSRC against the Fee Payment of the corresponding year to result in a “Net Fee Payment” to be due to the County from the Company.

### **Section 3. Minimum Investment**

(a) In the event the Company does not make a capitalized investment in the County of at least \$2.5 million in the Project within and as of the end of the Investment Period, the SSRC as described in Section 2 above shall terminate both prospectively and retroactively, and the Company shall repay to the County any shortfall in the Net Fee Payments made under this Credit Agreement and the payments that would have been due and payable had this Credit Agreement not been in effect. In the event the Company makes a capitalized investment in the County of at least \$2.5 million in the Project within and as of the end of the Investment Period, but fails to maintain at least \$2.5 million of capitalized investment in the County within and as of the last day of any property tax year following the end of the Investment Period, the SSRC as described in Section 2 above shall terminate prospectively only. This repayment obligation is a contractual obligation, and the Company hereby waives any statute of limitations defense that would in any way reduce the amount of this obligation. For purposes of this paragraph, capitalized investments shall be calculated based on gross cost without regard to depreciation.

(b) Any amounts determined to be owing pursuant to this Section 3 shall be subject to interest at the rates in effect for the late payment of ad valorem taxes and shall be due within 90 days after the last day of the Investment Period.

**Section 4. Project Shall Remain in the Park.** The County shall use its best efforts to ensure that the Project, once placed in the Park, will remain in the Park for a period not less than 20 years. If, for any reason, the Park Agreement is modified to exclude the Project, or is otherwise terminated, then the County will use its best efforts to ensure that the Project shall be immediately placed into another multi-county park arrangement to which the County is party and that would enable the Company to receive the SSRCs set forth in this Credit Agreement.

**Section 5. Administration Expenses.** The Company shall pay the County’s legal fees incurred with the review and preparation of this Agreement. Such fees shall be paid within thirty (30) days of the Company’s receipt of an invoice for such legal fees.

**Section 6. Notices.** Any notice, election, demand, request, or other communication to be provided under this Credit Agreement shall be effective when delivered to the party named below or three business days after deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address



as any party may subsequently furnish, in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY: Beaufort County, South Carolina  
Attn: County Attorney  
100 Ribaut Road  
Beaufort, SC 29902

WITH A COPY TO: Haynsworth Sinkler Boyd, P.A.  
Attn: William R. Johnson  
P.O. Box 11889  
Columbia, SC 29211-1889

AS TO THE COMPANY: Project Stone  
**[Insert company name and contact for final reading.]**

**Section 7. Binding Effect.** This Credit Agreement is binding, in accordance with its terms, upon and inure to the benefit of the Company and its respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Credit Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

**Section 8. Counterparts.** The parties may execute this Credit Agreement in any number of counterparts, in original or by facsimile or electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 9. Governing Law.** This Credit Agreement and all documents executed in connection with this Agreement are construed in accordance with and governed by the laws of the State of South Carolina. To the extent of any conflict between the provisions of this Credit Agreement and the SSRC Act, the SSRC Act controls.

**Section 10. Amendments.** The parties may modify or amend this Credit Agreement only in a writing signed by the parties.

**Section 11. Further Assurance.** From time to time the County shall execute and deliver to the Company any additional instruments as the Company reasonably requests to evidence or effectuate the purposes of this Credit Agreement, subject to any approvals required to be obtained from County Council.

**Section 12. Severability.** If any provision of this Credit Agreement is illegal, invalid, or unenforceable for any reason, the remaining provisions remain unimpaired and any illegal, invalid, or unenforceable provision are reformed to effectuate most closely the legal, valid, and enforceable intent and to afford the Company with the maximum benefits to be derived under this Credit Agreement and the SSRC Act, it being the intention of the County to offer the Company

the strongest inducement possible to encourage the Company to proceed with the Project in the County.

**Section 13. Assignment.** This Credit Agreement may be assigned in whole or in part only with the prior written consent or subsequent written ratification of the County.

**Section 14. Limited Obligation.** THIS CREDIT AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE SPECIAL SOURCE REVENUE CREDITS.

**Section 15. Indemnification.**

(a) The Company shall and agrees to indemnify and save the County 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 of this Credit Agreement, and Company further, shall indemnify and save the County harmless from all claims arising during the term of this Credit Agreement 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 Credit Agreement, (iii) any act of negligence of the Company or any of its agents, contractors, servants, employees or licensees related to the Project, (iv) any act of negligence related to the Project of any assignee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee of the Company, or (v) any environmental violation, condition, or effect related to the Project. The Company shall indemnify and save the County harmless from and against all 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, the Company shall defend the County in any such action, prosecution or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the County, its agents, officers, or employees, shall not incur pecuniary liability by reason of the terms of this Credit Agreement, or the undertakings required of the County hereunder, or by reason of the performance of any act requested of it 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, should the County, its agents, officers or employers incur any such pecuniary liability other than as a result of their own negligence or willful or intentional misconduct, 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, prosecution or proceeding.

(c) These indemnification covenants shall be considered included in and incorporated by reference in any subsequent documents related to the Project or this Credit Agreement that the Company requests the County sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Credit Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk to County Council as of the day and year first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

(SEAL)  
ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

IN WITNESS WHEREOF, the Company has caused this Credit Agreement to be executed in its name and on its behalf by its authorized officer as of the day and year first above written.

PROJECT STONE

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

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

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

**EXHIBIT B**  
**ANNUAL CERTIFICATION**

**PROJECT STONE**

Real Property Value (as it would be defined in Section 12-44-50 using gross cost as the applicable fair market value) = \$ \_\_\_\_\_

Real Property FILOT Tax Payment = Real Property Value x 6% x .2731 = \$ \_\_\_\_\_

Personal Property Value (as it would be defined in Section 12-44-50 including the applicable statutory depreciation) = \$ \_\_\_\_\_

Personal Property FILOT Tax Payment = Personal Property Value x 6% x .2731 = \$ \_\_\_\_\_

Total FILOT Tax Payment = Real Property FILOT Tax Payment + Personal Property FILOT Tax Payment = \$ \_\_\_\_\_

*Compliance Notes to County Auditor:*

*The SSRCs should be determined by first calculating the ad valorem taxes that would be due based upon the DOR certification issued directly to the County (but applying the full millage rate to all amounts, whether designed as “exempt” or “non-exempt” by DOR). The SSRCs under Section 2 of the Special Source Revenue Credit Agreement dated \_\_\_\_\_, 2020 between Beaufort County, South Carolina and Project Stone (the “Credit Agreement”) should be determined by subtracting the Total FILOT Tax Payment above from the ad valorem taxes that would be due based upon the ad valorem tax calculations as described in this paragraph. The difference in these figures is the Net Fee Payment, as defined in Section 2 of the Credit Agreement. The Net Fee Payment should equal the “Total FILOT Tax Payment” as defined above.*

*The County Auditor should check the calculation of the Total FILOT Tax Payment by determining the gross cost of all land, buildings, and building improvements listed in the Company’s applicable PT-300 filing, multiplying that total by 6% and a millage rate of .2731. This figure should match the Real Property FILOT Tax Payment described above. The County Auditor should then take the depreciated value of all machinery and equipment from the DOR certification (whether it is listed as exempt or non-exempt) and multiply that total by 6% and a millage rate of .2731. This figure should match the Personal Property FILOT Tax Payment described above. It may be helpful for the County Auditor to provide copies of the DOR certification to the Company upon receipt in order to avoid any confusion with the calculations.*

***Note to Company: A copy of a separate PT-300 schedule filed with SCDOR listing only assets placed in service in the Investment Period, as defined in the Credit Agreement must be included with this filing.***

THIS CERTIFICATION SHALL BE FILED ANNUALLY WITH THE  
BEAUFORT COUNTY AUDITOR, 100 RIBAUT RD BEAUFORT, SC 29902

ON OR BEFORE AUGUST 1 OF EACH YEAR.

**MULTI-COUNTY PARK AGREEMENT  
(Projects Stone, Garden, Glass, and Burger)**

**between**

**BEAUFORT COUNTY, SOUTH CAROLINA**

**and**

**JASPER COUNTY, SOUTH CAROLINA**

**Dated as of \_\_\_\_\_, 2020**



**Multi-County Park Agreement  
(Projects Stone, Garden, and Burger)**

This MULTI-COUNTY PARK AGREEMENT (PROJECTS STONE, GARDEN, GLASS AND BURGER PROPERTY) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020, by and between BEAUFORT COUNTY, SOUTH CAROLINA (“Beaufort County”) and JASPER COUNTY, SOUTH CAROLINA (“Jasper County”) (collectively, Beaufort County and Jasper County are the “Parties”), each a body politic and corporate, a political subdivision of the State of South Carolina (“Park Agreement”).

In consideration of the mutual agreements, representations and benefits contained in this Park Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Beaufort County and Jasper County agree as follows:

1. Effective Date. This Park Agreement is effective at 12:00 a.m. (midnight), December 31, 2020 (the “Effective Date”).

2. Authorization. Article VIII, section 13(D) of the South Carolina Constitution and Sections 4-1-170, -172, and -175 of the Code of Laws of South Carolina 1976, as amended (the “MCP Law”), authorizes contiguous counties to jointly develop industrial and business parks within the geographical boundaries of one or more of the participating counties. Beaufort County authorized and approved this Park Agreement by passage of Ordinance No. 2020/\_\_\_ and Jasper County authorized and approved this Park Agreement by passage of Ordinance No. \_\_\_ - \_\_\_.

3. Purpose. The purpose of this Park Agreement is to (i) provide for the establishment of a multi-county park in accordance with the MCP Law and (ii) encourage the investment of capital and the creation of jobs in Beaufort County and Jasper County.

4. Agreement to Develop Park. The Parties agree to jointly develop an industrial and business park in accordance with the MCP Law and the terms and conditions of this Park Agreement (the “Park”).

5. The Park. (A) *Location*. The Park consists of certain property located in Beaufort County as further identified in Exhibit A (Beaufort County) to this Park Agreement, and property located in Jasper County, as further identified in Exhibit B (Jasper County), to this Park Agreement. The Park may consist of non-contiguous properties within each county. The Parties acknowledge that on the Effective Date, the Park does not contain any property located in Jasper County.

(B) *Addition and Removal of Property*.

(1) *County Action*. Property may be added to or removed from the Park by ordinance of the county in which the subject property is located, provided that the host county shall provide notice to the non-host county as well as revised exhibits pursuant to subsection (2) below.

(2) *Revised Exhibits*. If property is added to or removed from the Park, this Park Agreement is deemed amended and a revised Exhibit A (Beaufort County) or Exhibit B (Jasper County), as applicable, shall be prepared by the county in which the added or removed property is located. The revised exhibit must contain a description or other identification of the properties included in the Park, after the addition or removal. A copy of the revised exhibit shall be provided to the Administrator, Clerk to Council, Assessor, Auditor and Treasurer of Beaufort County and Jasper County.

(3) *Public Hearings and Notice*. Prior to the adoption by either county of an ordinance authorizing the removal of property from the Park, the county council in the county in which the

property to be removed is located, shall hold a public hearing. The county that will conduct the public hearing must give notice of the public hearing by publication in a newspaper of general circulation in the county in which the public hearing will be held at least once and not less than fifteen (15) days prior to the public hearing. Notice of the public hearing shall also be served in the manner of service of process at least fifteen (15) days prior to the public hearing upon the owner of the real property and, if applicable and known, the lessee of any real property which would be removed from the Park.

6. Fee in Lieu of Taxes. Pursuant to article VIII, section 13(D), of the South Carolina Constitution, all property located in the Park is exempt from all *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Park Agreement and the MCP Law an amount equivalent to the *ad valorem* property taxes or other in-lieu-of payments that would have been due and payable but for the location of the property within the Park (“Fee in Lieu of Taxes” or “FILOT”).

7. Allocation of Expenses. Beaufort County and Jasper County shall bear the expenses for the development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

If property is in the Beaufort County portion of the Park:

- (1) Beaufort County 100%
- (2) Jasper County 0%

If property is in the Jasper County portion of the Park:

- (1) Beaufort County 0%
- (2) Jasper County 100%

8. Allocation of Revenues. Beaufort County and Jasper County shall receive an allocation of revenue generated by the Park through payment of Fee in Lieu of Taxes (net of any special source revenue bond payments or special source revenue credits) in the following proportions:

If property is in the Beaufort County portion of the Park:

- (1) Beaufort County 99%
- (2) Jasper County 1%

If property is in the Jasper County portion of the Park:

- (1) Beaufort County 1%
- (2) Jasper County 99%

9. Revenue Allocation Within Each County.

(A) *Host County.* Revenues generated by the Park through the payment of Fee in Lieu of Taxes shall be distributed to Beaufort County and to Jasper County, as applicable, according to the proportions established by Paragraph 8 of this Park Agreement. With respect to revenues allocable to Beaufort County or Jasper County by way of FILOT generated within the respective county (the “Host County”), such revenue shall be distributed within the Host County in the manner provided by ordinance of the council of the Host County; provided, that (i) all taxing districts which overlap the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such portion, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body

of the taxing entity shall allocate the revenues received between operations and debt service of the taxing entity. Each Host County is specifically authorized to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the council of the Host County.

(B) *Non-Host County*. Revenues allocable to Beaufort County by way of FILOT generated within Jasper County shall be distributed solely to Beaufort County. Revenues allocated to Jasper County by way of FILOT generated within Beaufort County shall be distributed solely to Jasper County.

10. Fees In Lieu of Taxes Pursuant to Title 4 and Title 12 Code of Laws of South Carolina. The Parties agree that the entry by Beaufort County into any one or more fee in lieu of tax agreements pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina 1976, as amended (“Negotiated Fee-in-Lieu of Tax Agreements”), with respect to property located within the Beaufort County portion of the Park and the terms of those agreements shall be at the sole discretion of Beaufort County. The Parties further agree that entry by Jasper County into any one or more Negotiated Fee-in-Lieu of Tax Agreements with respect to property located within the Jasper County portion of the Park and the terms of those agreements shall be at the sole discretion of Jasper County.

11. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code of Laws of South Carolina 1976, as amended, allocation of the assessed value of property within the Park to Beaufort County and Jasper County and to each of the taxing entities within the participating counties shall be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Paragraphs 8 and 9 of this Park Agreement.

12. Applicable Regulations. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply.

13. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff’s Department of Jasper County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff’s Department of Beaufort County. If any of the Park properties located in either Jasper County or Beaufort County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

14. Severability. If any provision or any part of a provision of this Park Agreement is held invalid or unenforceable by a 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 Park Agreement.

