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**Agenda**  
**Tuesday, August 8, 2023 ♦ 1:30 PM**  
*107 S. Jefferson Avenue, Eatonton, GA 31024*

**Opening**

1. Call to Order

**Minutes**

2. Approval of Minutes - June 13, 2023 Regular Meeting

**Financials**

3. Approval of Financials
  - a. June 2023
  - b. July 2023

**Reports**

4. Economic Development Director Report

**Regular Business**

5. Presentation from Matt Mills with Southeastern
6. Memorandum of Understanding between PDA and EM Resources

**Other Business**

7. Other Business

**Next Meeting Items**

8. Next Meeting Items

**Executive Session**

9. Enter Executive Session as allowed by O.C.G.A. 50-14-4, if necessary, for Personnel, Litigation, or Real Estate
10. Reopen meeting and execute Affidavit concerning the subject matter of the closed portion of the meeting
11. Action, if any, resulting from the Executive Session

**Closing**

12. Adjournment

The Putnam Development Authority reserves the right to continue the meeting to another time and place in the event the number of people in attendance at the meeting, including the PDA members, staff, and members of the public exceeds the legal limits. The meeting cannot be closed to the public except by a majority vote of a quorum present for the meeting. The authority can vote to go into an executive session on a legally exempt matter during a public meeting even if not advertised or listed on the agenda. Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the facilities are required to contact the ADA Compliance Officer, at least three business days in advance of the meeting at 706-485-1877 to allow the Authority to make reasonable accommodations for those persons.

**File Attachments for Item:**

2. Approval of Minutes - June 13, 2023 Regular Meeting



107 S. Jefferson Avenue  
Eatonton, GA 31024  
(478) 747-2219

**Minutes**  
**Tuesday, June 13, 2023 ♦ 1:30 PM**  
107 S. Jefferson Avenue, Eatonton, GA 31024

The Putnam Development Authority met on Tuesday, June 13, 2023 at approximately 1:30 PM in the Putnam Development Authority Office, 107 S. Jefferson Avenue, Eatonton, Georgia.

*PRESENT*

- Chairman Walt Rocker III
- Member Patty Burns
- Member Brice Doolittle
- Member Mylle Mangum

*ABSENT*

- Member John Wojtas

*OTHERS PRESENT*

- Attorney Kevin Brown
- Economic Development Director Matt Poyner
- County Clerk Lynn Butterworth

**Opening**

- 1. Call to Order

Chairman Rocker called the meeting to order at approximately 1:40 p.m. He welcomed Mr. Mickey Daniel, Georgia Power Regional Community Development Manager and advised that Member Wojtas had a family emergency might not be able to attend. (Copy of agenda made a part of the minutes.)

**Minutes**

- 2. Approval of Minutes
  - a. May 9, 2023 Regular Meeting
  - b. May 9, 2023 Executive Session

**Motion to approve the May 9, 2023 Regular Meeting and Executive Session minutes.**

**Motion made by Member Mangum, Seconded by Member Burns.**

**Voting Yea: Chairman Rocker, Member Burns, Member Doolittle, Member Mangum**

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June 13, 2023		

**Financials**

3. Approval of Financials - May 2023

Member Burns reviewed the financials.

**Motion to approve the May 2023 Financials.**

**Motion made by Member Mangum, Seconded by Member Doolittle.**

**Voting Yea: Chairman Rocker, Member Burns, Member Doolittle, Member Mangum**

(Copy of financials made a part of the minutes.)

**Reports**

4. Economic Development Director Report

Executive Director Matt Poyner reported the following:

(Copy of report made a part of the minutes.)

- Administrative
  - Georgia’s Rural Workforce Housing Initiative
  - Budget
  - “Make My Move”
  - Insurance
- Business & Industry Company Contacts
  - Existing Industry Updates
  - Planning to start a new program in the fall – BREP (Business Retention-Expansion Program)
- Workforce Development
  - Apprenticeship Opportunity
- Marketing & Branding
  - Tytan Pictures
- Project Status
  - Project Activity
- Rock Eagle Technology Park
  - Miscellaneous
- South Industrial Park
  - 121 acre tract

**Regular Business**

5. FY24 Proposed Budget

Executive Director Poyner distributed copies of the proposed budget for FY24. Members discussed adding money to the budget for cleanup of the eight acre South Industrial Park site.

**Motion to approve the FY24 budget at \$245,000 for the general budget and up to \$250,000 for capital improvements.**

**Motion made by Member Mangum, Seconded by Member Burns.**

**Voting Yea: Chairman Rocker, Member Burns, Member Doolittle, Member Mangum**

(Copy of proposed budget made a part of the minutes.)

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June 13, 2023		

**Other Business**

6. Other Business

Executive Director Poyner commented that he would like to organize another work session like the one done in November 2021 at Cuscowilla where various county stakeholders joined the board for strategic discussions. He asked Mr. Daniel if could facilitate the meeting. No action taken.

**Next Meeting Items**

7. Next Meeting Items

None

**Executive Session**

8. Enter Executive Session as allowed by O.C.G.A. 50-14-4, if necessary, for Personnel, Litigation, or Real Estate

Executive Session not needed.

9. Reopen meeting and execute Affidavit concerning the subject matter of the closed portion of the meeting

Executive Session not held.

10. Action, if any, resulting from the Executive Session

Executive Session not held.

**Closing**

11. Adjournment

Chairman Rocker adjourned the meeting at approximately 2:50 p.m.

ATTEST:

Lynn Butterworth  
County Clerk

Walt Rocker III  
Chairman

**File Attachments for Item:**

3. Approval of Financials

a. June 2023

b. July 2023

**Balance Sheet**

As of June 30, 2023

	<u>Jun 30, 23</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10001 · Checking-FMB	94,675.21
10055 · The Peoples Bank	20,048.01
10600 · Certificate of Deposit-24251	82,667.01
<b>Total Checking/Savings</b>	<u>197,390.23</u>
<b>Other Current Assets</b>	
11700 · CIP	25,357.50
12007 · Prepaid Insurance	3,896.00
<b>Total Other Current Assets</b>	<u>29,253.50</u>
<b>Total Current Assets</b>	<u>226,643.73</u>
<b>Fixed Assets</b>	
11100 · 10 ac. N. Park	200,000.00
11200 · 5 ac. N. Park	100,000.00
11225 · Land	19,106.00
11250 · Building-Tech College	1,000,000.00
11300 · Tech. College Property	455,962.60
11350 · Rock Eagle Land Improvements	660,561.00
11355 · Rock Eagle Rech. Accum Deprecia	-62,386.40
11500 · 142 Ac. Indust Blvd	300,000.00
11600 · 130 Ac. RE Tech. Park	1,029,600.00
11750 · S Jefferson Avenue	106,167.88
11751 · building-Old Hotel	123,536.00
15000 · Furniture and Equipment	34,955.47
<b>Total Fixed Assets</b>	<u>3,967,502.55</u>
<b>TOTAL ASSETS</b>	<b><u><u>4,194,146.28</u></u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Other Current Liabilities</b>	
11360 · Accum Depr-Building	352,083.00
18050 · Accrued Payroll	667.00
<b>Total Other Current Liabilities</b>	<u>352,750.00</u>
<b>Total Current Liabilities</b>	<u>352,750.00</u>
<b>Total Liabilities</b>	<u>352,750.00</u>
<b>Equity</b>	
30000 · Opening Balance Equity	3,367,924.20
32000 · Unrestricted Net Assets	741,775.80
Net Income	-268,303.72
<b>Total Equity</b>	<u>3,841,396.28</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u><u>4,194,146.28</u></u></b>

# Putnam Development Authority Profit & Loss YTD Comparison

June 2023

	Jun 23	Oct '22 - Jun 23
<b>Income</b>		
45000 · Interest	0.00	553.90
46400 · Other Types of Income		
46430 · Miscellaneous Revenue	0.00	3,400.00
<b>Total 46400 · Other Types of Income</b>	<b>0.00</b>	<b>3,400.00</b>
<b>Total Income</b>	<b>0.00</b>	<b>3,953.90</b>
<b>Expense</b>		
62800 · Facilities and Equipment		
62820 · Electricity	115.47	1,205.56
62830 · Repairs & Maintenance	0.00	5,151.12
62840 · Insurance	0.00	20,928.64
62850 · Water	0.00	581.09
62851 · Internet	0.00	287.89
<b>Total 62800 · Facilities and Equipment</b>	<b>115.47</b>	<b>28,154.30</b>
63000 · Professional Fees		
63003 · Accounting/Audit	350.00	900.00
63004 · Executive Director	7,750.00	77,691.82
63006 · Legal Fees	0.00	60,693.26
63000 · Professional Fees - Other	0.00	2,000.00
<b>Total 63000 · Professional Fees</b>	<b>8,100.00</b>	<b>141,285.08</b>
63007 · Engineering Services	0.00	3,812.50
64000 · Projects		
64001 · SIP Project	0.00	5,925.00
<b>Total 64000 · Projects</b>	<b>0.00</b>	<b>5,925.00</b>
65100 · Other Types of Expenses		
65102 · Building & Grounds	0.00	13,200.00
65106 · Telecommunications	0.00	181.25
65107 · Postage	0.00	45.53
65110 · Advertising Expenses	9,550.00	51,947.67
65120 · Dues & Subscriptions	0.00	500.00
65125 · Marketing	0.00	850.00
65135 · Travel	84.20	254.92
65142 · Office and General Supplies	1,040.95	1,168.97
<b>Total 65100 · Other Types of Expenses</b>	<b>10,675.15</b>	<b>68,148.34</b>
65144 · Employee Expenses		
65145 · Full Time Staff Salaries	6,274.82	15,687.05
65152 · Payroll Taxes	891.32	3,348.02
65144 · Employee Expenses - Other	0.00	4,470.00
<b>Total 65144 · Employee Expenses</b>	<b>7,166.14</b>	<b>23,505.07</b>
66000 · Miscellaneous	0.00	1,427.33
<b>Total Expense</b>	<b>26,056.76</b>	<b>272,257.62</b>
<b>Net Income</b>	<b>-26,056.76</b>	<b>-268,303.72</b>



