

COUNTY COUNCIL OF BEAUFORT COUNTY  
ADMINISTRATION BUILDING  
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2180  
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D. PAUL SOMMERVILLE  
CHAIRMAN

GERALD W. STEWART  
VICE CHAIRMAN

COUNCIL MEMBERS

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JOSHUA A. GRUBER  
INTERIM COUNTY ADMINISTRATOR

THOMAS J. KEAVENY, II  
COUNTY ATTORNEY

AGENDA  
COUNTY COUNCIL OF BEAUFORT COUNTY

REGULAR SESSION

Monday, June 11, 2018

6:00 p.m.

Council Chambers, Administration Building  
Beaufort County Government Robert Smalls Complex  
100 Ribaut Road, Beaufort

1. CALL TO ORDER - 6:00 P.M.
2. REGULAR SESSION
3. PLEDGE OF ALLEGIANCE
4. INVOCATION – Councilman Michael Covert
5. PROCLAMATION –Gullah/Geechee Nation Appreciation Week ([backup](#))
6. ADMINISTRATIVE CONSENT AGENDA
  - A. Committee Reports (next meeting)
    1. Natural Resources (June 18, 2018 at 2:00 p.m., ECR)
    2. Community Services (June 18, 2018 at 4:00 p.m., ECR)
    3. Public Facilities (June 25, 2018 at 3:00 p.m., ECR)
  - B. Boards and Commissions ([backup](#))
7. PUBLIC COMMENT – Speaker sign-up encouraged no later than 5:45 p.m. day of meeting
8. TIME-SENSITIVE ITEMS POTENTIALLY COMING FORTH FROM June 11, 2018 COMMITTEE MEETINGS FOR COUNCIL CONSIDERATION
  - A. CONTRACT AWARD / HDPE PIPE SUPPLY SERVICES / PUBLIC WORKS DEPARTMENT / STORMWATER SECTION ([backup](#))
    1. Contract Award: Crumpler Plastic Pipe, Inc., Roseboro, North Carolina
    2. Contract Amount: \$70,200
    3. Funding Source: Stormwater Utility Enterprise Fund, Account 50250011-53270, Pipe Supplies
    4. Public Facilities Committee Discussion to occur June 11, 2018
  - B. CONTRACT AWARD / HAULING YARD WASTE RECYCLING SERVICES / PUBLIC WORKS DEPARTMENT / SOLID WASTE AND RECYCLING SECTION (\$192,000) ([backup](#))
    1. Contract Award: South Coast Resources, Inc., Savannah, Georgia



2. Contract Amount: \$192,000
3. Funding Source: Solid Waste and Recycling Account 10001340-51166
4. Public Facilities Committee Discussion to occur June 11, 2018

C. CONTRACT AWARD / SCRAP /WASTE TIRE SERVICES / PUBLIC WORKS DEPARTMENT / SOLID WASTE AND RECYCLING SECTION (\$94,500) (backup)

1. Contract Award: C2G, Ltd. Co.
2. Contract Amount: \$94,500
3. Funding Source: Solid Waste and Recycling Account 23450011-51160
4. Public Facilities Committee Discussion to occur June 11, 2018

D. CONSIDERATION OF APPROVAL OF JENKINS ISLAND CONTRACT MODIFICATION AND PROJECT FEE SUMMARY (\$170,493.80) (backup)

E. CONSIDERATION OF AWARD FOR OUTDOOR WARNING SIREN GRANT / DISASTER RECOVERY (backup)

9. CONSENT AGENDA

A. CONTRACT RENEWALS PURSUANT TO FY 2019 BUDGET AUTHORIZATION (backup)

1. REPUBLIC WASTE SERVICES / HAULING SERVICES TO INCLUDE DAUFUSKIE
2. SOUTHERN HEALTH PARTNERS / HEALTHCARE SERVICES FOR COUNTY DETENTION CENTER
3. A & B CLEANING SERVICE, INC. / JANITORIAL SERVICES FOR COUNTY FACILITIES
4. OAKWOOD LANDFILL WASTE MANAGEMENT / DISPOSAL OF CLASS II WASTE
5. SUMMIT FOOD SERVICE (FORMERLY ABL MANAGEMENT) / FOOD SERVICE PROGRAM FOR THE BEAUFORT COUNTY DETENTION CENTER
6. SOUTH DATA / PRINTING AND MAILING SERVICES FOR THE COUNTY PROPERTY TAX BILLS
7. EASTERN AVIATION / AVGAS AND JET FUEL FOR RESALE
8. CLARKE MOSQUITO CONTROL PRODUCTS, INC. / PUBLIC HEALTH INSECTICIDE FOR MOSQUITO CONTROL
9. MANATRON / AUMENTUM (THOMAS REUTERS) / PROPERTY ASSESSMENT AND TAX SOFTWARE AND SUPPORT FOR THE ASSESSOR, AUDITOR AND TREASURER OFFICES
10. AUTOMATED BUSINESS RESOURCES (ABR) / PHOTOCOPIER/MULTIFUNCTION PRINTER LEASE AND PRINT MANAGEMENT SERVICES FOR BEAUFORT COUNTY
11. SHI – SOFTWARE HOUSE, INC. / MICROSOFT ENTERPRISE AGREEMENT
12. EMS MANAGEMENT AND CONSULTANTS / BILLING SERVICES FOR BEAUFORT COUNTY EMS
13. BEAUFORT COUNTY OPEN LAND TRUST / RURAL AND CRITICAL LAND PRESERVATION PROGRAM CONSULTING SERVICES
14. CARE ENVIRONMENTAL CORPORATION / HAULING SERVICES FOR HAZARDOUS WASTE
15. TYLER TECHNOLOGIES / ANNUAL SUPPORT AND LICENSE AGREEMENT FOR MUNIS (INCLUDES DISASTER RECOVERY CONTRACT)
16. BEAUFORT COUNTY DISABILITIES AND SPECIAL NEEDS / JANITORIAL SERVICES FOR BUCKWALTER, BURTON, ST. HELENA LIBRARY
17. HILTON HEAD HUMANE ASSOCIATION (SNAC: SPAY/NEUTER) / VETERINARY AND SPAY / NEUTER SERVICES FOR COUNTY ANIMAL SHELTER

B. A RESOLUTION AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN BEAUFORT COUNTY,

SOUTH CAROLINA (THE “COUNTY”) AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT MCCLELLAN, ACTING FOR ITSELF, ONE OR MORE AFFILIATES AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE “COMPANY”), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES AT ONE OR MORE LOCATIONS IN THE COUNTY (COLLECTIVELY, THE “PROJECT”); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO. (backup)

- C. AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT MCCLELLAN, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE “COMPANY”), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY (THE “PROJECT”); (2) CERTAIN SPECIAL SOURCE REVENUE CREDITS WITH RESPECT TO THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO. (backup)
- D. AN ORDINANCE AUTHORIZING AND APPROVING (1) THE DEVELOPMENT OF A NEW JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, IN CONJUNCTION WITH JASPER COUNTY (THE “PARK”) SUCH PARK TO BE GEOGRAPHICALLY LOCATED IN BEAUFORT COUNTY AND TO INCLUDE THE BELOW REFERENCED PROPERTY; (2) THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH JASPER COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE IN LIEU OF AD VALOREM TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; (4) THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN BEAUFORT COUNTY; AND (5) OTHER MATTERS RELATED THERETO. (backup)
- E. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY BEAUFORT, SOUTH CAROLINA, AND SEABROOK SOLAR, LLC. (backup)
- F. AN ORDINANCE ESTABLISHING A CONDITIONAL USE FOR AFFORDABLE HOUSING DEVELOPMENTS IN THE REGIONAL CENTER MIXED USE (C5) ZONE DISTRICT (AMENDS BY SUBSTITUTION, HOTEL TO APARTMENT CONVERSION ON UNIT-TO-UNIT BASIS) (backup)
1. Consideration of second reading to occur June 11, 2018
  2. Planning Commission approval of amended version occurred June 4, 2018 / Vote 8:1
  3. Natural Resources Committee recommends approval of Ordinance as a substitute for the hotel conversion, subject to independent review and recommendations of Planning Commission occurred May 21, 2018 / Vote 5-0-1
  4. Natural Resources Committee deferred to staff for 30 days for recommendations occurred April 16, 2018

5. County Council discussion to refer back to Natural Resources Committee occurred April 9, 2018
6. First reading approval occurred March 26, 2018
7. Natural Resources Committee discussion and recommendation to approve occurred March 19, 2018 / Vote 6:1
8. Planning Commission approval occurred February 5, 2018/ Vote 3:2

10. PUBLIC HEARINGS – 6:30 P.M.

A. FISCAL YEAR 2018-2019 AIRPORTS BUDGET PROPOSAL (ENTERPRISE FUND)

1. Consideration of approval on third and final reading to occur June 11, 2018
2. Second reading approval occurred May 29, 2018 / Vote
3. First reading, by title only, approval occurred May 14, 2018 / Vote 11:0
4. Finance Committee discussion and recommendation to approve ordinance on first reading occurred May 7, 2018 / Vote 6:1

B. FISCAL YEAR 2018-2019 STORMWATER MANAGEMENT UTILITY BUDGET PROPOSAL (ENTERPRISE FUND)

1. Consideration of approval on third and final reading to occur June 11, 2018
2. Second reading approval occurred May 29, 2018
3. First reading, by title only, approval occurred May 14, 2018 / Vote 11:0
4. Finance Committee discussion and recommendation to approve ordinance on first reading occurred May 7, 2018 / Vote 7:0

C. AN ORDINANCE TO PROVIDE FOR APPROPRIATIONS FROM THE LOCAL ACCOMMODATIONS TAX FUND TO THE SANTA ELENA FOUNDATION IN THE AMOUNT NOT TO EXCEED \$100,000 TO PROVIDE FOR FEES ASSOCIATED WITH A TWO-YEAR LEASE EXTENSION FOR PROPERTY KNOWN AS THE DOWLING FAMILY LOT

1. Consideration of approval on third and final reading to occur June 11, 2018
2. Second reading approval occurred May 29, 2018 / Vote
3. First reading approval occurred May 14, 2018 / Vote 11:0
4. Finance Committee discussion and recommendation to approve ordinance on first reading occurred May 7, 2018 / Vote 7:0

D. AN ORDINANCE TO PROVIDE FOR ALLOCATION OF FUNDS FOR BEAUFORT MEMORIAL HOSPITAL INDIGENT CARE, BEAUFORT / JASPER / HAMPTON COMPREHENSIVE HEALTH SERVICES, INC., ECONOMIC DEVELOPMENT, AND HIGHER EDUCATION BASED ON A MILLAGE AMOUNT TO BE DETERMINED BY THE ANNUAL BUDGET ORDINANCE

1. Consideration of approval on third and final reading to occur June 11, 2018
2. Second reading approval occurred May 29, 2018 / Vote
3. First reading approval occurred May 14, 2018 / Vote 11:0
4. Finance Committee discussion and recommendation to approve ordinance on first reading occurred May 7, 2018 / Vote 6:1

E. TEXT AMENDMENT TO THE BEAUFORT COUNTY CODE OF ORDINANCES, CHAPTER 66, ARTICLE II, ACCOMMODATIONS TAX BOARD, DIVISION 1, SECTION 66-29 POWERS AND DUTIES (DMO/DESIGNATED MARKETING ORGANIZATION)

1. Consideration of approval on third and final reading to occur June 11, 2018
  2. Second reading approval occurred May 29, 2018 / Vote
  3. First reading approval occurred May 14, 2018 / Vote 11:0
  4. Finance Committee discussion and recommendation to approve ordinance on first reading, occurred May 7, 2018 / Vote 7:0
- F. TEXT AMENDMENT TO THE BEAUFORT COUNTY CODE OF ORDINANCES, CHAPTER 66, ARTICLE II, ACCOMMODATIONS TAX BOARD, DIVISION 2, SECTION 66-47 MANAGEMENT AND USE OF LOCAL (3%) ACCOMMODATIONS TAX
1. Consideration of approval on third and final reading to occur June 11, 2018
  2. Second reading approval occurred May 29, 2018 / Vote
  3. First reading approval occurred May 14, 2018 / Vote 11:0
  4. Finance Committee discussion and recommendation to approve ordinance on first reading occurred May 7, 2018 / Vote 6:0
- G. AN ORDINANCE AUTHORIZING THE INTERIM COUNTY ADMINISTRATOR TO EXECUTE NECESSARY DOCUMENTS TO GRANT AN EASEMENT AND MAINTENANCE AGREEMENT WITH THE CITY OF BEAUFORT FOR A PEDESTRIAN AND BICYCLE TRAIL CONNECTING THE CITY’S SOUTHSIDE PARK AND THE COUNTY’S ADJACENT PARK FACILITY AT 1405 BATTERY CREEK ROAD
1. Consideration of approval on third and final reading to occur June 11, 2018
  2. Second reading approval occurred May 29, 2018 / Vote
  3. First reading approval occurred May 14, 2018 / Vote 11:0
  4. Public Facilities Committee discussion and recommendation to approve ordinance on first reading occurred April 23, 2018 / Vote 6:0
- H. FISCAL YEAR 2018-2019 BEAUFORT COUNTY BUDGET PROPOSAL
1. Consideration of approval on third and final reading to occur June 11, 2018
  2. Second reading approval occurred May 29, 2018 / Vote
  3. First reading, by title only, approval occurred May 14, 2018 / Vote 11:0
  4. Finance Committee discussion occurred May 7, 2018
  5. Finance Committee discussion occurred April 2, 2018
- I. FISCAL YEAR 2018-2019 BEAUFORT COUNTY SCHOOL DISTRICT BUDGET PROPOSAL
1. Consideration of approval on third and final reading to occur June 11, 2018
  2. Second reading approval occurred May 29, 2018 / Vote
  3. First reading, by title only, approval occurred May 14, 2018 / Vote 11:0
  4. Finance Committee discussion and recommendation to approve ordinance on first reading, by title only, occurred May 7, 2018 / Vote 7:0
  5. Finance Committee discussion occurred April 2, 2018
11. MATTERS ARISING OUT OF EXECUTIVE SESSION
12. PUBLIC COMMENT - Speaker sign-up encouraged
13. ADJOURNMENT

# Beaufort County Council

WHEREAS, Gullah/Geechee Nation Appreciation Week began in 2012; and

WHEREAS, this celebration of the living legacy of Gullah/Geechee history, heritage, and culture came about due to the work of St. Helena Island native, Queen Quet, Chieftess of the Gullah/Geechee Nation; and

WHEREAS, Queen Quet and Kwame Sha founded the "Gullah/Geechee Nation International Music & Movement Festival™" on St. Helena Island in 2005; and

WHEREAS, the festival is the culminating event of "Gullah/Geechee Nation Appreciation Week"; and

WHEREAS, Beaufort County now joins with all other counties and cities of the Gullah/Geechee Nation in these celebrations; and

WHEREAS, as a show of our support, we are calling on all citizens and visitors to Beaufort County to take part in the activities associated with these events which are part of global activities for the United Nation's International Decade of People of African Descent; and

WHEREAS, in 2017 the first "Gullah/Geechee Visitors Center" was opened in Beaufort to welcome visitors seeking to connect with this rich culture that adds to the beauty and historic legacy of our county; and

WHEREAS, Gullah/Geechee Nation Appreciation Week allows us to highlight Gullah/Geechee aspects of history for our community and visitors; and

WHEREAS, the theme for this year's celebration, which is being held in Beaufort County once again, is "Disya da Gullah/Geechee"; and

WHEREAS, the Beaufort County acknowledges the natives of the Gullah/Geechee Nation from Jacksonville, North Carolina to Jacksonville, Florida throughout the Sea Islands and Lowcountry and support the honoring of their ancestors who built this region and the continuation of this rich cultural heritage,

NOW, THEREFORE, BE IT RESOLVED, that Beaufort County Council does hereby proclaim the week of July 28 through August 5, 2018 as

## Gullah / Geechee Nation Appreciation Week

Dated this 11<sup>th</sup> day of June, 2018.

  
D. Paul Sommerville, Chairman



Boards and Commissions  
Reappointments and Appointments  
May 29, 2018

**1 Community Services Committee**

***Library Board***

<u>Nominate</u>	<u>Name</u>	<u>Position/Area/Expertise</u>	<u>Reappoint/Appoint</u>	<u>Votes Required</u>	<u>Term/Years</u>	<u>Expiration</u>
05.29.18	Victoria Woodhead	Council District 5	Appoint	06/11	Partial-Term	2/20

**2 Natural Resources Committee**

***Beaufort/Jasper Water and Sewer Authority***

<u>Nominate</u>	<u>Name</u>	<u>Position/Area/Expertise</u>	<u>Reappoint/Appoint</u>	<u>Votes Required</u>	<u>Term/Years</u>	<u>Expiration</u>
05.29.18	Donald Manson	Countywide	Reappoint	08/11	6	07/24



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

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

**TO:** Councilman Stu Rodman, Chairman, Public Facilities Committee  
**FROM:** David L Thomas, CPPO, Purchasing Director  
**SUBJ:** New Contract as a Result of Solicitation  
IFB 050218, HDPE Pipe Supply Services, Public Works/Stormwater Department  
**DATE:** 05/23/2018

**BACKGROUND:**

The Purchasing Department received two bids on May 2, 2018, from qualified high density polyethylene pipe (HDPE) suppliers. The awarded contractor will provide HDPE piping supplies on an on-call basis in support of Public Work's Stormwater projects. This contract is good for one year and may be renewed each year (up to four more years) for a total not to exceed five years subject to County Council approval.

**VENDOR INFORMATION:**

Crumpler Plastic Pipe, Inc. - Roseboro, NC

Fortiline -, North Charleston, SC

**COST:**

\$70,200

\$93,460

**FUNDING:**




Stormwater Utility Enterprise Fund, Account 50250011-53270, Pipe Supplies.

Funding approved: Yes By: aholland Date: 05/31/2018

**FOR ACTION:** Public Facilities Committee meeting on June 11, 2018.

**RECOMMENDATION:**

The Purchasing Department recommends that the Public Facilities Committee approve the contract award of \$70,200 to Crumpler Plastic Pipe, Inc., in order to provide the required piping supplies for Public Work's Stormwater projects.

Attachment:  IFB 050218 HDPE Pipe for BC Public Works Dept Prelim Bid Tab and Bid Form Pricing.pdf  
280.62 KB

cc: Joshua Gruber, Interim County Administrator

Approved: Yes Date: 06/05/2018

Check to override approval:  Overridden by:

Override Date:

Alicia Holland, Assistant County Administrator, Finance

Approved: Yes Date: 05/31/2018

Eric Larson, Director, Environmental Engineering & Land Mar

Approved: Yes Date: 05/31/2018

Check to override approval:  Overridden by:

Override Date: ready for admin:

David Wilhelm, Director, Public Works Department

Approved: Yes Date: 06/05/2018

Check to override approval:  Overridden by:

Override Date: ready for admin:

**After Initial Submission, Use the Save and Close Buttons**

**IFB 050218 HDPE Pipe for BC Public Works Dept  
BID FORM**

Quantity	U/M	Comodity or Services	Unit Price	Total Price	
500	LF	12" HDPE Bell and Spigot	Crumpler	4.55	2,275.00
			Fortiline	5.62	2,810.00
200	LF	12" Perforated HDPE Bell and Spigot w/ Sock	Crumpler	5.12	1,024.00
			Fortiline	5.33	1,066.00
1000	LF	15" HDPE Bell and Spigot	Crumpler	6.25	6,250.00
			Fortiline	7.51	7,510.00
200	LF	15" Perforated HDPE Bell and Spigot w/ Sock	Crumpler	6.78	1,356.00
			Fortiline	7.39	1,478.00
1000	LF	18" HDPE Bell and Spigot	Crumpler	8.90	8,900.00
			Fortiline	8.66	8,660.00
200	LF	18" Perforated HDPE Bell and Spigot w/ Sock	Crumpler	9.56	1,912.00
			Fortiline	10.83	2,166.00
1200	LF	24" HDPE Bell and Spigot	Crumpler	14.35	17,220.00
			Fortiline	16.66	19,992.00
200	LF	24" Perforated HDPE Bell and Spigot w/ Sock	Crumpler	15.08	3,016.00
			Fortiline	17.12	3,424.00
100	LF	30" HDPE Bell and Spigot	Crumpler	22.45	2,245.00
			Fortiline	21.12	2,112.00
100	LF	30" Perforated HDPE Bell and Spigot w/ Sock	Crumpler	23.81	2,381.00
			Fortiline	23.56	2,356.00
100	LF	36" HDPE Bell and Spigot	Crumpler	34.50	3,450.00
			Fortiline	26.85	2,685.00
100	LF	36" Perforated HDPE Bell and Spigot w/ Sock	Crumpler	35.90	3,590.00
			Fortiline	30.33	3,033.00
100	LF	42" HDPE Bell and Spigot	Crumpler	41.40	4,140.00
			Fortiline	38.96	3,896.00
5	EA	18" Corrugated Flared End	Crumpler	121.50	607.50
			Fortiline	230.57	1,152.85
5	EA	24" Corrugated Flared End	Crumpler	130.50	652.50
			Fortiline	292.80	1,464.00
5	EA	15" Corrugated End Cap	Crumpler	49.30	246.50
			Fortiline	287.84	1,439.20
5	EA	18" Corrugated End Cap	Crumpler	55.33	276.65
			Fortiline	383.74	1,918.70
10	EA	18" 45 Degree Elbow	Crumpler	88.47	884.70
			Fortiline	342.25	3,422.50
10	EA	24" 45 Degree Elbow	Crumpler	135.55	1,355.50
			Fortiline	550.73	5,507.30
10	EA	18" 90 Degree Elbow	Crumpler	114.44	1,144.40
			Fortiline	369.20	3,692.00
10	EA	24" 90 Degree Elbow	Crumpler	193.15	1,931.50
			Fortiline	588.08	5,880.80
5	EA	15" Split Coupling	Crumpler	11.70	58.50
			Fortiline	18.71	93.55
10	EA	18" Split Coupling	Crumpler	16.20	162.00
			Fortiline	29.48	294.80
10	EA	24" Split Coupling	Crumpler	18.09	180.90
			Fortiline	42.16	421.60
5	EA	36" Split Coupling	Crumpler	65.83	329.15
			Fortiline	139.89	699.45
5	EA	42" Split Coupling	Crumpler	126.88	634.40
			Fortiline	199.14	995.70

Crumpler	Fortiline
<b>Totals</b>	
\$70,200.94	\$93,460.70

725 72.50

276.55 -0.1

699.9 0.45

Sales Tax		Totals	
Crumpler	3977.74	Crumpler	\$70,200.94
Fortiline	5290.25	Fortiline	\$93,460.70



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

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

**TO:** Councilman Stu Rodman, Chairman, Public Facilities Committee

**FROM:** David L Thomas. CPPO. Purchasing Director

**SUBJ:** New Contract as a Result of Solicitation  
 RFP 042618, Yard Waste Recycling Services for Beaufort County

**DATE:** 06/07/2018

**BACKGROUND:**

Beaufort County issued a Request for Proposal (RFP) to solicit proposals from qualified firms to provide services to Beaufort County Public Works Department Solid Waste and Recycling Section to provide yard waste recycling services for County Convenience Centers. A pre-proposal meeting was held on April 5, 2018, and proposals were opened on April 26, 2018.