15. Amendments. The provisions of this Park Agreement may be modified or amended only in a writing signed by the Parties.

16. Headings and Catch Lines. The headings of the paragraphs and subparagraphs of this Park Agreement are inserted for convenience only and do not constitute a part of this Park Agreement.

17. Governing Law. This Park Agreement, and all documents executed in connection with it, shall be construed in accordance with and governed by the laws of the State of South Carolina.

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

19. Binding Agreement. This Park Agreement is binding upon and shall inure to the benefit of the respective Parties.

20. Merger. This Park Agreement, and all documents executed in connection with it, express the entire understanding and all agreements of the Parties with each other, and neither Beaufort County nor Jasper County has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Park Agreement.

21. Waiver. Either party may waive compliance by the other party with any term or condition of this Park Agreement only in a writing signed by the waiving party. The failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall not 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 hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

22. Termination.

(A) *Duration and Renewal.* This Park Agreement commences on the Effective Date and shall continue until at least December 31, 2045.

(B) *Mutual Termination.* Notwithstanding the provisions of subparagraph (A) of this Paragraph 22, the Parties may mutually agree to terminate this Park Agreement at any time upon passage of an ordinance to that effect by each county and after conducting a public hearing and giving notice as set forth in subparagraph (B)(3) of Paragraph 5 of this Park Agreement.

SIGNATURES FOLLOW ON NEXT PAGE.

WITNESS our hands and seals as of the date first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Joseph Passiment, Chair, County Council

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

JASPER COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Henry Etheridge, Chair, County Council

ATTEST:

\_\_\_\_\_  
Tisha L. Williams, Acting Clerk to Council

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**EXHIBIT A (Beaufort County)**

**Beaufort County Property  
December 31, 2020  
PROJECTS STONE, GARDEN, GLASS BURGER**

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**PROJECT STONE**  
**LEGAL DESCRIPTION**

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

**PROJECT GARDEN**  
**LEGAL DESCRIPTION**

**That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.**



**PROJECT GLASS**  
**LEGAL DESCRIPTION**

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

**PROJECT BURGER**  
**LEGAL DESCRIPTION**

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

**EXHIBIT B (Jasper County)**

**Jasper County Property  
December 31, 2020**

**NONE**

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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

**Item Title:**

Multi County Industrial Park - Burger, Garden, Glass, Stone

**Council Committee:**

County Council

**Meeting Date:**

October 26, 2020

**Committee Presenter (Name and Title):**

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

**Issues for Consideration:**

Placing Project Burger, Project Garden, Project Glass, and Project Stone into existing Multi County Industrial Park.

**Points to Consider:**

Placing projects in MCIP will allow companies to take advantage of an additional \$1,000 job tax credit per net new job . These credits can be used towards the company's corporate income tax over a five year period as long as the jobs are maintained.  
Project Burger - \$4.496 million investment, 43 newly created jobs  
Project Garden - \$3.19 million investment, 26 newly created jobs  
Project Glass - \$15.15 million investment, 55 newly created jobs  
Project Stone - \$3.2 million investment, 21 newly created jobs

**Funding & Liability Factors:**

Allocation of revenue would be 99% to Beaufort County and 1% to Jasper County in the Beaufort County portion of the park and 99% to Jasper County and 1% to Beaufort County in the Jasper County portion of the park. This project would fall within the Beaufort County portion of the park.

**Council Options:**

Recommend MCIP agreement between Beaufort County and Jasper County to full County Council.

**Recommendation:**

The BCEDC recommends moving forward with MCIP for Project Burger, Project Garden, Project Glass and Project Stone.

STATE OF SOUTH CAROLINA )  
COUNTY OF JASPER )                **ORDINANCE NO. 2020/\_\_\_**

**AN ORDINANCE TO AUTHORIZE AND APPROVE A MULTI-COUNTY PARK AGREEMENT BY AND BETWEEN BEAUFORT COUNTY AND JASPER COUNTY (PROJECTS STONE, GARDEN, GLASS, AND BURGER); TO REQUIRE THE PAYMENT OF A FEE IN LIEU OF AD VALOREM TAXES BY BUSINESSES AND INDUSTRIES LOCATED IN THE PARK; TO APPLY ZONING AND OTHER LAWS IN THE PARK; TO PROVIDE FOR LAW ENFORCEMENT JURISDICTION IN THE PARK; AND TO PROVIDE FOR THE DISTRIBUTION OF PARK REVENUES WITHIN JASPER COUNTY.**

Be it ordained by the Council of Jasper County, South Carolina:

**Section 1. Findings and Determinations; Purpose.**

(a) The Council finds and determines that:

- (1) the County is authorized by art. VIII, section 13(D) of the South Carolina Constitution and by Sections 4-1-170, -172 and -175 of the Code of Laws of South Carolina 1976, as amended, to jointly develop, in conjunction with contiguous counties, industrial and business parks (“multi-county parks”);
- (2) the use of multi-county parks is important in attracting and encouraging the investment and retention of capital and the retention and creation of jobs in the County.

(b) It is the purpose of this ordinance to authorize and approve a multi-county park agreement with Beaufort County (the “Park”).

**Section 2. Approval of Park Agreement; Authority of Officials.**

(a) The Council Chair is authorized, empowered and directed, in the name of and on behalf of Jasper County, to execute, acknowledge, and deliver a Multi-County Park Agreement between Jasper County, South Carolina and Beaufort County, South Carolina (Projects Stone, Garden, Glass and Burger) (the “Park Agreement”). The Clerk to Council is authorized to attest the execution of the Park Agreement by the Council Chair. The form of the Park Agreement is attached to this ordinance as Exhibit A and all terms, provisions and conditions of the Park Agreement are incorporated into this ordinance as if the Park Agreement were set out in this ordinance in its entirety. By adoption of this ordinance, Council approves the Park Agreement and all of its terms, provisions and conditions. The Park Agreement is to be in substantially the form as attached to this ordinance and hereby approved, or with such changes therein as the Council Chair determines, upon advice of counsel, necessary and that do not materially change the matters contained in the form of the Park Agreement.

(b) Prior to the execution of the Park Agreement as provided in subsection (a) of this Section 2, the Council Chair is authorized and directed to remove any property from the schedule of properties proposed to be included in the Park if at such time the property is located inside the boundaries of a municipality and the municipality has not consented to the creation of the Park as required by Section 4-1-170(C) of the Code of Laws of South Carolina 1976, as amended, unless the property was previously included in another multi-county park.

(c) Notwithstanding the provisions of subsection (a) of this Section 2, the Council Chair is authorized to execute the Park Agreement only upon the public announcement, including revelation of the company name, by the Company of its intentions to locate and develop the project on the property described in the Park Agreement.

**Section 3. Payment of Fee in Lieu of Tax.**

The businesses and industries located in the Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. With respect to properties located in the Beaufort County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Beaufort County and the portion of fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Jasper County shall be thereafter paid by the Treasurer of Beaufort County to the Treasurer of Jasper County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. With respect to properties located in the Jasper County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Jasper County and the portion of the fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Beaufort County shall thereafter be paid by the Treasurer of Jasper County to the Treasurer of Beaufort County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. The provisions of Section 12-2-90, Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

**Section 4. Applicable Ordinances and Regulations.**

Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply.

**Section 5. Law Enforcement Jurisdiction.**

Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff's Department of Beaufort County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff's Department of Jasper County. If any of the Park properties located in either Beaufort County or Jasper County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

**Section 6. Distribution of Revenue.**

(a) Revenues generated from industries or businesses located in the Jasper County portion of the Park to be retained by Jasper County shall be distributed within Jasper County in

accordance with this subsection:

(1) First, unless Jasper County elects to pay or credit the same from only those revenues which Jasper County would otherwise be entitled to receive as provided under item (3) below, to pay annual debt service on any special source revenue bonds issued by Jasper County pursuant to, or to be utilized as a credit in the manner provided in Section 4-1-175, Code of Laws of South Carolina 1976, as amended;

(2) Second, at the option of Jasper County, to reimburse Jasper County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Jasper County; and

(3) Third, to those taxing entities in which the property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if the property were taxable for that year.

(b) Notwithstanding any other provision of this section:

(1) all taxing entities which overlap the applicable properties within the Park shall receive at least some portion of the revenues generated from such properties; and

(2) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of the taxing entity.

(c) Revenues generated from industries or businesses located in the Beaufort County portion of the Park shall be retained by Jasper County.

### **Section 7. Conflicting Provisions.**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Jasper County Code or other Jasper County orders, resolutions and ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

### **Section 8. Severability.**

If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

### **Section 9. Effective Date.**

This ordinance is effective upon third reading.

SIGNATURES FOLLOW ON NEXT PAGE.

DONE this \_\_\_ day of \_\_\_\_\_ 2020.

COUNTY COUNCIL OF JASPER COUNTY

By: \_\_\_\_\_  
Henry Etheridge, Chair

ATTEST:

\_\_\_\_\_  
Wanda Simmons, Clerk to Council

First Reading: \_\_\_\_\_, 2020  
Second Reading: \_\_\_\_\_, 2020  
Public Hearing: \_\_\_\_\_, 2020  
Third and Final Reading: \_\_\_\_\_, 2020

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**Exhibit A to Ordinance No. 2020/ \_\_\_\_\_**

**Multi-County Park Agreement  
(Projects Stone, Garden, Glass and Burger)  
between  
Beaufort County, South Carolina and Jasper County, South Carolina**

See attached.

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**MULTI-COUNTY PARK AGREEMENT  
(Projects Stone, Garden, Glass, and Burger)**

**between**

**BEAUFORT COUNTY, SOUTH CAROLINA**

**and**

**JASPER COUNTY, SOUTH CAROLINA**

**Dated as of \_\_\_\_\_, 2020**

**Multi-County Park Agreement  
(Projects Stone, Garden, and Burger)**

This MULTI-COUNTY PARK AGREEMENT (PROJECTS STONE, GARDEN, GLASS AND BURGER PROPERTY) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020, by and between BEAUFORT COUNTY, SOUTH CAROLINA (“Beaufort County”) and JASPER COUNTY, SOUTH CAROLINA (“Jasper County”) (collectively, Beaufort County and Jasper County are the “Parties”), each a body politic and corporate, a political subdivision of the State of South Carolina (“Park Agreement”).

In consideration of the mutual agreements, representations and benefits contained in this Park Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Beaufort County and Jasper County agree as follows:

1. Effective Date. This Park Agreement is effective at 12:00 a.m. (midnight), December 31, 2020 (the “Effective Date”).

2. Authorization. Article VIII, section 13(D) of the South Carolina Constitution and Sections 4-1-170, -172, and -175 of the Code of Laws of South Carolina 1976, as amended (the “MCP Law”), authorizes contiguous counties to jointly develop industrial and business parks within the geographical boundaries of one or more of the participating counties. Beaufort County authorized and approved this Park Agreement by passage of Ordinance No. 2020/\_\_\_ and Jasper County authorized and approved this Park Agreement by passage of Ordinance No. \_\_\_ - \_\_\_.

3. Purpose. The purpose of this Park Agreement is to (i) provide for the establishment of a multi-county park in accordance with the MCP Law and (ii) encourage the investment of capital and the creation of jobs in Beaufort County and Jasper County.

4. Agreement to Develop Park. The Parties agree to jointly develop an industrial and business park in accordance with the MCP Law and the terms and conditions of this Park Agreement (the “Park”).

5. The Park. (A) Location. The Park consists of certain property located in Beaufort County as further identified in Exhibit A (Beaufort County) to this Park Agreement, and property located in Jasper County, as further identified in Exhibit B (Jasper County), to this Park Agreement. The Park may consist of non-contiguous properties within each county. The Parties acknowledge that on the Effective Date, the Park does not contain any property located in Jasper County.

*(B) Addition and Removal of Property.*

(1) County Action. Property may be added to or removed from the Park by ordinance of the county in which the subject property is located, provided that the host county shall provide notice to the non-host county as well as revised exhibits pursuant to subsection (2) below.

(2) Revised Exhibits. If property is added to or removed from the Park, this Park Agreement is deemed amended and a revised Exhibit A (Beaufort County) or Exhibit B (Jasper County), as applicable, shall be prepared by the county in which the added or removed property is located. The revised exhibit must contain a description or other identification of the properties included in the Park, after the addition or removal. A copy of the revised exhibit shall be provided to the Administrator, Clerk to Council, Assessor, Auditor and Treasurer of Beaufort County and Jasper County.

(3) Public Hearings and Notice. Prior to the adoption by either county of an ordinance authorizing the removal of property from the Park, the county council in the county in which the

property to be removed is located, shall hold a public hearing. The county that will conduct the public hearing must give notice of the public hearing by publication in a newspaper of general circulation in the county in which the public hearing will be held at least once and not less than fifteen (15) days prior to the public hearing. Notice of the public hearing shall also be served in the manner of service of process at least fifteen (15) days prior to the public hearing upon the owner of the real property and, if applicable and known, the lessee of any real property which would be removed from the Park.

6. Fee in Lieu of Taxes. Pursuant to article VIII, section 13(D), of the South Carolina Constitution, all property located in the Park is exempt from all *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Park Agreement and the MCP Law an amount equivalent to the *ad valorem* property taxes or other in-lieu-of payments that would have been due and payable but for the location of the property within the Park (“Fee in Lieu of Taxes” or “FILOT”).

7. Allocation of Expenses. Beaufort County and Jasper County shall bear the expenses for the development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

If property is in the Beaufort County portion of the Park:

- |     |                 |      |
|-----|-----------------|------|
| (1) | Beaufort County | 100% |
| (2) | Jasper County   | 0%   |

If property is in the Jasper County portion of the Park:

- |     |                 |      |
|-----|-----------------|------|
| (1) | Beaufort County | 0%   |
| (2) | Jasper County   | 100% |

8. Allocation of Revenues. Beaufort County and Jasper County shall receive an allocation of revenue generated by the Park through payment of Fee in Lieu of Taxes (net of any special source revenue bond payments or special source revenue credits) in the following proportions:

If property is in the Beaufort County portion of the Park:

- |     |                 |     |
|-----|-----------------|-----|
| (1) | Beaufort County | 99% |
| (2) | Jasper County   | 1%  |

If property is in the Jasper County portion of the Park:

- |     |                 |     |
|-----|-----------------|-----|
| (1) | Beaufort County | 1%  |
| (2) | Jasper County   | 99% |

9. Revenue Allocation Within Each County.

(A) *Host County.* Revenues generated by the Park through the payment of Fee in Lieu of Taxes shall be distributed to Beaufort County and to Jasper County, as applicable, according to the proportions established by Paragraph 8 of this Park Agreement. With respect to revenues allocable to Beaufort County or Jasper County by way of FILOT generated within the respective county (the “Host County”), such revenue shall be distributed within the Host County in the manner provided by ordinance of the council of the Host County; provided, that (i) all taxing districts which overlap the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such portion, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body

of the taxing entity shall allocate the revenues received between operations and debt service of the taxing entity. Each Host County is specifically authorized to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the council of the Host County.