**Balance Sheet**

As of July 31, 2023

	<u>Jul 31, 23</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10001 · Checking-FMB	84,087.78
10055 · The Peoples Bank	20,048.01
10600 · Certificate of Deposit-24251	82,667.01
<b>Total Checking/Savings</b>	<u>186,802.80</u>
<b>Other Current Assets</b>	
11700 · CIP	25,357.50
12007 · Prepaid Insurance	3,896.00
<b>Total Other Current Assets</b>	<u>29,253.50</u>
<b>Total Current Assets</b>	<u>216,056.30</u>
<b>Fixed Assets</b>	
11100 · 10 ac. N. Park	200,000.00
11200 · 5 ac. N. Park	100,000.00
11225 · Land	19,106.00
11250 · Building-Tech College	1,000,000.00
11300 · Tech. College Property	455,962.60
11350 · Rock Eagle Land Improvements	660,561.00
11355 · Rock Eagle Rech. Accum Deprecia	-62,386.40
11500 · 142 Ac. Indust Blvd	300,000.00
11600 · 130 Ac. RE Tech. Park	1,029,600.00
11750 · S Jefferson Avenue	106,167.88
11751 · building-Old Hotel	123,536.00
15000 · Furniture and Equipment	34,955.47
<b>Total Fixed Assets</b>	<u>3,967,502.55</u>
<b>TOTAL ASSETS</b>	<b><u>4,183,558.85</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Other Current Liabilities</b>	
11360 · Accum Depr-Building	352,083.00
18050 · Accrued Payroll	667.00
<b>Total Other Current Liabilities</b>	<u>352,750.00</u>
<b>Total Current Liabilities</b>	<u>352,750.00</u>
<b>Total Liabilities</b>	<u>352,750.00</u>
<b>Equity</b>	
30000 · Opening Balance Equity	3,367,924.20
32000 · Unrestricted Net Assets	741,775.80
Net Income	-278,891.15
<b>Total Equity</b>	<u>3,830,808.85</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>4,183,558.85</u></b>

**Putnam Development Authority**  
**Profit & Loss YTD Comparison**  
**July 2023**

	Jul 23	Oct '22 - Jul 23
<b>Income</b>		
45000 · Interest	0.00	553.90
46400 · Other Types of Income		
46430 · Miscellaneous Revenue	0.00	3,400.00
<b>Total 46400 · Other Types of Income</b>	<b>0.00</b>	<b>3,400.00</b>
<b>Total Income</b>	<b>0.00</b>	<b>3,953.90</b>
<b>Expense</b>		
62800 · Facilities and Equipment		
62820 · Electricity	110.25	1,315.81
62830 · Repairs & Maintenance	0.00	5,151.12
62840 · Insurance	0.00	20,928.64
62850 · Water	0.00	581.09
62851 · Internet	0.00	287.89
<b>Total 62800 · Facilities and Equipment</b>	<b>110.25</b>	<b>28,264.55</b>
63000 · Professional Fees		
63003 · Accounting/Audit	0.00	900.00
63004 · Executive Director	0.00	77,691.82
63006 · Legal Fees	0.00	60,693.26
63000 · Professional Fees - Other	0.00	2,000.00
<b>Total 63000 · Professional Fees</b>	<b>0.00</b>	<b>141,285.08</b>
63007 · Engineering Services	0.00	3,812.50
64000 · Projects		
64001 · SIP Project	0.00	5,925.00
<b>Total 64000 · Projects</b>	<b>0.00</b>	<b>5,925.00</b>
65100 · Other Types of Expenses		
65102 · Building & Grounds	0.00	13,200.00
65106 · Telecommunications	0.00	181.25
65107 · Postage	0.00	45.53
65110 · Advertising Expenses	1,300.00	53,247.67
65120 · Dues & Subscriptions	0.00	500.00
65125 · Marketing	0.00	850.00
65135 · Travel	0.00	254.92
65142 · Office and General Supplies	0.00	1,168.97
<b>Total 65100 · Other Types of Expenses</b>	<b>1,300.00</b>	<b>69,448.34</b>
65144 · Employee Expenses		
65145 · Full Time Staff Salaries	6,274.82	21,961.87
65152 · Payroll Taxes	2,902.36	6,250.38
65144 · Employee Expenses - Other	0.00	4,470.00
<b>Total 65144 · Employee Expenses</b>	<b>9,177.18</b>	<b>32,682.25</b>
66000 · Miscellaneous	0.00	1,427.33
<b>Total Expense</b>	<b>10,587.43</b>	<b>282,845.05</b>
<b>Net Income</b>	<b>-10,587.43</b>	<b>-278,891.15</b>

**File Attachments for Item:**

4. Economic Development Director Report



AUGUST 8, 2023

# Administrative

- **Budget:**
  - Conversations are on-going for some form of annual funding to be provided by the County.
- **Insurance:**
  - Received word back from multiple insurance providers that what is currently on the books for the PDA are good and affordable policies. The only item that was recommended was adding workers comp for the Executive Director which should be a minimal cost.

# Business & Industry Company Contacts

- **Existing Industry Updates:**

- Cosmo Cabinets is up to around 135 employees and are continuing to ramp up production. They have preliminary plans to create some in-house training curriculum and we're hoping to find some assistance from the state with the QuickStart program to offer assistance.
- Preliminary schedule to begin BREP surveys throughout the community is October 2023.

# Workforce Development

## ❖ **ACT Work Keys:**

- Will be attending the ACT Work Keys training program on August 14<sup>th</sup> and 15<sup>th</sup> in Macon. Program is set to revitalize the Georgia Work Keys program. Middle Georgia is striving to become the first region in Georgia to have all counties certified.

# Marketing & Branding

## ❖ **Tytan Pictures:**

- Content is continually being created and new photos and videos are forthcoming. New photos will be incorporated into prints to decorate the new PDA office.



# Project Status

## ❖ Project Activity

- Legal counsel is coordinating with company on bond issuance.
- Colliers International has reached back out regarding land on the SIP site and a timeline for new construction for a logistics facility. The lack of existing structures not only in our county, but across their search across the southeastern United States has provided us an opportunity.
- Received an RFI for a Life Sciences project that would create 186 jobs with a CAPX of \$330MM. However, the project required AG zoning and several different parameters to fall within that were not able to met within their 24 hour search window that was provided to us. The PDA can move quickly on projects requiring Industrial zoning, but AG zoning is something that is not normally a request.

# Rock Eagle Technology Park

## ❖ **Miscellaneous:**

- Still in talks with our partners on the property to move forward with GRAD reports to increase the marketability of the site.

# South Industrial Park

## ❖ **121 acre tract:**

- The park continues to see high activity for prospects.
- Would like to put a plan together to increase marketability for the 8 acre site across the road (pending funding).
- Would also like to move forward with the aesthetic improvements for Industrial Boulevard (pending funding).
- Existing sign at entrance to Park needs to be demolished. Director will coordinate with contractors to remove sign at the earliest convenience.

# Questions?

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**Matt Poyner**

Director

[mpoyner@putnamforward.dev](mailto:mpoyner@putnamforward.dev)

(478) 747-2219

**File Attachments for Item:**

6. Memorandum of Understanding between PDA and EM Resources

## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (this “**Agreement**”) is entered into as of the Effective Date set forth below by and between the **PUTNAM DEVELOPMENT AUTHORITY** (the “**Authority**”), a development authority and public body corporate and politic duly created by local amendment to the Georgia Constitution, 1968 Ga. L. p. 1860, continued by 1985 Ga. L. p. 3955 (collectively, the “**Act**”), and **EM RESOURCES-DE LLC** (d/b/a “EM Resources **DE LLC**”), a Delaware limited liability company (the “**Company**”), each, a “**Party**,” and collectively, the “**Parties**.”

### 1. THE PROJECT.

#### 1.1. Description of the Project.

1.1.1. The Company will construct a fly ash beneficiation facility (the “**Facility**”), to be located in Putnam County, Georgia (the “**County**”) at the below-defined Site. The project shall consist of processing equipment, personal fixtures and other personal property (the “**Project**”) for use by the Company in its fly ash beneficiation operations at the Facility. The Project is more particularly described on Schedule 1.1 attached hereto and incorporated herein by reference. The Project does not include any real estate, trade fixtures, or improvements to real estate. In connection with the issuance of the below-defined Bond, the Authority will become the owner of the Project as it then exists. The Project will be owned by the Authority and leased to the Company under the below-defined Bond Lease, as described below. The Authority will finance its acquisition of the Project by issuing to the Company the Bond. The Company’s development of the Project and cooperation with the Authority on the terms and conditions contemplated herein, including the issuance of the Bond, is sometimes called, the “**Transaction**.”

1.2. Total Project Costs. “**Total Project Costs**” include all reasonable costs, fees and expenses incurred by the Company in connection with the Project and the issuance of the Bond. The Company will be responsible for any costs of or related to the Project (including, without limitation, those related to any change orders or cost overruns) to the extent that proceeds of the Bond are not available or are not sufficient to pay such costs.

1.3. Closing. As used herein, the “**Closing**” is the event at which the Bond is issued. References herein to a “**Closing Condition**” are to the optional right of a Party hereto, based on a Closing Condition, to exercise a right provided herein in its favor and to avoid the Closing and terminate this Agreement as provided in Sections 5.4 and 5.5, respectively, below. In connection with the issuance of the Bond, the Parties hereto will also enter into an Economic Development Agreement (the “**EDA**”) to reflect any amendments hereto agreed to prior to Closing (or to reflect that there are no such amendments).