The staff evaluation committee reviewed the proposals for capability, the firms' experience, performance capability and proposed cost. Evaluation committee members consisted of David Wilhelm, Public Works Director; John Miller, Public Works Operations Manager, Bradley McAbee Solid Waste Operations Superintendent and Cindy Carter, Solid Waste Coordinator. The panel ranked the firms according to the RFP selection criteria and determined South Coast Resources, Inc., to be the top ranked firm.

**VENDOR INFORMATION:**

**COST:**

1. South Coast Resources, Inc., Savannah, GA second year; \$125 per load, fourth and fifth years	\$115 per load-first year; \$120 per load-
2. Oliver's Clean Burn, LLC, Beaufort, SC *Only burn the yard waste; considered non-responsive to the recycling services outlined in the RFP.	\$23.00* per ton disposal
Total estimated cost per year:	\$192,000

Insert Addition Vendor Info.

**FUNDING:**

Solid Waste and Recycling Account, 10001340-51166, Fiscal Year 2019 Proposed Appropriation for Solid Waste and Recycling is \$7.6 million, an increase of \$400 thousand as compared to Fiscal Year 2018.

Funding approved: Yes By: aholland Date: 06/08/2018

**FOR ACTION:** Public Facilities Committee on June 11, 2018.

**RECOMMENDATION:**

The Purchasing Department recommends that the Public Facilities Committee approve and recommend to County Council the contract award to South Coast Resources, Inc. \$ 192,000. (Estimate based on average number of container pulls which will vary)

Attachment: Copy of RFP 042618 Bid Tab and Pricing with Score Summary.pdf  
270.44 KB

cc: Joshua Gruber, Interim County Administrator

Approved: Yes Date: 06/08/2018

Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Override Date: <input type="text"/>
Alicia Holland, Assistant County Administrator, Finance		Approved: Yes <input type="button" value="v"/> Date: 06/08/2018 <input type="button" value="calendar"/>
Eric Larson, Director, Environmental Engineering & Land <input type="button" value="v"/>		Approved: Select... <input type="button" value="v"/> Date: <input type="text"/>
Check to override approval: <input checked="" type="checkbox"/>	Overridden by: lmaietta	Override Date: 06/08/2018 <input type="button" value="calendar"/> ready for admin: <input checked="" type="checkbox"/>
David Wilhelm, Director, Public Works Department <input type="button" value="v"/>		Approved: Yes <input type="button" value="v"/> Date: 06/08/2018 <input type="button" value="calendar"/>
Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Override Date: <input type="text"/> ready for admin: <input checked="" type="checkbox"/>
Cindy Carter Solid Waste Coordinator <input type="button" value="v"/>		Approved: Yes <input type="button" value="v"/> Date: 06/08/2018 <input type="button" value="calendar"/>
Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Override Date: <input type="text"/> ready for admin: <input checked="" type="checkbox"/>

CC others

**After Initial Submission, Use the Save and Close Buttons**





COUNTY COUNCIL OF BEAUFORT COUNTY  
**PURCHASING DEPARTMENT**

106 Industrial Village Road, Bldg 2–Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

TO: Councilman Stu Rodman, Chairman, Public Facilities Committee  
FROM: Dave Thomas, CPPO, Purchasing Director  
SUBJ: RFP #042618 Yard Waste Recycling Services for Beaufort County  
DATE: May 29, 2018

**BACKGROUND:** Beaufort County issued a Request for Proposal (RFP) to solicit proposals from qualified firms to provide services to Beaufort County Public Works Department Solid Waste and Recycling Section to provide yard waste recycling services for County Convenience Centers. A pre-proposal meeting was held on April 5, 2018, and proposals were opened on April 26, 2018.

The staff evaluation committee reviewed the proposals for capability, the firms' experience, performance capability and proposed cost. Evaluation committee members consisted of David Wilhelm, Public Works Director; John Miller, Public Works Operations Manager, Bradley McAbee Solid Waste Operations Superintendent and Cindy Carter, Solid Waste Coordinator. The panel ranked the firms according to the RFP selection criteria and determined South Coast Resources, Inc., to be the top ranked firm.

**VENDOR RANKING AND INFORMATION:**

**COST PER TON**

- |  |  |
|--|--|
| 1. South Coast Resources, Inc., Savannah, GA | \$115 per load-first year<br>\$120 per load-second year<br>\$125 per load-3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> year |
| 2. Oliver's Clean Burn, LLC, Beaufort, SC    | \$23.00* per ton disposal  |
- \*Only burn the yard waste; considered non-responsive to the recycling services outlined in the RFP.

Total estimated cost per year: \$ 192,000.

**FUNDING:** Solid Waste and Recycling Account 10001340-51166

**FOR ACTION:** Public Facilities Committee on June 11, 2018.

**RECOMMENDATION:** The Purchasing Department recommends that the Public Facilities Committee approve and recommend to County Council the contract award to South Coast Resources, Inc. \$ 192,000. (Estimate based on average number of container pulls which will vary)

cc: Joshua Gruber, Interim County Administrator  
Alicia Holland, Asst. Co. Administrator, Finance  
Eric Larson, Director Environmental Engineering  
David Wilhelm, Director Public Works  
Cindy Carter, Solid Waste Coordinator

Attachment: Scoring Evaluation Summary

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
5301 SOUTH CAMPUS DRIVE  
CHICAGO, ILLINOIS 60637

RECEIVED  
JAN 15 1964

TO: DR. J. H. GOLDSTEIN  
FROM: DR. R. M. WAYMIRE  
SUBJECT: POLYMERIZATION OF VINYL MONOMERS  
IN THE PRESENCE OF CATIONIC CATALYSTS

Enclosed for you are two copies of a report on the polymerization of vinyl monomers in the presence of cationic catalysts. The report contains a summary of the work done during the past year and a list of references.

I am sure that you will find this report of interest. If you have any questions or need further information, please do not hesitate to contact me.

Very truly yours,  
R. M. Waymire  
Department of Chemistry  
The University of Chicago



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

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

**TO:** Councilman Stu Rodman, Chairman, Public Facilities Committee

**FROM:** David L Thomas. CPPO. Purchasing Director

**SUBJ:** New Contract as a Result of Solicitation  
 IFB 051718, Scrap/Waste Tire Services for Beaufort County

**DATE:** 05/31/2018

**BACKGROUND:**

Beaufort County issued an Invitation for Bid (IFB) to solicit bids from qualified firms to provide tire hauling and recycling services for the Beaufort County Public Works Department Solid Waste and Recycling Section. Tires are collected at the County Convenience Centers and hauled to the County's Tire Collection Facility for removal. Services include the hauling of scrap/waste tires to a licensed tire recycling facility. An initial IFB #040518 received no response. The second IFB proposals were opened on May 17, 2018.

The staff evaluation committee reviewed the bids for capability, the firms' experience, performance capability and proposed cost. Evaluation committee members consisted of David Wilhelm, Public Works Director; John Miller, Public Works Operations Manager, Bradley McAbee Solid Waste Operations Superintendent and Cindy Carter, Solid Waste Coordinator. The panel selected C2G, Ltd Co., as the lowest responsive/responsible company.

**VENDOR INFORMATION:**

**COST:**

1. C2G, Ltd Co.	\$350.00 per ton
2. Ridge Recyclers, Johnston, SC *	**
**\$150.00 per ton passenger tires, \$175.00 per ton truck tires \$500.00 per ton other tires, \$560.00 per trip transportation	
*Non-responsive bidder - incomplete bid schedule and no surety bond submitted	as required by the IFB.

Insert Addition Vendor Info.

**FUNDING:**

Total estimated cost per year: \$94,500.00, Account 23450011-51160, South Carolina DHEC Waste Tire Fees with \$200 thousand available funding.

Funding approved: Yes By: aholland Date: 06/08/2018

**FOR ACTION:**

Public Facilities Committee on June 11, 2018.

**RECOMMENDATION:**

The Purchasing Department recommends that the Public Facilities Committee approve the contract award of \$94,500 to C2G, Ltd. Co.

Attachment: Copy of IFB 051718 Prelim Bid Tab and Bid Form Pricing.pdf  
222.31 KB

cc: Joshua Gruber, Interim County Administrator



Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Approved: Yes <input type="button" value="v"/>	Date: 06/08/2018 <input type="button" value="c"/>
Alicia Holland, Assistant County Administrator, Finance		Override Date: <input type="text"/>	<input type="button" value="c"/>
Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Approved: Yes <input type="button" value="v"/>	Date: 06/08/2018 <input type="button" value="c"/>
Eric Larson, Director, Environmental Engineering & Land <input type="button" value="v"/>		Approved: Select... <input type="button" value="v"/>	Date: <input type="text"/>
Check to override approval: <input checked="" type="checkbox"/>	Overridden by: lmaietta	Override Date: 06/08/2018 <input type="button" value="c"/>	ready for admin: <input checked="" type="checkbox"/>
David Wilhelm, Director, Public Works Department <input type="button" value="v"/>		Approved: Yes <input type="button" value="v"/>	Date: 06/08/2018 <input type="button" value="c"/>
Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Override Date: <input type="text"/>	ready for admin: <input checked="" type="checkbox"/>
Cindy Carter Solid Waste Coordinator <input type="button" value="v"/>		Approved: Yes <input type="button" value="v"/>	Date: 06/08/2018 <input type="button" value="c"/>
Check to override approval: <input type="checkbox"/>	Overridden by: <input type="text"/>	Override Date: <input type="text"/>	ready for admin: <input checked="" type="checkbox"/>

CC others

**After Initial Submission, Use the Save and Close Buttons**





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

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

**TO:** Councilman Stu Rodman, Chairman, Public Facilities Committee

**FROM:** David L Thomas, CPPO, Purchasing Director

**SUBJ:** Sole Source Purchase  
 Approval of Jenkins Island Contract Modification and Project Fee Summary

**DATE:** 06/06/2018

**BACKGROUND:**

On May 16, 2016, the Beaufort County Public Facilities Committee awarded HDR/ICA Engineering a project known as Engineering Design Services for Jenkins Island-Alternative 2A. The final contract value was \$412,176.22. The plans with the current design are considered 90% complete, however, in order to minimize right-of-way and tree impacts Beaufort County has requested that the design be revised. This change to the project design will result in updated plans for review as well as final construction plans for bidding. Additional fees for proposed plan revisions total \$170,493.80. Plans will be developed to provide the following:

Proposed Project Scope:

- A reduced 45 mph design speed along US 278;
- A modified typical section of 12 foot wide traveled-way lanes in both directions, with curb and gutter in the median and outside lanes;
- Revisions to drainage design due to the proposed closed drainage system;
- Rolling the profile grade of eastbound and westbound travel lanes to meet minimum requirements for drainage on curb and gutter roadways;
- Adding of curb grade profiles;
- Removing the bioswale design and design an inline water quality system to address Beaufort County's infiltration requirements;
- Modification to Nationwide Permit and Critical Area Permit;
- Update the traffic control plans, erosion control plans, typical sections, signing and pavement marking plans, signal plans, cross sections, and utility sheets;
- Coordination with utility owners for necessary relocations and permits.

**VENDOR INFORMATION:**

HDR/ICA Engineering	\$170,439.80
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**COST:**

Insert Addition Vendor Info.

**FUNDING:**

2017 General Obligation Bonds, Account 40100011-54500, Jenkins Island Road Improvement Project has \$7.4 million available funding.

Funding approved:  Yes By: aholland Date: 06/08/2018

**FOR ACTION:** Public Facilities Committee meeting on June 11, 2018.

**RECOMMENDATION:**

The Public Facilities Committee approves and recommends to County Council approval of HDR/ICA Engineering scope and fee in the amount of \$170,493.80 with funding as outlined above.

Attachment: Jenkins Island-Contract Mod Scope and Fee\_20180425.pdf  
 137.7 KB

cc: Joshua Gruber, Interim County Administrator

Approved:  Yes Date: 06/08/2018

Check to override approval:  Overridden by: \_\_\_\_\_ Override Date: \_\_\_\_\_

Alicia Holland, Assistant County Administrator, Finance  
 Approved:  Yes Date: 06/08/2018

Robert McFee, PE, Division Director, Construction, Engin  
 Approved:  Select... Date: \_\_\_\_\_

Check to override approval:  Overridden by: lmaietta Override Date: 06/08/2018 ready for admin:

CC others

After Initial Submission, Use the Save and Close Buttons



COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY TRAFFIC & TRANSPORTATION  
ENGINEERING DEPARTMENT  
2266 Boundary Street, 29902  
PO Drawer 1228, Beaufort, SC 29901-1228  
Phone: (843) 255-2940

TO: Councilman Stu Rodman, Chairman, Public Facilities Committee  
FROM: Colin Kinton, Director of Transportation Engineering *SK*  
SUBJ: **Approval of Jenkins Island Contract Modification and Project Fee Summary**  
DATE: June 11, 2018

**BACKGROUND:** On May 16, 2016, the Beaufort County Public Facilities Committee awarded HDR/ICA Engineering a project known as Engineering Design Services for Jenkins Island-Alternative 2A. The final contract value was \$412,176.22. The plans with the current design are considered 90% complete, however, in order to minimize right-of-way and tree impacts Beaufort County has requested that the design be revised. This change to the project design will result in updated plans for review as well as final construction plans for bidding. Additional fees for proposed plan revisions total \$170,493.80. Plans will be developed to provide the following:

**Proposed Project Scope:**

- A reduced 45 mph design speed along US 278;
- A modified typical section of 12 foot wide traveled-way lanes in both directions, with curb and gutter in the median and outside lanes;
- Revisions to drainage design due to the proposed closed drainage system;
- Rolling the profile grade of eastbound and westbound travel lanes to meet minimum requirements for drainage on curb and gutter roadways;
- Adding of curb grade profiles;
- Removing the bioswale design and design an inline water quality system to address Beaufort County's infiltration requirements;
- Modification to Nationwide Permit and Critical Area Permit;
- Update the traffic control plans, erosion control plans, typical sections, signing and pavement marking plans, signal plans, cross sections, and utility sheets;
- Coordination with utility owners for necessary relocations and permits.

**FUNDING:** Road Impact Fees-Bluffton-Road Improvements, Account #23020011-54500 with an available balance of \$2,003,706.00.

**FOR ACTION:** Public Facilities Committee meeting on June 11, 2018.

**RECOMMENDATION:** The Public Facilities Committee approves and recommends to County Council approval of HDR/ICA Engineering scope and fee in the amount of \$170,493.80 with funding as outlined above.

cc: Joshua Gruber, Interim County Administrator  
Alicia Holland, Asst. County Administrator, Finance  
Rob McFee, Director Facilities and Construction Engineering

Attachment: HDR/ICA Engineering Contract Modification #1 Scope of Services and Schedule and Project Fee Summary

## **ATTACHMENT "A"**

### **SCOPE OF SERVICES AND SCHEDULE**

#### **Introduction**

HDR, Inc. (CONSULTANT) has been authorized by Beaufort County (COUNTY) to provide engineering design and environmental services to incorporate the changes to US 278 and adjacent access points design, from the existing contract, dated July, 2016 in Beaufort County, South Carolina. The plans with current design are considered 90% complete, with wetland and tree permits obtained. This change to the project will consist of modifying the design plans by adding curb & gutter to the median and north and south sides of the roadway. This change will require a change in profile for both directions of travel, new closed drainage systems, updated environmental permits, and a change in the water quality system.

**Project Location** - The project is located along the US 278 roadway corridor on Jenkins Island, from the termini of the Wilton J. Graves Bridge to the beginning of the causeway onto Hilton Head Island, in Beaufort County.

**Proposed Project Scope** – Changes in design will result in updated plans for review as well as final construction plans. Plans will be developed to provide:

- A reduced 45 mph design speed along US 278;
- A modified typical section with 12 foot wide traveled-way lanes in both directions, with curb and gutter in the median and outside;
- Addition of drainage sheets (D Sheets) due to additional drainage for the closed drainage system;
- Rolling the profile grade of eastbound and westbound travel lanes to meet minimum requirements for drainage on curb and gutter roadways;
- Adding of curb grade profiles;
- Removing the bioswale design and design an inline water quality system to address Beaufort County's infiltration requirements;
- Modification to Nationwide Permit and Critical Area Permit
- Update of the traffic control plans, erosion control plans, typical sections, signing and pavement marking plans, signal plans, cross sections, and utility sheets;
- Coordination with utility owners for necessary relocations and permits.

**Summary of Anticipated Services** - An outline of the services anticipated for this project is shown below.

Task 1 – Project Management

Task 2 – Environmental Services

Task 3 – Traffic Study (no changes)

Task 4 – Surveys and Mapping

- Task 5 – Roadway Design
  - Task 6 – Pavement Marking and Signing Plans
  - Task 7 – Traffic Signal Design
  - Task 8 - Transportation Control Design and Plans
  - Task 9 - Stormwater Management/ Hydraulic Design
  - Task 10 – Sediment and Erosion Control/NPDES Permitting
  - Task 11 – Geotechnical Investigations and Engineering Services
  - Task 12 – Roadway Structures Design and Plans (no changes)
  - Task 13 – Subsurface Utilities Engineering (SUE)
  - Task 14 – Utility Coordination
  - Task 15 – Construction Phase Services (no changes)
- 
- 

## Task 1

### PROJECT MANAGEMENT

The CONSULTANT shall institute a program for conformance with COUNTY requirements for monitoring and controlling project engineering design budget, schedule and invoicing procedures. The CONSULTANT's subconsultants shall be included in this program. Proposed dates of submittals, completion of tasks, and final completion of pre-construction services as noted in this agreement will be negotiated with the COUNTY. Included in management of the project will be:

- ◆ Assume 2 additional project meetings between the COUNTY, SCDOT, and CONSULTANT for clarification of scope, discussion of designs, studies, review of submittals, etc. at the discretion of the COUNTY.
- ◆ The CONSULTANT will prepare meeting agenda and meeting materials as well as record the minutes of each meeting in which it participates and distribute to the appropriate COUNTY personnel.
- ◆ Prepare monthly invoices, status reports, and schedule updates. Assume a 4 month additional design schedule which will impact the duration of preparing invoices, status reports, and schedule updates.
- ◆ The CONSULTANT will provide coordination with its SUB-CONSULTANTS during the execution of their work. Assume a 4 month additional design schedule (excludes agency review periods).
- ◆ The CONSULTANT will include the COUNTY in discussions concerning the project prior to submittal of deliverables if that process has the advantage of expediting the completion of a task of the project.

**Task 2****ENVIRONMENTAL SERVICES/PERMITTING**

The CONSULTANT will be responsible for the additional required coordination with Local, State and Federal agencies regarding environmental services to apply for Section 404/401 permits from the U.S Army Corps of Engineers (USACE) and the S.C. Department of Health and Environmental Control (SCDHEC) Office of Ocean and Coastal Resource Management (OCRM). The USACE authorized the proposed improvements through a USACE Nationwide Permit for linear transportation projects (i.e. NWP #14) on January 8, 2018. A Request for Critical Area Permit from SCDHEC-OCRM was issued April 4, 2018.

**Permitting** – It is assumed that the proposed design changes will result in a modification to the permitted impact areas, but will remain below the impact thresholds for USACE Nationwide Permit #14. The CONSULTANT will prepare a modification to the existing permit issued by the USACE. The request for modification will include a cover letter describing proposed design changes and updates to information previously provided in the Impact Assessment Form. The CONSULTANT will prepare revised permit drawings depicting the proposed impacts to waters of the U.S. on the subject property. The CONSULTANT shall include the surveyed or measured boundaries of jurisdictional waters superimposed on the actual development/grading plans to establish the proposed jurisdictional impacts.

The CONSULTANT shall submit the modification to the COUNTY for review and approval. The CONSULTANT shall act as the COUNTY's agent and will coordinate directly with the DEPARTMENT, USACE, SCDHEC and other federal, state and local regulatory personnel throughout the course of the permit application process, and coordinate the submission of additional information as requested by the respective agencies in order to facilitate permit acquisition.

**Archaeological Survey** – The CONSULTANT submitted Section 106 Forms to the State Historic Preservation Office (SHPO). SHPO's response recommended that an archaeological survey be conducted within the project area beyond existing SCDOT Right-of-Way. Task 2 includes fee for Brockington and Associates, a SUBCONSULTANT, to perform the archeological survey, and CONSULTANT coordination between the County, SHPO, and USACE.

**OCRM Critical Area Permit** – The CONSULTANT will coordinate with OCRM to submit modified permit drawings that depict the design updates. The CONSULTANT assumes a public notice will not be required.