(B) *Non-Host County*. Revenues allocable to Beaufort County by way of FILOT generated within Jasper County shall be distributed solely to Beaufort County. Revenues allocated to Jasper County by way of FILOT generated within Beaufort County shall be distributed solely to Jasper County.

10. Fees In Lieu of Taxes Pursuant to Title 4 and Title 12 Code of Laws of South Carolina. The Parties agree that the entry by Beaufort County into any one or more fee in lieu of tax agreements pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina 1976, as amended (“Negotiated Fee-in-Lieu of Tax Agreements”), with respect to property located within the Beaufort County portion of the Park and the terms of those agreements shall be at the sole discretion of Beaufort County. The Parties further agree that entry by Jasper County into any one or more Negotiated Fee-in-Lieu of Tax Agreements with respect to property located within the Jasper County portion of the Park and the terms of those agreements shall be at the sole discretion of Jasper County.

11. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code of Laws of South Carolina 1976, as amended, allocation of the assessed value of property within the Park to Beaufort County and Jasper County and to each of the taxing entities within the participating counties shall be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Paragraphs 8 and 9 of this Park Agreement.

12. Applicable Regulations. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply.

13. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff’s Department of Jasper County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff’s Department of Beaufort County. If any of the Park properties located in either Jasper County or Beaufort County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

14. Severability. If any provision or any part of a provision of this Park Agreement is held invalid or unenforceable by a 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 Park Agreement.

15. Amendments. The provisions of this Park Agreement may be modified or amended only in a writing signed by the Parties.

16. Headings and Catch Lines. The headings of the paragraphs and subparagraphs of this Park Agreement are inserted for convenience only and do not constitute a part of this Park Agreement.

17. Governing Law. This Park Agreement, and all documents executed in connection with it, shall be construed in accordance with and governed by the laws of the State of South Carolina.

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

19. Binding Agreement. This Park Agreement is binding upon and shall inure to the benefit of the respective Parties.

20. Merger. This Park Agreement, and all documents executed in connection with it, express the entire understanding and all agreements of the Parties with each other, and neither Beaufort County nor Jasper County has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Park Agreement.

21. Waiver. Either party may waive compliance by the other party with any term or condition of this Park Agreement only in a writing signed by the waiving party. The failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall not 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 hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

22. Termination.

(A) *Duration and Renewal.* This Park Agreement commences on the Effective Date and shall continue until at least December 31, 2045.

(B) *Mutual Termination.* Notwithstanding the provisions of subparagraph (A) of this Paragraph 22, the Parties may mutually agree to terminate this Park Agreement at any time upon passage of an ordinance to that effect by each county and after conducting a public hearing and giving notice as set forth in subparagraph (B)(3) of Paragraph 5 of this Park Agreement.

SIGNATURES FOLLOW ON NEXT PAGE.

WITNESS our hands and seals as of the date first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Joseph Passiment, Chair, County Council

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

JASPER COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Henry Etheridge, Chair, County Council

ATTEST:

\_\_\_\_\_  
Tisha L. Williams, Acting Clerk to Council

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**EXHIBIT A (Beaufort County)**

**Beaufort County Property  
December 31, 2020  
PROJECTS STONE, GARDEN, GLASS BURGER**

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**PROJECT STONE**  
**LEGAL DESCRIPTION**

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

**PROJECT GARDEN**  
**LEGAL DESCRIPTION**

**That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.**

**PROJECT GLASS**  
**LEGAL DESCRIPTION**

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

**PROJECT BURGER**  
**LEGAL DESCRIPTION**

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

**EXHIBIT B (Jasper County)**

**Jasper County Property  
December 31, 2020**

**NONE**

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# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
<i>FEE-IN-LIEU OF PROPERTY TAXES (FILOT)- PROJECT BURGER, PROJECT GARDEN, PROJECT GLASS</i>
<b>MEETING NAME AND DATE:</b>
<i>COUNTY COUNCIL OCTOBER 26, 2020</i>
<b>PRESENTER INFORMATION</b>
<i>JOHN O'TOOLE, EXECUTIVE DIRECTOR, BEAUFORT COUNTY ECONOMIC DEVELOPMENT CORPORATION</i>
<b>ITEM BACKGROUND:</b>
<i>THE BCEDC'S POSITION ON FILOT AGREEMENTS IS TO TAKE A CONSERVATIVE APPROACH WHILE RECRUITING PROSPECTS COMPANIES AND OFFER THE 'BASE FILOT.' THE SOUTH CAROLINA ECONOMIC DEVELOPMENT CLIMATE IS ONE THAT PROMOTES FILOT AGREEMENTS FOR INDUSTRIAL PROJECTS AND TAXING INDUSTRY ON PAR WITH COMMERCIAL RATE. USING THESE FILOT AGREEMENTS AS A RECRUITING TOOL ALLOWS THE BCEDC TO LEVEL THE PLAYING FIELD WITH OTHER SC COUNTIES AND RECRUIT JOB CREATING AND TAX BASE DIVERSIFYING COMPANIES TO BEAUFORT COUNTY. SEE BELOW THE EXPECTED INVESTMENT AND JOB CREATION OF EACH COMPANY:</i>
<b>PROJECT / ITEM NARRATIVE:</b>
<i>PROJECT BURGER: \$4.496 MILLION INVESTMENT, 43 NEWLY CREATED JOBS</i> <i>PROJECT GARDEN: \$3.19 MILLION INVESTMENT, 26 NEWLY CREATED JOBS</i> <i>PROJECT GLASS: \$15.15 MILLION INVESTMENT, 55 NEWLY CREATED JOBS</i> <i>TOTAL: \$22.836 MILLION INVESTMENTS, 124 NEWLY CREATED JOBS</i>
<b>FISCAL IMPACT:</b>
<i>PROVINDING BASE FEE-IN-LIEU OF TAX AGREEMENTS TO PROJECT BURGER, PROJECT GARDEN, AND PROJECT GLASS. THE WILL BRING PROPERTY TAX RATE FROM 10% INDUSTRIAL RATE DOWN TO 6% RATE FOR A 20 YEAR PERIOD</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
<i>APPROVE</i>
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>THE BCEDC RECOMMENDS MOVING FORWARD WITH FILOT AGREEMENTS FOR PROJECT BURGER, PROJECT GARDEN, AND PROJECT GLASS</i>

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Item 4.

STATE OF SOUTH CAROLINA )  
 ) RESOLUTION NO.: \_\_\_\_\_  
COUNTY OF BEAUFORT )

**INDUCEMENT RESOLUTION PROVIDING FOR A  
FEE IN LIEU OF TAX AGREEMENT  
BETWEEN BEAUFORT COUNTY AND PROJECT BURGER**

WHEREAS, Beaufort 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, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into a fee in lieu of tax agreement (the “Fee Agreement”) with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, a company currently identified as Project Burger, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the “Company”), desires to invest capital in the County in order to establish a manufacturing facility in the County (the “Project”), provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, the Project is anticipated to result in an investment of at least \$4,496,000 and the creation of approximately 43 new, full-time jobs; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for a fee in lieu of tax (“FILOT”) with respect to the Project; 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” and “economic development property” as such terms are defined in the Act and that the Project would serve the purposes of the Act.

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

Section 1. The County Council hereby finds that: (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes and the inducement of the location of the Project within South Carolina is of paramount importance and the benefits of the Project to the public are greater than the cost (which latter finding has been made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.



Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

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

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

(SEAL)

ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

STATE OF SOUTH CAROLINA )  
 ) RESOLUTION NO.: \_\_\_\_\_  
 COUNTY OF BEAUFORT )

**INDUCEMENT RESOLUTION PROVIDING FOR A  
 FEE IN LIEU OF TAX AGREEMENT  
 BETWEEN BEAUFORT COUNTY AND PROJECT GARDEN**

WHEREAS, Beaufort 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, Code of Laws of South Carolina, 1976, as amended (the ‘‘Act’’), to enter into a fee in lieu of tax agreement (the ‘‘Fee Agreement’’) with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, a company currently identified as Project Garden, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the ‘‘Company’’), desires to invest capital in the County in order to establish a manufacturing facility in the County (the ‘‘Project’’), provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, the Project is anticipated to result in an investment of at least \$3,190,000 and the creation of approximately 26 new, full-time jobs; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for a fee in lieu of tax (‘‘FILOT’’) with respect to the Project; 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’’ and ‘‘economic development property’’ as such terms are defined in the Act and that the Project would serve the purposes of the Act..

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

Section 1. The County Council hereby finds that: *(i)* the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; *(ii)* the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power; *(iii)* the purposes to be accomplished by the Project are proper governmental and public purposes and the inducement of the location of the Project within South Carolina is of paramount importance and the benefits of the Project to the public are greater than the cost (which latter finding has been made using an appropriate cost-benefit analysis); and *(iv)* it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

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

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

(SEAL)

ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT GLASS

Dated as of \_\_\_\_\_, 2020

RECAPITULATION OF CONTENTS OF  
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of \_\_\_\_\_, 2020 by and between BEAUFORT 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 Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT GLASS (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) 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.

2. Pursuant to Section 12-44-40(H)(1) of 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 benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any 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 are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on \_\_\_\_\_, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which 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 enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Glass and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any



machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 286.70 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) 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 as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

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 Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable 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 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 Manager, 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. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 286.70 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

#### Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be

reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the



damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8   Condemnation.

(a)   Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b)   Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c)   The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9   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 (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may 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. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than

concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, 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. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

## ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, 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; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company’s failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(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;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. 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 therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder 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 hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

## ARTICLE VI

### MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE COMPANY:**

Project Glass  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Insert notice person and address for final reading.]**

**IF TO THE COUNTY:**

Beaufort County, South Carolina  
Attn: County Attorney  
100 Ribaut Road  
Beaufort, SC 29902

**WITH A COPY TO:**

Haynsworth Sinkler Boyd, P.A.  
Attn: William R. Johnson  
P.O. Box 11889  
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement 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 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 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 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement 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 to effectuate most closely 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, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), 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 Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, 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 Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all 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, 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 Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or 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 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; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)



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

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

**PROJECT GLASS**

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

**EXHIBIT A**  
**Legal Description**

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

**STATE OF SOUTH CAROLINA )  
   )  
 COUNTY OF BEAUFORT         )                                   **ORDINANCE****

ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA AND PROJECT GARDEN PROVIDING FOR A PAYMENT OF A FEE IN LIEU OF TAXES AND OTHER MATTERS RELATED THERETO.

WHEREAS, Beaufort County, South Carolina (the “County”) acting by and through its County Council (the “County Council”) is authorized and empowered 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 fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the “State”) and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally; and

WHEREAS, a company currently identified as Project Garden (referred to hereinafter as the “Company”) intends to invest in the establishment of a manufacturing facility through the acquisition of land, a building, and improvements thereon (the “Land and Building”); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, which would constitute a project within the meaning of the Act and which are eligible for inclusion as economic development property, the cost of which is estimated to be \$3,190,000 and which is anticipated to create 26 new, full-time jobs over five years (the “Project”), all as more fully set forth in the Fee Agreement attached hereto, and provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, pursuant to an Inducement Resolution duly enacted by the County Council, the County authorized the execution of an agreement providing for fee in lieu of tax payments; 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 (the “Fee Agreement”), which provides for fee in lieu of tax payments utilizing a 6% assessment ratio for a period of 20 years for the Project or each component thereof placed in service during the investment period; and

WHEREAS, 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 the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. 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, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any 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.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby 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 5. 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 6. 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.

(SIGNATURE PAGE TO FOLLOW)

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT         )

I, the undersigned, Clerk to County Council of Beaufort County, South Carolina (“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 \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on \_\_\_\_\_, and notice of the public hearing was published in the \_\_\_\_\_ on \_\_\_\_\_. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws, 1976, in connection with said meetings of County Council.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Beaufort County Council, South Carolina, as of this \_\_\_\_ day of \_\_\_\_\_, 2020.

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

STATE OF SOUTH CAROLINA )  
 ) RESOLUTION NO.: \_\_\_\_\_  
COUNTY OF BEAUFORT )

**INDUCEMENT RESOLUTION PROVIDING FOR A  
FEE IN LIEU OF TAX AGREEMENT  
BETWEEN BEAUFORT COUNTY AND PROJECT GLASS**

WHEREAS, Beaufort 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, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into a fee in lieu of tax agreement (the “Fee Agreement”) with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, a company currently identified as Project Glass, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the “Company”), desires to invest capital in the County in order to establish a manufacturing facility in the County (the “Project”), provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, the Project is anticipated to result in an investment of at least \$15,150,000 and the creation of approximately 55 new, full-time jobs; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for a fee in lieu of tax (“FILOT”) with respect to the Project; 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” and “economic development property” as such terms are defined in the Act and that the Project would serve the purposes of the Act.

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

Section 1. The County Council hereby finds that: (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes and the inducement of the location of the Project within South Carolina is of paramount importance and the benefits of the Project to the public are greater than the cost (which latter finding has been made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

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

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

(SEAL)

ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council





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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Fee-in-Lieu of Property Taxes (FILOT) - Project Burger, Project Garden, Project Glass

#### Council Committee:

County Council

#### Meeting Date:

October 26, 2020

#### Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

#### Issues for Consideration:

Providing base fee-in-lieu of tax agreements to Project Burger, Project Garden, and Project Glass. This will bring property tax rate from 10% industrial rate down to 6% rate for a 20 year period.

#### Points to Consider:

The BCEDC's position on FILOT agreements is to take a conservative approach while recruiting prospect companies and offer the 'base FILOT.' The South Carolina economic development climate is one that promotes FILOT agreements for industrial projects and taxing industry on par with the commercial rate. Using these FILOT agreements as a recruiting tool allows the BCEDC to level the playing field with other SC Counties and recruit job creating and tax base diversifying companies to Beaufort County. See below the expected investment and job creation of each company:  
Project Burger - \$4.496 million investment, 43 newly created jobs  
Project Garden - \$3.19 million investment, 26 newly created jobs  
Project Glass - \$15.15 million investment, 55 newly created jobs  
Total: \$22.836 million investment, 124 newly created jobs

#### Funding & Liability Factors:

Companies will be assessed at 6% tax rate for a 20 year period.