1.4. The Site. The “**Site**” is located in the County in the vicinity of 1100 Milledgeville Road, Milledgeville, GA 31061, being more particularly described and/or depicted on Schedule 1.4 attached hereto and incorporated herein by reference. The Company shall provide to the Authority a metes and bounds legal description of the Site prior to adoption of the Bond Resolution (defined below), and the EDA shall amend Schedule 1.4 hereof to include such

legal description. Such legal description shall be used for purposes of this Agreement and the below-defined Definitive Documents, provided, that it shall be a Closing Condition in favor of each of the Parties that it be satisfied with such legal description. For the avoidance of doubt, the Project shall not include the Site, and ownership of the Site shall not be transferred to the Authority. Instead, during the Term (defined below), the Site shall be either (a) owned by the Company, or (b) leased by the Company from owner of the Site. To the extent deemed reasonably necessary by the Authority, the Company shall grant or cause to be granted to the Authority, at no cost or expense to the Authority, a right-of-entry across the Site as required by the Authority to exercise its rights under this Agreement and the Bond Lease.

1.5. Environmental Indemnity. The Company shall indemnify the Authority, its members, officers, employees and representatives against any claims, liabilities or losses relating to environmental claims relating to or arising from the Site or the Facility or the Company’s operations thereat (including the Company’s use of the items of property comprising the Project), regardless of whether any environmental claim is based on facts or circumstances first existing before or after the Closing, provided that if a court of competent jurisdiction determines that any of the provisions of this Section violate O.C.G.A. § 13-8-2, the indemnity contained in this Section shall not extend to any matter for which indemnification is prohibited by O.C.G.A. § 13-8-2. Said indemnity shall survive the Closing and the expiration or earlier termination of this Agreement and the Bond Lease.

1.6. Development of the Project.

1.6.1. Utilities. The Company shall be responsible for the delivery of adequate electricity, natural gas, telephone, internet, water and sewer and all other utilities to the Site and the Facility. The Company’s ability to acquire governmental approvals or permits to allow for delivery of adequate electricity, natural gas, telephone, internet, water and sewer and all other utilities by acceptable providers, or in quantities or at pressures which are acceptable to the Company in its sole discretion, shall each be a Closing Condition in favor of the Company. All permitting and tap fees for utilities shall be the responsibility of the Company.

1.6.2. Design. The Company shall be responsible for the design and selection of the items of property comprising the Project.

1.6.3. Acquisition and Installation of the Project. The Company will be responsible for the acquisition and installation of the items of property comprising the Project, including, without limitation, payment of the costs thereof. The Bond Lease will provide for the Company to convey title to the items of property comprising the Project to the Authority from time to time by one or more bills of sale as such items are acquired and installed at the Facility or on the Site. The Project shall be installed and operated in compliance with all applicable laws, rules, regulations and codes including, without limitation applicable zoning laws, building codes, environmental laws and other restrictions.

1.6.4. Permitted Encumbrances. Without limitation, the Company shall keep the Project free and clear of all liens and encumbrances, except for Permitted Encumbrances

(defined below), and shall in any event indemnify, hold harmless and defend the Authority and the County, and their respective officials, members, officers, employees and representatives from any claim, liability or loss arising out of or related to any such lien or encumbrance, including, without limitation, Permitted Encumbrances, provided that if a court of competent jurisdiction determines that any of the provisions of this Section violate O.C.G.A. §13-8-2, the indemnity contained in this Section shall not extend to any matter for which indemnification is prohibited by O.C.G.A. §13-8-2. Said indemnity shall survive the expiration or earlier termination of this Agreement and the Bond Lease. As used herein, “**Permitted Encumbrances**” shall be defined as the Definitive Documents—~~(defined below)~~, and any liens, encumbrances or exceptions otherwise specified in this Agreement as being acceptable, or defined as such in, or as otherwise permitted by, the Bond Lease.

1.6.5. Insurance. The Bond Lease will contain insurance provisions (including property insurance and general commercial liability insurance) reasonably acceptable to the Authority related to the Project, including its installation.

1.7. Indemnity by the Company. In addition to any other indemnities contained in this Agreement or elsewhere, the Company shall indemnify, hold harmless and defend the Authority and the County and their respective officials, members, officers, employees and representatives from and against any and all loss, liabilities and claims (including, without limitation, liens and encumbrances resulting from construction and installation activities) that may arise out of or relate to: (a) the Company’s or its vendors’, contractors’ or subcontractors’, agents’, employees’ or representatives’ entry upon the Site or from any work performed thereon or at the Facility by such persons, (b) any failure to observe and comply with any applicable local, state or federal statute, ordinance, permit, law or regulation relating to the Project or the Facility, (c) any damage or destruction of any property, or injury or death to any person, occurring on the Site or at the Facility in connection with the Project, (d) any act or omission by or attributable to the Company or its vendors, contractors or subcontractors, agents, employees or representatives, related to the Project or the Facility; or (e) the transactions contemplated by this Agreement, including the Transaction, the Bond or the issuance thereof, or the ownership or operation of the Project at the Facility, provided that if a court of competent jurisdiction determines that any of the provisions of this Section violate O.C.G.A. §13-8-2, the indemnity contained in this Section shall not extend to any matter for which indemnification is prohibited by O.C.G.A. §13-8-2. Said indemnity shall survive the Closing and the expiration or earlier termination of this Agreement and the Bond Lease.

1.8. Year 1. The date on which the Project has been placed into service at the Facility (which the Company shall not intentionally delay) shall be the “**Completion Date**.” The Company shall provide a written notice to the Authority within thirty (30) days of the Completion Date, to inform the Authority that the Project has been placed into service. For all purposes of this Agreement, including, without limitation, any Schedules and “Exhibits” hereto, “**Year 1**” shall be the calendar year beginning January 1 immediately following the year in which the Completion Date occurs, but in no event shall Year 1 occur later than ~~2026~~2027. The attainment of Year 1 by such outside date is hereby designated as being subject to Force Majeure. If Force Majeure is claimed as provided herein, then such outside date shall be extended by the period of the event of Force Majeure, but in no event shall Year 1 occur later than ~~2027~~2028.



1.8.1. For the avoidance of doubt, for the “**Installation Period**” for the Project, there shall be no *ad valorem* property taxes due on the Project. The Installation Period for the Project shall be limited to calendar years, if any, that are both after the Closing and before the Project has been placed into service, but ending no later than December 31, ~~2025~~2026 (or December 31, ~~2026~~2027, if Force Majeure postpones Year 1 to ~~2027~~2028, as provided in Section 1.8, above).

1.8.2. “**Year**,” as used herein, refers to years following Year 1, in sequence and numbered as appropriate.

1.8.3. The Company agrees that it shall, subject to Force Majeure as provided below in this Section, (i) start physical work of a significant nature towards installing the Project by December 31, 2023, (ii) make continuous progress towards completion once installation has begun, and (iii) begin Year 1 no later than as provided in Section 1.8, above.

1.8.4. The term “**Force Majeure**” shall mean the following: a general banking moratorium shall have been declared by federal or Georgia authorities, or a major financial crisis or a material disruption in commercial banking shall have occurred (but Force Majeure does not include a mere inability to obtain financing); acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Georgia or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; tornadoes; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other event not within the control of the Company. Without limitation, increased costs alone are not sufficient to constitute Force Majeure. The Company upon claiming Force Majeure agrees, however, to use its reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing the Company from carrying out its obligations under this Agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Company, unfavorable to the Company. For the avoidance of doubt, to the extent that the Governor of the State of Georgia at any time or from time to time hereafter issues an Executive Order declaring there to be in effect a (1) State of Emergency relating to unlawful assemblage and violence, or (2) Public Health State of Emergency relating to pandemics, and the same leads to the impossibility to perform any obligation under this Agreement that is expressly stated to be subject to Force Majeure, then riots and pandemic may be asserted as Force Majeure events.

1.8.4.1. It shall be conditions to the Company claiming the benefit of Force Majeure that, (a) the Company promptly certifies to the Authority in writing, (1) what the event of Force Majeure is, (2) the date of the commencement and, when the event of Force Majeure has abated, the date of the abatement, of such event of

Force Majeure, (3) for what obligation the benefit of Force Majeure is claimed, and (b) Force Majeure shall be the proximate cause of the non-performance of such obligation. The foregoing notwithstanding, however, (1) the Company may not claim the benefit of Force Majeure more than twice in the aggregate, (2) in no event shall Force Majeure excuse or postpone a payment obligation, and (3) in no event shall the Company claim Force Majeure in order to protect the Company against the normal risks of contracting.

1.8.4.2. The effect of Force Majeure for purposes of this Agreement shall be as specified in connection with designating an obligation herein as being subject to Force Majeure. For the avoidance of doubt, the benefit of Force Majeure may not be claimed with respect to an obligation unless this Agreement expressly designates that such obligation as being subject to Force Majeure.

**2. FINANCING OF THE PROJECT.**

2.1. Bond. In order to establish the bond-financed sale-leaseback structure that is necessary for the provision of certain of the incentives contemplated herein, including, without limitation, *ad valorem* property tax savings for the Project, the Authority will issue the Authority’s revenue bond (the “**Bond**”) to the Company. The Bond will be issued in one series as a single draw-down bond authorized by a resolution adopted by the Authority (the “**Bond Resolution**”). The Authority will hold legal title to all of the Project. The Company may acquire legal title to the Project as provided herein.

2.2. Maximum Principal Amount of the Bond. Without limitation, the maximum principal amount of the Bond shall in the aggregate accommodate Total Project Costs for the Project. Such accommodation shall be made through structuring the Bond as a single draw-down bond in an appropriate maximum principal amount, now estimated at \$35,000,000 (the “**Maximum Principal Amount**”).