**Public Involvement** – This task includes five (5) additional staff needed during a public involvement meeting at Hilton Head High School in May 2017, including travel costs. This task also includes one (1) update to the COUNTY website by providing revised plans.

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**TASK 2 DELIVERABLES**



**Deliverables:**

- USACE NWP #14 request for modification (cover letter and revised permit drawings)
- SCDHEC-OCRM Critical Area Permit request for modification (cover letter and revised permit drawings)

**Assumptions:**

- Design changes will occur within the current Jurisdictional Determination and surveyed Critical Area plat. The scope of services does not include additional delineation of Waters of the US or OCRM Critical Area.
  - Impacts will be within the threshold of a NWP #14, i.e. less than 1/2 acres of impacts to waters of the U.S., including less than 1/3 acres of tidal waters.
  - Additional coordination with the State Historic Preservation Office and field investigations or testing is not included with these services.
  - Consultation under Section 7 of the Endangered Species Act is not included with these services.
  - Permanent impacts are assumed to remain less than 0.10 acre and no mitigation will be proposed. If mitigation is required, the scope of services assumes completion of mitigation worksheets and identification of an available mitigation bank. Purchase of mitigation credits will be the responsibility of the COUNTY. Preparation of a detailed compensatory mitigation plan can be provided under a separate scope and fee.
  - Modification to OCRM Critical Area Permit will not require additional public notice.
  - No additional public meetings will be held as part of this scope of services.
- 

**Task 3**

**TRAFFIC STUDY**

No changes to Task 3 are anticipated.

**Task 4**

**SURVEYS AND MAPPING**

**Tree Impact Coordination** – Task 4 includes a tree survey, conducted by a SUBCONSULTANT Atlas Surveying, and coordination conducted by the CONSULTANT with the COUNTY and the Town of Hilton Head.

## Task 5

### ROADWAY DESIGN

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**Modify Design Criteria** – Design criteria for the project will be modified to address the proposed 45mph design speed.

#### **Roadway Plans**

**FOR THIS MODIFICATION 90% PLANS AND FINAL CONSTRUCTION PLANS ARE ASSUMED. Current plans are assumed to be at the 90% stage.**

**Modified Right-of-Way Exhibits** – Based on discussions with the COUNTY, no modification to the R/W is anticipated for this modification

#### **Final Roadway Design and Plans**

**Roadway Construction Plans** – The construction plans will be assumed to be 90% complete for review and Right-of-Way Acquisition. After review from SCDOT and the COUNTY, final construction plans will be prepared.

Modification to the plans will include a change in the typical section to include curb and gutter, the profile to include “rolling” the grade (to accommodate the minimum grade necessary for drainage), modification of the cross sections, limits of construction, curb grade profiles in the median and outside.

Two (2) meetings with SCDOT and the COUNTY are assumed to discuss changes in design.

### **TASK 5 DELIVERABLES**

#### **Deliverables:**

- Updated Preliminary Construction Plans
    - 2, half-size plan sets & electronic copy PDF
    - Project Cost Estimate (95%)
  - Updated Final Construction Plans
    - 1, full-size set, PDF & CADD files
  - Updated Engineer’s Estimate of Probable Construction Costs
-

**Task 6**

**PAVEMENT MARKING AND SIGNING**

Minor modifications to the current pavement marking and signing plans will be implemented to reflect the addition of curb and gutter.

**Task 7**

**TRAFFIC SIGNAL DESIGN**

Minor modifications to the two (2) current traffic signal designs will be implemented to reflect the addition of curb and gutter. No signal retiming will be performed and the 50mph design speed will remain for this signal timing.

**Task 8**

**WORK ZONE TRAFFIC CONTROL**

Minor modifications to the current work zone traffic control plans will be implemented to reflect the addition of curb and gutter and closed drainage system.

**Task 9**

**STORMWATER MANAGEMENT/HYDRAULIC DESIGN**

This scope will include updated drainage design and reports based on utilizing a closed drainage system and updated roadway profile for eastbound and westbound US 278.

The roadway drainage design for the PROJECT will be performed utilizing design procedures to comply with stormwater management and sediment and erosion control regulations and the NPDES general permit. Drainage calculations will be performed with methods suggested in the SCDOT's *Requirements for Hydraulic Design Studies* dated May 26, 2009, as well as SCDHEC's Best Management Practices and Beaufort County's *Manual for Stormwater Best Management and Design Practices* (March 2012 edition) and will be made available to the COUNTY for approval.

The hydrologic analysis of each watershed will be performed with the appropriate method for the lower coastal plain physiographic region. Pre- and post-construction peak discharges will be computed at each outfall. Outfalls will be evaluated in accordance with SCDOT, NPDES and per COUNTY BMP regulations. If required to control stormwater quality or quantity, detention or water quality basins will be added using a hydraulic routing method. Coordination with the COUNTY will be required to determine preferred method for water quality treatment. CONSULTANT will provide conceptual designs for water quality for coordination with COUNTY prior to proceeding with final water quality design. Treatment options that will be considered are in-line manufactured treatment devices flowing to an infiltration pipe as well as detention ponds.

Energy dissipaters may also be utilized based on HEC-14 procedures. Outfall channel protective measures will be based on design methods in HEC-15 and/or HEC-11.

Roadway cross-lines will be designed and analyzed according to the principles given in FHWA's Hydraulic Design Series No. 5 and COUNTY BMP regulations. Cross-line pipes will be sized based on SCDOT criteria and COUNTY BMP regulations and evaluated for possible backwater effects. To reduce backwater, multiple pipes or multiple barrel culverts may be used in lieu of a single structure. Closed storm sewer systems will be analyzed with GEOPAK Drainage. Roadway inlets, as necessary, will be located based on FHWA's Urban Drainage Design Manual HEC-22. Roadway ditches will be sized with Manning's equation, and HYDRAIN will be used to measure stability.

According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps for Beaufort County, the PROJECT is located within FEMA designated Special Flood Hazard Areas. Therefore, tidal effects and FEMA defined 100-year Stillwater Elevations will be accounted for in the roadway drainage design. This scope of services does not include bridge hydraulic analysis.

The storm sewer design for the PROJECT will be performed to reduce impacts to existing utilities if possible. Existing utility data has been obtained from the utility owners within the project area. The CONSULTANT will utilize this data as part of the design for the storm sewer systems. The CONSULTANT will adjust pipe locations and inverts if possible. If conflicts cannot be avoided, the CONSULTANT will evaluate the use of utility conflict boxes or other devices to minimize the need for utility relocations. The CONSULTANT and the COUNTY acknowledge some utility relocations can be avoided.

The location of the storm drainage systems will be shown on replicated drainage sheets. Additional plan information will include pipe and drainage structure size, location, type and elevation. An updated Stormwater Management Design Report will be prepared for the PROJECT as recommended in this scope of work.

---

## **TASK 9 DELIVERABLES**

### **Deliverables:**

- Updated Stormwater Management Design Report
  - Updated Design Calculations
  - Drainage plan sheets
- 

## Task 10

### **SEDIMENT AND EROSION CONTROL/NPDES PERMITTING**

**Sediment and Erosion Control** – This updated design for US 278 improvements will include the development of updated Sediment and Erosion Control Plans as well as the preparation of Supporting Documentation for the Land Disturbance Permit Application.

**NPDES Permitting** – The project will require the acquisition of a National Pollutant Discharge Elimination System (NPDES) permit for construction activities. The NPDES permit is required by SCDHEC for land disturbing activities in South Carolina.

The CONSULTANT will assist the COUNTY with the development of the NPDES permit application as well as with the submission of required supporting data. The Stormwater Management Report for the project will contain supporting data developed by the CONSULTANT for the project. The CONSULTANT will provide additional calculations and make revisions to the construction plans as required by the permit reviewer. The COUNTY is subject to MS4 permitting by DHEC. The CONSULTANT acknowledges that local MS4 regulations are pending and may impact the NPDES permitting process. Additional work that may become required would be performed under a contract amendment unless the required work involves only a local permit application preparation.

**Coastal Zone Consistency** – Because the proposed utility line is within the South Carolina coastal zone, NPDES permitting will be coordinated with SCDHEC-OCRM to determine if the improvements comply with the Coastal Zone Management Plan. HDR will complete and submit the State Coastal Zone Consistency Request Form and Policy Group Checklist to the COUNTY for their submittal to SCDHEC-OCRM.

---

### **TASK 10 DELIVERABLES**

**Deliverables:**

- Notice of Intent for SCDHEC NPDES permit & documentation
- Coastal Zone Consistency application

**Assumptions:**

- COUNTY will be responsible for SCDHEC NPDES or CZC permitting fees.
- 

**Task 11**

**GEOTECHNICAL INVESTIGATIONS AND ENGINEERING SERVICES**

Minor modifications to the current geotechnical report will be implemented. No additional field services are anticipated.

This task includes study of quiet pavement for US278 as requested by the County after public comment.

This task includes additional coordination with SCDOT for modifications to the pavement design based on unexpected SCDOT mill and overlay performed in October 2017.

**Task 12**

**ROADWAY STRUCTURES DESIGN AND PLANS**

No changes to Task 12 are anticipated.

**Task 13**

**SUBSURFACE UTILITIES ENGINEERING (SUE)**

The modifications to the design will include additional curb and gutter on the south side of the roadway and new stormwater pipe to be placed on the median and north sides of US 278. Based on utility coordination already performed, it is assumed for this scope that Level A SUE services will be necessary within the project corridor at 15 sites to include the south side of US 278 and utilities crossing under US278. In performance of these services, the CONSULTANT shall:

- Coordinate with utility companies to determine location of borings/utility exposure.
- Survey location of the utilities after utility owner has exposed the utility. 15 test holes/locations are assumed.
- Provide information concerning 1) the horizontal and vertical location of the top and/or bottom of the utility referenced to the project survey datum; 2) the elevation of the existing grade over the utility at a test hole referenced to the project survey datum;
- Draft horizontal location and, if applicable, profile view of the utility on the project

plans using CADD standards as outlined above. A station and offset distance and northing and easting coordinates (State Plane) with elevations shall be provided with each test hole.

The data provided through the utility locations is to assist in potential utility conflict determinations and design services to mitigate these conflicts.

## **Task 14**

### **UTILITY COORDINATION**

The CONSULTANT shall have the responsibility of coordinating the Project modifications with utilities that may be affected. Utility relocations shall be handled in accordance with the SCDOT's *A Policy for Accommodating Utilities on Highway Rights of Way* and the *Code of Federal Regulations*, Title 23, Chapter 1, Subchapter G, part 645, subparts A and B. These services shall be performed by individuals skilled and experienced in utility coordination services.

The CONSULTANT shall make modifications as described in this scope to the Project and avoid conflicts with utilities where possible, and minimize impacts where conflicts cannot be avoided. This may include, but is not limited to, utilizing available utility data, whether obtained from SUE services, as-builts, or provided by the COUNTY or some other source. The CONSULTANT will be expected to determine utility conflict points from the design modification, including work to properly analyze each conflict point, and make recommendations for resolution of the conflict where possible. The COUNTY will request a Utility Conflict Analysis and Remediation Spreadsheet from the CONSULTANT as a deliverable.

The CONSULTANT shall initiate coordination with utility companies that are located within the Project limits. Coordination shall include, but shall not be limited to, contacting each utility company to advise the company of the proposed changes.

The CONSULTANT shall provide the utility companies with design plans as soon as the plans have reached a level of completeness adequate to allow the companies to fully understand the Project impacts. These plans shall contain available data that may be helpful to the utility in assessing the utility impact (stations and offsets, and etc.). The utility company may use the CONSULTANT's design plans for preparing Relocation Sketches.

The CONSULTANT shall coordinate and conduct a preliminary review meeting with the utility companies to assess and explain the changes to the project design and the impact of the Project to the companies. The COUNTY's Project Manager (or designee), SCDOT Resident Construction Engineer (RCE, or designee) shall be invited and included in this meeting.

The CONSULTANT shall modify and submit to the COUNTY a Preliminary Utility Report by that includes a listing of utility companies located within the project limits and a preliminary recommendation as to the extent of each company's prior rights. This report shall also include a preliminary assessment of the impact to each company as determined at the time, as well as a determination of the feasibility of early utility relocations that may begin prior to the start of construction.

The CONSULTANT shall be responsible for collecting the following from each utility company that is located within the project limits: **Relocation Sketches** including letter of "no cost" where the company does not have a prior right; **Utility Agreements** including cost estimate and relocation plans where the company has a prior right; and **Letters of "no conflict"** where the company's facilities will not be impacted by the Project.

The CONSULTANT shall review Relocation Sketches and Utility Agreements to verify that relocations comply with the SCDOT's *A Policy for Accommodating Utilities on Highway Rights of Way* and the *Code of Federal Regulations*, Title 23, Chapter 1, Subchapter G, part 645, subparts A and B. The CONSULTANT shall also verify that there are no conflicts with the proposed highway improvements, and verify that there are no conflicts between each of the utility company's relocation plans.

The CONSULTANT shall prepare and submit to the COUNTY a Final Utility Report with the submittal of Final Construction Plans that includes a listing of the utilities located within the Project limits, an explanation of the Project impacts to each of the utilities, prior rights supporting documentation, and a description of each utilities' relocation plans. As part of the report, the CONSULTANT shall assemble and submit to the COUNTY **Relocation Sketches, Utility Agreements, and Letters of "no conflict"**, for the Project. The CONSULTANT is expected to assemble the information included in the Utility Agreements and Relocation Sketches in final form and in such a manner that the COUNTY may approve the submittals with minimal review. Each Utility Agreement and Relocation Sketch submitted must be accompanied by a certification from the CONSULTANT stating that the proposed relocation will not conflict with the proposed highway improvement and will not conflict with another utility company's relocation plan. The report shall also contain the CONSULTANT's recommendation for approval of the Utility Agreements and Relocation Sketches and the CONSULTANT's recommendation that, from a utilities standpoint, the Project is ready to be let to contract. The CONSULTANT shall prepare and maintain a compilation of utility relocation plans on one set of the project plans. These plans (U-sheets) will be used during the project development, and the final set may be included in the bid documentation for information only and will reference the actual relocation plans prepared by the utility.

The utility companies shall not begin their relocation work until authorized in writing by the COUNTY.

#### **Consultant Utility Deliverables**

1. Modified Preliminary Utility Report
  - List of utilities



- Preliminary prior rights assessment
- Preliminary utility impact assessment
- Recommendations for early relocations
- 2. Recommendations for in-contract relocations
- 3. Final Utility Report (with modifications)
  - List of utilities
  - Explanation of impacts to each utility
  - Prior rights documentation
  - Description of each utility relocation
  - Utility Agreements, Relocation Sketches, and Letters of no conflict
  - Certification that each relocation will not conflict with project or other utility relocations
  - Recommendation for approval of Utility Agreements and Relocation Sketches
  - Recommendation that project is ready for letting with regard to utilities
- 4. Modified Utility Conflict Analysis and Remediation Spreadsheet
- 5. Modified U-sheets

## **Task 15**

### **CONSTRUCTION PHASE SERVICES**

No changes to Task 15 are anticipated.

## **Services Not Provided**

Services not provided by the CONSULTANT include, but are not limited to, the following:

- Services remain the same as the original contract.
- Coordination with Town of Hilton Head for tree various update
- Excavation to expose underground utilities for survey. This will be done by the utility companies.

## **Services of the COUNTY**

The COUNTY agrees to provide to the CONSULTANT, and at no cost to the CONSULTANT, the following upon request, and as available:

- Services remain the same as the original contract

**Schedule**

Below is a summary of significant milestones and anticipated submittal timeframes from NTP of this contract modification:

<b>Preliminary Construction Plans</b> .....	2	months from NTP
<i>assume COUNTY / SCDOT review (1 month)</i>	3	months from NTP
<b>Design Field Review</b> .....	4	months from NTP
<b>Plans Modifications and Submittal</b> .....	4	months from NTP
<b>Final Construction Plans</b> .....	5	months from NTP
<i>assume COUNTY / SCDOT review (1 month)</i> .....	6	months from NTP
<b>Bid Document Preparation (Project Manual)</b> .....	6	months from NTP
<i>assume COUNTY / SCDOT review (1 month)</i> .....	7	months from NTP





**BEAUFORT COUNTY PUBLIC WORKS/ DISASTER RECOVERY**

**120 Shanklin Road  
Beaufort, South Carolina 29906  
Voice (843) 255-2721  
pcobb@bcgov.net**

**TO: Gerald Dawson, Chairman, Governmental Committee**

**FROM: Pamela Cobb, Disaster Recovery Coordinator**

**SUBJECT: Award for Outdoor Warning Siren Grant Project**

**DATE: May 30, 2018**

---

The Outdoor Warning Siren Project has been awarded by South Carolina Emergency Management Division. This project is awarded under the Hazard Mitigation Grant Program under the Floods of 2015. This project will install 12 outdoor warning sirens to be placed on 12 poles throughout the county. These locations have been chosen to cover most of the outdoor recreational venues in the county. The system will include a master controller, antenna, power packs, poles, and other equipment outlined in the project. The sirens would be automatically tied to the NWS Polygon warning system and activated automatically by radio signal originating from the master controller, which will be housed in the Sheriff's Office Emergency Management Operation Center.

The cost of the project is \$520,769 with a Federal share of \$333,294 and a non-federal share of \$187,475. The local match will come from the County Council's reserve fund. The project must be completed within a 36 month time period and completed no later than April 2, 2020.

# WARNING SIREN PROJECT

Hazard Mitigation Grant  
Program

Floods -2015

**Awarded**



U.S. Department of Homeland Security  
FEMA Region IV  
3003 Chamblee Tucker Road  
Atlanta, GA 30341

**FEMA**

May 4, 2018

Mr. Kim Stenson, Director  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road  
West Columbia, SC 29172

Attention: Mr. Allen Fountain, State Hazard Mitigation Officer

Reference: Hazard Mitigation Grant Program (HMGP)  
Project: **4241-0017-F Beaufort County - Outdoor Warning Siren (S-212)**

Dear Mr. Stenson:

I am pleased to inform you that the project referenced above has been approved for \$520,769 with a Federal share of \$333,294 and a non-federal share of \$187,475. Financial approval documents for the award are enclosed for your records.

The following is the approved Statement of Work (SOW) for the above referenced project:

Beaufort County proposes to purchase and install 12 outdoor warning sirens to be placed on 12 poles throughout the county. These locations have been chosen to cover most of the outdoor recreational venues in the county. The system will include a master controller, antenna, power packs, poles, and other equipment outline in the contact. The sirens would be automatically tied to the NWS Polygon warning system and activated automatically by radio signal originating from the master controller, which will be housed in the County Emergency Operation Center.

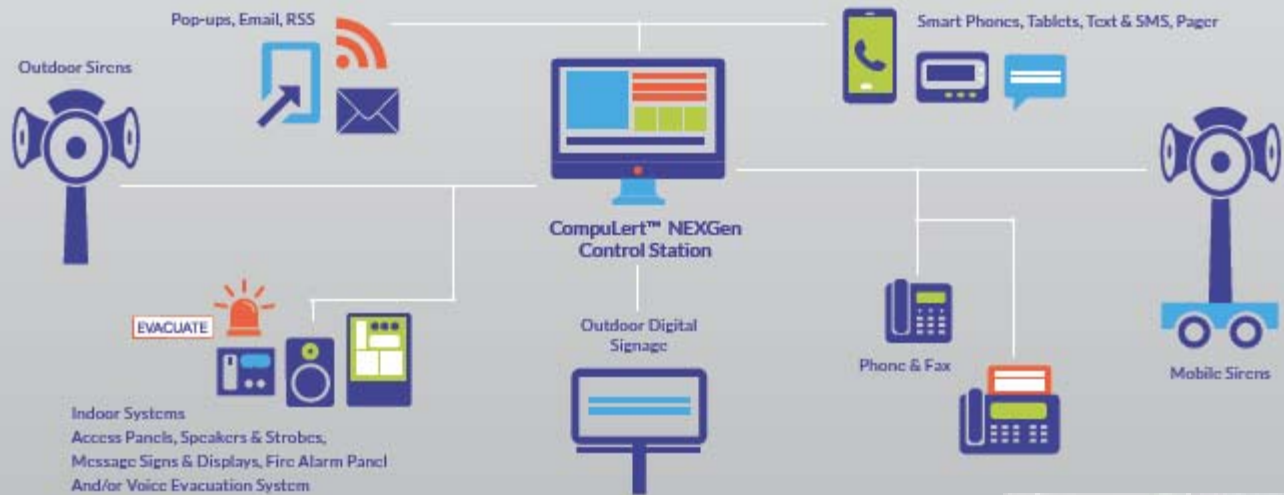
FEMA will not establish activity completion timeframes for individual sub-awards. Recipients are responsible for ensuring that all approved activities are completed by the end of the grant period of performance (POP). The HMGP application period for DR 4241 closed on April 2, 2017. The period of performance ends no later than 36 months from the close of the application period which is April 2, 2020. The State must submit all financial, performance, and other reports required as a condition of the grant prior to July 31, 2020.