#### Council Options:

Recommend FILOT agreements to full County Council for approval.

#### Recommendation:

The BCEDC recommends moving forward with FILOT agreements for Project Burger, Project Garden, and Project Glass

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT GARDEN

Dated as of \_\_\_\_\_, 2020

RECAPITULATION OF CONTENTS OF  
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of \_\_\_\_\_, 2020 by and between BEAUFORT 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 Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT GARDEN (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) 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.

2. Pursuant to Section 12-44-40(H)(1) of 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 benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any 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 are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on \_\_\_\_\_, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which 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 enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Garden and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 286.7 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.



(b) 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 as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

### ARTICLE III

#### COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

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 Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable 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 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 Manager, 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. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 286.7 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

#### Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

(d) Notwithstanding the foregoing language, if the Company fails to meet the Act Minimum Investment Requirement but meets and maintains total capital expenditures placed in service in the County (based on gross cost without regard to depreciation) of at least \$2,000,000 as of the end of the Investment Period, the Company shall not be required to make any retroactive payments and shall be entitled to special source revenue credits (SSRCs) pursuant to Sections 4-29-68 and Title 4, Chapter 1, Sections 170 through 175 of the Code of Laws of South Carolina, 1976, as amended. The SSRCs shall equal the Additional Payment as described above. Further, for each subsequent year, so long as the company maintains at least \$2,000,000 of capital expenditures placed in service in the County within the Investment Period, the Company shall be entitled to SSRCs equal to the difference between (1) the *ad valorem* taxes or payments in lieu of taxes that would be due with respect to such investments in the absence of this Fee Agreement and (2) the FILOT payments that would be due as if such investments qualified for this Fee Agreement. If the SSRCs in this paragraph are triggered, the Company and the County agree to work in good faith to establish a certification procedure whereby the Company must remit a detailed annual certification to the County in order to be entitled to the SSRCs described herein.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income

tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any

part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

#### Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes

would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 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 (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may 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. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, 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. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor’s basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.



In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, 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; or

- (f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(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;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. 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 therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder 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 hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE COMPANY:**

Project Garden  
Attn: \_\_\_\_\_  
\_\_\_\_\_

**[Insert notice person and address for final reading.]**

**IF TO THE COUNTY:**

Beaufort County, South Carolina  
Attn: County Attorney  
100 Ribaut Road  
Beaufort, SC 29902

**WITH A COPY TO:**

Haynsworth Sinkler Boyd, P.A.  
Attn: William R. Johnson  
P.O. Box 11889  
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement 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 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 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 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement 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 to effectuate most closely 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, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however,* that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in

lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

## ARTICLE VII

### INDEMNIFICATION, INDIVIDUAL LIABILITY

#### Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the "Indemnified Parties"), 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 Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, 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 Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all 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, 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 Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or 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 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; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

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

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

**PROJECT GARDEN**

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

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

**That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.**



FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT BURGER

Dated as of \_\_\_\_\_, 2020

RECAPITULATION OF CONTENTS OF  
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

## FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of \_\_\_\_\_, 2020 by and between BEAUFORT 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 Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT BURGER (the “Company”).

### RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County *(i)* to induce industries to locate in the State; *(ii)* to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and *(iii)* 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.

2. Pursuant to Section 12-44-40(H)(1) of 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 benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any 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 are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on \_\_\_\_\_, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which 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 enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Burger and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 285 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) 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 as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

### ARTICLE III

#### COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

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 Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable 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 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 Manager, 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. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum



Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 285 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

#### Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be

reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the

damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8   Condemnation.

(a)   Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b)   Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c)   The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9   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 (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may 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. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than

concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, 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. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

## ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, 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; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company’s failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.



In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(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;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. 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 therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder 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 hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE COMPANY:**

Project Burger  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Insert notice person and address for final reading.]**

**IF TO THE COUNTY:**

Beaufort County, South Carolina  
Attn: County Attorney  
100 Ribaut Road  
Beaufort, SC 29902

**WITH A COPY TO:**

Haynsworth Sinkler Boyd, P.A.  
Attn: William R. Johnson  
P.O. Box 11889  
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement 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 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 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 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement 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 to effectuate most closely 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, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), 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 Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, 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 Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all 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, 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 Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or 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 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; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

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

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

ATTEST:

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council

**PROJECT BURGER**

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

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

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

**STATE OF SOUTH CAROLINA )**  
**)**  
**COUNTY OF BEAUFORT         )**   **ORDINANCE**

ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA AND PROJECT GLASS PROVIDING FOR A PAYMENT OF A FEE IN LIEU OF TAXES AND OTHER MATTERS RELATED THERETO.

WHEREAS, Beaufort County, South Carolina (the “County”) acting by and through its County Council (the “County Council”) is authorized and empowered 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 fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the “State”) and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally; and

WHEREAS, a company currently identified as Project Glass (referred to hereinafter as the “Company”) intends to invest in the establishment of a manufacturing facility through the acquisition of land, a building, and improvements thereon (the “Land and Building”); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, which would constitute a project within the meaning of the Act and which are eligible for inclusion as economic development property, the cost of which is estimated to be \$15,150,000 and which is anticipated to create 55 new, full-time jobs over five years (the “Project”), all as more fully set forth in the Fee Agreement attached hereto, and provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, pursuant to an Inducement Resolution duly enacted by the County Council, the County authorized the execution of an agreement providing for fee in lieu of tax payments; 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 (the “Fee Agreement”), which provides for fee in lieu of tax payments utilizing a 6% assessment ratio for a period of 20 years for the Project or each component thereof placed in service during the investment period; and

WHEREAS, 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 the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. 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, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any 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.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby 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 5. 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 6. 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.

(SIGNATURE PAGE TO FOLLOW)

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

STATE OF SOUTH CAROLINA   )  
  )  
COUNTY OF BEAUFORT         )

I, the undersigned, Clerk to County Council of Beaufort County, South Carolina (“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 \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on \_\_\_\_\_, and notice of the public hearing was published in the \_\_\_\_\_ on \_\_\_\_\_. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws, 1976, in connection with said meetings of County Council.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Beaufort County Council, South Carolina, as of this \_\_\_\_ day of \_\_\_\_\_, 2020.

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council



NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

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- (d) The Project gives rise to no pecuniary liability of the County or any 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.
- (g) The benefits of the Project to the public will be greater than the costs.

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such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

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(SIGNATURE PAGE TO FOLLOW)

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

STATE OF SOUTH CAROLINA )  
   )  
COUNTY OF BEAUFORT                        )

I, the undersigned, Clerk to County Council of Beaufort County, South Carolina (“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 \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on \_\_\_\_\_, and notice of the public hearing was published in the \_\_\_\_\_ on \_\_\_\_\_. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

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The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Beaufort County Council, South Carolina, as of this \_\_\_\_ day of \_\_\_\_\_, 2020.

Signature: \_\_\_\_\_  
Name: Sarah W. Brock  
Title: Clerk to County Council



## BEAUFORT COUNTY COUNCIL

### Agenda Item Summary

**Item Title:**

Land Acquisition Proposal through Rural and Critical Land Program - Project 2020A

**Council Committee:**

County Council

**Meeting Date:**

October 26, 2020

**Committee Presenter (Name and Title):**

Eric Greenway, Planning and Zoning Director

**Issues for Consideration:**

The fee simple acquisition of +/- 12 acres on US Highway 21 (3020, 3026, and 3030 Trask Parkway) for \$557,037 in Rural and Critical Program land acquisition funds, acceptance of 1.7 acres of donated property, sale of restrictive easement and grant of conservation easement of purchased and donated property. County Council approved this item with Ordinance No. 2020/12 on April 27, 2020. Ordinance No. 2020/12 inaccurately provided the United States of America was purchasing a restrictive easement in the amount of \$922,500; creating a short fall in funding by \$12,500.

**Points to Consider:**

Property being purchased below fair market value. The three parcels under consideration comprise a significant portion of the battlefield of the 1779 Revolutionary War Battle of Port Royal Island. One tract includes an existing 22,000 s.f. commercial building. SC Conservation Bank, and DoD/Marine Corps Air Station Beaufort are cost-share partners. Marine Corps Air Station Beaufort purchasing a Restrictive Easement on the property with some limitations on public access. The SC Battleground Preservation Trust will hold a conservation easement to protect historic resources. County would be sole owner of purchased and donated property. Property could be established as a site on the South Carolina Liberty Trail.

**Funding & Liability Factors:**

Land acquisition cost from Rural & Critical Program funds = \$557,037. Other cost-share funds are MCAS Beaufort \$910,000, and SC Conservation Bank \$352,963. County has expended \$18,235 in identifiable due diligence expenses, further costs expected for closing including survey of donated parcel and closing costs. The existing building is a liability consideration.

**Council Options:**

Motion to approve the amendment to the 2020/12 Ordinance for 2nd reading.

Motion to deny the amendment to the 2020/12 Ordinance for 2nd reading.

**Recommendation:**

Staff recommends Council approve 2<sup>nd</sup> reading. The Finance Committee recommended approval Monday, October 19, 2020, and Council gave 1<sup>st</sup> reading at the Special-Called meeting on October 19, 2020.



**ORDINANCE 2020/ \_\_\_\_\_**

**AN ORDINANCE TO AMEND BEAUFORT COUNTY ORDINANCE NO. 2020/12 TO REFLECT THE APPROPRIATE DOLLAR AMOUNTS FOR PURCHASING REAL PROPERTY KNOWN AS THE PORT ROYAL ISLAND BATTLEFIELD**

**WHEREAS**, on April 27, 2020, Beaufort County Council adopted Ordinance No. 2020/12 authorizing the County Administrator to execute the necessary documents for the purchase of approximately 12 acres of real property (the “Property”) known as tax map serial numbers R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000 and also known as the Port Royal Island Battlefield, to sell a restrictive easement to the United States of America on tax map serial numbers R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000, to accept the donation of a portion of R100 020 000 0244 0000, and to grant a conservation easement to the South Carolina Battleground Preservation trust on tax map serial numbers R100 020 000 0165 0000, R100 020 000 047C 0000 and R100 020 000 0047 0000 and a portion of R100 020 000 0244 0000; and

**WHEREAS**, the purchase of the Port Royal Island Battlefield is for a fee simple purchase in the amount of \$1,820,000.00 (“Purchase Price”) and County Council approved \$544,537 from the Rural and Critical Land Preservation Program to be allocated for the purchase of the Property; and

**WHEREAS**, Ordinance No. 2020/12 inaccurately stated the United States of America desired to purchase a Restrictive Easement on the Property in the amount of fifty-one percent (51%) of the Purchase Price which was shown as \$922,500; and

**WHEREAS**, the United States of America in fact desired to purchase a Restrictive Easement on the Property in the amount of fifty percent (50%) of the Purchase Price which amounts to \$910,000; and

**WHEREAS**, as a result of the decrease in funds provided by the United States of America an additional \$12,500 is required to purchase the Property; and

**WHEREAS**, the Rural and Critical Land Preservation Program’s contribution for purchase of the Property shall therefore be amended to reflect a contribution in the amount of \$557,037.

**NOW, THEREFORE, BE IT ORDAINED**, by Beaufort County Council that Beaufort County Ordinance No. 2020/12 is hereby amended as follows:

- (1) the purchase of the Port Royal Island Battlefield is for a fee simple purchase of \$1,820,000.00 with \$557,037 from the Rural and Critical Land Preservation Program, \$352,963 from a South Carolina Conservation Bank grant, and \$910,000 from the sale of a Restrictive Easement to the United States of America

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

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
Resolution authorizing the Interim County Administrator to prepare and submit a Community Development Block Grant Application for the Detour Road Sidewalk Extension Project.
<b>MEETING NAME AND DATE:</b>
County Council – October 26, 2020
<b>PRESENTER INFORMATION:</b>
Jared Fralix, ACA – Engineering (5 min)
<b>ITEM BACKGROUND:</b>
<i>October 19, 2020 – This item was presented and approved by Public Facilities Committee</i> As part of the Seabrook Solar Development Agreement from January 2019, a \$250,000 contribution was set aside for the installation of a sidewalk and associated improvements along Detour Road, near Whale Branch Early College High School.
<b>PROJECT / ITEM NARRATIVE:</b>
Detour Road Sidewalk Extension project helps provide a safe travel way for students walking to the Whale Branch Early College High School to the nearby neighborhoods. The proposed pathway is 8’ wide and 3,350ft in length.
<b>FISCAL IMPACT:</b>
The project cost estimate is \$461,868. The proposed Community Development Block Grant is \$200,000 requiring a match of \$259,868. Of the match, \$250,000 will be provided from the Seabrook Solar Development Agreement.
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Staff recommends approval of the Resolution.
<b>OPTIONS FOR COUNCIL MOTION:</b>
Motion to approve Resolution authorizing the County Administrator to prepare and submit a Community Development Block Grant Application for the Detour Road Sidewalk Extension Project.  Motion to deny Resolution authorizing the County Administrator to prepare and submit a Community Development Block Grant Application for the Detour Road Sidewalk Extension Project.
<i>(Next Step – Interim County Administrator to prepare and submit the CDBG Application)</i>

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT****BY AND BETWEEN  
SEABROOK SOLAR, LLC,  
AND  
BEAUFORT COUNTY, SOUTH CAROLINA,**

This **AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the 11<sup>th</sup> day of Jan., 2019, which shall be the date of recording of this fully approved and executed Agreement (the "Effective Date"), by and between Seabrook Solar, LLC, a Delaware limited liability corporation ("Property Owner"), and Beaufort County, a political subdivision of the State of South Carolina ("County")

**RECITALS**

This Agreement is predicated upon the following:

1. The Code of Laws of South Carolina (the "S.C. Code") Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables political subdivisions of the State of South Carolina to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act.
2. Division 7.3 of Article 7 of the Beaufort County Community Development Code governs Beaufort County's participation in development agreements.
3. Beaufort County Council ("County Council") approved that certain Seabrook Solar Development Agreement by and between the County and Property Owner on August 27, 2018,

(1) A contribution of \$850,000 to the County, to be paid within thirty (30) business days of the start of construction of the solar facility as evidenced by the earlier of (i) issuance of full notice to proceed pursuant to the project's engineering, procurement, and construction contract; or (ii) the driving of piles for the first mounting structure at the Paragon site for a solar array (exclusive of any mounting structures installed for purposes of gathering meteorological, solar insolation and similar data) (the "Start of Construction"). This contribution shall be utilized evenly between the northern and southern portions of the county, i.e., \$425,000 shall be utilized in that portion of the county north of the Broad River and \$425,000 shall be utilized in that portion of the County south of the Broad River;

(2) A contribution of \$250,000 to the County for the installation of a sidewalk and associated improvements along Detour Road, near Whale Branch Early College High School, to be paid with thirty (30) business days of the Start of Construction as defined above.