2.3. Transaction Costs. The Company shall be responsible for all transactional costs of the issuance of the Bond. Such transactional costs include, without limitation: (i) the reasonable legal fees and disbursements of Bond Counsel related to the preparation and distribution of this Agreement and the issuance of the Bond and preparation of transcripts; (ii) the reasonable fees and disbursements of the Authority’s Issuer’s Counsel, including the validation of the Bond and the closing of the issuance of the Bond; (iii) the reasonable legal fees and disbursements of the Company’s own counsel relating to the Transaction; (iv) the court costs relating to validation of the Bond and recording and filing fees; and (v) the Authority’s administrative fee for the issuance of the Bond equal to \$25,000 plus one-eighth (1/8) of one percent (1%) of the Maximum Principal Amount of the Bond, which shall be payable in full to the Authority at Closing. In addition, the Company shall pay for the costs of issuance of the Bond and other transaction costs, promptly upon being invoiced therefor, including following the occurrence of any of the following events: (x) execution of this Agreement (which shall only include the payment of Seyfarth Shaw LLP’s fees incurred to date as of the execution of this Agreement), (y) validation of the Bond, and (z) the Closing.

2.4. Tax Status of the Bond. The interest on the Bond contemplated by this Agreement will not be exempt from federal income taxation.

2.5. Roles of Counsel. The law firm of Seyfarth Shaw LLP, Atlanta, Georgia, Bond Counsel to the Authority, shall serve as Bond Counsel and as the Authority’s Issuer’s Counsel in connection with the Project, the issuance of the Bond and this Agreement. The law firm of Murray Barnes Finister LLP shall serve as the Company’s Counsel in connection with the Project, the issuance of the Bond and this Agreement.

2.6. Repayment of the Bond. The Company shall be responsible for the repayment of the Bond. Without limitation, the Bond shall not be a general obligation of the Authority, but shall be a special and limited obligation payable solely from the payments received under the Bond Lease and other pledged security. Neither the Authority, the County, the State of Georgia, nor any other public body shall have any obligation or liability for repayment of the Bond.

2.7. The Bond Lease. The Authority and the Company shall enter into a lease agreement in connection with the Bond (the “**Bond Lease**”) at the Closing. Pursuant to the Bond Lease, the Authority will lease the Project to the Company. The Bond Lease shall contain terms and provisions substantially of the type normally included in bond leases between governmental “conduit” bond issuers and users of bond-financed property. The Bond Lease shall provide for the Company to pay “**Basic Rent**,”*i.e.*, rent equal to debt service on the Bond, which shall be applied to such payment. If permitted by the “**Bond Purchase Loan Agreement**” to be entered into by the Parties, the Bond Lease shall grant to the Company the option, at any time, to prepay Basic Rent in the amount needed to retire the Bond. The Bond Lease will be a triple net type lease. Pursuant to the Bond Lease, without limitation, the Company will be responsible, during the Term, for all of the Project’s costs of operation and maintenance, insurance (as provided in Section 1.6.5 hereof), and (subject to Section 2.4 hereof) taxes. The Bond Lease shall provide customary and reasonable requirements for indemnification of the Authority, its directors, members, officers, employees and representatives, against any claims, liabilities or losses relating to the Bond or the Project, or the Company’s operations thereof, or environmental claims relating to the Project (to the extent that any environmental claim is based on facts or circumstances first existing after the effective date of the Bond Lease), such requirement for indemnification to be consistent with the provisions of Section 1.7 hereto. Said indemnity shall survive the Closing and the expiration or earlier termination of this Agreement and the Bond Lease. The Bond Lease will contain provisions reasonably satisfactory to the Company and the Authority limiting the transfer by the Authority of items of property comprising the Project. The Bond Lease shall have a term (“**Term**”) sufficient to accommodate the Savings Schedule (defined below) and to accommodate the possibility of a Force Majeure extension of the outside date for Year 1, provided, that the Term shall be structured to be comprised of intervals, each of less than five (5) years, and each of which shall automatically renew for the next interval unless notice of non-renewal is given by the Company. The Bond Lease will contain provisions which recite the property tax or *ad valorem* exempt nature of the Authority’s interest in the Project so as to specify that there shall be no such taxes or payments in lieu of taxes, except as specified herein and in the Definitive Documents for the Project.

2.8. Purchase Option. The Authority, by a separate instrument (the “**Option Agreement**”), which is one of the Definitive Documents, shall grant the option to purchase the Project or from time to time any portion thereof (the “**Purchase Option**”), to the Company, as

contemplated in Section 2.1, above, to the extent that the Authority holds title thereto at the time, exercisable for (i) an option exercise price of \$10; (ii) plus any other amounts due to the Authority that must be paid at such time by the Company, including, without limitation, any Community Recovery Payments (defined below ) then past due, if any; and (iii) if the Bond has not theretofore been retired, the Company shall cause the Bond to be retired or cancelled. The Company may not exercise its Purchase Option under this Section if at the time of the attempted exercise of such Purchase Option, the Company is in default under the Bond Lease, unless it simultaneously cures such default.

2.9. Definitive Documents. The term, “**Definitive Documents,**” means and includes the Bond, the Bond Lease, the Option Agreement, the EDA, the Bond Purchase Loan Agreement, and any other related documents necessary to implement the transactions described herein. The Definitive Documents shall be prepared by Bond Counsel and shall be subject to the approval of the Authority, the Company, and the legal counsel thereof. The Parties agree to negotiate in good faith to establish the terms and conditions to be included in the Definitive Documents. It shall be a Closing Condition in favor of each of the Company and the Authority that they reach an agreement on such terms and conditions that are applicable to each of them.

2.10. Transfers.

2.10.1. The rights and benefits of the Company under this Agreement may not be transferred and assigned by the Company, in whole or in part, prior to Closing, except to an Affiliate (defined below) of the Company.

2.10.2. Except as expressly provided in this Section or elsewhere in this Agreement, after the Closing the Company may not, without the prior written consent of the Authority, (a) transfer its interest in the Project, or (b) assign its interests and rights under the Bond Lease or other Definitive Documents or sublease any part of the Project. The foregoing shall not be construed to impose any restriction on the transfer of equity interests in the Company.

2.10.3. The Company, as the tenant under the Bond Lease, may sublease (or lease, to the extent that a leasing continues beyond the Term) the Project as a whole or in part, provided, that (a) any such transaction outside of the ordinary course of the Company’s business shall be subject to prior approval by the Authority, as the landlord under the Bond Lease, which may not unreasonably be withheld, conditioned or delayed, and (b) in the case of all transactions, the sublease is expressly subject and subordinate to the Bond Lease, and that the Company is not released from its obligations under the Bond Lease.

2.10.4. The Company may assign the Bond Lease and the other Definitive Documents without the consent of the Authority, but upon prior or contemporaneous notice to the Authority, in the event that, (a) (i) the Company expressly agrees, by written instrument in form and substance reasonably satisfactory to the Authority, to remain obligated for all obligations and liabilities thereunder, whether incurred before, as of, or after such assignment, and to maintain its legal existence and solvency, provided that clause (b) of Section 2.10.5, below must be satisfied, and, (ii) the assignee is solvent, after giving effect to such transaction, and expressly assumes in writing and agrees to pay and to

perform all of the Company's obligations and liabilities thereunder, whether incurred before, as of, or after such assignment, or (b) the Company consolidates with or merges into another domestic entity or permits one or more domestic legal entities to consolidate with or merge into it or the Company transfers or conveys all or substantially all of its assets to another domestic legal entity, but only on the condition that, either, (i) if the Company is the transferee or surviving entity, then the Company expressly agrees, by written instrument in form and substance reasonably satisfactory to the Authority, to remain obligated for all obligations and liabilities thereunder, whether incurred before, as of, or after such assignment, and is solvent, after giving effect to such transaction, and agrees to maintain its legal existence and solvency, and, (ii) if the Company is not the transferee or surviving entity, then the transferee or surviving entity shall be solvent, after giving effect to the transaction, and shall expressly assume in writing and agree to pay and to perform all of the Company's obligations and liabilities thereunder, whether incurred before, as of, or after such transaction.

2.10.5. The Company may assign its interest in the Project, and the Bond Lease and the other Definitive Documents, pursuant to an Exempt Assignment (defined below) without the approval of the Authority, but upon prior or contemporaneous notice to the Authority; provided that, (a) any assignee of the Company shall agree to fully and unconditionally assume all obligations of the Company arising under the Bond Lease and such other Definitive Documents, including, without limitation, all indemnity provisions contained in the Bond Lease and the other Definitive Documents, and (b) the assignor and assignee must first receive prior written confirmation from the Authority that the Authority is satisfied that the Company will have the financial capability thereafter to satisfy, and will continue to satisfy, its continuing indemnification and other obligations; without limitation, the Authority may condition its satisfaction with such financial capability upon the Company providing surety satisfactory to the Authority.

2.10.6. Any provision hereof to the contrary notwithstanding, any assignment by the Company of any interest in this Agreement, the Project, the Bond Lease or the other Definitive Documents shall be further subject to the following conditions:

2.10.6.1. If the Authority should, in a writing approved by a resolution of the Authority, consent to an assignment, then the Authority in such consent may agree to release the assignor from all liabilities and obligations accruing under the assigned documents or instruments after the effective date of such assignment;

2.10.6.2. The assignor shall, within fifteen (15) days after the delivery thereof, furnish or cause to be furnished to the Authority and (after the issuance of the Bond) to the holder of the Bond a true and complete copy of each such assignment, together with any instrument of assumption; and

2.10.6.3. An assignee of the interest of the Company under the Bond Lease must also be the holder of the Bond and the assignee of the Company's interest under the other Definitive Documents. A pledgee of the interest of the Company under the Bond Lease must also be the pledgee of the Bond and the pledgee of the Company's interest under the other Definitive Documents. An assignee must

assume all obligations of the Company under the assigned instruments and documents. In the event a pledgee shall ever become the owner of the rights and interests of the Company under the pledged instruments and documents by reason of judicial foreclosure, nonjudicial sale under power or other proceedings brought by the pledgee to enforce its rights thereunder, or through any other means or manner in connection therewith, the pledgee shall assume all obligations and responsibilities of the Company thereunder arising from and after the date it becomes the owner.