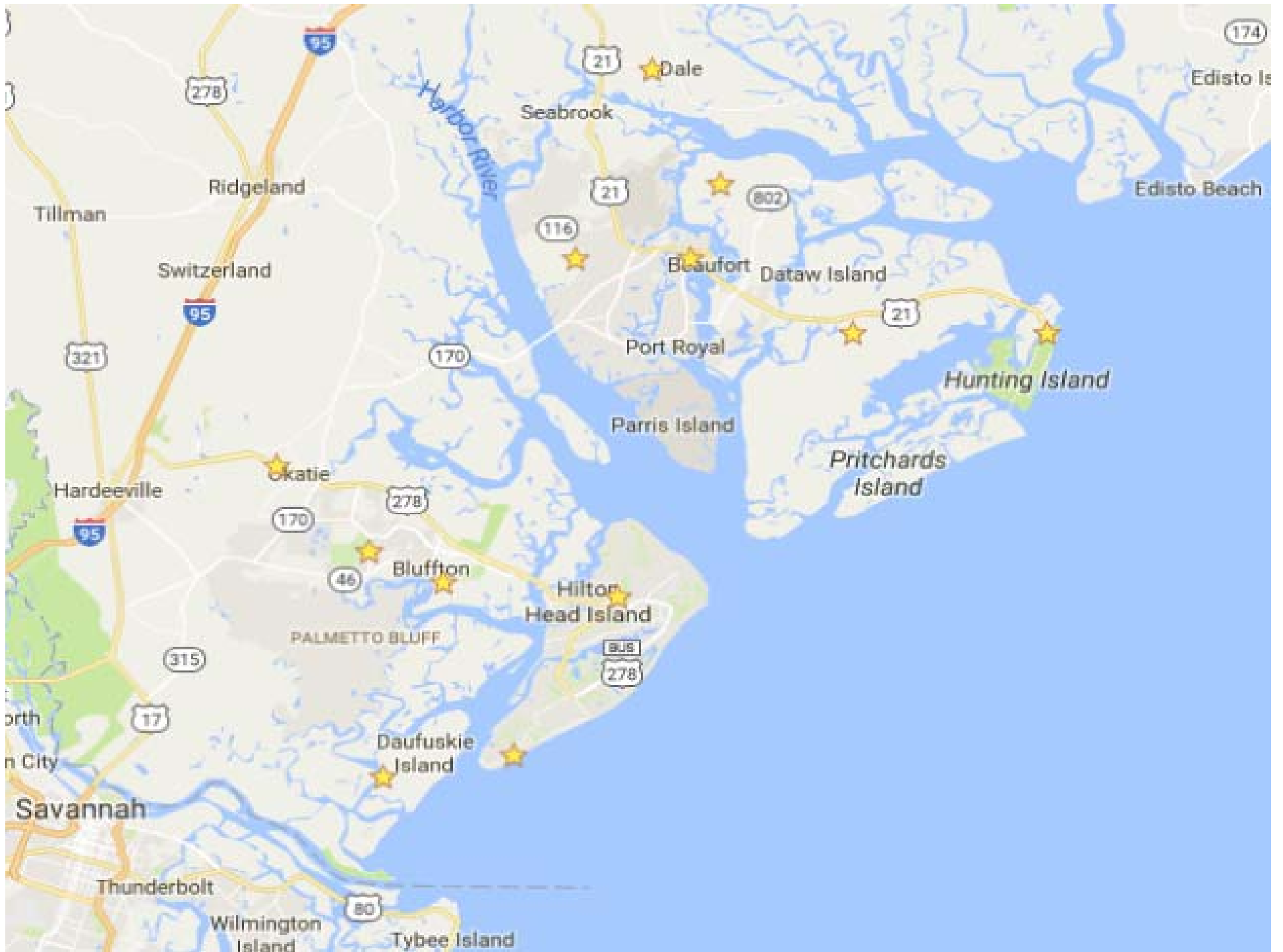


Item	Qty.	Model	American Signal Equipment	Unit	Extended Price
<b>T-135 AC/DC</b>					
1	12	T-135-DC	Rotating Siren 133.5dB 72v DC Siren	\$ 29,429.40	\$ 353,152.80
2	12	T-135-MC-AC\DC	AC/DC Motor Control Combination T-135 - UL Listed NEMA 4X	Included	Included
3	12	RTU--DC Door Mt.	RTU, Universal Controller, Panel Mount DC Tempest-MC's	Included	Included
4	12	SENSOR - Current	Current Sensor, Tempest-Series	Included	Included
5	12	KIT-FSK-32-DC	FSK, Format Card, for DC Mechanical Sirens	Included	Included
6	12	RK-V	TK7180K-30 Watt Kenwood Radio VHF 150-170Mhz	Included	Included
7	12	KIT-KCT-19	Kenwood 'Radio Interface, UHF/VHF MHz	Included	Included
8	12	KIT-OMNI-ANT-7	Antenna, VHF, 35' coax Omni-Directional	Included	Included
9	12	KIT-ARR-2	Lightning Arrestor, VHF, PL-259	Included	Included
10	12	BATT-3M	<b>Battery, 12V, Group 29 Set of (6) for TEMPEST™ 72Vdc T-135 DC Controls</b>	Included	Included
11	12	PM-4	Pole Mount - Tempest T-135	Included	Included
12					
13			<b>Command And Control Software &amp; Hardware</b>		
14	1	CSC-960-FSK	Central Station Controller-960, FSK Format includes 10 programmable push buttons	\$ 5,015.50	\$ 5,015.50
15	1	RK-V	TK7180K-30 Watt Kenwood Radio VHF 150-170Mhz	Included	Included
16	1	KIT-KCT-19	Kenwood 'Radio Interface, UHF/VHF MHz	Included	Included
17	1	KIT-ARR-2	Lightning Arrestor, VHF, PL-259	Included	Included
18	1	KIT-OMNI-ANT-7	Antenna, VHF, 100' coax Omni-Directional	Included	Included
19	1	NEXGEn	<b>CompuLert™ NEXGen Command and Control Server software with Google Chrome client. Requires Ubuntu 14.04 LTS Server operating system, and Google Chrome for the Client</b>	\$ 7,000.00	\$ 7,000.00
20	1	Server	Tower Server-Includes RAID 1 data mirroring, 8Gb RAM, 21" Monitor, Keyboard, Mouse. Preloaded with <b>Ubuntu 14.04 LTS and supporting environment for CompuLert™ NEXGen.</b>	\$ 3,500.00	\$ 3,500.00
21	1	NOAA Auto	Through collaboration with local NOAA Station, ASC NEXGen will receive selected messages to automatically activate the siren system.	\$ 2,500.00	\$ 2,500.00
22			<b>Installation</b>		
23	12	Install	Assemble Components on Pole. Auger and Set Assembly. Note: 208 VAC, 40 Amp Service, Meter (if required) and Disconnect Brought to the Pole by Others. Underground Utility Locates by Others.	\$ 5,500.00	\$ 66,000.00
24	12	Steel Poles	Provide 70' Class II Steel Poles	\$ 5,800.00	\$ 69,600.00
25			<b>Rock Clause</b>		
26		Rock Clause	During the Augering Process should Rock or some other impenetrable Substrate be encountered and a Pier Drilling Rig or Secondary Pole Site be Required an Additional Fee May Apply		
27			<b>System Commissioning</b>		
28	12	Commissioning	ASC Certified Installer to Perform Start Up and Commissioning of System.	\$ 500.00	\$ 6,000.00
29	1	Training	Training to be conducted on site (Beaufort County) by ASC Certified Technician. Local support from ASC will be available to assist Technician in deployment of the NEXGen System.	\$ 3,200.00	\$ 3,200.00
30			<b>Shipping</b>		
31	12	Freight	<b>EXW:8600 W. Bradley Road, Milwaukee Wisconsin 53224</b>	\$ 400.00	\$ 4,800.00
32			<b>Standard ASC Warranty Applies to Order</b>		\$ 520,768.30
33			<b>Taxes - Not Included</b>		
34			<b>Project Totals - US Funds</b>		\$ 520,768.30

25% Due with order = \$ 130,192.08

## ASC's Complete Integrated Solutions

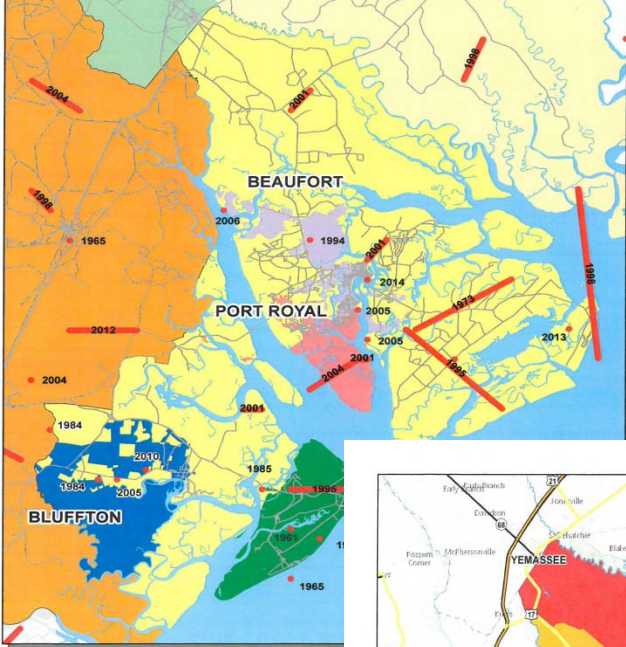




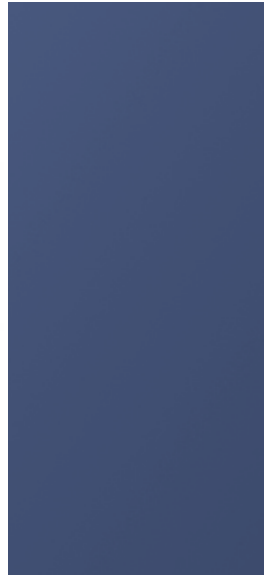
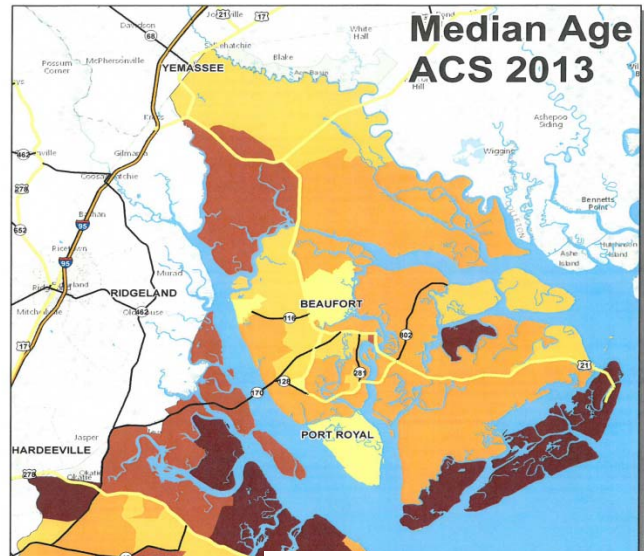
# LOCATIONS

- ▣ Hunting Island Nature Center
- ▣ Sea Pines Traffic Circle
- ▣ Ulmer Recreation Center
- ▣ Buckwalter Recreation Center
- ▣ Technical College of the Lowcountry
- ▣ James J Davis Elementary
- ▣ Beaufort Elementary
- ▣ St Helena Library
- ▣ Burton Wells Recreation Center
- ▣ Hilton Head High School
- ▣ Broomfield Recreation
- ▣ Daufuskie Elementary

# NOAA Tornado Events 1950-2014



# Median Age ACS 2013



Total Cost: \$ 520,768.30

-Cost Share Portion: \$187,475

Estimate to complete project 3-6 months

Time Frame to complete per the grant:

36 months/ no later than April 2, 2020

Pamela Cobb

843-255-2721

[pcobb@bcgov.net](mailto:pcobb@bcgov.net)

Beaufort County, South Carolina  
Fiscal Year 2019 Contract Renewals  
Finance Committee, June 4, 2018

	Vendor	Purpose	Department	Account	FY 2019 Proposed Cost	FY 2018 Cost (to date)	Term (Beg/End)
1	Republic Waste Services	Hauling Services to include Daufuskie	Solid Waste	10001340-51165 10001340-5116A	\$ 1,538,000	\$ 1,279,157	7/1/2018 thru 6/30/2019
<b>Notes:</b> Estimated costs due to volume demanded of this service depends on various factors throughout each fiscal year.							
2	Southern Health Partners Chattanooga, Tennessee	Healthcare Services for County Detention Center Inmates	Detention Center	Medical/Dental Services 10001250-51190	\$ 681,428	\$ 578,296	7/1/2018 thru 6/30/2019
<b>Notes:</b> Estimated costs due to volume demanded of this service depends on various factors throughout each fiscal year. Fiscal Year 2019 cost also includes \$80,000 annual outside cost pool limit that may or may not be expended throughout the fiscal year. FY19 4% rate adjustment.							
3	A & B Cleaning Service, Inc. Greenville, North Carolina	Janitorial Services for County Facilities	Facilities Management Lady's Island Airport Hilton Head Airport	Cleaning Services 10001310-51210 51000011-51210 54000011-51210	\$ 602,382	\$ 556,998	7/1/2018 thru 6/30/2019
<b>Notes:</b> Increase is related to price increase for the new Crystal Lake building and the temporary occupancy of the United Way Building.							
4	Oakwood Landfill Waste Management Ridgeland, South Carolina	Disposal of Class II Waste	Solid Waste	10001340-51166	\$ 350,000	\$ 291,671	7/1/2018 thru 6/30/2019
<b>Notes:</b>							
5	Summit Food Service (formerly ABL Management) Atlanta, Georgia	Food Service Program for the BC Detention Center	Detention Center	10001250-51200	\$ 300,000	\$ 246,835	7/1/2018 thru 6/30/2019
<b>Notes:</b> Fiscal Year 2019 estimated cost includes approximately \$0.03 per meal price increase (2.5% CPI - Food Away increase as of January 2018).							
6	South Data Mount Airy, North Carolina	Printing and Mailing Services for the County Property Tax Bills	Treasurer	10001020-51010 20110011-51010	\$ 300,000	\$ 233,562	9/1/2018 thru 8/31/2019
<b>Notes:</b> Fiscal Year 2019 cost is estimated and includes an addendum to the contract.							
7	Eastern Aviation Charlotte, North Carolina	AVGAS and Jet Fuel for Resale	Lady's Island Airport	Purchases - Fuels 51000011-58000	\$ 276,000	\$ 258,932	7/1/2018 thru 6/30/2019
<b>Notes:</b> Beaufort County (Lady's Island) Airport purchases this fuel for resale. Fiscal Years 2018 and 2019 estimated revenue related to the resale of this fuel is \$395,000 and \$453,000, respectively.							
8	Clarke Mosquito Control Products, Inc. St. Charles, Illinois	Public Health Insecticide for Mosquito Control	Mosquito Control	Public Health Products 10001400-52320	\$ 250,000	\$ 261,309	8/1/2018 thru 7/31/2019
<b>Notes:</b> Estimated costs due to volume demanded of this service depends on various factors throughout each fiscal year. Fiscal Years 2017 and 2018 included increased costs as a result of Tropical Storm Hermine, Hurricane Matthew and Hurricane Irma.							
9	Manatron/Aumentum (Thomson Reuters) Chicago, Illinois	Property Assessment and Tax Software and Support for the Assessor, Auditor and Treasurer Offices	Assessor Auditor Treasurer	Maintenance Contracts 10001152-51110	\$ 231,529	\$ 223,872	7/1/2018 thru 6/30/2019
<b>Notes:</b> Fiscal Year 2019 includes approximately 3.5% increase. The contract renewal includes the software support and upgrades as well as managed support services.							
10	Automated Business Resources (ABR) Savannah, Georgia	Provide Photocopier/Multifunction Printer Lease and Print Management Services for BC	MIS	Various Departments	\$ 210,000	\$ 161,711	5/1/2018 thru 4/30/2019
<b>Notes:</b> Price based on number of units maintained on service agreement.							
11	SHI - Software House Inc. Charlotte, North Carolina	Microsoft Enterprise Agreement	MIS	10001150-51110	\$ 205,769	\$ 153,469	7/1/2018 thru 6/30/2019
<b>Notes:</b> SoftwareOne was former State Contract vendor. SHI is current State Contract vendor. Fiscal Year 19 cost increase due to additional licenses and servers.							
12	EMS Management and Consultants Lewisville, North Carolina	Billing Services for BC EMS	EMS	10000001-44220	\$ 190,000	\$ 173,546	7/1/2018 thru 6/30/2019
<b>Notes:</b> Per contract is 6.25% of collections and not to exceed (NTE) \$190,000. As of April 30, 2018, this vendor has collected \$2.67 million of revenue during FY 2018.							

Beaufort County, South Carolina  
Fiscal Year 2019 Contract Renewals  
Finance Committee, June 4, 2018

	Vendor	Purpose	Department	Account	FY 2019 Proposed Cost	FY 2018 Cost (to date)	Term (Beg/End)
13	Beaufort County Open Land Trust Beaufort, South Carolina	Rural and Critical Land Preservation Program Consulting Services	Rural and Critical Lands Program	Professional Services 45000011-51160	\$ 179,000	\$ 179,000	7/1/2018 thru 6/30/2019
<b>Notes:</b>							
14	Care Environmental Corp Dover, New Jersey	Hauling Services for Hazardous Waste	Solid Waste	Professional Services 10001340-51160	\$ 160,000	\$ 137,915	7/1/2018 thru 6/30/2019
<b>Notes:</b> Estimated costs due to volume demanded of this service depends on various factors throughout each fiscal year.							
15	Tyler Technologies Dallas, Texas	Annual support and license agreement for Munis, includes disaster recovery contract	MIS	Various Departments	\$ 140,046	\$ 133,377	7/1/2018 thru 6/30/2019
<b>Notes:</b> Fiscal Year 2019 includes approximately 5% increase. The contract renewal includes the software support and upgrades, managed support services and a disaster recovery contract.							
16	Beaufort County Disabilities and Special Needs (DSN) Beaufort, South Carolina	Janitorial Services for Buckwalter, Burton St. Helena Library	Facilities Management Parks and Leisure Services	10001310-51210 10001600-51210	\$ 116,224	\$ 110,304	7/1/2018 thru 6/30/2019
<b>Notes:</b> Fiscal Year 2019 is an anticipated decrease due to removal of Lind Brown building from the contract.							
17	Hilton Head Humane Association (SNAC: SPAY/NEUTER) Hilton Head, South Carolina	Provides Veterinary and Spay/Neuter Services for the County Animal Shelter	Animal Services	Professional Services Spay/Neuter 10001270-51165	\$ 100,000	\$ 83,503	7/1/2018 thru 6/30/2019
<b>Notes:</b> The process of restitution is intended to help offset the cost of this service. The County receives a small percentage of the actual cost via restitution through the court process.							
18	Strickland Electronic Recycling, LLC North, South Carolina	Electronic Waste Recycling Services	Solid Waste	E-waste 10001340-51164	\$ 90,000	\$ 40,201	9/1/2018 thru 8/31/2019
<b>Notes:</b> Estimated costs due to volume demanded of this service depends on various factors throughout each fiscal year.							
19	Pictometry International Corporation Rochester, New York	License Image Software/Aerial Photos	GIS/MIS	Aerial Photos 10001152-51250	\$ 85,364	\$ 80,176	7/1/2018 thru 6/30/2019
<b>Notes:</b> Beginning in Fiscal Year 2017, this vendor began charging South Carolina Sales Tax (6%) on this service/product.							
20	USI Insurance Services National, Inc. (formerly Wells Fargo) Dallas, Texas	Benefit Consulting Services	Employee Services	10001160-51160	\$ 66,950	\$ 65,000	7/1/2018 thru 6/30/2019
<b>Notes:</b> Fiscal Year 2019 includes 3% increase per contract terms.							
21	South Carolina Judicial Department Columbia, South Carolina	Court Management System Support	Clerk of Court Magistrate	Maintenance Contracts 10001030-51110 10001081-51110	\$ 60,000	\$ 60,000	7/1/2018 thru 6/30/2019
<b>Notes:</b>							
22	New Vision Systems New Canaan, Connecticut	Official Records Software and Maintenance Support	Register of Deeds	Maintenance Contracts 10001122-51110	\$ 52,048	\$ 52,048	7/1/2018 thru 6/30/2019
<b>Notes:</b>							



**BEAUFORT COUNTY  
RESOLUTION 2018/\_\_\_**

A RESOLUTION AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT MCCLELLAN, ACTING FOR ITSELF, ONE OR MORE AFFILIATES AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES AT ONE OR MORE LOCATIONS IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Beaufort County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, a company identified for the time being as Project McClellan, acting for itself or one or more affiliates and/or other project sponsors (collectively, the "Company") proposes to establish certain facilities at one or more locations in the County (collectively, the

“Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of at least \$100,000,000; and

WHEREAS, on the basis of the information supplied to it by the Company, the County has determined, *inter alia*, that the Project would subserve the purposes of the Act and would be directly and substantially beneficial to the County, the taxing entities of the County and the citizens and residents of the County due to the investment to be made, or caused to be made, by the Company, which contributes to the tax base and the economic welfare of the County, and, accordingly, the County wishes to induce the Company to undertake the Project by offering certain negotiated FILOT and multi-county industrial or business park benefits as well as the benefits of certain Special Source Credits as set forth herein, all of which shall be further described and documented in a Fee in Lieu of Tax and Incentive Agreement to be entered into by the County and the Company (the “Incentive Agreement”).

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

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the County makes the following findings and determinations:

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

Section 2.

(a) The County hereby agrees, under certain conditions, to enter into the Incentive Agreement with the Company, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County, under certain conditions to be set forth in the Incentive Agreement, will agree to accept negotiated fee in lieu of *ad valorem* tax (“Negotiated FILOT”) payments with respect to the Project.

(b) (i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%, (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act which, based, in part, on the presently anticipated locations of the Project, the parties believe will be [243.54] mills, and, which millage rate or rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; (3) the fair market value of the Project, determined in accordance with the Negotiated FILOT Act; and (4) such other terms and conditions as are or will be specified in the Incentive Agreement, including, without limitation, that the Company, in its sole discretion, may dispose of property and replace property subject to Negotiated FILOT payments to the maximum extent permitted by the Negotiated FILOT Act.

(ii) The Negotiated FILOT shall be calculated as provided in this Section 2(b) for that portion of the Project consisting of economic development property under the Negotiated FILOT Act. For each annual increment of investment in such economic development property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years, all in accordance with Section 12-44-30(21) of the Negotiated FILOT Act. Accordingly, if such economic development property is placed in service during more than one year, each year's investment shall be subject to the Negotiated FILOT for a payment period of thirty (30) years.