In addition to the above, at County's election following the third (3rd) year of commercial operation, Property Owner will either contribute an additional \$200,000 to County, to be used at its discretion, or install supplemental on-site plantings in areas identified by the County along the perimeter of the project site at a cost not exceed \$200,000, inclusive of materials, labor, irrigation or other establishment costs.

At the beginning of the fourth (4th) year of commercial operation, County shall notify Property Owner, in writing, of its election. The supplemental on-site plantings, if elected, shall be installed in the fourth (4th) year of commercial operation, in a manner and at a time determined by Property Owner. In the event County elects to receive the contribution, Property Owner shall remit said contribution to the County within sixty (60) days of receipt of the written notice.

## Whale Branch High School Pathway - Cost Estimate

### Project Description:

6,650 LF of 8' sidewalk from Chisolm Hill Road along Detour Road & ending at Seabrook Road

### Phase 1:

3,350 LF of 8' sidewalk from Whale Branch High School along Detour Road & ending at Seabrook Road

<u>Item</u>	<u>Item Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
1	Mobilization	1	LS	\$25,000.00	\$25,000.00
2	Bonds & Insurance	1	LS	\$5,000.00	\$5,000.00
3	Construction Stakes, Lines & Grade	1	LS	\$15,000.00	\$15,000.00
4	Traffic Control	1	LS	\$35,000.00	\$35,000.00
5	Clearing & Grubbing within Roadway	1	LS	\$20,000.00	\$20,000.00
6	Site Excavation for Small Projects	1	LS	\$40,000.00	\$40,000.00
7	Permanent Construction Signs	400	SF	\$7.50	\$3,000.00
8	18" Smooth Wall Pipe	32	LF	\$40.00	\$1,280.00
9	36" Smooth Wall Pipe	116	LF	\$75.00	\$8,700.00
10	Catch Basin - Type 9	2	EA	\$3,000.00	\$6,000.00
11	Concrete Sidewalk (4" Uniform)	3000	SY	\$40.00	\$120,000.00
12	Detectable Warning Material	100	SF	\$25.00	\$2,500.00
13	Concrete Driveway (6" Uniform)	160	SY	\$60.00	\$9,600.00
14	Pedestrian Ramp Construction	30	SY	\$90.00	\$2,700.00
15	Rip Rap (Class B)	28	TN	\$75.00	\$2,100.00
16	Geotextile for Erosion Control under Rip	40	SY	\$8.00	\$320.00
17	Permanent Grassing for Small Projects	0.75	AC	\$2,500.00	\$1,875.00
18	Temporary Erosion Control Blanket (ECB)	0.75	MSY	\$2,500.00	\$1,875.00
19	Sediment Tubes for Ditch Checks	200	LF	\$15.00	\$3,000.00
20	Silt Fence	3350	LF	\$2.50	\$8,375.00
21	Replace/Repair Silt Fence	300	LF	\$3.00	\$900.00
22	Removal of Silt Retained by Silt Fence	300	LF	\$2.50	\$750.00
23	Relocate Utilities	1	LS	\$25,000.00	\$25,000.00
				<b>TOTAL =</b>	<b>\$312,975.00</b>
	Contingency (10%)				\$31,297.50
	Engineering Design & Permitting (10%)				\$31,297.50
	Right of Way Acquisition				\$30,000.00
	Construction Admin & CE&I (10%)				\$31,297.50
	Grant Administration (LCOG)				\$25,000.00
				<b>PHASE 1 TOTAL =</b>	<b>\$461,867.50</b>

**Phase 2:**

3,300 LF of 8' sidewalk from Chisolm Hill Road along Detour Road and ending at Whale Branch High School

<b><u>Item</u></b>	<b><u>Item Description</u></b>	<b><u>Quantity</u></b>	<b><u>Unit</u></b>	<b><u>Unit Price</u></b>	<b><u>Total</u></b>
24	Bonds & Insurance	1	LS	\$5,000.00	\$5,000.00
25	Construction Stakes, Lines & Grade	1	LS	\$5,000.00	\$5,000.00
26	Traffic Control	1	LS	\$10,000.00	\$10,000.00
27	Clearing & Grubbing within Roadway	1	LS	\$10,000.00	\$10,000.00
28	Removal & Disposal of Existing Pavement	815	SY	\$20.00	\$16,300.00
29	Site Excavation for Small Projects	1	LS	\$30,000.00	\$30,000.00
30	Permanent Construction Signs	288	SF	\$7.50	\$2,160.00
31	18" Smooth Wall Pipe	32	LF	\$40.00	\$1,280.00
32	36" Smooth Wall Pipe	100	LF	\$75.00	\$7,500.00
33	Catch Basin - Type 9	2	EA	\$3,000.00	\$6,000.00
34	Concrete Sidewalk (4" Uniform)	2950	SY	\$40.00	\$118,000.00
35	Detectable Warning Material	135	SF	\$25.00	\$3,375.00
36	Concrete Driveway (6" Uniform)	160	SY	\$60.00	\$9,600.00
37	Pedestrian Ramp Construction	40	SY	\$90.00	\$3,600.00
38	Rip Rap (Class B)	28	TN	\$75.00	\$2,100.00
39	Geotextile for Erosion Control under Rip	40	SY	\$8.00	\$320.00
40	Permanent Grassing for Small Projects	0.75	AC	\$2,500.00	\$1,875.00
41	Temporary Erosion Control Blanket (ECB)	0.75	MSY	\$2,500.00	\$1,875.00
42	Sediment Tubes for Ditch Checks	200	LF	\$15.00	\$3,000.00
43	Silt Fence	3300	LF	\$2.50	\$8,250.00
44	Replace/Repair Silt Fence	300	LF	\$3.00	\$900.00
45	Removal of Silt Retained by Silt Fence	300	LF	\$2.50	\$750.00
46	Relocate Utilities	1	LS	\$20,000.00	\$20,000.00
				<b>TOTAL =</b>	<b>\$246,885.00</b>
	Contingency (10%)				\$24,688.50
	Engineering Design & Permitting (10%)				\$24,688.50
	Right of Way Acquisition				\$25,000.00
	Construction Admin & CE&I (10%)				\$24,688.50
	Grant Administration (LCOG)				\$10,000.00
				<b>PHASE 2 TOTAL =</b>	<b>\$355,950.50</b>
				<b>GRAND TOTAL =</b>	<b>\$817,818.00</b>

**RESOLUTION 2020/\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE INTERIM COUNTY ADMINISTRATOR TO PREPARE AND SUBMIT A COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION FOR THE DETOUR ROAD SIDEWALK EXTENSION PROJECT**

**WHEREAS**, there is a need to address quality of life issues for Beaufort County, and addressing the concerns and issues of low-to-moderate income (LMI) residents is a priority for the County, and pedestrian pathways have been identified as a priority community need for Beaufort County; and

**WHEREAS**, Beaufort County has taken steps to address this need by making application to the South Carolina Department of Commerce, Grants Administration for Community Enrichment Funds; and

**WHEREAS**, the completion of this project would benefit approximately 923 homes in the Seabrook community, of which at least 51% qualify as having low-to-moderate incomes.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Beaufort County, South Carolina, the following:

1. The County hereby endorses the Detour Road Sidewalk Extension project because it will greatly improve the quality of life for the residents of Beaufort County.
2. The Interim County Administrator, Eric Greenway, shall be and is authorized to prepare and submit a Community Development Block Grant application in the amount of \$200,000 for the Detour Road Sidewalk Extension Project.
3. Beaufort County commits to sharing cost savings on a pro rata basis based on the application budget to be submitted on September 18, 2020.

**ADOPTED**, THIS \_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
Joe Passiment,  
Chairman

**ATTEST:**

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





# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
A RESOLUTION AUTHORIZING THE INTERIM COUNTY ADMINISTRATOR TO PURSUE CONDEMNATION FOR PORTIONS OF PARCELS R123 015 000 0551 0000, R123 015 000 116G 0000, and R123 015 000 1002 0000 ASSOICATED WITH RIGHT OF WAY ACQUISITION FOR SC 802 SAM’S POINT RIGHT TURN LANE PROJECT AS PART OF THE 2018 ONE CENT REFERENDUM
<b>MEETING NAME AND DATE:</b>
County Council – October 26, 2020
<b>PRESENTER INFORMATION:</b>
Jared Fralix, P.E., Assistant County Administrator - Engineering (5 minutes)
<b>ITEM BACKGROUND:</b>
<i>October 19, 2020 – This item was presented and approved by Public Facilities Committee</i> <ul style="list-style-type: none"><li>- On November 6, 2018 -Project was included 2018 Sales Tax Referendum that was approved by voters.</li><li>- On September 14, 2020 – County Council unanimously approved construction contract to APAC –</li></ul>
<b>PROJECT / ITEM NARRATIVE:</b>
The SC 802 Sam’s Point Right Turn Lane Project is part of the Lady’s Island Traffic Improvements included in the 2018 Sales Tax program. Right of Way Acquisitions for Tracts 1, 2, and 3 are necessary to proceed and complete the project. Written and verbal communication with the owner of tract 1 has been unsuccessful. County Legal representatives have encountered possible closing issues due to mortgages and judgements on tracts 2 & 3.
<b>FISCAL IMPACT:</b>
Condemnation expenses range from \$5,000-\$15,000 Plus owner compensation for R/W: R123 015 000 0551 0000 “ <b>Tract 1</b> ” (appraised value for 3,473 SF=\$60,000) R123 015 000 116G 0000 “ <b>Tract 2</b> ” (appraised value for 1,551 SF=\$15,000) R123 015 000 1002 0000 “ <b>Tract 3</b> ” (appraised value for 206 SF= \$2,000) Funded by 2018 One Cent Referendum Account # 47050011-54505
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Staff recommends moving forward with condemnation for these 3 parcels.
<b>OPTIONS FOR COUNCIL MOTION:</b>
Motion to approve a resolution authorizing the County Administrator to pursue condemnation for portions of parcels R123 015 000 0551 0000, R123 015 000 116G 0000, and R123 015 000 1002 0000 as associated with right-of-way acquisition process for SC 802 Sam’s Point Right Turn Lane Project.  Motion to deny a resolution authorizing the County Administrator to pursue condemnation for portions of parcels R123 015 000 0551 0000, R123 015 000 116G 0000, and R123 015 000 1002 0000 as associated with right-of-way acquisition process for SC 802 Sam’s Point Right Turn Lane Project.
<b>(Next Step – Interim County Administrator Pursue Condemnation)</b>

**RESOLUTION NO. 2020/**

**A RESOLUTION AUTHORIZING THE INTERIM COUNTY ADMINISTRATOR TO PURSUE CONDEMNATION FOR PORTIONS OF PARCELS R123 015 000 0551 0000, R123 015 000 116G 0000, and R123 015 000 1002 0000 ASSOICATED WITH RIGHT OF WAY ACQUISITION FOR SC 802 DEDICATED RIGHT TURN LANE AS PART OF THE 2018 ONE CENT REFERENDUM**

**WHEREAS**, a Referendum to approve the expenditure of One Hundred Twenty Million Dollars (\$120,000,000) by implementation of a One Percent (1 %) Sales Tax was held on November 6, 2018; and

**WHEREAS**, the voters of Beaufort County voted to approve implementing the one (1%) percent sales tax by a margin of nearly fifty-eight (58%) percent; and

**WHEREAS**, Beaufort County Council adopted an Ordinance on November 13, 2017 to impose a One Percent (1 %) Transportation Sales and Use Tax for not more than four ( 4) years, as approved by referendum, to authorize the issue of General Obligation Bonds not to exceed One Hundred Twenty Million Dollars (\$120,000,000) to fund Transportation-related projects; and

**WHEREAS**, it is necessary to acquire right-of-ways from private landowners for the purpose of implementing the SC 802 Sam’s Point Right Turn Lane as part of the Lady’s Island Traffic Improvement projects; and

**WHEREAS**, County legal representatives have attempted both written and verbal communication with property owners for Right of Way (R/W) to be acquired from parcels R123 015 000 0551 0000 “**Tract 1**” (R/W needed 3,473 SF); R123 015 000 116G 0000 “**Tract 2**” (R/W needed 1,551 SF); and R123 015 000 1002 0000 “**Tract 3**” (R/W needed 206 SF) as specified on attached EXHIBIT “A”; and

**WHEREAS**, County legal representatives have made contact with the tenants of tract 1 but have not been able to establish communication with the owner of tract 1. Written and Verbal communication efforts have been unsuccessful; and

**WHEREAS**, County legal representatives have had positive responses from owners of tracts 2 and 3 for offers corresponding to appraisal values, however title search efforts indicate possible closing issues due to judgements and mortgages associated with tracts 2 and 3 ; and

**WHEREAS**, County Engineering Staff and legal representatives have determined that condemnation efforts may be necessary for R/W acquisitions associated with tracts 1, 2, and 3

needed for construction of SC 802 Sam’s Point Right Turn Lane as specified on attached EXHIBIT “A”; and

**WHEREAS**, condemnation of the aforementioned tracts will benefit the County by helping to alleviate traffic congestion at the intersection of Hwy 21 and SC 802 located on Lady’s Island.

**WHEREAS**, Beaufort County Council believes that it is in the best interest of its citizens to pursue condemnation of parcels R123 015 000 0551 0000 “**Tract 1**” (R/W needed 3,473 SF), R123 015 000 116G 0000 “**Tract 2**” (R/W needed 1,551 SF), and R123 015 000 1002 0000 “**Tract 3**” (R/W needed 206 SF) for construction of SC 802 Dedicated Right Turn Lane as specified on attached EXHIBIT “A”.