2.10.7. As used herein, “**Affiliate**” means any person or entity (as used herein “entity” includes, without limitation, any public body) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a specified person or entity. Without limitation, “control” of the other person or entity is deemed to exist if a person or entity possesses, directly or indirectly, the power: (A) to vote 10% or more of the voting securities of such other person or entity (on a fully diluted basis) having ordinary power to vote in the election of the governing body of such other person or entity, or (B) to direct or cause the direction of the management or policies of the other person or entity, whether through the ownership of voting securities, by contract or otherwise.

2.11. Permitted Uses. The Bond Lease will provide that the permitted uses of the Project are restricted to those that are described in the Project description provided for on Schedule 1.1 hereto.

**3. INCENTIVES TO BE PROVIDED.**

3.1. Purpose of Incentives. In order to induce the Company to locate the Project in the County, the following economic inducements will be provided for the Project by the Authority and other entities, as applicable.

3.2. Ad Valorem Tax Savings.

3.2.1. Basis for Savings. Under the Act, under which the Authority was created and exists, and provided the effect and operation of the provisions of said Act and related laws are in no way impaired or limited by legislative or judicial act after the date of this Agreement, all property owned by the Authority is exempt from *ad valorem* property tax. As the title to the Project transferred by the Company to the Authority by bill of sale will be vested in the Authority during the term of the Bond Lease, the Authority’s interest in the Project, as well as the Company’s leasehold interest therein, will be exempt from *ad valorem* taxes during the term of the Bond Lease. See *McMillan v. Jacobs*, 249 Ga. 117, 288 S.E.2d 211 (1982) and *Hart County Board of Assessors v. Dunlop Tire & Rubber Corporation*, 252 Ga. 479, 314 S.E.2d 188 (1984). In addition, the Parties also intend that the Bond Lease shall be structured, and shall incorporate the restrictions on use set forth in this Agreement and to be set forth in the Bond Lease, so that the Company’s leasehold interest in the Project will be a mere usufruct, or, as to personal property, a nontaxable bailment for hire, and not a taxable estate for years, with similar provisions to the sub-lessee identified under and pursuant to the holding of the Georgia Supreme Court in

*Macon-Bibb County Board of Tax Assessors v. Atlantic Southeast Airlines, Inc.*, 262 Ga. 119, 414 S.E.2d 635 (1992). Thus, while the Bond Lease is in effect, the Company shall pay no actual taxes on its leasehold interest in the Project irrespective of the Authority’s exemption. However, notwithstanding the foregoing, the Company agrees that in consideration of the Bond Lease structure and other benefits accruing thereunder, so as not to deprive the taxing authorities of revenues which may otherwise flow from the Project, the Company shall make payments in lieu of taxes (each a “**PILOT**”) as provided in Schedule 3.2 (the “**Savings Schedule**”) attached hereto and incorporated herein by reference. The Company shall pay normal *ad valorem* property taxes with respect to property it owns which is not titled to the Authority in connection with the issuance of the Bond.

3.2.2. Procedures.

(a) The Authority will require that the Company send the Authority a report (the “**Community Investment Report**”), which shall be used by the Board of Tax Assessors of Putnam County (the “**Assessors**”) in consultation with the Authority to assign the valuation of the portion of the Project titled in the Authority. The Community Investment Report shall detail the following:

- (i) each item of property which has become part of the Project as of January 1 of the same year;
- (ii) each item of property which has become part of the Project in all prior tax years;
- (iii) the tax year in which each item of the property became part of the Project;
- (iv) the original cost of each item of property;
- (v) the value of each item of property for *ad valorem* tax purposes as if it were owned directly by the Company; and
- (vi) a statement of cumulative capital investment.

Items (i) through (vi) of subsection (a) above shall be satisfied by the Company’s submission by March 1 of a pro-forma Georgia personal property tax return (Form PT 50P) for all personal property constituting a part of the Project reflecting the appropriate depreciation group classification for such personal property as set forth on the Form PT 50P, indicating that such property is owned by the Authority and is exempt from *ad valorem* taxation. The Authority shall notify the Assessors of any errors, omissions, or corrections it is actually aware of which may be required to adjust the information provided by the Company in the Community Investment Report, which the Assessors shall use in their reasonable discretion in assigning the annual valuation of the Project. Notwithstanding the foregoing, the Company shall not be required to include in the Community Investment Report information regarding any items of personal property located at the Project and constituting inventory; such return of inventory, along with any

application for freeport exemption thereon, and also the return of any other real and/or personal property of the Company in the County not titled in the name of the Authority, should be made by the Company in the manner and at the time prescribed by Georgia law.

(b) As part of the valuation process, the Assessors shall give deference to the personal property depreciation group life class agreed upon by the Authority and the Company as to any personal property titled in the name of the Authority. Upon completion of the valuation process by the Assessors and the Company, in cooperation with the Authority, as set forth subsection (a) above, the Assessors shall transmit to the Authority the valuation for the real property and personal property (as applicable) included in the Project and titled in the name of the Authority.

(c) The Authority, or such other entity as the Authority may designate, after coordinating with the Assessors per the above to assign the value to the portion of the Project titled in the name of the Authority, shall bill and collect annually PILOTs and any applicable Community Recovery Payments due from the Company under these methodologies. At the time tax bills are mailed by the County for the Year or at such other reasonable time as the Authority may determine following the submission of the Community Investment Report (but no earlier than July 1 of any Year) and assigning of a value as set forth above, the Authority will provide the Company an invoice for the amount equal to the PILOT payment and applicable Community Recovery Payment, if any, due for such Year (each a “**PILOT Invoice**”). The Company may object to a valuation in any Year which the Company reasonably understands to be inconsistent with the value of the Project or procedures set forth in this Agreement, and the Authority and the Company may utilize such reasonable methods to resolve any objection, including mediation, third-party determination, or judicial review, as may be more fully set forth in the Bond Lease. Subject to the negotiated rights between the Company and the Authority to object to the valuation of the Project, the Company will be required to pay the PILOT Invoice in full, by a separate check to the Authority or its designee on or before October 15 of each Year, or within thirty (30) days after such PILOT Invoice is sent, whichever is later. All PILOTs and Community Recovery Payments collected by the Authority will be retained, used, and disbursed by the Authority in its discretion in consultation with local taxing authorities.

3.2.3. Reversion to Normal Taxability. If the Purchase Option is exercised upon termination of the Bond Lease or earlier, in whole or in part, or if the Bond Lease is otherwise terminated or expires and all or part of the Project is conveyed to the Company, the Project or any such part thereof, as appropriate, will be taxable according to normal *ad valorem* property taxation rules that are applicable to privately-owned property (e.g., effective January 1 the following calendar year). Once proceeds up to the Maximum Principal Amount of the Bond have been expended on the Project, any items of property added by the Company as part of the Project for which there are not Bond proceeds to cover, such items of property shall be subject to 100% payment level under a payment in lieu of taxes, absent subsequent bond issue.

3.2.4. Minimum Community Investment. So long as the Company’s minimum Community Investment Goal in the Project meets or exceeds the Community Investment Goal (defined in Section 4.4, below), the Company shall receive the full extent of the



benefit of the reduced PILOTs pursuant to the calculated percentages in Schedule 3.2 hereof.

3.3. Private Training. The Authority shall, if the Company so requests, reasonably assist the Company in obtaining recruitment assistance and training for the Company’s employees working at the Project. This incentive shall be limited to coordination by the Authority with the Georgia Department of Labor, the Middle Georgia Consortium and local colleges. Such recruitment and training is in addition to (i) such employee training as may be provided by the State of Georgia pursuant to its “Quick Start” program, and (ii) such employee recruitment and training as maybe provided through a partnership with the Putnam College & Career Academy (which is part of Putnam County High School) and through other apprenticeship opportunities that may be available, which is outside the scope of this Agreement.

**4. JOBS AND INVESTMENT GOALS.**

4.1. Inducement. The Company agrees to locate the Project at the Facility on the Site, within the jurisdiction of the Authority, provided that nothing herein contained shall obligate the Company to make any particular level of investment or create any particular level of jobs. Rather, the Company’s responsibilities regarding such matters shall be governed exclusively by the provisions hereof relating to Community Recovery Payments (set forth in Section 4.7, below). The Company’s foregoing agreement to locate the Project at the Facility on the Site is based, in part, on the incentives being provided by the Authority in connection with the Bond Lease and the EDA (including this Agreement). Such incentives are being provided to induce the Company to locate the Project at the Facility on the Site, with attendant job creation on the part of the Company, and accompanying investment by the Company, all of which constitutes valuable, non-cash consideration to the Authority and the citizens of the County and of the State of Georgia. The Parties acknowledge that the incentives provided for in this Agreement serve a public purpose through the job creation and investment generation represented by the Project. The Parties further acknowledge that the cost/benefit requirements applicable to the Authority in the course of providing such incentives dictate that some measure of recovery must be applied in the event that the anticipated jobs and investment do not for any reason fully materialize, and such measure of recovery is set forth in Schedule 4 attached hereto and incorporated herein by reference.

4.2. Community Jobs Goal. For the period prescribed as the Performance Period on the Community Goals Table (“**Community Goals Table**”) included on the “**Community Incentives Schedule**” attached as Schedule 4 hereto (such period, the “**Performance Period**”), and with respect to the incentives covered by the Incentives Table, the Company shall have the goal of providing not fewer than the number of new full-time jobs at the Facility, in connection with the operation of the Project, specified on the Community Goals Table as the applicable Community Jobs Goal (the goal applicable in any particular year being the “**Community Jobs Goal**” for such year). For purposes of this Agreement, the number of new “full-time jobs” shall be defined and determined, from time to time, as provided on Schedule 4.2 attached hereto and incorporated herein by reference. Schedule 4.2 also determines how the number of full-time jobs shall be calculated.