(iii) As authorized in, and subject to the provisions of, Section 12-44-50(A)(3) of the Negotiated FILOT Act, the County hereby approves the Company's request to calculate the Negotiated FILOT payments due with respect to the Project based on an alternative payment method yielding over the thirty-year Negotiated FILOT payment period for each annual increment of investment in the Project, a payment stream which has the same net present value as the payment stream which would be generated using the standard calculation provided under Section 12-44-50(A)(1) and the factors set forth in Section 2(b)(i) hereof. Such net present value calculations shall be determined using a discount rate which is equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which the Incentive Agreement is executed. If no yield is available for the month in which the Incentive Agreement is executed, the last published yield for the appropriate maturity available must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity.

Section 3. The County will use its best efforts to ensure that the Project will be included, if not already included, and will remain, within the boundaries of a Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide the Company and the Project with any additional jobs creation tax credits afforded by the laws of the State for projects located within Multi-County Park and on terms which, and for a period of time sufficient to, facilitate the receipt by the Company of the Special Source Credits referenced in Section 4 hereof.

Section 4. As an additional incentive to induce the Company to undertake the Project, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act and the provisions set forth in this Section 4, the County

does hereby agree that the Company shall be entitled to receive, and the County shall provide, Special Source Credits against each Negotiated FILOT payment due with respect to the Project for the full term of the Negotiated FILOT in an amount equal to sixty percent (60%) of each such Negotiated FILOT payment, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project. Notwithstanding the foregoing provisions of this Section 4, (i) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to all or any portion of the Project, to the extent not already fully depreciated for such purposes, is less than 5%, the above-described initial Special Source Credits percentage (60%) otherwise applicable against the Negotiated FILOT payment due with respect to such property shall be increased by an amount sufficient so that such net Negotiated FILOT payment due after application of such increased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (60%); and (ii) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to all or any portion of the Project, to the extent not already fully depreciated for such purposes, is more than 5%, the above-described initial Special Source Credits percentage (60%) otherwise applicable against the Negotiated FILOT payment due with respect to such property shall be decreased by an amount sufficient so that such net Negotiated FILOT payment due after application of such decreased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (60%). In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

Section 5. The provisions, terms, and conditions of the Incentive Agreement shall be subject to approval by the Council through the subsequent adoption of an Ordinance authorizing the Incentive Agreement. The Incentive Agreement is to be in substantially the form customarily used by the County for similar transactions with such changes therein as shall be approved by said Ordinance.

Section 6. The Chairman of the Council, the County Administrator and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to this Resolution.

Section 7. The execution and delivery of the Incentive Agreement is subject to the enactment by the Council of an ordinance authorizing the same and, in conjunction therewith, compliance with the provisions of the Home Rule Act regarding the procedural requirements for enacting ordinances.

Section 8. All orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Resolution shall take effect and be in full force upon adoption by the Council.

[End of Resolution]

Done in a meeting of County Council duly assembled June 11, 2018.

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman, County Council  
Beaufort County, South Carolina

[SEAL]

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas J. Keaveny, II, Esquire  
Beaufort County Attorney

**BEAUFORT COUNTY  
ORDINANCE NO. 2018/\_\_\_**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT MCCLELLAN, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) CERTAIN SPECIAL SOURCE REVENUE CREDITS WITH RESPECT TO THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Beaufort County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and, by incorporation Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, Project McClellan, a [\_\_\_\_\_], organized and existing under the laws of the State of [\_\_\_\_\_], acting for itself, one or more affiliates, and/or other project sponsors (collectively, the "Company"), is considering the establishment of certain facilities to be operated primarily for the production of electricity from solar energy at one or more locations

in the County (collectively, the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or caused to be invested, in the aggregate, at least \$100,000,000 in the Project; and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on June 11, 2018 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Company with respect to the Project (the “Incentive Agreement”), the form of which is presented to this meeting, which Incentive Agreement is to be dated as of [\_\_\_\_\_, 2018], or such other date as the parties may agree; and

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

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

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

(a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and

(c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and

(e) The purposes to be accomplished by the Project are proper governmental and public purposes; and

(f) The benefits of the Project are greater than the costs.

## Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the "Negotiated FILOT"), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(a)(1)(d) of the Negotiated FILOT Act, as set forth in greater detail in the Incentive Agreement, and which, based on the property comprising the Land as of the original execution and delivery of the Incentive Agreement, the County and the Company believe to be [243.54] mills, and which millage rate or rates shall be fixed in accordance with Section 12-44-50(A)(1)(b) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT, all as set forth in greater detail in the Incentive Agreement; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the Incentive Agreement including, but not limited to, that the Company and the Project shall be entitled to the maximum benefits allowable under the Negotiated FILOT Act with respect to the disposal and replacement of Project property.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment



during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in the Incentive Agreement, up to an aggregate of forty (40) years.

(iii) As authorized in, and subject to the provisions of, Section 12-44-50(A)(3) of the Negotiated FILOT Act, the County hereby approves the Company's request to calculate the Negotiated FILOT payments due with respect to the Project based on an alternative payment method yielding over the thirty-year Negotiated FILOT payment period for each annual increment of investment in the Project, a payment stream which has the same net present value as the payment stream which would be generated using the standard negotiated FILOT calculation provided under Section 12-44-50(A)(1) of the Negotiated FILOT Act and the factors set forth in Section 2(b)(i) hereof. Such net present value calculations shall be determined using a discount rate which is equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which the Incentive Agreement is executed. If no yield is available for the month in which the Incentive Agreement is executed, the last published yield for the appropriate maturity available must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity.

Section 3. As an additional incentive to induce the Company to undertake the Project, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act and the provisions set forth in this Section 4, the County does hereby agree that the Company shall be entitled to receive, and the County shall provide, Special Source Credits against each Negotiated FILOT payment due with respect to the Project for the full term of the Negotiated FILOT in an amount equal to sixty percent (60%) of each such Negotiated FILOT payment, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project. Notwithstanding the foregoing provisions of this Section 4, (i) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to all or any portion of the Project, to the extent not already fully depreciated as such purposes, is less than 5%, the above-described initial Special Source Credits percentage (60%) otherwise applicable against the Negotiated FILOT payment due with respect to such property shall be increased by an amount sufficient so that such net Negotiated FILOT payment due after application of such increased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (60%); and (ii) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to all or any portion of the Project, to the extent not already fully depreciated for such purposes, is more than 5%, the above-described initial Special Source Credits percentage (60%) otherwise applicable against the Negotiated FILOT payment due with respect to such property shall be decreased by an amount sufficient so that such net Negotiated FILOT payment due after application of such decreased

Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (60%). In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

Section 4. As further reimbursement for investment in Special Source Improvements, and in addition to the Special Source Credits set forth in Section 3 hereof, the County does hereby agree that each Credit Eligible Entity shall be entitled to receive, and the County shall provide, Special Source Credits against each net Negotiated FILOT Payment due with respect to the Project, after application of the Special Source Credits set forth in Section 3 hereof, for the full term of the Negotiated FILOT, in an annual amount sufficient to fully **[offset any business license fees imposed by the County pursuant to the County Business License Fee Ordinance, with respect to the Project in excess of the maximum fee to be agreed to by the Company and the County under, and pursuant to, the Development Agreement]**.

Section 5. The County will use its best efforts to ensure that the Project will be included, if not already included, and will remain, within the boundaries of a Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide the Company and the Project with any additional jobs creation tax credits afforded by the laws of the State for projects located within Multi-County Parks and on terms which, and for a period of time sufficient to, facilitate the receipt by the Company of the Special Source Credits referenced in Section 3 hereof.

Section 6. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 7. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 8. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 9. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in a meeting duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2018.

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman, County Council,  
Beaufort County, South Carolina

[SEAL]

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas J. Keaveny II, County Attorney  
Beaufort County, South Carolina

First Reading:            June 11, 2018  
Second Reading:        \_\_\_\_\_, 2018  
Public Hearing:            \_\_\_\_\_, 2018  
Third Reading:            \_\_\_\_\_, 2018

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT MCCLELLAN

Dated as of \_\_\_\_\_, 2018

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement" dated as of \_\_\_\_\_, 2018, by and between BEAUFORT COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and a company identified for the time being as PROJECT MCCLELLAN, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ acting for itself, one or more affiliates, and/or other project sponsors (the "Company").

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, the Company is considering the establishment of certain facilities to be operated primarily for the production of electricity from solar energy at one or more locations in the County (the "Project"), and anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$100,000,000 in the Project by the end of the Compliance Period (as defined herein) as set forth in greater detail herein; and

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

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on



[\_\_\_\_\_] , 2018 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits, all with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein, and, by Ordinance No. \_\_\_\_\_ enacted by the County Council on [\_\_\_\_\_] , 2018, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project, and authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, the potential investment to be made, or caused to be made, by the Company which contribute to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

## ARTICLE I

### DEFINITIONS

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

“*Act*” shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act, including, without limitation, the Special Source Act.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney’s fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Sponsor or Sponsor Affiliate under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County shall have furnished to the Company, Sponsor, or other Sponsor Affiliate required to pay such expenses hereunder, an itemized statement of all expenses incurred.

“*Affiliate*” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, or which is now or hereafter owned in whole or in part by the Company or any other Sponsor or Sponsor Affiliate, as the case may be, or by any partner,

shareholder or owner of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, and shall also include any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company or any other Sponsor or Sponsor Affiliate, as the case may be, as described in Section 267(b) of the Internal Revenue Code.

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

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

“*Co-Investor*” shall mean the Company, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, the Project. The Company shall, to the extent not identified herein, notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such other entity intend to extend the benefits of the Negotiated FILOT to property owned by any such other entity pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. **[As of the date of the original execution and delivery of this Agreement, the only Co-Investor is the Company.]**

“*Company*” shall mean a company identified for the time being as Project McClellan, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee or transferee hereunder which is designated by the Company and approved by the County.

“*Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required, that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, [20\_\_], and, in such event, the Compliance Period will end on December 31, [20\_\_].

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

“*County Business License Fee Ordinance*” shall mean Section 18-46 et. seq. of the Code of Ordinances of the County or any County ordinance which succeeds, supersedes, or replaces

such County business license fee ordinance or any successor thereto, as may be amended, modified, or supplemented from time to time.

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

“*Credit Eligible Entity*” shall have the meaning specified in **Section 3.02(a)** hereof.

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue and any successor thereof.

“*Development Agreement*” shall mean that Project McClellan Development Agreement by and between Project McClellan and Beaufort County, South Carolina effective [\_\_\_\_\_, 20\_\_], and recorded on \_\_\_\_\_, 20\_\_, in the Office of the Register of Deeds for Beaufort County in Book \_\_\_, Page \_\_\_, as amended from time to time.

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

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

“*Existing Property*” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

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

“*Inducement Resolution*” shall have the meaning specified in the recitals of this Agreement.

“*Investment Period*” shall initially have the same meaning as the Compliance Period; provided that, to the extent permitted by the Negotiated FILOT Act, prior to the end of the Compliance Period, the Company or any other Sponsor or Sponsor Affiliate may request from the County an extension of up to five (5) years beyond the Compliance Period, which extension may be granted by the County, in its sole discretion, and provided further that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, as determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on December 31, [20\_\_], upon any such maximum extension, if granted by the County Council then in office, the Investment Period will end on December 31, [20\_\_].

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

“*Minimum Contractual Investment Requirement*” shall mean investment in the Project, within the period commencing on the first day that Project property comprising all or a portion of the Project is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of Compliance Period, by the Company and all Co-Investors, in the aggregate, of at least \$100,000,000 (without regard to depreciation or other diminution in value).

“*Minimum Statutory Investment Requirement*” shall mean investment in the Project of not less than \$2,500,000 within the Compliance Period, as set forth in by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof.

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

“*Multi-County Park Act*” shall mean Title 4, Chapter 1 of the Code.

“*Multi-County Park Agreement*” shall mean that certain Agreement for Development of a Joint County Industrial or Business Park (Project McClellan) by and between the County and Jasper County, South Carolina effective as of [\_\_\_\_\_] , 2018, as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

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

“*Negotiated FILOT Act*” shall mean Title 12, Chapter 44 of the Code.

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

“*Non-Qualifying Property*” shall mean that portion of the real and personal property located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act or under this Agreement, including without limitation property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(d)(iii)** hereof.

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

“*Project*” shall mean: (i) the Land; (ii) all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (iii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company or any other Co-Investors for use on or about the Land; and (iv) any Replacement Property; provided, however, except as to Replacement Property, the term Project shall be deemed to include any such real property improvements and personal property, whether now existing or hereafter constructed, improved, acquired or equipped, only to the extent placed in service within the period commencing on **[January 1, 20\_\_]** and ending at the end of the Investment Period.

“*Property Tax Year*” shall mean the annual period which is equal to the fiscal year of the Company, or any other Co-Investor, as the case may be, *i.e.*, with respect to the Company, the annual period ending on **[December 31]** of each year.

“*Released Property*” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the

Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(d)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

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

*“South Carolina Freedom of Information Act”* shall mean Title 30, Chapter 4 of the Code.

*“Special Source Act”* shall mean Section 4-1-175 of the Code.

*“Special Source Credits”* shall mean the Tier 1 Special Source Credits and the Tier 2 Special Source Credits, collectively, as set forth in **Section 3.02** hereof.

*“Special Source Improvements”* shall mean to the extent paid for by the Company or any other Sponsor or Sponsor Affiliate, any infrastructure serving the economic development of the County and any improved or unimproved real property, buildings, structural components of buildings, fixtures, or other real property improvements, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and the machinery and equipment and other personal property comprising the Project, and any additions or improvements to any of the foregoing, whether paid for by the Company or any Sponsor or Sponsor Affiliate directly or through lease payments.

*“Sponsor”* and *“Sponsor Affiliate”* shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. **[As of the original execution and delivery of the Agreement, the only Sponsor is the Company and there are no Sponsor Affiliates].**

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

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

“*Tier 1 Special Source Credits*” shall mean the special source revenue credits hereby granted herein by the County and described in **Section 3.02(a)** hereof.

“*Tier 2 Special Source Credits*” shall mean the special source revenue credits hereby granted herein by the County and described in **Section 3.02(b)** hereof.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

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

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

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

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

On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

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

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

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

The Company is a [\_\_\_\_\_] validly existing and in good standing under the laws of the State of [\_\_\_\_\_] and is authorized to do business in the State, has all requisite power to enter into this Agreement and to carry out its obligations hereunder, and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is **[December 31]** and the Company will notify the County of any changes in the fiscal year of the Company.

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

The Company intends to operate the Project as facilities primarily for the production of electricity from solar energy at one or more locations in the County.

The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to locate the Project within the County and the State.

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



## ARTICLE III

### COVENANTS OF COUNTY

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

Section 3.02. Special Source Credits.

As reimbursement for investment in Special Source Improvements, and subject to the requirements of the Special Source Act and **Section 4.02** hereof, the County hereby agrees that the Company and each other Sponsor or Sponsor Affiliate (each, a “Credit Eligible Entity”) shall be entitled to receive, and the County shall provide, special source revenue credits against each Negotiated FILOT Payment due from each such Credit Eligible Entity with respect to the Project for the full term of the Negotiated FILOT in an amount equal to sixty percent (60%) of each such Negotiated FILOT Payment, commencing with the tax year for which the initial Negotiated FILOT payment is due hereunder with respect to the Project (the “Tier 1 Special Source Credits”). In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Sponsors and Sponsor Affiliates.

Notwithstanding the foregoing provisions of this **Section 3.02(a)**, in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to all or any portion of the Project, to the extent not already fully depreciated as such purposes, is less than 5%, the above-described initial Special Source Credits percentage (60%) otherwise applicable against the Negotiated FILOT payment due with respect to such property shall be increased by an amount sufficient so that such net Negotiated FILOT payment due after application of such increased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (60%); and (ii) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to all or any portion of the Project, to the extent not already fully depreciated for such purposes, is more than 5%, the above-described initial Special Source Credits percentage (60%) otherwise applicable against the Negotiated FILOT payment due with respect to such property shall be decreased by an amount sufficient so that such net Negotiated FILOT payment due after application of such decreased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (60%). In accordance with the Special Source Act, the

Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

[As further reimbursement for investment in Special Source Improvements, and in addition to the Tier 1 Special Source Credits, the County does hereby agree that each Credit Eligible Entity shall be entitled to receive, and the County shall provide, special source revenue credits against each net Negotiated FILOT Payment due with respect to the Project, after application of the Tier 1 Special Source Credits, for the full term of the Negotiated FILOT in an annual amount sufficient to fully offset any business license fees imposed by the County **[pursuant to the County Business License Fee Ordinance with respect to the Project in excess of the maximum fee set forth in Section 14(c) of the Development Agreement].**]

The Special Source Credits to which a Credit Eligible Facility is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each Negotiated FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original Negotiated FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.

In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

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

To the extent required by, and as set forth in, Section 4-29-68(A)(2)(ii) of the Code, if a Credit Eligible Entity claims Special Source Credits as reimbursement for investment in personal property, including machinery and equipment, if such property is removed from the Project during the term of this Agreement, the amount of the FILOT payments due from such Credit Eligible Entity on such personal property for the year in which the personal property was removed from the Project also shall be due for the two (2) years following such removal.

Section 3.03. Multi-County Park Designation. The County agrees to use its best efforts to designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best efforts to maintain the Project within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the

State Constitution on terms which provide for all jobs created at the Project from [January 1, 20\_\_] through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms, and for a duration, which facilitate the provision by the County, and the receipt by the Company, of the Special Source Credits set forth in **Section 3.02** hereof.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its commercially reasonable efforts, and to take such other steps as may be necessary, to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and the Special Source Credits and agrees, if requested by the Company, to enter into a lease purchase agreement with the Company and each other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160 of the Negotiated FILOT Act and Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with, but not in excess of, those intended under this Agreement, including, but not limited to, the Special Source Credits, as then permitted by law, including, without limitation, any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides that the Company and each other Sponsor or Sponsor Affiliate must transfer their respective portion of the Negotiated FILOT Property to the County within one hundred eighty (180) days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In any such lease purchase agreement referenced above, the County, upon the conveyance of title to the Project to the County at the expense of the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, shall agree to accept title to the Project and to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, upon terms and conditions mutually agreeable to the County and the Company. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, each of the Company and any such other Sponsor or Sponsor Affiliate shall

have the option to purchase its respective portion of the Project from the County for Ten Dollars (\$10.00).

## ARTICLE IV

### COVENANTS OF THE COMPANY

#### Section 4.01. Investment in Project.

The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on **[December 31, 20\_\_]**.

Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment in the Project by any and all other Co-Investors shall together with investment by the Company, count toward all investment requirements, thresholds, and levels set forth in this Agreement, including, without limitation, the Minimum Contractual Investment Requirement and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

Subject to the provisions of **Sections 4.05** and **6.01** hereof, each of the Company and any other Co-Investor shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term of this Agreement, and each of the Company and any other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including without limitation, in connection with any financing transactions, all in its sole discretion.

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

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

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

Each of the Company and any other Co-Investor may, at any time and in its sole discretion by written notice to the County, remove any Project property including, but not limited to, Negotiated FILOT Property, real or personal, from the Project or from the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains as part of the Project, and effective as of the date of any such removal, such property will be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, and in such event, any such removal reflected by any such return shall be deemed to be effective as of the date of such removal.

If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project, all as permitted herein, the Company or such Co-Investor shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to such **Exhibit A** reflecting any such addition, disposal or removal and such revised or supplemented **Exhibit A** shall, effective as of the date of any such transaction, addition, disposal, or removal, be automatically made a part of this Agreement without further action or proceedings by the County; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act, and in such event, any such addition, disposal, or removal reflected by any such return, shall be automatically deemed effective as of the date of any such addition, disposal, or removal.

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

Section 4.02. Failure to Satisfy Minimum Contractual Investment Requirement. If the Minimum Contractual Investment Requirement is not satisfied by the end of the Compliance Period, each of the following subsections (a) – (c) shall apply:

The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the alternate payment method Negotiated FILOT described in **Section 5.01(b)(iii)** hereof and Section 12-44-50(A)(3) of the Negotiated FILOT Act, in the event that the \$45,000,000 investment requirement set forth therein is satisfied, or a standard method Negotiated FILOT under Section 12-44-50(A)(1) of the Negotiated FILOT Act and the factors set forth in **Section 5.01(b)(ii)** hereof, in the event that the investment requirement of Section 12-44-50(A)(3) of the Negotiated FILOT Act is not satisfied, but the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Compliance Period.

Each Credit Eligible Entity shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Tier 1 Special Source Credits previously received, or to be received (upon actual receipt), by such Credit Eligible Entity for each tax year for which such Credit Eligible Entity is entitled to receive Tier 1 Special Source Credits under **Section 3.02(a)** hereof (*i.e.*, each tax year for which a Negotiated FILOT Payment has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Compliance Period) (collectively, the “Compliance Period Tier 1 Special Source Credits”), taking into account the highest level of aggregate investment in the Project (without regard to depreciation or other diminution in value) within the Compliance Period at any time during the Compliance Period (the “Actual Project Investment”), as compared to the Minimum Contractual Investment Requirement, all as further detailed and illustrated in the formula and examples set forth below:

Formula:

1. 
$$\frac{\text{Actual Project Investment}}{\$100,000,000} = \text{Investment Satisfaction Percentage [ISP]}$$
2. 
$$100\% - \text{ISP} = \text{Investment Satisfaction Shortfall [ISS]}$$
3. In the event that determination of the Investment Satisfaction Shortfall results in a positive percentage figure, the Investment Satisfaction Shortfall shall be applied to the Compliance Period Tier 1 Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from each such Credit Eligible Entity. Any such amounts shall be due to be paid by a Credit Eligible Entity on or before the date by which such Credit Eligible Entity is required, under applicable law, to make its Negotiated FILOT Payment due with respect to the Project for the tax year corresponding to the final Property Tax Year of the Compliance Period (*i.e.*, the Negotiated FILOT Payment due with respect

to Project property placed in service as of the end of the final Property Tax Year within the Compliance Period).