**NOW, THEREFORE, BE IT RESOLVED** that Beaufort County Council hereby authorizes the Interim County Administrator to pursue condemnation of parcels R123 015 000 0551 0000 “**Tract 1**” (R/W needed 3,473 SF), R123 015 000 116G 0000 “**Tract 2**” (R/W needed 1,551 SF), and R123 015 000 1002 0000 “**Tract 3**” (R/W needed 206 SF) for construction of SC 802 Sam’s Point Right Turn Lane Project as specified on attached EXHIBIT “A”.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

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

Joseph Passiment, Chairman

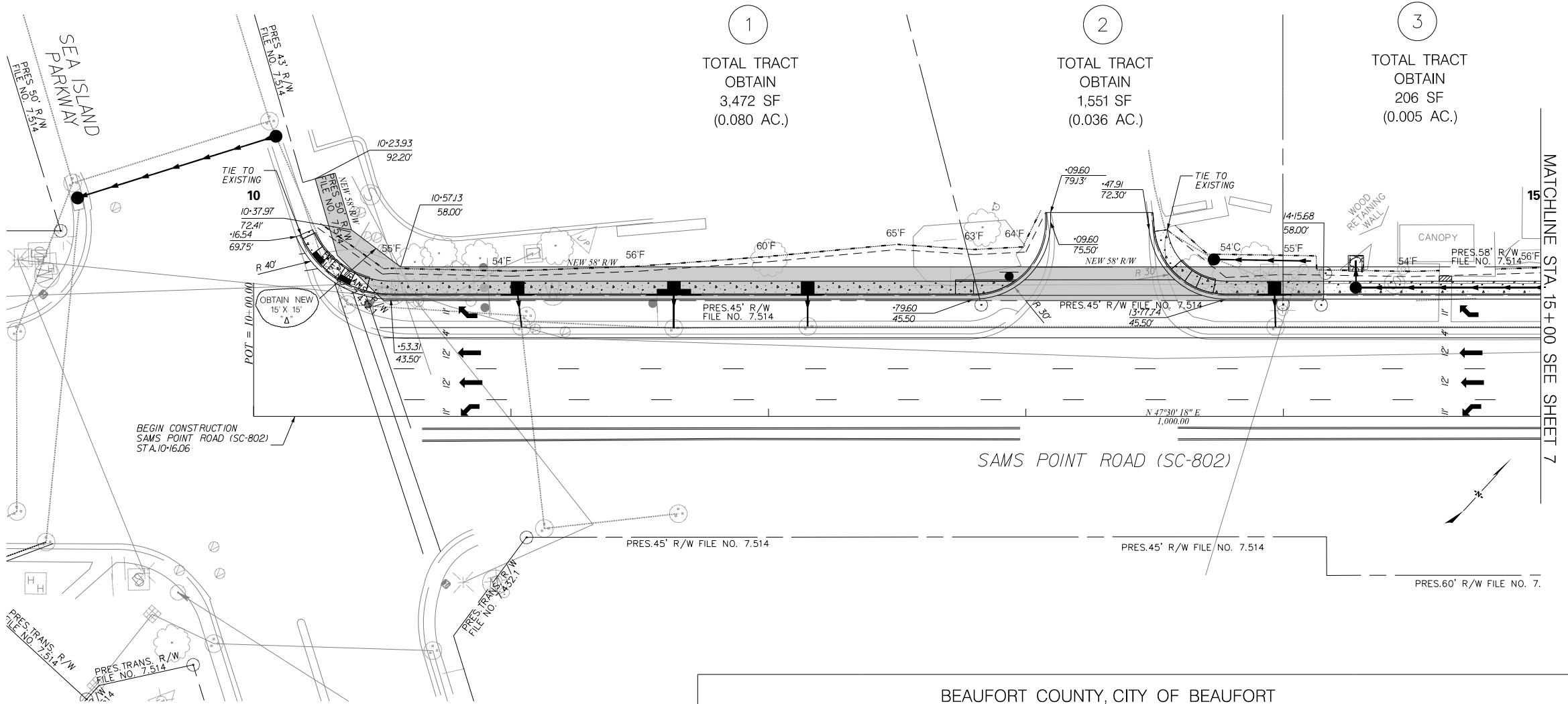
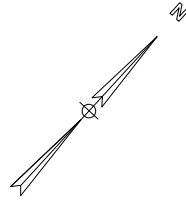
ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council

# EXHIBIT "A"

Item 7.

THIS EXHIBIT IS A GRAPHIC REPRESENTATION OF THE AREA OF ACQUISITION AND IS IN DIRECT REFERENCE TO ENGINEERING PLANS, A COPY OF WHICH CAN BE OBTAINED FROM SCDOT HEADQUARTERS: 955 PARK STREET, COLUMBIA SC 29201. ADDITIONALLY, UPON COMPLETION OF CONSTRUCTION, A RECORDABLE RIGHT OF WAY PLAT SHALL BE SUBMITTED TO THE REGISTER OF DEEDS IN COMPLIANCE WITH SCDOT STANDARD DRAWING 809-105-00.



TOTAL OBTAIN FOR TRACTS SHOWN & PROJECT = 0.121 AC



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
<i>Request for Private Road Acceptance of Maxine Lane into County Road System</i>
<b>MEETING NAME AND DATE:</b>
County Council - October 26, 2020
<b>PRESENTER INFORMATION:</b>
Jared Fralix, P.E., Assistant County Administrator, Engineering (5 Minutes)
<b>ITEM BACKGROUND:</b>
<b><i>October 19, 2020 – This item was presented and staff recommendation was approved by Public Facilities Committee</i></b>  Policy Statements 15 and 17 and the County’s posted Road Acceptance Procedures outline the process for private road acceptance into County Road Inventory.
<b>PROJECT / ITEM NARRATIVE:</b>
Maxine Lane is a private dirt Road (~0.2 Mile) located in district 1. SCDOT recently discontinued maintenance on Maxine Lane even though it falls within the SC-116 E (Laurel Bay Road) right of way. SCDOT views this road as a private frontage road. The owner of the Sports Academy LLC initiated a petition for County Acceptance of Maxine Lane after SCDOT’s recent action. Neil Desai, P.E., Director of Public Works, has inspected this road and has noted concerns about a manhole within the right of way, inadequate Stormwater drainage/outfall, and insufficient right of way width. He has estimated maintenance and repair at \$40,000 (\$20,000 for drainage work & \$20,000 for road work) to bring the road to a minimum standard.
<b>FISCAL IMPACT:</b>
<i>This is an unfunded deficiency within the Public Works Roads and Drainage North division at an estimated cost of \$40,000.</i>
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Staff recommends denial of bringing Maxine Lane into the County road Inventory due to its existing & current conditions.
<b>OPTIONS FOR COUNCIL MOTION:</b>
<i>Motion to accept Maxine Lane into County Road Inventory in accordance with policy statements 15 &amp; 17 and County’s posted Road Acceptance Procedures.</i>  <i>Motion to deny acceptance of Maxine Lane into County road Inventory in accordance with policy statements 15 &amp; 17 and County’s posted road acceptance procedures.</i>  <b><i>(Next Step) Staff to execute Council decision and coordinate with property owners accordingly.</i></b>

Date 3/9/20

Beaufort County Right of Way Manager  
120 Shanklin Road  
Beaufort, SC 29906

Subject: Road Acceptance Letter

Dear Sir/Madam:

As the representative and point of contact for the property owners for MAXINE LANE (Name of road), located in Sheldon or Port Royal Island (Township), Beaufort County, it is requested that the County accept the right of way for this road as determined and include MAXINE LANE (Name of road) in the County's maintenance inventory. My contact information is:

Name DAVID M KIRKWOOD

Address 20 MAXINE LANE

City, State, Zip Code BEAUFORT SC 29906

Phone Number 843-986-6336

Email Address dkirkwood@hargray.com

Signature David M Kirkwood

BEAUFORT COUNTY, SOUTH CAROLINA  
ROAD ACCEPTANCE APPLICATION

Item 8.

TO: Patty Wilson  
Right of Way Manager  
Beaufort County

FROM: Property Owner(s) of Maxine Lane (name of Private Road or Subdivision containing private road(s), Beaufort, SC)

DATE: 2/22/20

We, the undersigned property owners with land adjoining the above referenced street/road, do hereby petition Beaufort County to accept this private road into the County Road System for scheduled maintenance and repair. We have read Beaufort County Policy Statements 15 and 17 and understand that:

1. We will be required to grant the County a 50' wide right-of-way, including the existing roadway **and** whatever additional land is required to assemble a 50' right-of-way, and existing or proposed drainage easements necessary for adequate drainage.
2. By signing this petition, we are giving employees of Beaufort County permission to enter our property for the purpose of surveying the new right-of-way and any existing or proposed drainage easements.
3. **100%** of the adjoining property owners must sign this application in order for it to be presented to the Public Facilities Committee and County Council for consideration.
4. We understand that the road will be designated for public use.

<u>David M Kirkwood</u> Name (Print)	<u>SPORTS ACADEMY</u>	<u>Justin Billy Daniel</u> Name (Print)	<u>Willie Jr Daniel</u>
<u>David M Kirkwood</u> Name (Signature)	<u>LLC</u>	<u>Justin Billy Daniel</u> Name (Signature)	
<u>20 Maxine Lane</u> Address		<u>10 Maxine Lane</u> Address	
<u>Beaufort SC 29906</u> City, State, Zip Code		<u>Beaufort SC 29906</u> City, State, Zip Code	
<u>843-1846-1804 dkirkwood@whorgray.com</u> Day Time Phone Number/Email Address		<u>843-252-9678</u> Day Time Phone Number/Email Address	
<u>R100 024 000 030A 0000</u> Lot or Parcel Number		<u>R100 024 000 031A 0000</u> Lot or Parcel Number	

<u>Landon's LP</u> Name (Print)	<u>Landon's LP</u> Name (Print)
<u>Landon's LP (Dusty Lanning)</u> Name (Signature)	<u>Landon's LP (Dusty Lanning)</u> Name (Signature)
<u>4 Maxine Lane</u> Address	<u>6 Maxine Lane</u> Address
<u>Beaufort, SC 29906</u> City, State, Zip Code	<u>Beaufort SC 29906</u> City, State, Zip Code
<u>843-846-4512 landonslp89@gmail.com</u> Day Time Phone Number/Email Address	<u>843-846-4512 landonslp89@gmail.com</u> Day Time Phone Number/Email Address
<u>R100-024-000-0299-0000</u> Lot or Parcel Number	<u>R100-024-000-0298-0000</u> Lot or Parcel Number

NOTE: Please return this application to:  
Right of Way Manager  
120 Shanklin Road  
Beaufort SC 29906

Landon's LP  
Name (Print)  
Landon's LP (Dusty Ljung)  
Name (Signature)  
2 Maxine Lane  
Address  
Beaufort SC 29906  
City, State, Zip Code  
843-846-4512 landonslp89@gmail.com  
Day Time Phone Number/Email Address  
R100-024-000-D300-0000  
Lot or Parcel Number

Deborah + Frederick Adams  
Name (Print)  
Deborah Adams + Frederick Adams  
Name (Signature)  
Beaufort, S.C. 29906  
Address  
8 Maxine Lane  
City, State, Zip Code  
843-441-4362 message  
Day Time Phone Number/Email Address  
R100-024-000-030B-0000  
Lot or Parcel Number

Item 8.

~~Wendy Lawrence  
Name (Print)  
Wendy Lawrence  
Name (Signature)  
14 Pennyroyal Way  
Address  
Beaufort SC 29906  
City, State, Zip Code  
843-473-5119 wendylawrence5@gmail.com  
Day Time Phone Number/Email Address~~

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number/Email Address  
Lot or Parcel Number

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number/Email Address  
Email Address  
Lot or Parcel Number

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number/Email Address  
Email Address  
Lot or Parcel Number

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number/Email Address  
Lot or Parcel Number

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number/Email Address  
Lot or Parcel Number



**The SPORTS ACADEMY, LLC**  
**Offering Gymnastics Programs**  
(Dedicated to enhancing the physical skills of children!)  
DAVID M. KIRKWOOD, DIRECTOR  
20 Maxine Lane, BEAUFORT, SC 29906

February 21, 2020

To: Residents of Maxine Lane, Beaufort, SC

Subj: Beaufort County Road Acceptance Application

Ref: Policy Statement PS-17, Beaufort County Policy for the Acceptance of Private Roads

1. Effective 1 January 2020 or earlier, without formal notification the SC Department of Transportation ceased semi-annual road repair for Maxine Lane. SC DOT has maintained Maxine Lane over the past 15 years I have owned the property at 20 Maxine Lane.
2. Our road has now been determined to be a private dirt road as evident by the new BLUE road sign at the entrance to Maxine Lane. Moreover, it is a limited access road due to Highway 116, Laurel Bay road being a federal highway.
3. Beaufort Jasper Water Sewer Authority has a right of way and have a sewer and water pipe running down the middle of Maxine Lane.
4. The reference allows for the submission of written application by any property homeowner with land abutting a private road. A private road: a road, street or other vehicular pathway, paved or unpaved, that is owned and maintained by a non-governmental body (e.g. private individual or individuals), property owners association, developer, etc. and that has not been designated for public use.
5. To be considered for acceptance, a private road must meet each of the four criteria listed below
  - a. Not a private driveway
  - b. Directly accessible by public road
  - c. Serve at least 6 dwelling units
  - d. Property owners must submit a "Road Acceptance Application".
6. The application will be on the purple table at the Sports Academy daily between 4 and 8 PM. The information required is: Name, Signature, address, daytime phone number, email address and lot or parcel number.
7. Your immediate attention to this matter is requested, in addition the Sports Academy will have a petition for our clients to sign requesting the road be repaired.



David Kirkwood, LtCol, USMCR. Ret  
Owner

Sports Academy Gymnastics and the owners of the property along Maxine Lane are submitting an Application for Road Acceptance to Beaufort County. SC DOT has determined Maxine Lane is a private road and will not maintain it. Please sign this petition in support of our request.