4.3. Community Jobs Shortfall Percentage. If, for any year in the Performance Period, the number of full-time jobs at the Facility is less than the Community Jobs Goal that is applicable

to such year, the actual number of such full-time jobs shall be subtracted from the applicable Community Jobs Goal to obtain the “**Community Jobs Shortfall.**” The number of jobs constituting the Community Jobs Shortfall shall be divided by the applicable Community Jobs Goal and converted to a percentage to determine the “**Community Jobs Shortfall Percentage**” for such year. If there is no shortfall,, such percentage shall be 0%.

4.4. Community Investment Goal. For purposes of the incentives covered by the Incentives Table, the Company shall have a “**Community Investment Goal**” of the Company having invested, in the aggregate, in the Project in each year of the Performance Period the amount for such year specified on the Community Goals Table as the applicable Community Investment Goal (the goal applicable in any particular year, the “**Community Investment Goal**”). For purposes of the Community Investment Goal, the investment at the Project shall be calculated on a cumulative basis from the date hereof to the end of each year of the Performance Period. Schedule 4.4 attached hereto and incorporated herein by reference provides rules that shall apply to satisfying the Community Investment Goal.

4.5. Community Investment Shortfall Percentage. If, for any year in the Performance Period, the cumulative amount of capital investment by the Company in the Project is less than the Community Investment Goal that is applicable to such year, then the actual amount of such investment shall be subtracted from the applicable Community Investment Goal to obtain the “**Community Investment Shortfall.**” The amount of investment constituting the Community Investment Shortfall shall be divided by the applicable Community Investment Goal and converted to a percentage to determine the “**Community Investment Shortfall Percentage.**” If there is no shortfall, such percentage shall be 0%.

4.6. Annual Report. On or before March 1 of each year following a year that is in the Performance Period, the Company shall provide to the Authority an annual report (each an “**Annual Report**”) for the preceding calendar year which shall include a Community Jobs Report and a Community Investment Report, as described below. Each Annual Report shall be in substantially the form of Schedule 4.6 attached hereto and incorporated herein by reference, as revised for the matters being reported.

4.6.1. Community Jobs Report. The Community Jobs Report shall contain a statement as to the full-time jobs at the Facility for the immediately preceding year (each, an “**Annual Report Year**”) using the methodology prescribed herein, and shall provide such supporting extracts from the Company’s employment records (consistent with the privacy rights of its employees) as the Authority shall reasonably request.

4.6.2. Community Investment Report. The Community Investment Report shall contain a statement as to the Company’s investment in the Project for the subject Annual Report Year, using the methodology prescribed herein.

4.6.3. Inspection Rights. No more often than once per year, the Authority and its agents shall be permitted to inspect employment and investment records of the Company, specifically related to the Project, to verify such information during normal business hours and upon reasonable notice. The Authority shall not be liable or otherwise responsible for costs incurred by the Company or its agents resulting from the reasonable inspection

activities of the Authority or its agents, and the Company and its agents shall fully cooperate with any such reasonable inspection activities without charge or other cost of any kind to the Authority or its agents. The Company may reasonably redact such records to protect the confidentiality of the Company and its employees or its customers.

4.6.4. Project Shortfall Percentages. Upon receipt of an Annual Report and any inspection authorized hereunder, the Authority shall calculate the Community Jobs Shortfall Percentage and the Community Investment Shortfall Percentage for such Annual Report Year. The average of such Community Jobs Shortfall Percentage and such Community Investment Shortfall Percentage shall be the “**Project Shortfall Percentage,**” which shall also be calculated by the Authority. Thus, for illustrative purposes only, if the Community Jobs Shortfall Percentage is 10% and the Community Investment Shortfall Percentage is 25%, then the Project Shortfall Percentage shall be  $(10\% + (25\%)) \div 2 =$  Project Shortfall Percentage of 17.5%.

4.7. Community Recovery Payments. If, based on the Annual Report, there is a Project Shortfall Percentage that is greater than 20%, then the Authority shall calculate the amount of the “**Community Recovery Payments,**” and the Company shall pay the same to the Authority with respect to the incentives set forth in the Incentives Table, all pursuant to and as defined in the Community Incentives Schedule. If the Project Shortfall Percentage is 20% or less, there shall be no Community Recovery Payment due. The Authority shall include the amount of Community Recovery Payments calculated for the previous Year and include such amount in the PILOT Invoice for the current Year, which the Company shall pay within the time set forth in Section 3.2.2, above.

4.8. Failure to File Report and Make Required Payments. If the Company fails to pay any PILOT Invoice or Community Recovery Payment when due without making objection thereto prior to the date required for payment, and the Company fails to cure this failure to pay within thirty (30) days following written notice from the Authority that it be cured, then interest shall be paid by the Company thereon at the rate of seven percent (7%) per annum (or such lesser rate as may be allowed by law) from the date when due until paid. If there has been a failure which is not cured within thirty (30) days following a written notice from the Authority to the Company that said failure be cured, the Authority shall be entitled to enforce its rights under this Section 4.8 and the Company shall indemnify the Authority for all costs of enforcement, including any court costs and reasonable and actual attorneys’ fees and court costs. The Company shall be liable for the payment of any such interest, fees and costs. Notwithstanding the foregoing, the Company shall be responsible for all reasonable costs actually incurred by the Authority in connection with monitoring compliance and addressing any non-compliance by the Company with this Agreement, including, without limitation, Annual Report errors, omissions and discrepancies, and the Authority shall provide the Company itemized invoices documenting any costs so incurred. Such costs may include, but are not limited to, reasonable fees and disbursements of attorneys actually incurred by the Authority. Without limitation, the Company shall be responsible for compliance with the provisions of Article 4 hereof.

**5. TERMINATION OF AGREEMENT.**

5.1. Delay. If, despite the good faith efforts of the Parties, this Agreement is not fully executed on or before August 15, 2023, or the Closing has not occurred by October 31, 2023, then the Authority or the Company may terminate this Agreement by written notice to the other Party, without any further liability to the other Party except as otherwise expressly provided in this Agreement.

5.2. Approval by Governing Bodies. Upon its execution of this Agreement, each Party represents and warrants that its governing body or other authorized committee or official thereof has approved and authorized its entry into this Agreement.

5.3. Closing Conditions. Any Party shall have the right to terminate this Agreement prior to the Closing without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice to the other Party, if:

5.3.1. The other Party is in breach of this Agreement beyond any applicable notice and cure period.

5.3.2. There has been commenced or threatened against the Authority or the Company, or any Affiliate of the Company, any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the matters that are the subjects of this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with, any of such matters. An uncontested validation proceeding for the Bond shall not be considered a proceeding within the meaning of this Section.

5.4. Authority’s Termination Rights. The Authority shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the Company, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Authority shall have the right to terminate this Agreement, effective immediately upon giving written notice to the Company if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Authority has not been satisfied. If the Authority does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.5. Company’s Termination Rights. The Company shall have the right to terminate this Agreement prior to Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the Authority, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Company shall have the right to terminate this Agreement, effective immediately upon giving written notice to the Authority if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Company has not been satisfied. If the Company does not exercise any such right to terminate by

Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.6. Effect of Termination. If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued, or except as otherwise expressly provided in this Agreement, or shall exist as a result of any prior breach hereof.

**6. MISCELLANEOUS.**

6.1. Notices. Any notice required to be given by any Party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service or express mail (in each case for delivery on the next business day) addressed to each other Party at the addresses set forth below (or to such other address as any particular Party may designate for notices to each other Party from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service or the United States Postal Service:

If to the Authority: Putnam Development Authority  
107 S Jefferson Avenue  
Eatonton, Georgia 31024  
Attn: Walt Rocker III, Chairman

with a copy to: Seyfarth Shaw LLP  
1075 Peachtree Street NE, Suite 2500  
Atlanta, Georgia 30309  
Attn: Kevin T. Brown, Esq.

If to the Company: EM Resources-~~DE~~ LLC d/b/a EM Resources DE LLC  
10701 S River Front Pkwy  
Suite 300  
South Jordan, Utah 84095  
Attn: Jason T. Jones, Vice President of Tax

with a copy to: Murray Barnes Finister LLP  
3525 Piedmont Road NE  
5 Piedmont Center  
Suite 515  
Atlanta, Georgia 30305  
Attn: Caroline L. Loftin, Esq.

6.2. Confidential Information. All confidential information acquired by the Authority or the Assessors relating to the Company shall be held in confidence by them, subject to their legal obligations as public bodies, including, without limitation O.C.G.A. § 50-18-70, *et seq.* and § 50-14-1, *et seq.* This confidentiality requirement shall survive termination or expiration of this

Agreement. The Company and its advisors shall, prior to the execution and delivery hereof, treat the contents of this Agreement and project plans related thereto as confidential, and, without limitation, shall not disclose such contents to the public or competing communities or states.

6.3. No Partnership or Agency. No partnership or agency relationship between or among the Parties shall be created as a result of this Agreement.

6.4. Survival of MOU. This Agreement shall survive Closing and the expiration or termination of the Bond Lease, but may be superseded in whole or in part by the EDA to the extent that the EDA expressly so provides.