Each Credit Eligible Entity shall continue to be eligible for Tier 1 Special Source Credits against each Negotiated FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in **Section 3.02(a)** hereof; provided, however, in the event that determination of the Investment Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the initial total Tier 1 Special Source Credits amount set forth in **Section 3.02(a)** hereof shall be reduced for the remaining such tax years by the percentage equal to such Investment Satisfaction Shortfall.

Section 4.03. Payment of Administration Expenses. The Company or any other Sponsor or Sponsor Affiliate will reimburse, or cause reimbursement of, the County from time to time for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement's terms and provisions, with respect to the Company or such other Sponsor or Sponsor Affiliate, as the case may be, promptly upon written request therefor, but in no event later than forty-five (45) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, except as may be set forth in the Development Agreement with respect to the Project, and, aside from the attorneys' fees set forth below, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby. The parties understand that the County has incurred, and will incur, legal fees and other expenses for review of the Inducement Resolution, this Agreement, the Development Agreement, the Multi-County Park Agreement and all resolutions, ordinances and other documentation related thereto in an amount not to exceed [\$\_\_\_\_\_].

Section 4.04. Use of Project for Lawful Activities. Subject to the applicable terms of the Development Agreement, during the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior written consent or subsequent ratification otherwise, which consent or ratification may be provided by the County in its sole discretion, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and

existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement and the Development Agreement on the part of the Company to be performed or observed with respect to the Project; and

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

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

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this **Section 4.05**, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this **Section 4.05**.

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

Section 4.06. Records and Reports. (a) The Company and each other Co-Investor will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply



with all reporting requirements applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(i) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from the Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of the Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by the Company or such other Sponsor or Sponsor Affiliate. For purposes of this Agreement, the term "County Official" shall include the Administrator, Auditor, Assessor, or Treasurer of the County.

(ii) Each year during the Term hereof, the Company and each other Sponsor or Sponsor Affiliate shall deliver to the County Auditor, the County Assessor and the County Treasurer a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

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

(b) The Company acknowledges that the County is subject to the provisions of the South Carolina Freedom of Information Act. The County acknowledges that information the Company may hereafter provide to the County and which is clearly identified as "confidential and proprietary" ("Additional Information") may be deemed by the Company to be confidential and proprietary. To the extent that the Company identifies information in this Agreement or any of the attachments hereto or any Additional Information that it considers to be confidential or proprietary, the County agrees to maintain the confidentiality of such information and will, to the extent permitted by law (including, specifically, the South Carolina Freedom of Information Act), decline to honor any request for release of the information so designated to persons other than the Company and its designated officers and representatives. In the event that the County is required by law to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with as much prompt advance notice of such requirement as reasonably possible before making such disclosure. In the event an action at law or equity is brought against the County to require the disclosure of any Additional Information that the Company identified as confidential or proprietary, the County reserves the right to include the Company in such action, and the Company hereby agrees, only

to the extent that it has communicated to the County its desire that such disclosure not be made, to bear the reasonable costs associated with defending the County in such action, including payment of any judgment against the County for attorneys' fees or other liabilities related to such action. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project, the Company may require the execution, to the extent permitted by law, of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County who would gather, receive, or review such information or conduct or review the results of any inspections.

Section 4.07. Funding for Special Source Improvements. The Company and any other Sponsors or Sponsor Affiliates shall provide, or cause the provision of, funding for the Special Source Improvements related to the Project.

## ARTICLE V

### FEES IN LIEU OF TAXES

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

In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this Section, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on **[January 15, 20\_\_]**. If the Company designates any other Sponsor or Sponsor Affiliates as the same shall have been consented to by the County, (if such consent is required pursuant to **Section 6.02** hereof), the Company must notify the County in writing at the time of such designation as to whether such additional Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments due hereunder with respect to such Sponsor or Sponsor Affiliate's respective portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments due with respect to such Negotiated FILOT Property.

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

For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the

Investment Period is extended as set forth in the definition of Investment Period contained in **Section 1.01** hereof, up to an aggregate of forty (40) years.

The Negotiated FILOT shall be determined using (1) a fixed assessment ratio of 6%; (2) the lowest millage rate or rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which (i) the parties believe to be, with respect to all Negotiated FILOT Property comprised of, or located on, the Land, the millage rate or rates as set forth in **Exhibit A** attached hereto, (ii) based on the property comprising the Land as of the original execution and delivery of this Agreement, and which the parties believe to be **[243.54]** mills with respect to all Negotiated FILOT Property comprised of, or located on, such Land, and (iii) shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Negotiated FILOT Property owned by the Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT.

As authorized in, and subject to the provisions of, Section 12-44-50(A)(3) of the Negotiated FILOT Act, the County hereby approves the Company's request to calculate the Negotiated FILOT payments due with respect to the Project based on an alternative payment method yielding over the thirty-year Negotiated FILOT payment period for each annual increment of investment in the Project, a payment stream which has the same net present value as the payment stream which would be generated using the standard negotiated FILOT calculation provided under Section 12-44-50(A)(1) of the Negotiated FILOT Act and the factors set forth in **Sections 5.01(b)(i)** and **5.01(b)(ii)** hereof. Such net present value calculations shall be determined using a discount rate which is equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which this Agreement is executed, which the parties believe to be **[\_\_\_\_\_]**%. If no yield is available for the month in which this Agreement is executed, the last published yield for the appropriate maturity available must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity.

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

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

The Negotiated FILOT Payments are to be recalculated:

to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.01(d)(ii)** hereof, by the amount applicable to the Released Property;

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

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

to adjust such payments if the Company or any other Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.01(d)(iii)**;

provided, however, that, notwithstanding the foregoing provisions of **Section 5.01(c)** hereof, if any part of the Negotiated FILOT Property is disposed of, released or converted to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, by the Company or any other Sponsor or Sponsor Affiliate, then such Company or any such other Sponsor or Sponsor Affiliate shall pay to the County an amount equal to the difference, to that point in time, between what such entity would have paid to the County using the standard Negotiated FILOT calculation described in Section 12-44-50(A)(1) of the Negotiated FILOT Act and the factors set forth in **Section 5.01(b)(ii)** hereof and the amount actually paid using the alternative payment method Negotiated FILOT described in **Section 5.01(b)(iii)** hereof (a “Differential Payment”), after taking into account the Special Source Credits that would have applied, or did apply, to each such payment, as the case may be. Such Differential Payment will be made and included by such owing entity with the next FILOT payment due to the County.

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

Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject

to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes, or to the FILOT payments pursuant to the Multi-County Park Act, as the case may be, which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for the remaining portion of the Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property

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

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

case may be, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a “Deficiency Payment”).

(f)

In the event that either the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period as to any Sponsor or Sponsor Affiliate then all Negotiated FILOT Payments with respect to that portion of the Project owned by such non-qualifying Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable to the County with respect to Negotiated FILOT Payments theretofore made. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

If the Minimum Contractual Investment Requirement is not satisfied by the end of the Compliance Period, but the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Compliance Period, the Company and each other Sponsor or Sponsor Affiliate shall, subject to the provisions of **Section 5.01(f)(iv)** hereof, continue to be eligible to take advantage of the Negotiated FILOT described in **Section 5.01** hereof, but the County shall have the rights specified in **Section 4.02** hereof with respect to the Special Source Credits.

In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Statutory Investment Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT Payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act, commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

In the event that investment in the Project by the Company, all other Sponsors and Sponsor Affiliates and, to the extent permitted by the Negotiated FILOT Act, all other Co-Investors does not satisfy the \$45,000,000 investment requirement set forth in Section 12-44-50(A)(3) of the Negotiated FILOT Act, but nevertheless satisfies the Minimum Statutory Investment Requirement, then the Negotiated FILOT Payments shall revert retroactively and prospectively to the amounts due under the standard method Negotiated FILOT under Section 12-44-50(A)(1) of the Negotiated FILOT Act and the factors set forth in **Sections 5.01(b)(i)** and **5.01(b)(ii)** hereof, and then the Company and each other Sponsor or Sponsor Affiliate shall pay to the County a Differential Payment with respect to the Project as described in **Section 5.01(c)** hereof.

In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land which is subject to *ad valorem* taxes, or the Negotiated FILOT, in the County, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under **Section 5.01(e)** as a Deficiency Payment or other retroactive payment shall be paid within ninety (90) days after receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

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

## ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Sponsor or Sponsor Affiliate may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Sponsor or Sponsor Affiliate or operates such assets for the Company or any other Sponsor or Sponsor Affiliate or is leasing all or a portion of the Project in question from the Company or any other Sponsor or Sponsor Affiliate. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Sponsor or Sponsor Affiliate under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved, automatically, without further action or proceedings of the County, subject to the following provisions: (i) except in connection with any transfer to any other Sponsor or Sponsor Affiliate

or an Affiliate of the Company or any other Sponsor or Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above, as to all of which transfers and other transactions the County hereby consents, the Company shall obtain the prior written consent or subsequent ratification of the County, which consent or subsequent ratification of the County may be provided by the County in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Sponsor or Sponsor Affiliate hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.01(d)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Sponsor or Sponsor Affiliate hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such other Sponsor or Sponsor Affiliate (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such other Sponsor or Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue notice of any such transfer agreement; and (v) the Company or any such other Sponsor or Sponsor Affiliate and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

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

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

Section 6.02. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Project by the end of the Compliance Period all investment by



such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project by the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement by the end of the Compliance Period. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

## ARTICLE VII

### TERM; TERMINATION

Section 7.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained or as provided in the Act, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the later of (i) the day the last Negotiated FILOT Payment is made hereunder; or (ii) the day that all Special Source Credits due from the County hereunder have been fully provided by the County.

Section 7.02. Termination. In addition to the termination rights of the County under **Section 8.02(a)** hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination.

Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, Differential Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

Notwithstanding anything herein to the contrary, termination of this Agreement with respect to all, or any portion of, the Project shall not result in the termination of the Development Agreement with respect to such Project property, except as may be set forth in the Development Agreement.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

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

if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County; or

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

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Sponsor or Sponsor Affiliate, as the case may be, to make certain additional payments to the County, all as set forth in **Sections 4.02** and **5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default by the Company or any other Sponsor or Sponsor Affiliate, the following remedies may be exercised by the County only as to the Defaulting Entity:

the County may terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;

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

the County may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County’s rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available

by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Although the parties hereto acknowledge that the Negotiated FILOT Property is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise any remedies provided by general law (Title 12, Chapters 49 and 51 of the Code or any other statutory provision for tax collection of property taxes (the “Tax Statute”)) relating to the enforced collection of taxes, including an Event of Default under **Section 8.01(a)** hereof pertaining to the failure to make Negotiated FILOT Payments. The Company expressly acknowledges that in the event of its failure to make the required Negotiated FILOT Payments, that the County is only required to give notice thereof in accordance with the Tax Statute, and that no further notice is required hereunder in order to enforce the remedies set forth in this paragraph.

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

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

## ARTICLE IX

### MISCELLANEOUS

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

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Sponsor or Sponsor Affiliate hereof, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Company, which consent may be provided by the Company in its sole discretion.

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

(a) As to the County:

Beaufort County  
Attn: County Administrator  
PO Box 1228  
Beaufort, South Carolina 29901  
Phone: (843) 255-2026

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

Beaufort County Attorney  
**PO Box 1228**  
Beaufort, South Carolina 29901  
Phone: [(843)255-2055]

(c) As to the Company:

Project McClellan  
c/o [\_\_\_\_\_] ]  
Attention: **[insert name]**  
**[insert street address]**  
**[insert city, state and zip code]**  
Phone: [(\_\_\_\_) \_\_\_\_ - \_\_\_\_]

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

Tushar V. Chikhliker, Esq.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700 (29201)  
P.O. Drawer 2426  
Columbia, South Carolina 29202

Phone: (803) 771-8900

Fax: (803) 253-8277

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

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

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

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

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

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

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

Section 9.11. Further Proceedings. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the County Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 9.12. Disparity or Ambiguity with Inducement Resolution. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Agreement the terms and provisions of this Agreement shall control.

[Execution Pages to Follow]

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

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman, County Council  
Beaufort County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Thomas J. Keaveny, II County Attorney  
Beaufort County, South Carolina

Witnesses

PROJECT MCCLELLAN

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Representative

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

**[INSERT LEGAL DESCRIPTION]**

Applicable Negotiated FILOT Millage Rate: **[243.54]** mills



**ORDINANCE NO. 2018/\_\_\_**  
**(PROJECT MCCLELLAN MULTI-COUNTY PARK)**

AN ORDINANCE AUTHORIZING AND APPROVING (1) THE DEVELOPMENT OF A NEW JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, IN CONJUNCTION WITH JASPER COUNTY (THE "PARK") SUCH PARK TO BE GEOGRAPHICALLY LOCATED IN BEAUFORT COUNTY AND TO INCLUDE THE BELOW MENTIONED PROPERTY; (2) THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH JASPER COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; (4) THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN BEAUFORT COUNTY; AND (5) OTHER MATTERS RELATED THERETO.

WHEREAS, pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (collectively, the "Multi-County Park Act"), Beaufort County, South Carolina ("Beaufort County") and Jasper County, South Carolina ("Jasper County"), in order to promote economic development and thus encourage investment and provide additional employment opportunities, Beaufort County and Jasper County, as authorized under the Multi-County Park Act, now propose to establish jointly a multi-county industrial/business park (the "Park"); and

WHEREAS, Beaufort County and Jasper County have agreed to the specific terms and conditions of such arrangement as set forth in that certain Agreement for Establishment of a Multi-County Industrial/ Business Park (Project McClellan) proposed to be entered into by and between Beaufort County and Jasper County as of such date as may be agreed to by Beaufort County and Jasper County (the "Project McClellan Multi-County Park Agreement"), a form of which Project McClellan Multi-County Park Agreement has been presented to this meeting; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE BEAUFORT COUNTY COUNCIL AS FOLLOWS:

**Section 1. Establishment of Project McClellan Multi-County Park; Approval of the Project McClellan Multi-County Park Agreement.** There is hereby authorized to be established, in conjunction with Jasper County, a multi-county industrial/business park to be known as the Project McClellan Multi-County Park and to include therein the Project McClellan Property as more particularly described on Exhibit A. The form, provisions, terms and

conditions of the Project McClellan Multi-County Park Agreement now before this meeting and filed with the Clerk to Beaufort County Council be and they are hereby approved, and all of the provisions, terms and conditions thereof are hereby incorporated herein by reference as if the Project McClellan Multi-County Park Agreement were set out in this Ordinance in its entirety. The Chairman of Beaufort County Council is hereby authorized, directed, and empowered to execute the Project McClellan Multi-County Park Agreement in the name and on behalf of Beaufort County; the Clerk to Beaufort County Council is hereby authorized, directed, and empowered to attest the same; and the Chairman of Beaufort County Council is further authorized, directed, and empowered to deliver the Project McClellan Multi-County Park Agreement to Jasper County.

The Project McClellan Multi-County Park Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of Beaufort County thereunder and as shall be approved by the officials of Beaufort County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Project McClellan Multi-County Park Agreement now before this meeting.

The Chairman of Beaufort County Council, the County Administrator of Beaufort County, and the Clerk to the Beaufort County Council, for and on behalf of Beaufort County, are hereby each authorized and empowered to do any and all things necessary or proper to effect the development of the Project McClellan Multi-County Park and the performance of all obligations of Beaufort County under and pursuant to the Project McClellan Multi-County Park Agreement and to carry out the transactions contemplated thereby and by this Ordinance.

**Section 2. Payment of Fee in Lieu of Tax.** The businesses and industries located in the Project McClellan Multi-County Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Project McClellan Multi-County Park Agreement. The fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Jasper County. That portion of the fee allocated pursuant to the Project McClellan Multi-County Park Agreement to Beaufort County shall, upon receipt by the Treasurer of Jasper County, be paid to the Treasurer of Beaufort County in accordance with the terms of the Project McClellan Multi-County Park Agreement. Payments of fees in lieu of *ad valorem* taxes will be made on or before the due date for taxes for a particular year. Penalties for late payment will be at the same rate as late tax payment. Any late payment beyond said date will accrue interest at the rate of statutory judgment interest. Beaufort County and Jasper County, acting by and through the Treasurer of Jasper County, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes. Nothing herein shall be construed to prohibit Jasper County from negotiating and collecting reduced fees in lieu of taxes pursuant to Title 4, Chapter 29 or Chapter 12, or Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended, or any similar provision in South Carolina law.

The provisions of Section 12-2-90 of the Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

**Section 3. Sharing of Expenses and Revenues.** Sharing of expenses and revenues of the Project McClellan Multi-County Park by Beaufort County and Jasper County shall be as set forth in the Project McClellan Multi-County Park Agreement.

**Section 4. Distribution of Revenues within Beaufort County.** Revenues generated from industries and businesses located in the Project McClellan Multi-County Park and received by Beaufort County shall be distributed by Beaufort County in accordance with an ordinance to be passed by Beaufort County Council.

**Section 5. Governing Laws and Regulations.** The ordinances of Beaufort County, as applicable, concerning zoning, health and safety regulations, and building code requirements will apply for the entire Project McClellan Multi-County Park.

**Section 6. Law Enforcement Jurisdiction.** Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Project McClellan Multi-County Park properties is vested with the Sheriff's Department of Beaufort County. If any of the Project McClellan Multi-County Park properties are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

**Section 7. Conflicting Provisions.** To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Beaufort County Code or other Beaufort County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

**Section 8. Severability.** If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

**Section 9. Effectiveness.** This Ordinance shall be effective upon third and final reading.

[End of Ordinance - Signature page to follow]

Enacted and approved, in a meeting duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2018.

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman, County Council,  
Beaufort County, South Carolina

[SEAL]

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas J. Keaveny II, County Attorney  
Beaufort County, South Carolina

First Reading:            June 11, 2018  
Second Reading:        \_\_\_\_\_, 2018  
Public Hearing:           \_\_\_\_\_, 2018  
Third Reading:          \_\_\_\_\_, 2018

EXHIBIT A  
(PROPERTY DESCRIPTION)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT ) **AGREEMENT FOR THE ESTABLISHMENT OF**  
 ) **MULTI-COUNTY INDUSTRIAL/BUSINESS PARK**  
 ) **(PROJECT MCCLELLAN)**  
 COUNTY OF JASPER )

**THIS AGREEMENT FOR THE ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK (PROJECT MCCLELLAN)** for the establishment of a multi-county industrial/business park to be located within Beaufort County and Jasper County is made and entered into as of [\_\_\_\_\_] , 2018, by and between Beaufort County, South Carolina (“Beaufort County”) and Jasper County, South Carolina (“Jasper County”).

RECITALS

**WHEREAS**, Beaufort County and Jasper County are contiguous counties which, pursuant to Ordinance No. [\_\_\_\_\_] , enacted by Beaufort County Council on [\_\_\_\_\_] , 2018, and Ordinance No. [\_\_\_\_\_] enacted by Jasper County Council on [\_\_\_\_\_] , 2018, have each determined that, in order to promote economic development and thus encourage investment and provide additional employment opportunities within both of said counties, there should be established in Beaufort County a multi-county industrial/business park (the “Park”), to be located upon property more particularly described in Exhibit A (Beaufort); and

**WHEREAS**, as a consequence of the establishment of the Park, property comprising the Park and all property having a situs therein is exempt from *ad valorem* taxation pursuant to Article VIII, Section 13(D) of the South Carolina Constitution, but the owners or lessees of such property shall pay annual fees in an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for such exemption.

**NOW, THEREFORE**, in consideration of the mutual agreement, representations and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Binding Agreement.** This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on Jasper County and Beaufort County, their successors and assigns.

2. **Authorization.** Article VIII, Section 13(D) of the South Carolina Constitution provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a manner in which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any provision of law which measures the relative fiscal capacity of a school district to support its schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of taxable property in all school districts in South Carolina. The Code of Laws of South Carolina, 1976, as amended (the “Code”) and particularly, Section 4-1-170 thereof, satisfies the conditions imposed by Article VIII, Section 13(D) of the South Carolina Constitution and provides the statutory vehicle whereby a multi-county industrial or business park may be created.

3. **Location of the Park.**

(A) The Park consists of property that is located in Beaufort County and which now or will be owned and/or operated by Project McClellan one or more affiliates, and/or other project sponsors, as more particularly described in Exhibit A hereto. It is specifically recognized that the Park may from time to time consist of non-contiguous properties within Beaufort County. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinance of the county council of Beaufort County and resolution of the county council of Jasper County. If any property proposed for inclusion in the Park is located, at the time such inclusion is

proposed, within the boundaries of a municipality, then the municipality must give its consent prior to the inclusion of the property in the Park.

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached hereto a revised Exhibit A which shall contain a legal description of the boundaries of the Park as enlarged or diminished, together with a copy of the ordinance of Beaufort County Council and resolution of Jasper County Council pursuant to which such enlargement or diminution was authorized.

(C) Prior to the enactment by Beaufort County Council of its ordinance authorizing the diminution of the boundaries of the Park, a public hearing shall first be held by Beaufort County Council. Notice of such public hearing shall be published in a newspaper of general circulation in Beaufort County, at least once and not less than fifteen (15) days prior to such hearing. Notice of such public hearing shall also be given by certified mail that is deposited with the U.S. Postal Service at least fifteen (15) days prior to such public hearing upon the owner and, if applicable, the lessee of any property which would be excluded from the Park by virtue of the diminution.

4. **Fee in Lieu of Taxes.** Pursuant to Article VIII, Section 13(D) of the South Carolina Constitution, all property located in the Park is exempt from all *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Agreement an amount (referred to as fees in lieu of *ad valorem* taxes) equivalent to the *ad valorem* taxes or other in-lieu-of payments that would have been due and payable but for the location of such property within the Park.