Signature	Date	Signature	Date
1 <i>Kendra Coyle</i>	3-5-2020	1	
2 <i>Flora Green</i>	3-5-2020	2	
3 <i>Cassandra Pelt</i>	3/5/2020	3	
4 <i>Todd [unclear]</i>	3/5/2020	4	
5 <i>[unclear]</i>	3/5/2020	5	
6 <i>[unclear]</i>	3/5/2020	6	
7 <i>[unclear]</i>	3/5/2020	7	
8 <i>[unclear]</i>	3/5/2020	8	
8 <i>[unclear]</i>	3/5/2020	8	
10 <i>[unclear]</i>	3/5/2020	10	
11 <i>[unclear]</i>	3/5/2020	11	
12 <i>[unclear]</i>	3-5-20	12	
13 <i>[unclear]</i>	3-6-20	13	
14 <i>[unclear]</i>	3-6-20	14	
15 <i>[unclear]</i>	3-6-20	15	
16 <i>[unclear]</i>	3-6-20	16	
17 <i>[unclear]</i>	3-6-20	17	
18 <i>[unclear]</i>	3-6-20	18	
18 <i>[unclear]</i>	3-6-20	18	
20 <i>[unclear]</i>	3-6-2020	20	
26 <i>[unclear]</i>	3-6-20	26	
27 <i>[unclear]</i>	3-6-20	27	
28 <i>[unclear]</i>	3-6-20	28	
29 <i>[unclear]</i>	3/6/2020	29	
30 <i>[unclear]</i>	3/6/2020	30	
31 <i>[unclear]</i>	3/6/2020	31	
32 <i>CAROL CAUGH</i>	3-6-2020	32	
33 <i>DANIEL CAUGH</i>	3-6-2020	33	
34		34	
35		35	
36		36	
37		37	
38		38	
39		39	
40		40	

Sports Academy Gymnastics and the owners of the property along Maxine Lane are submitting an Application for Road Acceptance to Beaufort County. SC DOT has determined Maxine Lane is a private road and will not maintain it. Please sign this petition in support of our request.

Signature	Date	Signature	Date
1 JEFF STEINKE	20 FEB 2020	1 James J. Ueber	2/24/20
2 Priscila Medina	20 Feb 2020	2 John McLeod	2/24/20
3 MATTHEW Fico	20 FEB 2020	3 ROBYN DAVIES	2/25/20
4 Jenna Feltz	20 Feb 2020	4 Janelyn Oliver	2/25/20
5 Dan Feltz	20 Feb 2020	5 Ashley Hecksher	2/25/2020
6 Cheryl Atkins	20 FEB 2020	6 Richard Hecksher	2/25/2020
7 <del>_____</del>	20 FEB 2020	7 Judith Brown	2/25/2020
8 <del>_____</del>	20 Feb 2020	8 Holly Shaw	2/25/2020
8 <del>_____</del>	20 Feb 2020	8 Patricia Sanders	2/25/2020
10 Kodie Burnett	21 Feb 2020	10 Richard S. Adams	
11 Shanna Burnett	02/21/2020	11 Frederick S. Adams	
12 <del>_____</del>	02-21-2020	12 Brad Mical	2/25/20
13 <del>_____</del>	02-21-2020	13 <del>_____</del>	2/25/2020
14 <del>_____</del>	02-21-2020	14 <del>_____</del>	02/26/2020
15 <del>_____</del>	21 Feb 2020	15 <del>_____</del>	02-26-2020
16 <del>_____</del>	21 Feb 2020	16 <del>_____</del>	
17 <del>_____</del>	21 FEB 2020	17 <del>_____</del>	2/26/2020
18 Elin Mc Peterson	22 Feb 2020	18 Nicole Hinton	2/26/2020
18 <del>_____</del>	22 Feb 2020	18 Nagela Garcia	2/26/20
20 <del>_____</del>	Feb 22 2020	20 JAMES KLING	2/26/20
26 <del>_____</del>	22 Feb 2020	26 William Thomas	2/26/20
27 Amy Cole	24 Feb 2020	27 <del>_____</del>	2/26/20
28 Susan Malphrus	02-24-2020	28 <del>_____</del>	2/28/20
29 Mary Nisa Fuller	02-24-2020	29 <del>_____</del>	2-28-20
30 <del>_____</del>	2/24/20	30 <del>_____</del>	2/28/2020
31 Heather Lyme	02-24-2020	31 <del>_____</del>	2/29/2020
32 Pearly McLeod	02/24/20	32 <del>_____</del>	3/2/20
33 Joshua Daniel	2020/02/24	33 <del>_____</del>	3/2/20
34 Swendolyn Daniel	2/24/2020	34 <del>_____</del>	3/3/20
35 <del>_____</del>	2/24/2020	35 <del>_____</del>	2/3/20
36 <del>_____</del>	2/24/2020	36 <del>_____</del>	3/3/20
37 <del>_____</del>	2/24/20	37 <del>_____</del>	
38 <del>_____</del>	2/24/20	38 <del>_____</del>	
39 <del>_____</del>	2/24/20	39 <del>_____</del>	
40 <del>_____</del>	2/24/20	40 <del>_____</del>	3/3/20
		41e Catherine Doroberto	3/3/20

Sports Academy Gymnastics and the owners of the property along Maxine Lane are submitting an Application for Road Acceptance to Beaufort County. SC DOT has determined Maxine Lane is a private road and will not maintain it. Please sign this petition in support of our request.

Signature	Date	Signature	Date
1 Katherine McCollum	3/3/20	1	
2 Brandon Perry	3/3/2020	2	
3 Katherine Kelch	3/3/2020	3	
4 Kamm & Sons	3/3/2020	4	
5 Linda Wiley	3/3/2020	5	
6 Jerry Wiley	3/3/2020	6	
7 Brentley Dewell	3/3/20	7	
8 R. Parker	3/4/20	8	
8 Melinda Denton	3-4-2020	8	
10 Alexis & Helen	3-6-2020	10	
11 Hannah Muller	3-6-2020	11	
12 J. Hill	3-6-20	12	
13 Katey Land	3-7-20	13	
14 Armie Cline	3-7-2020	14	
15 Nicole Munnis	3-7-20	15	
16 Kimmora Ingram	3-7-20	16	
17		17	
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**From:** [Desai, Niles](#)  
**To:** [Wilson, Patricia](#)  
**Subject:** RE: Maxine Lane  
**Date:** Tuesday, April 28, 2020 10:42:51 AM

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Patty,

Based on an onsite inspection with John, Jerry and myself, we measured from the back of the existing top of slope (parallel to Laurel Bay Road) to an approximation of the property lines and we were short the required minimum 50' width needed for County acceptance. For acceptance, Public Works would need the full 50'. Lastly, the existing drainage system is less than adequate for County standards and there is no defined outfall for the drainage. An outfall will need to be established that may require drainage easements downstream to adjacent properties.

A very preliminary cost estimate to bring this road up to County standards as a dirt road would be approximately \$40,000 (\$20,000 for drainage work & \$20,000 for road work).

Please let me know if you need anything else or have any questions.

Thanks,

Neil J. Desai, P.E.  
Beaufort County  
Public Works Director

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**From:** Desai, Niles  
**Sent:** Friday, April 3, 2020 12:07 PM  
**To:** Wilson, Patricia <[pwilson@bcgov.net](mailto:pwilson@bcgov.net)>  
**Subject:** RE: Maxine Lane

Patty,

My only concern for County acceptance is the existing manholes and manhole covers. If we were to accept the road, there is a high potential for the County's equipment to damage the existing infrastructure during the maintenance efforts which is a concern for me. Additionally, I want to inspect the road with the Roads & Drainage Superintendent to access the existing condition of the road.

Thanks,

Neil J. Desai, P.E.  
Beaufort County  
Public Works Director

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**From:** Wilson, Patricia <[pwilson@bcgov.net](mailto:pwilson@bcgov.net)>  
**Sent:** Friday, April 3, 2020 11:42 AM  
**To:** Desai, Niles <[niles.desai@bcgov.net](mailto:niles.desai@bcgov.net)>

**Subject:** FW: Maxine Lane

Neil,

Below is the estimated length of the road. Let me know if you need more information. SCDOT recently made this road private and discontinued any maintenance previously provided. Their point of view is that Maxine Lane is a private frontage road even though it falls within their ROW. The owner of the Sports Academy initiated the petition for County Acceptance after SCDOT's recent action. Thanks, Patty.



Kindest regards,

Patty Wilson  
Right of Way Manager  
Beaufort County

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**From:** Wilson, Patricia  
**Sent:** Monday, March 9, 2020 12:47 PM  
**To:** Desai, Nilesh <[nilesh.desai@bcgov.net](mailto:nilesh.desai@bcgov.net)>  
**Subject:** Maxine Lane

Neil,

Owners along Maxine Lane have petitioned the County to include the road in County maintenance inventory. Please provide a maintenance cost estimate for road/drainage for future PFC agenda item.

Respectfully,

Patty Wilson  
Right of Way Manager

Beaufort County  
120 Shanklin Road  
Beaufort, SC 29906

843-255-2694 WK  
843-812-1144 Cell  
[pwilson@bcgov.net](mailto:pwilson@bcgov.net)





Beaufort County Petition for  
County Road to be classified as Private

Date: 9/17/20

Name of Road: Eddings Point Road

Location: St. Helena Island -

Point Person Contact Information: Terry Sutcliffe; 843-82-8936  
(Name) (Phone #)

laniesutcliffe@yahoo.com; 712 Eddings Point Road St. Helena Island, SC  
(E-Mail Address) (Mailing Address) 29920

Please submit this petition to the following address:

Beaufort County Right of Way Manager  
2266 Boundary Street  
Beaufort, SC 29902

For Right of Way questions call:  
Patty Wilson  
Beaufort County Right of Way Manager  
843 255- 2694

**Beaufort County Petition for  
County Road to be classified as Private**

We the owners of property adjacent to Eddings Point Road (Name of Road) are submitting this petition to have the above named road classified as private. We understand that if County Council approves this request the road will be classified as private and that the County will not be responsible for the maintenance of the road and drainage associated with the road. We also understand that road classification may affect financial lending status and reversing the road status once private is not guaranteed. We the undersigned agree formally with this request.

Patricia Elaine Sutcliffe / trustee ...

Name (Print) Patricia Elaine Sutcliffe  
 Name (Signature) [Signature]  
 Address 712 Eddings Point Road  
St. Helena Island, SC 29920  
 City, State, Zip Code  
843-838-3390  
 Day Time Phone Number  
 Email Address  
R300 006 000 0011 0000  
 Tax Map Parcel Number

Terry Lee Sutcliffe II & Treva Sutcliffe

Name (Print) Terry Sutcliffe Treva Sutcliffe  
 Name (Signature) [Signature]  
 Address 708 EDDING AT RD  
ST HELENA SC, 29920  
 City, State, Zip Code  
843 812-8925  
 Day Time Phone Number  
Andrianna@HARGRAY.com  
 Email Address  
R300 006 000 0020 0000  
 Tax Map Parcel Number

Patrick Shawn Sutcliffe & Tonya L. Sutcliffe

Name (Print) Patrick Shawn Sutcliffe  
 Name (Signature) [Signature]  
 Address 714 Eddings Point Rd  
St. Helena Island, S.C. 29920  
 City, State, Zip Code  
843-812-8928, 843-812-8927  
 Day Time Phone Number  
Sutcliffe.tonya@yahoo.com  
 Email Address  
R300 006 000 0078 0000  
 Tax Map Parcel Number

Terry Lee Sutcliffe / trustee ...

Name (Print) Terry Lee Sutcliffe  
 Name (Signature) [Signature]  
 Address 712 Eddings Point Road  
 City, State, Zip Code  
843-812-8936  
 Day Time Phone Number  
lanie.sutcliffe@yahoo.com  
 Email Address  
R300 006 000 0079 0000  
 Tax Map Parcel Number

Patricia Elaine Sutcliffe / trustee ...

Name (Print) Patricia Elaine Sutcliffe  
 Name (Signature) [Signature]  
 Address 712 Eddings Point Road  
St. Helena Island, SC 29920  
 City, State, Zip Code  
843-838-3390  
 Day Time Phone Number  
lanie.sutcliffe@yahoo.com  
 Email Address  
R300 006 000 0051 0000  
 Tax Map Parcel Number

Sutcliffe Estates INC

Name (Print) Sutcliffe Estates Inc.  
 Name (Signature) [Signature]  
 Address 1351-A Ribaut Road  
Port Royal, SC 29935  
 City, State, Zip Code  
843-812-8936  
 Day Time Phone Number  
None  
 Email Address  
R300 006 000 0072 0000  
 Tax Map Parcel Number

Beaufort County Petition for  
County Road to be classified as Private

Item 9.

J. Russell Bishop + Dollie B Bond

Name (Print) J. Russell Bishop  
Name (Signature) J. Russell Bishop  
Address P.O. Box 996  
City, State, Zip Code BEAUFORT, SC 29906-0996  
Day Time Phone Number 843 986-3965  
Email Address R300 006 000 0048 0000  
Tax Map Parcel Number

Jack H Woodward + Betty M Woodward

Name (Print) Jack H Woodward  
Name (Signature) Betty M Woodward  
Address  
City, State, Zip Code S+ Helena SC 29920  
Day Time Phone Number 803 277-1317  
Email Address R300 006 000 0060 0000  
Tax Map Parcel Number

Russell J. Bishop + June L. Bishop

Name (Print) Russell J. Bishop  
Name (Signature) J. Russell Bishop  
Address P.O. Box 996  
City, State, Zip Code BEAUFORT, SC 29901-0996  
Day Time Phone Number 843 986-3965  
Email Address R300 006 000 0061 0000  
Tax Map Parcel Number

Kenneth Wayne Felder + Tabitha Gene Felder

Name (Print) Wayne & Tabitha Felder  
Name (Signature) 739 Addings Point Rd  
Address S+ Helena SC  
City, State, Zip Code 803 683-4551  
Day Time Phone Number  
Email Address R300 006 000 012B 0000  
Tax Map Parcel Number

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number  
Email Address  
Tax Map Parcel Number

Name (Print)  
Name (Signature)  
Address  
City, State, Zip Code  
Day Time Phone Number  
Email Address  
Tax Map Parcel Number



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
Resolution to Commission two Solid Waste and Recycling Enforcement Officers
<b>MEETING NAME AND DATE:</b>
County Council – October 26, 2020
<b>PRESENTER INFORMATION:</b>
Jared Fralix, ACA-Engineering Cindy Carter, Solid Waste and Recycling Director(Alternate) (Time Needed for Item Discussion = 5 minutes)
<b>ITEM BACKGROUND:</b>
<i>October 19, 2020 – This item has been presented and approved at Public Facilities Committee</i>  Resolution 2019/46 adopted November 18, 2019, appointed and commissioned Artrell Horne (EMP #9232) as a County Enforcement Officer to enforce Beaufort County Convenience Centers, Boat Landings and all Litter and Environmental Ordinances for Beaufort County.
<b>PROJECT / ITEM NARRATIVE:</b>
Solid Waste and Recycling requests two current SW&R Foremen (John Milledge EMP #6536 and Dierdre Brown EMP #5460) to be appointed and commissioned to serve as Beaufort County Enforcement Officers to enforce proper security, general welfare and convenience of the Beaufort County Convenience Centers. Each Foreman will support the existing program.
<b>FISCAL IMPACT:</b>
Both are current employees – no fiscal impact.
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Approve both current employees to be appointed and commissioned as County Litter Officers.
<b>OPTIONS FOR COUNCIL MOTION:</b>
Motion to approve the appointment and commission of John Milledge and Dierdre Brown as County Litter Officers.  Motion to deny the appointment and commission of John Milledge and Dierdre Brown as County Litter Officers.