6.5. Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of Georgia, except for such state’s conflicts of law rules. THE COMPANY FURTHER AGREES THAT ANY ACTION RELATING TO, OR ARISING OUT OF, THIS AGREEMENT OR THE PROJECT SHALL BE INSTITUTED AND PROSECUTED IN THE COURTS OF THE COUNTY OF PUTNAM, STATE OF GEORGIA, OR THE U.S. DISTRICT COURT SITTING IN THE MIDDLE DISTRICT OF GEORGIA, AND THE COMPANY AGREES TO SUBMIT, AND DOES HEREBY SUBMIT, TO THE PERSONAL JURISDICTION AND VENUE OF SAID COURTS OF THE COUNTY OF PUTNAM, STATE OF GEORGIA, OR THE U.S. DISTRICT COURT SITTING IN THE MIDDLE DISTRICT OF GEORGIA (AS THE CASE MAY BE), AND DOES FURTHERMORE EXPRESSLY AND SPECIFICALLY WAIVE ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUCH LITIGATION. THE COMPANY FURTHER ACKNOWLEDGES THAT NEITHER IT NOR THE AUTHORITY HAS ANY EXPECTATION THAT, AND THERE IS NO BASIS FOR, ANY SUCH ACTION BEING INSTITUTED OR MAINTAINED IN ANY COURT EXCEPT THOSE SPECIFIED HEREINABOVE, AND THE COMPANY COVENANTS AND AGREES THAT IT SHALL IN NO EVENT INSTITUTE OR PROSECUTE ANY SUCH ACTION IN ANY OTHER COURT OTHER THAN AS EXPRESSLY AUTHORIZED HEREIN, AND THAT THIS PARAGRAPH SHALL BAR AND SERVE AS A COMPLETE DEFENSE TO ANY ACTION BROUGHT OR PROSECUTED BY OR ON BEHALF OF THE COMPANY IN ANY OTHER COURT.

6.6. Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the Parties hereto. This Agreement does not confer any rights or remedies upon any person or entity (including, without limitation, any public body), other than the Parties to this Agreement and their respective permitted successors and assigns. Without limitation, a writing executed only by the Parties hereto or their respective permitted successors and assigns shall be effective to amend or terminate this Agreement.

6.7. Entire Agreement. This Agreement, together with the Definitive Documents (when executed), constitutes the entire agreement between the Parties with respect to the subject matter hereof.

6.8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

6.9. Counterparts; Electronic Transmittal. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. To facilitate execution of this Agreement, the Parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the printed product of a facsimile or electronic transmittal of this Agreement shall be deemed to be “written” and a “writing” for all purposes, and shall otherwise constitute an original document binding upon the transmitting party.

6.10. No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, representative or employee of the Authority or the County (including the members and staff of the Assessors) shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, director, officer, agent, representative or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

6.11. No Personal Liability of Representatives of Company. No official, member, manager, director, officer, agent, representative or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, representative or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

6.12. Legal Compliance. The Company agrees that it and its officers and employees acting for it in matters relating to this Agreement shall comply with all applicable provisions of law, including, without limitation, O.C.G.A. § 50-36-1 relating, in part, to public benefits.

6.13. Effective Date. This Agreement shall not be effective until it has been fully executed by all Parties hereto.

6.14. Business Days. As used herein, the term “business day” shall mean any calendar date except Saturday, Sunday or a legal banking holiday in the State of Georgia.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum of Understanding and caused it to be delivered as of the following **“Effective Date”**: \_\_\_\_\_, 2023.

**The “Authority”**

**PUTNAM DEVELOPMENT AUTHORITY**

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

ATTEST:

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

[AUTHORITY’S SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]



The “Company”:

EM RESOURCES ~~DE~~-LLC d/b/a EM  
RESOURCES DE LLC

By: \_\_\_\_\_  
Jason T. Jones  
Vice President of Tax

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

**SCHEDULE 1.1**

**DESCRIPTION OF THE PROJECT**

The Company will locate a turn-key project for the engineering, procurement, and construction of a fly ash beneficiation facility (*i.e.*, the Facility) in the County on the Site. The Project, when completed, will be capable of generating at least 570,000 dry tons of beneficiated ash per year, using the following process:

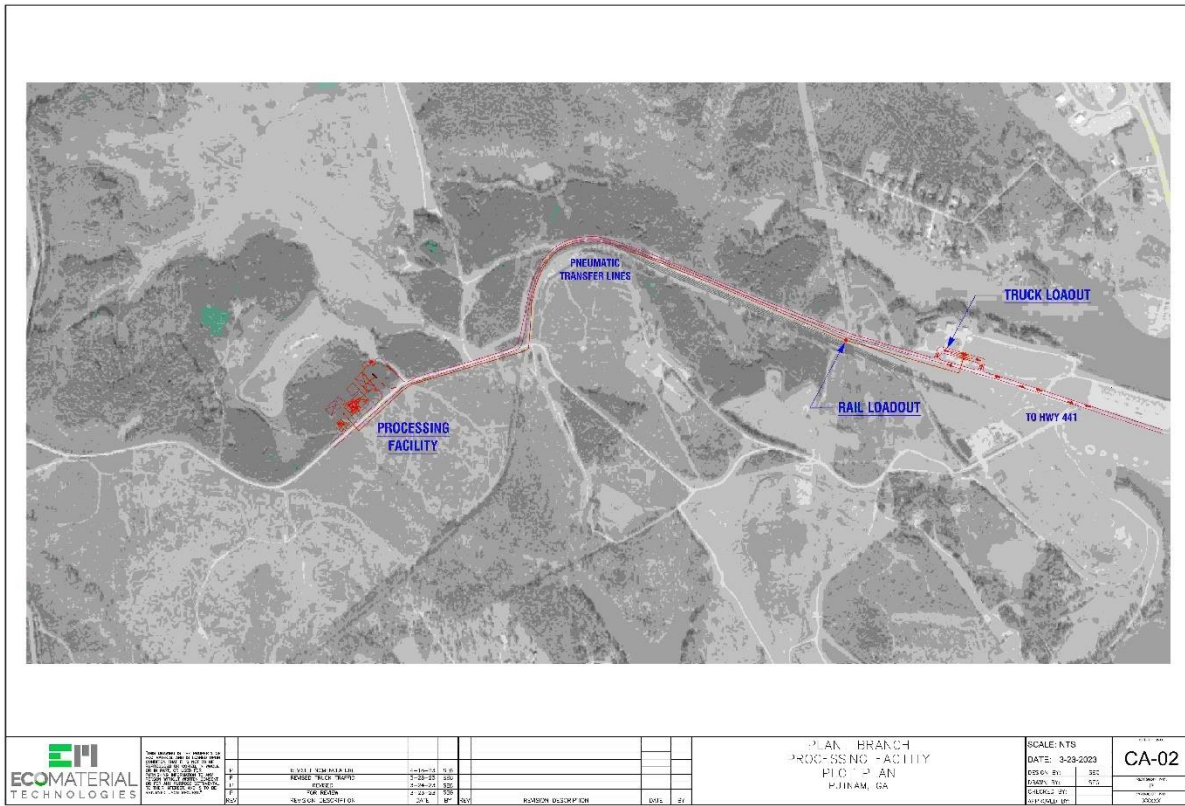
- 1) Wet ash will be reclaimed and loaded on haul trucks and delivered to the raw ash storage barn. The ash will then be conveyed to a pre-screener, then into one of two, or both, rotary dryers to reduce the moisture content to a maximum of one percent (1%). The configuration of the Facility will be designed to accommodate a third rotary dryer.
- 2) There will be two streams of dry ash coming out of the rotary dryers: (i) one stream—bag house fines—will go to a transfer silo; and (ii) the other stream—dryer bottoms—will then go through an air classifier to remove oversized particles and bottom ash. After the product is sized, it will be processed through the Facility to remove the carbon. The Facility’s system’s discharge will be conveyed to the storage silos. A dense phase conveying system will convey the fly ash from the transfer silo to the storage silos.

The Project consists of processing equipment, personal fixtures and other personal property for use by the Company in its fly ash beneficiation operations at the Facility. The Project does not include any real estate, trade fixtures, or improvements to real estate. More specifically, the Project is expected to include, without limitation, the following:

- Two (2) rotary dryer systems
- Two (2) air classifiers
- Two (2) ECO systems (carbon removal)
- One (1) raw ash storage barn; approximately 7,000 tons
- One (1) 1,000 ton transport silo
- Two (2) 3,000 ton truck loading silos
- One (1) 1,000 ton rail loading silo
- One (1) dry scrubber
- Process equipment (under roof)
- Dense phase ash transport system: 120 TPH (tons/hr.)
- Raw ash pre-screener
- Electrical equipment (including new power service, PLC & controls, control and power wiring/conduit, etc.)
- New natural gas supply pipe line
- Rail track improvements

### SCHEDULE 1.4

### DESCRIPTION OF THE SITE



A copy of the above Site plan is on file with the Authority.

{LEGAL DESCRIPTION TO BE INSERTED}

**SCHEDULE 3.2**

**SAVINGS SCHEDULE**

1. As provided in Section 1.8 regarding Year 1 and other matters, Section 3.2 regarding the Savings Schedule, and elsewhere in this Agreement, there is a schedule of payments in lieu of taxes (the “**PILOTS**”) relating to the Project. The Project will receive a property tax savings incentive correlating to the difference between: (i) what the Company normally would pay in *ad valorem* taxes if the Project were titled in the name of the Company as of January 1 of any Year; and (ii) the PILOT required for the applicable Year as provided in the table in Paragraph 4, below. However, there are no tax savings with respect to special district levies of assessments or fees for any tax year.
2. The Company agrees to make PILOTS with respect to the Project as set forth herein.
3. There shall be no property taxes or PILOTS for the Project’s Installation Period as provided in Section 1.8.1, above.
4. As provided in the following table, the Company agrees to pay the PILOTS for the Project which are a percentage (*i.e.*, the Payment Percentage) of the normal *ad valorem* property taxes that would be payable if legal title to the Project were vested in the Company instead of the Authority on January 1 of such Year. The PILOTS and percentages are as follows:

<b>Year</b>	<b>Depreciation (Group III assumed)</b>	<b>Savings Percentage</b>	<b>Payment Percentage</b>
Installation Period	N/A	100%	0%
Year 1	95%	100%	0%
Year 2	91%	100%	0%
Year 3	87%	100%	0%
Year 4	82%	100%	0%
Year 5 & thereafter	As applicable	0%	100% of normal taxes on Project