5. **Allocation of Expenses.** Beaufort County and Jasper County shall bear expenses incurred in connection with the Park, including, but not limited to, those incurred in the administration, development, operation, maintenance and promotion of the Park, in the following proportions:

A. Beaufort County	100%
B. Jasper County	0%

6. **Allocation of Revenues.** Beaufort County and Jasper County shall receive an allocation of all revenues generated by the Park through payment of fees in lieu of *ad valorem* taxes in the following proportions:

A. Beaufort County	99%
B. Jasper County	1%

Any payment from Beaufort County to Jasper County of Jasper County's allocable share of Park revenues: (I) shall be made and accompanied by a statement showing the manner in which total payment and each County's share were calculated. If any Park revenues are received by Beaufort County through payment by any owner, or any lessee/tenant, or any other taxpayer is made under protest, or otherwise as part of a dispute, then Beaufort County is not obligated to pay Jasper County more than Jasper County's share of the undisputed portion of the Park revenues until thirty (30) days after the final resolution of the protest or dispute.

7. **Revenue Allocation within Each County.** Park revenues generated shall be distributed to and within the County as follows:

(A) Revenues generated by the Park through the payment of fees in lieu of *ad valorem* taxes shall be distributed to Beaufort County and to Jasper County, as the case may be, according to the proportions established by this Agreement. With respect to revenues allocable to Beaufort County by way of fees in lieu of *ad valorem* taxes generated from properties within the Park, such revenue shall be distributed within Beaufort County in the manner provided by ordinance of the county council of Beaufort County; provided, that (i) each taxing entity which overlaps the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such revenue-generating portion, (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body of such taxing entity shall allocate the revenues received to operations and/or debt service of such entity, and (iii) all taxing entities other than the foregoing shall receive zero percent (0%) of such revenues.

(B) Revenues allocable to Jasper County by way of fees in lieu of *ad valorem* taxes generated from properties located in the Beaufort County portion of the Park shall be distributed solely to Jasper County.

8. **Fees in Lieu of *Ad Valorem* Taxes Pursuant to Title 4 or Title 12 of the Code.** It is hereby agreed that the entry by Beaufort County into any one or more fee in lieu of *ad valorem* tax agreements pursuant to Title 4 or Title 12 of the Code or any successor or comparable statutes (“Negotiated Fee in Lieu of Tax Agreements”), with respect to property located within the Park and the terms of such agreements shall be at the sole discretion of Beaufort County.

9. **Assessed Valuation.** For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to Beaufort County and Jasper County and to each of the taxing entities within the participating counties shall be in accordance with the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to **Sections 6 and 7** herein.

10. **Governing Laws and Regulations.** Any applicable ordinances and regulations of Beaufort County including those concerning zoning, health and safety, and building code requirements shall apply to the Park properties located in the Beaufort County portion of the Park unless any such property is within the boundaries of a municipality in which case, the municipality’s applicable ordinances and regulations shall apply.

11. **South Carolina Law Controlling.** This Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with South Carolina law.

12. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision of this Agreement.

13. **Counterpart Execution.** This Agreement may be executed in multiple counterparts.

14. **Additional Parties.** This Agreement may be amended from time to time to add additional counties located in South Carolina, subject to Article VIII, Section 13(D) of the Constitution of South Carolina and Title 4, Chapter 1 of the Code, by ordinance of the county council of Beaufort County, and by resolution of the county council of Jasper County; provided, however, that to the extent permitted by law, additional counties may be added as parties hereto with only the enactment of an ordinance of the county council of Beaufort County only in the event that such additional county’s allocation of Park Revenues hereunder shall be allocated solely out of Beaufort County’s residual net share of the Park Revenues provided for its use and distribution pursuant to **Section 7** hereof.

15. **Term; Termination.** Except as specifically provided in this **Section 15**, Beaufort County and Jasper County agree that this Agreement may not be terminated in its entirety by any party and shall remain in effect for a period equal to the shorter of (i) twenty-one (21) years commencing with the effective date of this Agreement or (ii) a period of time of sufficient length to facilitate any special source revenue credits due with respect to Park property; provided, however, that this Agreement shall automatically terminate in its entirety on the 30<sup>th</sup> day after provision or payment in full, or termination, of all special source revenue credits or due with respect to Park property. Notwithstanding anything in this Agreement to the contrary, this Agreement may not be terminated to the extent that Beaufort County has outstanding contractual commitments to any owner or in the event the County is the owner pursuant to a negotiated fee-in-lieu-of-tax agreement under Title 4, Chapter 29 or Chapter 12 of the Code, lessee/tenant, or other taxpayer of or with respect to Park property requiring designation of such property as part of a multi-county industrial/business park pursuant to Article VIII, Section 13(D) of the Constitution of South Carolina and/or Title 4, Chapter 1 of the Code (the “Act”), unless Beaufort County shall first (i) obtain the written consent of such owner, lessee/tenant, or other taxpayer or (ii) designate such parcel as part of another multi-county industrial/business park pursuant to the Act effective immediately upon termination of this Agreement. Additionally, in the event that Beaufort County complies with the preceding sentence, Beaufort County may terminate this Agreement upon providing thirty (30) days notice to Jasper County and any owner or in the event the County is the owner pursuant to a negotiated fee-in-lieu-of-tax agreement under Title 4, Chapter 29 or Chapter 12 of the Code, lessee/tenant, or other taxpayer of or with respect to Park property.

16. **Law Enforcement Jurisdiction.** Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties is vested with the Sheriff’s Office of Beaufort County, for matters



within their jurisdiction. If any of the Park properties are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is also vested with the law enforcement officials of the municipality for matters within their jurisdiction.

[End of Agreement – Execution Page to Follow]

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

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman, County Council  
Beaufort County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Thomas J. Keaveny II, County Attorney  
Beaufort County, South Carolina

JASPER COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. T. Johnson, Jr., Chairman, County Council  
Jasper County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Judy Frank, County Council Clerk  
Jasper County, South Carolina

**Exhibit A (Beaufort)**

PARK PROPERTY

**[TO BE INSERTED]**

The remainder of this page intentionally left blank.

**Exhibit B (Jasper)**

JASPER COUNTY PROPERTY

None.

The remainder of this page intentionally left blank.

## **ORDINANCE 2018/\_\_\_**

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF BEAUFORT, SOUTH CAROLINA, AND SEABROOK SOLAR, LLC**

**WHEREAS**, Beaufort County, South Carolina (the “County”), acting by and through the Beaufort County Council (the “County Council”) is empowered under and pursuant to the provisions of the South Carolina Local Government Development Agreement Act, Title 6, Chapter 31, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into development agreements relating to property within the County; and

**WHEREAS**, the County Council has determined that the Development Agreement by and between Beaufort County, South Carolina, and Seabrook, LLC (the Development Agreement”) is consistent with the Beaufort County Comprehensive Plan (the “Comprehensive Plan”) and the Beaufort County Community Development Code (the “CDC”); is a proper exercise of the police power and authority granted to the County government; and benefits the general health, safety and welfare of the citizens of the County for the County to enter into the Development Agreement relating to the development property identified as TMS Nos. R700 029 000 0054 0000 and R700 028 000 0086 0000 in Beaufort County, South Carolina.

**NOW, THEREFORE, BE IT ORDAINED**, by the County Council of Beaufort County, South Carolina, in a meeting duly assembled, as follows:

### **SECTION 1. FINDINGS INCORPORATED**

The above recitals and findings are incorporated herein by reference and made a part of this Ordinance. In addition to the recitals set forth above, which the County Council hereby adopts as findings of fact, the County Council specifically finds that the Development Agreement attached hereto as Exhibit “A” and incorporated herein by reference, complies with the Act, the Comprehensive Plan, and the CDC.

### **SECTION II. DEVELOPMENT AGREEMENT**

The terms of the Development Agreement are hereby approved in accordance with the Act and the CDC. The Development Agreement shall be effective immediately upon approval of this Ordinance after third reading and execution by both parties.

### **SECTION III. EXECUTION**

The County Administrator is authorized to execute and deliver the Development Agreement on behalf of the County, and any and all other necessary documents or instruments incidental to the approval of this Ordinance and the Development Agreement.

SECTION IV. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its approval following third reading by the County Council.

**THEREFORE, BE IT ORDAINED, ENACTED and APPROVED**, in a meeting duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2018.

BEAUFORT COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman, County Council,  
Beaufort County, South Carolina

[SEAL]

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas J. Keaveny, II, Esquire  
Beaufort County Attorney

First Reading:            June 11, 2018  
Second Reading:        \_\_\_\_\_, 2018  
Public Hearing:            \_\_\_\_\_, 2018  
Third Reading:            \_\_\_\_\_, 2018

**EXHIBIT A**

Seabrook Solar Development Agreement

**SEABROOK SOLAR  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN**

**SEABROOK SOLAR, LLC,  
AND  
BEAUFORT COUNTY, SOUTH CAROLINA**

\_\_\_\_\_, 2018

**Prepared by:  
Nicole Scott Ewing  
Nexsen Pruet, LLC  
205 King Street  
Charleston, SC 29401**



**DEVELOPMENT AGREEMENT  
BY AND BETWEEN**

**SEABROOK SOLAR, LLC**

**AND**

**BEAUFORT COUNTY, SOUTH CAROLINA**

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## **EXHIBITS**

- Exhibit A: Legal Description
- Exhibit B: Boundary Plat
- Exhibit C: Development Schedule
- Exhibit D: Current Regulations
- Exhibit E: Development Agreement Ordinance
- Exhibit F: Form Partial Assignment and Assumption of Rights and Obligations
- Exhibit G: Legal and Equitable Owners

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN  
SEABROOK SOLAR, LLC,  
AND  
BEAUFORT COUNTY, SOUTH CAROLINA,**

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, which shall be the date of recording of this fully approved and executed Agreement (the "Effective Date"), by and between Seabrook Solar, LLC, a Delaware limited liability corporation, and Beaufort County, a political subdivision of the State of South Carolina.

**RECITALS**

This Agreement is predicated upon the following:

- I. The Code of Laws of South Carolina (the "S.C. Code") Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables political subdivisions of the State of South Carolina to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act.
- II. Division 7.3 of Article 7 of the Beaufort County Community Development Code governs Beaufort County's participation in development agreements.

III. The County conducted public hearings regarding its consideration of this Agreement on \_\_\_\_\_, 2018, and \_\_\_\_\_, 2018, after publishing and announcing notice, in accordance with the Act.

IV. County Council adopted Ordinance Number \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2018, (a) determining that this Agreement is consistent with the County Comprehensive Plan, the Act, and the Current Regulations of the County, and (b) approving this Agreement. A copy of the Ordinance is attached hereto as Exhibit E, and incorporated herein by reference.

NOW THEREFORE, in consideration of the promises of this Agreement and the mutual benefits to the parties, the parties agree as follows:

1. The Real Property. The Real Property subject to this Agreement currently consists of approximately one thousand forty-two (1,042) acres, of which approximately eight hundred eighty (880) acres are highland. A legal description of the Real Property is set forth in Exhibit A, and the boundary lines of the property are shown on the plat attached as Exhibit B.

2. Definitions. In this Agreement, unless the word or phrase is non-capitalized:

(a) “Agreement” means this Development Agreement, including the recitals and exhibits attached hereto.

(b) “Annual Development Fee” means that minimum payment made to Beaufort County by the Property Owner, its successors or assigns pursuant to Paragraph 14 herein.

(c) “Comprehensive Plan” means the Beaufort County Comprehensive Plan, Ordinance No. 2011/1, adopted on January 11, 2011, pursuant to S.C. Code Section 6-29-510, et

seq., as amended, and the official zoning map adopted pursuant to S.C. Code Section 6-7-1210, et seq.

(d) “County” means Beaufort County, South Carolina.

(e) “Current Regulations” mean the Comprehensive Plan and the Beaufort County Community Development Code, Ordinance No. 2014/36, as adopted by County Council on December 8, 2014, all as amended through the Effective Date hereof. “Current Regulations” do not include subdivision plat and development plan procedural processes and fees.

(f) “Development” means the planning for or carrying out of a building activity or mining operation, the making of a material change in the use or appearance of any structure or property, or the dividing of land into parcels. “Development,” as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, “Development” refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(g) “Development Parcel” means any tract of land on which Development may occur, including platted Lots and unplatted parcels, but excluding street rights-of-way.

(h) “Development Permit” includes a County building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action of the County having the effect of permitting the Development or use of Real Property.

(i) “Facilities” means major capital improvements to be constructed on the Real Property including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water. Except as may be specifically provided for in this Agreement, and in consideration, in part, of the fees to be paid to Beaufort County pursuant to Section 14, the Property Owner is specifically exempted from any County requirement for the provision of facilities relating to public education, public health systems and facilities, libraries, parks and recreational facilities, public housing, jails and other detention sites, courts, and police. Such exemptions shall not, however, exempt Property Owner from payment of applicable user, tap and impact fees, respectively, for any such facilities.

(j) “FILOT Agreement” means that certain Fee in Lieu of Tax and Incentive Agreement by and between/among the County, and Project McClellan (as defined in the FILOT Agreement) dated as of the \_\_\_\_ day of \_\_\_\_\_, 2018 as may be amended, supplemented, or modified from time to time.

(k) “FILOT Project” shall have the meaning ascribed to such term in the FILOT Agreement.

(l) “Land Development Regulations” means ordinances and regulations enacted by County Council for the regulation of any aspect of Development and include County zoning, rezoning, subdivision, building construction, sign regulations or any other regulations controlling the Development or use of Real Property.

(m) “Law” means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules, custom and usage (formal and informal) adopted by the County Council affecting the Development of Real Property, and includes laws governing

permitted uses of the Real Property, governing density, and governing design, improvement, and construction standards and specifications, except those regarding the provision of electricity or gas service, including, but not limited to, the generation, transmission, distribution, or provision of electricity at wholesale, retail or in any other capacity.

(n) “Lot” means a Development Parcel identified in a Subdivision Plat recorded in the Beaufort County Register of Deeds Office.

(m) “Parcel” means any of those tracts of Real Property that are identified on the Boundary Plat, attached as Exhibit B, as same may be specifically identified by the filing of a subdivision application.

(o) “Parties” means the Property Owner and the County.

(p) "Permits" include any and all governmental or other permits, consents, approvals, certifications, licenses, authorizations, utility connections, annexation, zoning, special use, certificate of designation or other land use designation as may be necessary to allow Property Owner or its assignee to operate a solar farm or other permitted facility or operation for which no appeal has been taken within the time required by law.

(q) “Project” is the Development that will occur within and upon the Real Property described in Exhibit A and Exhibit B, including but not limited to the development of a solar farm.

(r) “Property Owner” means Seabrook Solar, LLC, a Delaware limited liability corporation, who has an equitable interest in the Real Property, together with all subsidiaries and other entities that have legal or equitable interest on the date of execution hereof in any of the Real Property as described in Section 5, and includes Seabrook Solar, LLC’s successors in interest or



successors in title and/or assigns by virtue of assignment or other instrument pursuant to Section 28 hereof.

(s) “Real Property” is the real property referred to in Section 1 and Section 5 and includes any improvements or structures customarily regarded as part of real property.

(t) “Subdivision Plat” means a recorded graphic description of property prepared and approved in compliance with the Current Regulations, as modified in this Agreement.

(u) “Term” shall have the meaning set forth in Section 16 of this Agreement.

(v) “Vested Rights” shall have meaning set in section 9(b) of this agreement.

3. Compliance with South Carolina Code Section 6-31-60. Pursuant to South Carolina Code Section 6-31-60, a list of all individuals/entities with an equitable or legal interest in the Real Property is attached hereto as Exhibit G.

4. Relationship of the Parties. This Agreement creates a contractual relationship among the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Property Owner constitutes “state action” for any purposes.

5. Legal Description of the Real Property. The Real Property which is the subject of this Agreement is described as follows:

(a) A legal description of the Real Property is set forth in Exhibit A.

(b) A boundary plat of the Real Property is set forth in Exhibit B.

The Real Property currently consists of approximately eight hundred eighty (880) acres of highland and approximately one hundred sixty-two (162) acres of wetlands, with a total gross acreage of approximately one thousand forty-two (1,042) acres.

The Property Owner may notify the County from time to time of property proposed to be added to the legal description of Real Property by the filing of a legal description of such properties owned by Property Owner with the Clerk of Council; provided, however, that no other property shall be added to the Agreement unless this Agreement is duly amended to add the legal description of the properties desired to be added to the legal description of the Real Property, pursuant to S.C. Code Section 6-31-10, et seq.

6. Intent of the Parties. The Parties agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their successors in interest and, in the case of the Property Owner, to their successors in title and/or assigns. The Parties are entering into this Agreement in order to secure benefits and burdens referenced in the Code of Laws of South Carolina, Sections 6-31-10, et seq. To that end, the Parties agree to cooperate fully with each other to accomplish the purposes of this Agreement during the Term of this Agreement.

7. Consistency with the County's Comprehensive Plan and Land Development Regulations. This Agreement is consistent with the County's Comprehensive Plan and Current Regulations.

Whenever expressed or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Current Regulations, the standards set forth in the Current Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered in *pari material* to give effect to both the Current Regulations and this Agreement; provided, however, that nothing in this section is intended to revoke or repeal the review, variance,

special exception, or appeal authority of other bodies contained in Code of Laws of South Carolina § 6-29-800 or in the Current Regulations.

8. Legislative Act. Any change in the standards established by this Agreement or to Laws pertaining to the same shall require the approval of County Council, subject to compliance with applicable statutory procedures and consistent with Section 9(a). This Agreement constitutes a legislative act of County Council. County Council adopted this Agreement only after following procedures required by S.C. Code Section 6-31-10, et seq. This Agreement shall not be construed to create a debt of the County as referenced in Section 6-31-145.

9. Applicable Land Use Regulations.

(a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by South Carolina Code Section 6-31-10, et seq., the Laws applicable to Development of the Real Property, subject to this Agreement, are those in force at the time of execution of this Agreement, defined as the Current Regulations, attached hereto as Exhibit D. The County may apply a subsequently adopted law to a development that is subject to this Agreement only if the subsequently adopted law meets the requirements of the Code of Laws of South Carolina § 6-31-80(b), as the same may be amended from time to time.

(b) Vested Rights. Subject to the provisions of subparagraph (a) above, all rights and prerogatives accorded the Property Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property for the term of this Agreement or until earlier terminated, cancelled or suspended pursuant hereto.

Subparagraph 9(a) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

10. Building Codes and Laws Other Than Land Use Regulations. The Property Owner, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing and gas codes subsequently adopted by the County or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing and gas codes subsequently adopted by the County or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the County to exercise governmental powers and pass laws not applicable to Development of the Real Property including, but not limited to, the power of eminent domain and the power to levy and collect taxes; provided, however, that Laws applicable to the Development of the Real Property shall be subject to Section 9(a).

11. Local Development Permits and Other Permits Needed. The Parties anticipate that local Development Permits and other regulatory permits will be needed to complete the Project as more fully described in the Current Regulations.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Property Owner of the necessity of complying with the Law governing permit requirements, conditions, terms, or restrictions.

A. LAND USES AND INTENSITIES

(a) Permitted Land Uses and Intensities. The permitted land uses and intensities set forth in the T2-R zoning district, as described in the Current Regulations, attached hereto as Exhibit D, are allowed on the Real Property. The County acknowledges and agrees that a solar farm is a permitted use under the T2-R zoning district, and that the Property Owner’s intent is to construct a 72.5 megawatt solar farm (the “Solar Farm”) on the Real Property.

(b) Standards. All standards and regulations pertaining to the T2-R zoning district, as applicable, including but not limited to building development standards, setbacks, buffers, fencing, signage, conditional use requirements, parking, off street loading, landscaping, height, tree-protection, vibration, noises, air pollution, odors, toxic matters and hazardous waste, fire and explosive hazards, radioactive materials, light and glare, electromagnetic interference, smoke and particulate matter, fumes, vapors, heat, cold, dampness, or movement of air, financial security, water supply, sewage, disposal requirements, road classification and design standards, construction standards, storm water design, and all other required regulations and standards found in the Current Regulations shall apply with respect to planned uses for which Property Owner seeks site plan approval. Other statutes, regulations and ordinances not specifically included in the Current Regulations, such as International Building, Fire and Electrical Codes, shall also apply.

B. SUBDIVISION PLAN AND DEVELOPMENT PERMIT APPROVAL

Conceptual, preliminary plans and final plats, as defined in the Current Regulations, as applicable, for each phase of the Development shall be submitted for review and approval pursuant to the applicable provisions of the Current Regulations, but shall utilize and be subject to the subdivision and development permitting processes and fees in effect at the time of submission.

### C. DECOMMISSIONING

The Property Owner acknowledges and agrees that decommissioning will be required following a continuous period of twelve (12) months in which no electricity is generated by the Solar Farm other than for mechanical, repair, replacement, and/or maintenance purposes.

The Property Owner shall submit a decommissioning plan that describes the anticipated life of the Solar Farm; the estimated decommissioning costs in current dollars; the method for ensuring that funds will be available for decommissioning and restoration; and the anticipated timeline and manner in which the Solar Farm project will be decommissioned and the site restored to its condition prior to the development of the solar farm. The decommissioning plan shall be recorded in the Beaufort County Register of Deeds prior to the issuance of a Zoning Permit, as such term is defined in the Current Regulations.

The Property Owner shall have twelve (12) months to complete decommissioning of the Solar Farm. Decommissioning shall include removal of solar panels, foundations, structures, cabling, electrical components, conduit, and any other associated facilities as described in the decommissioning plan.

Prior to the issuance of the Zoning Permit, the applicant must provide the County with a performance guarantee in the form of a corporate guarantee from an investment grade company or other equivalent security acceptable to the County in the amount of 125% of the estimated decommission cost minus the salvageable value, or \$50,000, whichever is greater. Estimates shall be determined by an engineer licensed to practice in South Carolina, and the County will be the holder of the guarantee.