RESOLUTION NO. \_\_\_\_/2020

**A RESOLUTION TO COMMISSION TWO SOLID WASTE AND RECYCLING ENFORCEMENT OFFICER TO ENFORCE BEAUFORT COUNTY CONVENIENCE CENTERS AND ALL LITTER AND ENVIRONMENTAL ORDINANCES FOR BEAUFORT COUNTY PURSUANT TO THE AUTHORITY GRANTED IN SECTION 4-9-145 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976 AS AMENDED.**

**WHEREAS**, Beaufort County Council may appoint and commission as many litter control/enforcement officers as may be necessary for proper security, general welfare and convenience of the County; and

**WHEREAS**, each candidate for appointment as a Beaufort County Solid Waste and Recycling Enforcement Officer has completed training and whatever certification may be necessary.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Beaufort County, South Carolina that:

1. County Council hereby appoints and commissions the following individuals as Solid Waste and Recycling Enforcement Officers for Beaufort County:

John Milledge – EMP #6536, Beaufort County Solid Waste and Recycling Enforcement Officer

Dierdre Brown – EMP #5460, Beaufort County Solid Waste and Recycling Enforcement Officer

2. Each Solid Waste and Recycling Enforcement Officer shall present the appropriate certificate to the Beaufort County Magistrate’s office prior to any official action as a Solid Waste and Recycling Enforcement Officer.

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

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council



# BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

<b>ITEM TITLE:</b>
US 278 Independent Review
<b>MEETING NAME AND DATE:</b>
County Council - October 26, 2020
<b>PRESENTER INFORMATION:</b>
Jared Fralix, ACA – Engineering (20 min)
<b>ITEM BACKGROUND:</b>
<i>October 19, 2020 – This item was presented and staff recommendation was approved by Public Facilities Committee</i>
<b>PROJECT / ITEM NARRATIVE:</b>
Over the past several weeks, there has been much discussion to pursue an independent engineering review of work completed to date by SCDOT on the US 278 Corridor Project to ensure that safety and traffic congestion mitigation options are optimized while minimizing detrimental environmental and community impacts in a way that is reflective of local operations and aesthetic expectations.
<b>FISCAL IMPACT:</b>
2017 GO Bond – Road Improvements Windmill Harbor/Jenkins Island – 40100011-54500. \$7,176,928.95 available. Cost proposal received is for \$134,732.00 to HDR Engineering, Inc. The cost of the study is to be split with the Town of Hilton Head with a 50/50 cost share.
<b>STAFF RECOMMENDATIONS TO COUNCIL:</b>
Approve recommendation for the contract award to HDR Engineering, Inc. to provide the US 278 Independent Engineering Review.
<b>OPTIONS FOR COUNCIL MOTION:</b>
Motion to approve the contract award to HDR Engineering, Inc to provide the US 278 Independent Engineering Review to be included as part of the overall US 278 Corridor Project. Motion to deny the contract award to HDR Engineering, Inc to provide the US 278 Independent Engineering Review to be included as part of the overall US 278 Corridor Project. <b>(Next Step – Staff to execute contract with consultant to begin prjoect)</b>



**COUNTY COUNCIL OF BEAUFORT COUNTY  
ENGINEERING DIVISION**  
2266 Boundary Street, Beaufort, South Carolina 29902  
Post Office Drawer 1228, Beaufort, South Carolina 29901-1228  
Telephone: 843-255-2940  
Website: www.beaufortcountysc.gov

October 14, 2020

Mr. David A. Kinard, PE, VP  
Program Manager  
HDR  
4400 Leeds Avenue, Suite 450  
North Charleston, SC 29406

RE: US 278 Independent Engineering Review

Dear Mr. Kinard:

The South Carolina Department of Transportation (SCDOT), in cooperation with Beaufort County and the Town of Hilton Head Island, is developing the US 278 Corridor project to address safety and capacity issues currently being experienced within the corridor. The identified project limits are from the Moss Creek intersection to the Cross Island Parkway on Hilton Head Island. SCDOT owns the roads and bridges in question and will be controlling Federal Highway Administration funds associated with the project and as such is leading the environmental assessment and design process through the help of their previously selected consultant design team led by KCI.

Over the past several weeks, there has been much discussion to pursue an independent engineering review of work completed to date by the SCDOT to ensure that safety and traffic congestion mitigation options are optimized while minimizing detrimental environmental and community impacts in a way that is reflective of local operational and aesthetic expectations. Evaluation of adjacent roadway segments and nearby intersection beyond the project boundary stated above is considered an essential component of the independent review.

The scope of the independent engineering review shall include the following:

**Scope of Services**

- Receive and review all of the design information and data inputs from SCDOT
- Review and verify that the assumptions and methodologies employed for proposed design elements (i.e.,- future traffic volumes and expected growth rates) are appropriate and meet professional standards for validation of use within the project’s design
- Verify findings of alternatives already identified to ensure viable ideas were not prematurely discarded and explore other possible alternatives that have not already been examined. Possible alternatives include, but are not limited to: Cross Island Parkway connection; grade-separated intersections; reversible lanes; High Occupancy Vehicle lane, Express Lanes, turning movement prohibitions, specific local traffic only lanes; intelligent signal system, other improvements without widening to 6 lanes, etc.

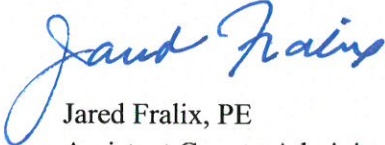
- Review & verify the cost estimates for all of the alternatives that SCDOT has explored thus far and provide a cost estimate for any alternative developed that has not already been explored by SCDOT. Provide costs estimates for all alternatives in a tabular format.
- Review and confirm the operational analyses of the reasonable alternatives and the other possible alternatives identified (both the intersections and the corridor performance) as a measure of delay throughout the entire corridor limits.
- Provide recommendations of feasible options or improvements identified through the study that merit further consideration by the SCDOT design team. Consider and provide recommendations for any landscaping, land use planning, or aesthetic concepts that are developed by others during the study period.
- Incorporate public participation through the means of the oversight committee. Conduct up to 4 virtual progress meetings with oversight committee.

### Schedule & Deliverables

- Provide a detailed engineering report with analysis and recommendations within sixty (60) days from established Notice To Proceed. The report shall contain the following sections: Executive Summary and Recommendations, Goals and Objectives of the Report, Review of Design Data, Criteria, Assumptions and Methodologies, Assessment of Project Needs, Operational Traffic Analysis of Alternatives and Intersections Ancillary to the Corridor, PowerPoint presentation materials for the Elected Official Meetings, and requisite Appendices.
- Provide an interim update within thirty (30) days of commencing work to oversight committee.
- Present findings at both County Council and Town Council meetings in a manner in which the general public will be able to easily and sufficiently understand the results of this examination. VISSIM models or other suitable methods to clearly convey findings to general public and elected officials shall be employed.
- All work must be certified by a Professional Engineer registered in South Carolina.

The intent of this specific project is to ensure that all alternatives, to include those that have been previously established and those that have been potentially unexamined, are fully explored and any findings or recommendations established are provided to SCDOT as additional public input per the NEPA process. Please contact me with any questions you may have and provide a fee proposal for the scope of services outlined herein by Tuesday, October 6. We look forward to acting on this additional design review and ensuring that the benefits proposed as part of the US 278 Corridor Project are meaningful and long lasting, resulting in an improved corridor and project results that are well-received by the citizens of Beaufort County and Hilton Head Island.

Kindest Regards,



Jared Fralix, PE  
Assistant County Administrator – Engineering





October 7, 2020

Jared Fralix, PE  
Assistant County Administrator - Engineering  
Beaufort County  
100 Ribaut Road  
Beaufort, SC 29902

Re: **US 278 Independent Review**

Dear Mr. Fralix:

HDR Engineering, Inc. of the Carolinas (HDR) appreciates this opportunity to provide Beaufort County with a proposal to provide engineering and planning services associated with the US 278 Environmental Document. It is our understanding that the County wishes to have an independent review of the ongoing SCDOT study. Based on the scope provided by the County dated October 14, 2020, HDR will review verify existing documentation, explore additional options, make recommendations for additional study and present our findings in a report and to Beaufort County and Town of Hilton Head Councils.

### **Scope**

The scope of the independent engineering review will include the following:

**Task 1** – Project Management and coordination

**Task 2** - Receive and review relevant design information and data from SCDOT

**Task 3** - Review and verify that the assumptions and methodologies employed for proposed design elements (i.e.,- future traffic volumes and expected growth rates) are appropriate and meet professional standards for validation of use within the project's design

**Task 4** - Verify findings of alternatives already identified to determine that viable ideas were not prematurely discarded and explore other possible alternatives that may not already been examined. Possible alternatives to be explored will be coordinated with the Oversight committee and limited to a maximum of five (5). Possible alternatives include, but are not limited to: Cross Island Parkway connection; grade-separated intersections; reversible lanes; High Occupancy Vehicle lane, Express Lanes, turning movement prohibitions, specific local traffic only lanes; intelligent signal system, other improvements without widening to 6 lanes, etc.

**Task 5** - Review and verify the cost estimates for the SCDOT alternatives explored. Create cost estimates for alternatives identified in Task 4.

**Task 6** - Review and confirm the operational analyses of the reasonable alternatives and a cursory review of the other possible alternatives identified (both the intersections and the corridor performance) as a measure of delay throughout the entire corridor limits.

**Task 7** - Provide recommendations of feasible options or improvements identified through the study that merit further consideration by the SCDOT design team. Provide coordination for recommendations regarding landscaping, land use planning and aesthetic concepts developed by others.

**Task 8** - Conduct up to 4 virtual progress meetings with oversight committee.

### **Deliverables**

**Deliverable 1** - Provide a report with analysis summary and recommendations. The report will contain the following sections: Executive Summary and Recommendations, Goals and Objectives of the Report, Review of Design Data, Criteria, Assumptions and Methodologies, Assessment of Project Needs, Review of Operational Traffic Analysis of Alternatives and Intersections Ancillary to the Corridor, PowerPoint presentation materials for the Elected Official Meetings, and requisite Appendices.

**Deliverable 2** - Provide an interim update within thirty (30) days of commencing work to the oversight committee and others as necessary.

**Deliverable 3** - Present findings at both Beaufort County Council and Hilton Head Island Town Council meetings in a manner in which the general public will be able to easily and sufficiently understand the results of this examination. Methods to clearly convey findings to general public and elected officials will be employed.

**Deliverable 4** - All work will be reviewed by a Professional Engineer registered in South Carolina.

### **Fee**

HDR proposes to perform the tasks described in this proposal as outlined below:

Task 1	\$5,700.00	(32 manhours)
Task 2	\$7,968.00	(42 manhours)
Task 3	\$12,983.00	(80 manhours)
Task 4	\$20,812.00	(120 manhours)
Task 5	\$14,995.00	(76 manhours)
Task 6	\$19,773.00	(120 manhours)
Task 7	\$6,193.00	(32 manhours)
Task 8	\$8,692.00	(48 manhours)
Deliverable 1	\$27,470.00	(152 manhours)
Deliverable 2	\$3,096.00	(16 manhours)
Deliverable 3	\$6,193.00	(32 manhours)
Direct Expenses	\$857.00	
<b>Total</b>	<b><u>\$134,732.00</u></b>	(750 manhours)

**Schedule**

Our current workload will permit us to begin work immediately upon approval of the scope and issuance of notice to proceed. We anticipate an estimated project schedule of 60 Days from Notice to Proceed to provide a report with analysis summary and recommendations. Once again, HDR appreciates this opportunity to provide assistance to the Beaufort County. We look forward to working with you on this project. Please call 803-509-6626 with any questions or comments you may have.

Sincerely,

**HDR ENGINEERING, INC. OF THE CAROLINAS**



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Phillip Hutcherson, P.E.  
Project Manager

*Jonathan Henderson*

10/15/2020

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Jonathan Henderson, P.E., VP  
South Atlantic Area Manager

STATE OF SOUTH CAROLINA )  
 ) MEMORANDUM OF AGREEMENT  
COUNTY OF BEAUFORT ) TOWN OF HILTON HEAD ISLAND

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 by and between the Town of Hilton Head Island, South Carolina (“Town”), and Beaufort County, South Carolina (“County”).

**WHEREAS**, the Town and the County wish to procure an independent engineering study of the SCDOT conceptual and preliminary engineering work on the US 278 Corridor Improvement Project (“Project”); and

**WHEREAS**, the Town and the County recognize that it is mutually beneficial to procure and share in the coordinated oversight of professional assistance to conduct this independent review as a means of quality assurance that the conceptual and preliminary engineering work on the Project have adequately assessed and addressed the project goals and desires of the County and the Town; and

**WHEREAS**, the County has, in accordance with its procurement procedures, selected and contracted the firm of HDR Engineering of the Carolinas, Inc. (“HDR”) to provide traffic engineering and professional consulting services along the US 278 corridor, within the limits of the Project; and

**WHEREAS**, the County shall administer the contract and the work thereunder; however, the Town shall be granted full and equal participation in decision-making regarding the development of a mutually agreed to scope of work, input and discussions regarding analysis, invitations to all project related meetings, at least one presentation to Town elected officials, and access to all contract data and deliverables, and;

**WHEREAS**, the County shall enter into a contract amendment with HDR for professional services in the amount of \$134,732.00, attached as Exhibit A; and

**WHEREAS**, the Town and County shall agree to share in the expense of the contract price as stated above at equal 50/50 rate. Should there be any changes to the contract amount, a change order shall be approved by both the Town and County prior to execution of work and the cost of that change order shall be shared at the same 50/50 rate as stated above, and;

**WHEREAS**, both parties have been authorized by their respective councils to enter into this agreement; and

**NOW, THEREFORE**, be it known, this agreement shall be in effect from the date of execution until the work contracted for is complete and the obligations herein are met.

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

WITNESSES:

BEAUFORT COUNTY

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

By: \_\_\_\_\_  
Name: Ashley Jacobs  
Title: County Administrator

TOWN OF HILTON HEAD ISLAND

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

By: \_\_\_\_\_  
Name: Steve Riley  
Title: Town Manager