5. Installation of the Project shall commence as provided in Section 1.8.3, above.
6. The PILOT required for any Year is in lieu of all *ad valorem* property taxes (School, County, State and other) with respect to items of property comprising the Project titled to the Authority in connection with the issuance of the Bond. The Company shall pay normal property taxes with respect to property not so titled to the Authority.
7. As to depreciation of the items of property comprising the Project, while Group III depreciation classification is assumed for purposes of illustration in the table above and to assist in estimating PILOTS and savings, the actual depreciation class reflected in the

Community Investment Report detailing the items of property comprising the Project as submitted by the Company shall be used to calculate PILOTs for each Year of the Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**SCHEDULE 4**

**COMMUNITY INCENTIVES SCHEDULE**

1. The recovery value (“**Recovery Value**”) of each of the community incentives provided pursuant to the Sections of this Agreement identified below shall be as specified in the rows of the table set forth below (the “**Incentives Table**”), with any payments to be made by the Company as provided in this Community Incentives Schedule to the recipients indicated as follows:

<b>INCENTIVES TABLE</b>				
<b>Section</b>	<b>Incentive</b>	<b>Recovery Value</b>	<b>Recovery Factor</b>	<b>Recovery Paid To</b>
3.2	Property Tax Savings on Project	Actual amount of <i>ad valorem</i> property taxes on Project saved each year	100%	Authority

2. The Company shall make a payment with respect to each incentive listed in the Incentives Table above (each payment, a “**Community Recovery Payment**,” and collectively, the “**Community Recovery Payments**”) to the respective parties so specified based on the Recovery Value as so determined for each year included in the Performance Period in which a Project Shortfall Percentage greater than 20% is determined as provided in this Agreement. If the Project Shortfall Percentage is 20% or less, there shall be no Community Recovery Payment due.
3. The table set forth below (“**Community Goals Table**”) sets forth the applicable Community Jobs Goal and Community Investment Goal:

<b>COMMUNITY GOALS TABLE</b>		
<b>Performance Period (Includes All Years Scheduled Below)</b>	<b>Community Jobs Goal (Cumulative)</b>	<b>Community Investment Goal (Cumulative)</b>
Year 1	5	\$10,000,000
Year 2	15	\$20,000,000
Year 3 – Year 4	25	\$30,000,000

4. The Community Jobs Goal and the Community Investment Goal in any Year are each subject to the effect of Force Majeure. The effect of Force Majeure for such purposes shall be that for any Year in which the Company is entitled to claim, and does claim, the benefit of such provision, the Company shall be considered in compliance with its Community Jobs Goal and/or Community Investment Goal, as applicable, provided that, in no event shall Force Majeure extend the Savings Schedule or the Term.

5. For each Year for which a Project Shortfall Percentage is determined to be greater than 20% as provided in this Agreement, in order to determine the Community Recovery Payment for each incentive in the Incentives Table, such Project Shortfall Percentage shall be multiplied times the Recovery Value, the result shall be multiplied times the corresponding Recovery Factor, the result shall be the Community Recovery Payment, and the Company shall pay the amount thereof to the Authority pursuant to the terms of this Agreement (specifically, Section 3.2.2(c) hereof). For the avoidance of doubt, if the Project Shortfall Percentage is 20% or less, there shall be no Community Recovery Payment due.
6. (a) Each of the following shall be a “**Trigger Event**” hereunder:
- (i) The expiration or termination of the Bond Lease at a time when any part of the Project is subject to a Payment Percentage less than 100%, including, without limitation, expiration or termination in connection with the exercise of the Purchase Option.
  - (ii) A “**Plant Closing.**” A Plant Closing is defined as the permanent or temporary shutdown of the Facility, if the shutdown results in an “employment loss” during any 30-day period at the Facility for 80% or more of the employees at the Facility, excluding any part-time employees, or if all jobs are lost at the Facility. The term “**employment loss**” means (1) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (2) a layoff exceeding 6 months, or (3) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period. An employment action that results in the effective cessation of production of the work performed at the Facility, even if a few employees remain, is a shutdown. A “**temporary shutdown**” is a Trigger Event only if there are a sufficient number of terminations, layoffs exceeding six months, or reductions in hours of work as specified under the definition of “employment loss.”
  - (iii) A “**Mass Layoff.**” The term Mass Layoff means a reduction in work force which first, is not the result of a Plant Closing, and second, results in an employment loss at the Facility during any 30-day period for at least 1/2 of the active employees, excluding part-time employees.
- (b) Upon the occurrence of a Trigger Event, the Purchase Option shall be deemed exercised by the Company, the Company shall cause the Bond to be retired or cancelled, and the Payment Percentage shall thereupon become 100% (and the Savings Percentage shall become 0%) as to all years after the Year in which the Trigger Event occurred. If necessary to assure that there are no property tax savings after the Year in which the Trigger Event occurred, the Company shall pay to the Authority with respect to the Project, such payments in lieu of taxes as are necessary so that normal property taxes due on the items of property comprising the Project plus such payments in lieu of taxes would equal 100% of what normal taxes would be if title to such property had been vested in the Company as of January 1 of the applicable year.

**SCHEDULE 4.2**

**RULES FOR SATISFYING THE COMMUNITY JOBS GOAL**

1. For purposes of this Agreement, the number of new “full-time jobs” shall be defined and determined, from time to time, as provided follows:
  - a) Only direct employees of the Company (or its Affiliates) whose jobs are physically performed at the Facility shall be counted.
  - b) In determining the number of full-time jobs, a portion of the definition of “full-time job” from the job tax credit regulations of the Georgia Department of Community Affairs, which portion is set forth below, shall be used, but shall be modified as follows: “In no event shall any temporary employee or leased employee be counted as occupying a full-time job, regardless of whether or not such person is employed by the Company or any other person or entity.”
  - c) Subject to such modification, “**full-time job**” means the following: “a job with no predetermined end date (other than a retirement date), that did not previously exist prior to the Project within the State of Georgia, with a regular work week of 35 hours or more on average for the entire normal year of local Company operations, and with benefits provided to other regular employees of the local Company, including the opportunity for access to, but not necessarily paid or subsidized, medical benefits, but does not mean a job classified for federal tax purposes as an independent contractor.”

For purposes of this Agreement, an individual’s employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. In addition, the employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such terms are defined and delimited from time to time by regulations of the Secretary of Labor, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

2. The number of full-time jobs shall be calculated as provided below.
  - a) The number of jobs shall be determined based on the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year.
  - b) The monthly average number of full-time employees in a taxable year shall be determined by the following method:
    - (i) for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;



- (ii) add the monthly totals of full-time employees; and
- (iii) divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs, except for jobs transferred to the Facility from outside the State of Georgia, and replacement jobs, may not be included in the monthly totals.

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## SCHEDULE 4.4

### RULES FOR SATISFYING THE COMMUNITY INVESTMENT GOAL

For purposes of the Community Investment Goal:

1. Only capital investments in the Project by the Company and its Affiliates shall be counted, except as provided in 4, below.
2. Original cost, without regard to depreciation, shall be used in calculating whether the Community Investment Goal is met, except as provided in 3, below.
3. Transferred equipment relocated by the Company or its Affiliates to the Facility, to be used as part of the Project, may be counted at net book value, or, if requested and substantiated by the Company to the Authority's satisfaction, and approved by the Authority, its fair market value.
4. Machinery and equipment leased to the Company or its Affiliates under an operating lease (even though such property is not titled to the Authority and is not leased to the Company under the Bond Lease) and other machinery and equipment owned or beneficially owned by the Company or its Affiliates but not leased to it under the Bond Lease, shall be counted (but such machinery and equipment will not be subject to the tax savings provided for in the Savings Schedule).

SCHEDULE 4.6

FORM OF ANNUAL REPORT

[DATE]

[AUTHORITY]

**Re: Memorandum of Understanding (“MOU”) and Economic Development Agreement (“EDA”) between the [AUTHORITY] (“Authority”) and [COMPANY] (“Company”) regarding the capital project located in [COUNTY], Georgia (the “Project”) – 20\_\_ Annual Report**

Dear \_\_\_\_\_:

This letter shall serve as the 20\_\_ Annual Report, as required under the MOU and EDA.

1. Community Jobs Report

As of December 31, 20\_\_, the total number of full-time jobs located at the Facility was \_\_\_\_\_. We have enclosed \_\_\_\_\_, as evidence of such job creation.

The Community Jobs Goal for \_\_\_\_\_ was \_\_\_\_\_ jobs. The Community Jobs Shortfall for the year \_\_\_\_\_ is \_\_\_\_\_ jobs. The Community Jobs Shortfall Percentage is \_\_\_\_\_% (\_\_\_\_ ÷ \_\_\_\_).

2. Community Investment Report

As of December 31, 20\_\_, the Company has invested \$\_\_\_\_\_ in the Project.

The Community Investment Goal for 20\_\_ was \$\_\_\_\_\_. Therefore, the Community Investment Shortfall Percentage is \_\_\_\_%.

3. Community Recovery Payments

The Project Shortfall Percentage for 20\_\_ is \_\_\_\_\_% ((\_\_\_\_% + \_\_\_\_%) ÷ 2). [IF A COMMUNITY RECOVERY PAYMENT IS DUE, THAT PAYMENT SHOULD BE CALCULATED HERE BASED ON THE COMMUNITY INCENTIVES SCHEDULE IN THE MOU. NO RECOVERY PAYMENT IS REQUIRED UNLESS THE PROJECT SHORTFALL PERCENTAGE EXCEEDS 20%.]

4. Outstanding Bond Balance

As of December 31, 20\_\_, the outstanding balance on the Bond was \$\_\_\_\_\_.

Please do not hesitate to let us know if you require any additional information.

Sincerely,  
Enclosures

Schedule 4.6