Every five (5) years a new engineer's estimate of the probable cost of decommissioning shall be submitted for approval in the same manner as the initial submission, and the letter of credit, corporate guarantee, or other financial security acceptable to the County shall be adjusted upward or downward as necessary.

12. Facilities and Services. Although the nature of this long-term project prevents the Property Owner from providing exact completion dates, the general phases of Development are set forth in Section 15 and described in Exhibit C attached hereto and incorporated herein by reference. The Property Owner certifies that the Facilities will be in place (or if not fully in place, the cost of construction fully bonded or letter of credit posted pursuant to the Current Regulations) at the times provided herein. Subject to compliance with applicable Laws, all provisions of this Agreement, required subdivision and development approvals, and prior approval of construction plans by the County or other applicable governmental entity, the County hereby authorizes the Property Owner, on its own or through its affiliated companies, to install the Facilities. Notwithstanding any provision herein to the contrary, the Property Owner hereby assures the County that adequate Facilities shall be available concurrent with the phases of Development.

(a) Rights-of-Way/Easement. The Property Owner or a third party shall at its expense develop and provide roads and other related infrastructure within the Project and pursuant to and at such time required by the development plans for the Project and/or the Current Regulations. The Property Owner or a third party shall also be responsible for repairing any damage made to public roads or highways used to access the Property during construction, and surety to ensure such may be required by the County.

(b) Water and Sewer. Subject to approval by the South Carolina Department of Health and Environmental Control (“DHEC”), the Facilities for water and sewer on the Real Property will be provided by the Beaufort-Jasper Water Authority. In the event public sewer is not practically available to the Property through the Beaufort-Jasper Water and Sewer Authority, nor subject to a required tie-in under their policies due to the distance to the existing sewer lines, septic fields may be utilized on the Property, subject to DHEC and County permitting in the usual and customary course.

13. Traffic Considerations. Access to the Project will be from US Highway 21 and Keans Neck Road, and shall comply with Current Regulations. Additionally, the condition of these roads will be documented to the satisfaction of the owning and/or maintaining entity prior to the beginning of construction on the Property, and if required by the owning or maintaining entity, security in the form of an acceptable financial instrument in an amount sufficient to ensure repair of the roads, shoulders, and paving surface shall be a condition precedent to the granting of a subdivision or development permit by the County.

14. Fees.

(a) Development and Impact Fees. County and Property Owner agree that the Property Owner will pay, or cause to be paid by a third party, all road and fire impact fees (the “Impact Fees”) as same may become due. Other than the Impact Fees, the County specifically acknowledges and agrees that there are no development fees currently imposed by the County that are applicable to the Project, other than the usual and customary application, inspection and similar fees generally applicable to all development (“Customary Fees”), as may be amended by the terms of this Agreement, and will not impose any other development fees, including impact fees, on the



Project during the term of this Agreement other than the fees set forth in subsection 14(b), 14(c), the Impact Fees, and the Customary Fees.

(b) Fees-in-lieu of taxes.

(i) Property Owner and County acknowledge that all or a portion of the Project is, or will be upon being placed in service, subject to a fee-in-lieu of tax agreement pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina (the “Negotiated FILOT Act”) (the “FILOT Agreement”) pursuant to Ordinance No. \_\_\_\_, which was adopted by County Council on the \_\_\_\_ day of \_\_\_\_\_, 2018 and will be included in a multi-county industrial or business park pursuant to Title 4, Chapter 1 of the Code (the “Multi-County Park Act”). The FILOT Agreement and its fee-in-lieu tax arrangement are partial consideration of the reduced impact the Project will have on schools and other services as referenced in Section 14(a).

(ii) Property Owner agrees to make, or cause to be made, an Annual Development Fee of \$ \_\_\_\_\_, subject to a credit against such Annual Development Fee obligation in an amount equal to the actual aggregate amount of the annual fee-in-lieu of tax payments made, or *ad valorem* taxes paid, as the case may be, with respect to the FILOT Project, whether or not pursuant to the Negotiated FILOT Act and/or the Multi-County Park Act (the “FILOT Payments”), as described in further detail below. Annual Development Fees payable for a term equal to the scheduled term of the annual negotiated FILOT payments to be made under and pursuant to the FILOT Agreement with respect to the FILOT Project; provided however, that in the event that the FILOT Agreement is terminated due to a breach by County, Property Owner’s obligation under this Section 14(b) terminates. The County

and Property Owner acknowledge and agree that the present term of the annual negotiated FILOT arrangement is equal to thirty (30) years and, as a result, Property Owner shall be, subject to the proviso set forth in the preceding sentence, obligated to make, or cause to be made, thirty (30) Annual Development Fee payments.

(iii) The Annual Development Fee is being provided in consideration, among other things, of the granting of the Multi-County Business Park status and the FILOT Agreement, the exclusion of other development fees by the County, the exemption from the application of future laws as provided herein, and to assure other public benefits pursuant to §§ 6-31-10(4) and 6-31-60(D) of the South Carolina Code of Laws, 1976 (as amended).

(iv) As the Annual Development Fee is to be offset by the payment of FILOT payments or *ad valorem* taxes actually paid, in the event the offsets are not sufficient to fully satisfy the Annual Development Fee, or because no offsetting payment or a less than full offset payment is made because of the circumstances set forth in (ii) above, the Property Owner covenants and agrees the County shall have a continuing equitable lien on the Real Property (including fixtures) to secure payment of the Annual Development Fee, with such equitable lien to be superior to any mortgage on the Real Property granted after execution of this Development Agreement.

(c) Business License Fee. Property Owner and County acknowledge that the Project is subject to certain business license fees pursuant to Chapter 18 of the Code of Ordinances of Beaufort, South Carolina. In lieu of a yearly calculation, Property Owner will submit a letter from a certified public account certifying the gross sales of the Project. The County agrees to provide in

the FILOT Agreement a special source revenue credit for any portion of the annual business license fee that exceeds \$7,500.

15. Schedule for Project Development.

(a) Commencement Date. The Project will be deemed to commence Development upon the Effective Date of this Agreement.

(b) Interim Completion Date. The Property Owner projects that during the years after the execution and adoption of this Agreement, the following percentages of the Development of the Real Property will occur:

<u>YEAR</u>	<u>% COMPLETE</u>
5	100%
10	100%

16. Term of the Agreement. The term of this Agreement shall be ten (10) years, commencing on the Effective Date; provided, however, that this Agreement shall automatically renew for two (2) five-year renewal periods.

17. Amending or Canceling the Agreement. Subject to the provisions of Section 6-31-80, et. seq., and Paragraph 16 hereof, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in writing or by their successors in interest.

Any amendment to this Agreement shall comply with the provisions of Section 6-31-10, et seq. Any requirement of this Agreement requiring consent or approval of one of the parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld. A

major modification of this Agreement shall occur only after public notice and a public hearing by the County.

18. Modifying or Suspending the Agreement. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations. Notwithstanding the foregoing, it is acknowledged that state law changes affecting the payment of *ad valorem* or FILOT payments as contemplated herein shall not affect the responsibility of the Property Owner, its successors or assigns, to pay the Annual Development Fee pursuant to Section 14 herein, such being a contractual liability enforceable by a civil suit for damages.

19. Periodic Review. The County Administrator or their designee shall review the Project and this Agreement at least once every twelve (12) months, at which time the Property Owner shall demonstrate good-faith compliance with the terms of this Agreement.

If, as a result of its periodic review or at any other time, the County finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the County shall serve notice in writing upon the Property Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Property Owner a reasonable time in which to cure the material breach.

If the Property Owner fails to cure any material breach within the time given, then the County unilaterally may terminate or modify this Agreement or, in the case of a failure to pay the Annual Development Fee, the County may seek actual damages in such appropriate civil cause of

action in the Court of Common Pleas for Beaufort County; provided, that in the case of a modification or termination, the County has first given the Property Owner the opportunity: (1) to rebut the County's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the County with respect to the findings and determinations.

20. Severability. Subject to the provisions of Section 6-31-150, if any word, phrase, sentence, paragraph, provision, or exhibit of this Agreement shall either be terminated by any provision stated therein or finally adjudicated to be invalid, void, or illegal it shall be deleted and in no way affect, impair, or invalidate any other provision or agreement hereof.

21. Merger. This Agreement, coupled with its exhibits, which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions. In return for the respective rights, benefits and burdens undertaken by the Parties, and subject to Code of Laws of South Carolina §6-31-80(B) the Property Owner shall be, and is hereby, relieved of obligations imposed by future land development laws, ordinances and regulations, except those which may be specifically provided for herein for the term of this Agreement, or until earlier terminated, cancelled or suspended pursuant hereto.

The Parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action.

22. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

23. Venue. Any action brought under or involving this Agreement shall be brought in Beaufort County, South Carolina.

24. Default. (i) Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the covenants or conditions contained herein for fifteen (15) days after the other party has given the party breaching or defaulting written notice of such breach or default and such party has not cured or commenced curing such default, the non-breaching party may pursue all available legal and equitable remedies, including termination of the Agreement as may be allowed under the Act; however, the Parties agree that neither party is entitled to punitive damages. Waiver of a default shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default. It is expressly acknowledged that specific remedies for a breach of the Agreement to pay the Annual Development Fees are set forth elsewhere herein, including but not limited to, Sections 14 and 18.

(ii) Each party recognizes that the other party may suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law may exist to enforce this Agreement. Consequently, the Parties agree that any non-breaching party who seeks enforcement of the Agreement is entitled to seek the equitable remedies of injunction and specific performance.

25. Recording. Within fourteen (14) days after execution of this Agreement, the Property Owner shall record the agreement with the Beaufort County Register of Deeds. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the Parties to this Agreement.

26. Third Parties. This Agreement shall not be binding and shall have no force or effect as to persons or entities that are not Parties or successors and assigns to this Agreement.

27. County Approval of Agreement. The County Council has approved this Agreement under the process set forth in Section 6-31-50 of the Act on the terms and conditions set forth in this Agreement.

28. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Property Owner in the ownership or Development of any portion of the Real Property, the Project. A purchaser, lessee, or other successor in interest of any portion of the Real Property shall be solely responsible for performance of Property Owner's obligations hereunder as to the portion or portions of the Real Property so transferred. Assignees of the Real Property or any portion thereof shall be required to execute a written acknowledgment accepting and agreeing to the Property Owner's obligations in this Agreement, and specifically the responsibility for payment of the monetary obligations hereunder, including but not limited to the Annual Development Fee and the priority of the equitable lien of the County, said document to be in recordable form and provided to the County at the time of the recording of any deed transferring a development tract. Following delivery of such documents Property Owner shall be released of any further liability or obligation with respect to said tract.

This paragraph shall not be construed to prevent Property Owner from obtaining indemnification of liability to the County from third parties.

This Agreement shall also be binding on the County and all future County Councils for the duration of this Agreement to the extent authorized by law.

(b) Transfer of Project. Property Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following conditions:

(i) Notice of Property Transfer. If the Property Owner intends to transfer all or a portion of the Real Property to a purchaser who, by virtue of assignment or other instrument, becomes the “Property Owner” under and within the meaning of this Agreement, Property Owner shall notify the County within thirty (30) days of the transfer and provide it a copy of the assignment of such status as the “Property Owner” and the acknowledgement referred to in subparagraph 28(a).

(ii) Transfer of Facility and Service Obligations. If the Property Owner transfers any portion of the Real Property on which the Property Owner is required to provide and/or construct certain Facilities or provide certain services, distinct from those provided throughout the Project and which are site-specific to the portion of the Real Property conveyed, then the Property Owner shall be required to obtain a written agreement in substantially the same form as Exhibit F, attached hereto and incorporated by reference, expressly assuming the development obligations with regard to the parcel conveyed and the potential Development of same. The Property Owner shall notify the County within thirty (30) days after the conveyance of the property, provide the County the applicable documents assigning the development obligations to the transferee, and record the same in the office of the Beaufort County Register of Deeds.

(iii) Mortgage Lenders. Nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser. Except as set forth herein, any such mortgage lender or subsequent purchaser



shall be bound by the obligations and shall receive the benefits from this Agreement as the successor in title to the Property Owner.

(c) Release of Property Owner. In the event of conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, the Property Owner shall be released from any further obligations with respect to this Agreement as to the portion of Real Property so transferred, and the transferee shall be substituted as the Property Owner under the Agreement as to the portion of the Real Property so transferred.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the County sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the County will provide a certificate (the "Certificate") in recordable form stating that solely with respect to the portion of the Real Property described in the request, there are no known violations or breaches of this Agreement, except as otherwise described in the Certificate. The County will respond to such a request within thirty (30) days of the receipt of the request, and may employ such professional consultants, municipal, county and state agencies and staff as may be necessary to assure the truth and completeness of the statements in the certificate. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The Certificate issued by the County will be binding on the County in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof. Subsequent to the issuance of such a Certificate no claim or action to enforce compliance with this Agreement may be brought against the Property Owner or its assignees properly holding rights hereunder, alleging any violation of the terms and covenants affecting such

portion of the Real Property covered by the Agreement and occurring prior to the date of such Certificate, except as otherwise described in the Certificate.

29. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit A and shown on Exhibits B attached hereto. The agreements contained herein shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties to the Agreement.

(b) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare, including but not limited to ensuring the adequacy of Facilities and compatibility between Developed and Undeveloped Lands.

(c) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the County Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the County has the power to amend, modify or alter this Agreement or waive any of its conditions so as to bind the County by making any promise or representation contained herein. Any amendments are subject to the provisions of Section 17 herein.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject

matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

(e) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the County:  
Beaufort County Administrator  
100 Ribaut Road  
Beaufort, SC 29901

With copies to:  
Beaufort County Attorney  
P.O. Drawer 1228  
Beaufort, SC 29901

To Seabrook Solar, LLC:  
Seabrook Solar, LLC  
c/o Adger Solar  
20 Towne Drive, Suite 388  
Bluffton, SC 29910  
ATTN: William Moore

With copies to:  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
ATTN: Nicole Scott Ewing, Esquire  
  
Nexsen Pruet, LLC  
120 Main Street  
Columbia, SC 29201  
ATTN: Tushar Chikhliker, Esquire

(f) Execution of Agreement. This Agreement may be executed in multiple counterparts as duplicate originals; provided, however, if executed in multiple counterparts and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

(g) Whenever the consent, approval or cooperation of one party is expressly or implicitly required or necessary by the terms hereof or to effect successful performance of the other party, such consent, approval or cooperation shall not be unreasonably withheld, denied or delayed.

[SEPARATE SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the day and year first above written.

Witness:

**BEAUFORT COUNTY**

\_\_\_\_\_

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

D. Paul Sommerville, Chairman

\_\_\_\_\_

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

Thomas J. Keaveny II, County Attorney

STATE OF SOUTH CAROLINA )

)

**ACKNOWLEDGMENT**

COUNTY OF BEAUFORT )

I, \_\_\_\_\_, Notary of the Public of the State of South Carolina, do hereby certify that the County of Beaufort, by D. Paul Sommerville, its Chairman, and Thomas J. Keaveny II, its County Attorney, personally known to me or having provided satisfactory proof of their identity, appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2018, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

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

My Commission Expires: \_\_\_\_\_



## **EXHIBITS**

Exhibit A: Legal Description

Exhibit B: Boundary Plat

Exhibit C: Development Schedule

Exhibit D: Current Regulations

Exhibit E: Development Agreement Ordinance

Exhibit F: Form Partial Assignment and Assumption of Rights and Obligations

Exhibit G: Legal and Equitable Owners

**Exhibit A**

Legal Description

[TO BE INSERTED]



**Exhibit B**

Boundary Plat

[TO BE INSERTED]

**Exhibit C**  
Development Schedule

<u>Year</u>	<u>Percent Complete</u>
0-5	100%
6-10	100%

**Exhibit D**

Current Regulations

[TO BE INSERTED]

**Exhibit E**

Development Agreement Ordinance

[TO BE INSERTED]



**Exhibit F**

Form Partial Assignment and Assumption of Rights and Obligations



(i) Payment of the Annual Development Fee in the amount of \$ \_\_\_\_\_ applicable to the assigned property; and

(ii) \_\_\_\_\_

3. Default and Enforcement of Provisions. As provided in Sections 19 and 24 of the Development Agreement and as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and this Partial Assignment and Assumption incident to the Property, the non-defaulting party may pursue the remedies of injunction and specific performance, as well as any other legal or equitable remedies, including, but not limited to, actual damages.

4. Indemnification. Assignee agrees to indemnify, defend and hold harmless Assignor, its agents, principals, successors and assigns, and their affiliates from and against all losses, costs, damages, and reasonable attorney fees arising out of any breach by Assignee of the Development Agreement from and after the Closing Date, including without limitation the Assumed Obligations set forth in Section 2 hereof.

5. Notices. Any notice, demand, request, consent, approval or communication among any of the parties hereto shall be in writing and shall be delivered or addressed as provided under section 28(h) of the Development Agreement and shall also be addressed as follows:

As to Assignee:

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

Attn: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

With a required copy to:

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

Attn: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

To Assignor:

Seabrook Solar, LLC  
c/o Adger Solar



20 Towne Drive, Suite 388  
Bluffton, SC 29910  
ATTN: William Moore  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

With a required copy to:

Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
Attn: Nicole Scott Ewing, Esq.  
843-720-1716  
843-414-8821  
newing@nexsenpruet.com

6. Binding Effect. This Partial Assignment and Assumption shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

7. Governing Law. The within Partial Assignment and Assumption shall be interpreted and construed and conform to the laws of the State of South Carolina.

8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]





Exhibit A to Partial Assignment  
Property

Exhibit B to Partial Assignment  
Transferred Property

## **Exhibit G**

### Legal and Equitable Owners

1. Essex Farms, LLC
2. Paragon Produce, LLC
3. Seabrook Solar, LLC

**ORDINANCE NO. 2018 / \_\_\_\_**

**AN ORDINANCE ESTABLISHING A CONDITIONAL USE FOR AFFORDABLE HOUSING DEVELOPMENTS IN THE REGIONAL CENTER MIXED USE (C5) ZONE DISTRICT (AMENDS BY SUBSTITUTION, HOTEL TO APARTMENT CONVERSION ON UNIT-TO-UNIT BASIS)**

**BE IT ORDAINED** that Beaufort County Community Development code is hereby amended to add the following underlined text as well as the **yellow highlighted text**.

DONE this \_\_\_\_ day of \_\_\_\_\_, 2018.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_  
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas J. Keaveny, II, County Attorney

- Planning Commission recommends approval of amended version 6/4/2018 vote 8-1
- Natural Resources Committee recommends approval of Affordable Housing Ordinance as a substitute for the hotel conversion, subject to independent review and recommendations of PC 5/21/2018 vote 5-0-1
- Natural Resources Committee deferred to staff for 30 days for recommendations 4/16/2018
- County Council 2<sup>nd</sup> Reading was referred back to Natural Resources Committee 4/9/2018
- County Council 1<sup>st</sup> Reading approved 3/26/2018 (Hotel Conversion Text Amendment)
- Natural Resources Committee Recommends approval 3/19/2018 (Hotel Conversion Text Amendment)
- Planning Commission Recommends approval 2/5/2018 (Hotel Conversion Text Amendment) by vote of 3-2

3.1.60 Consolidated Use Table

**3.1.60 Consolidated Use Table**

**Table 3.1.60. Consolidated Use Table**

Land Use Type	T1 N	T2R	T2 RL	T2 RN	T2 RNO	T2 RC	T3E	T3 HN	T3 N	T3 NO	T4 HC	T4 VC	T4 HCO	T4 NC	C3	C4	C5	SI
<b>AGRICULTURE</b>																		
1. Agriculture & Crop Harvesting	P	P	P	P	P	P	P	--	--	--	--	--	--	--	P	--	--	--
2. Aquaponics	S	S	S	S	S	S	S	--	--	--	--	--	--	--	S	--	--	--
3. Agricultural Support Services	--	P	P	P	P	P	--	--	--	--	P	P	P	--	TCP	P	P	P
4. Animal Production	--	C	--	C	C	C	--	--	--	--	--	--	--	--	--	--	--	--
5. Animal Production: Factory Farming	--	S	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
6. Seasonal Farmworker Housing	--	C	C	C	C	C	C	--	--	--	--	--	--	--	C	--	--	--
7. Forestry	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
8. Commercial Stables	--	C	C	C	C	C	--	--	--	--	--	--	--	--	C	--	--	--
<b>RESIDENTIAL</b>																		
1. Dwelling: Single Family Detached Unit	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	TCP	TCP	--
2. Dwelling: Single Family Attached Unit	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	TCP	TCP	--
3. Dwelling: Two Family Unit (Duplex)	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	TCP	TCP	--
4. Dwelling: Multi-Family Unit	--	--	--	--	--	--	--	--	P	P	P	P	P	P	C	P	P	--
5. Dwelling: Accessory Unit	--	C	C	C	C	C	C	C	C	C	C	C	C	C	C	TCP	TCP	--
6. Dwelling: Family Compound	--	C	C	C	C	C	C	C	--	--	--	C	--	--	C	C	C	C
7. Dwelling: Group Home	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	TCP	TCP	--
8. Affordable Housing	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--
9. Community Residence (dorms, convents, assisted living, temporary shelters)	--	--	--	--	--	P	P	P	P	P	P	P	P	P	TCP	TCP	TCP	--
10. Home Office	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
11. Home Business	--	C	--	C	C	C	C	C	C	C	C	C	C	C	C	TCP	TCP	--
12. Cottage Industry	--	C	--	C	C	C	--	--	--	--	--	--	--	--	--	--	--	--
13. Live/Work	--	--	--	--	P	--	--	--	--	--	P	P	P	P	TCP	P	P	--
14. Manufactured Home Community	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--
<b>RETAIL &amp; RESTAURANTS</b>																		
1. General Retail 3,500 SF or less	--	C	--	--	P	P	--	--	--	--	P	P	P	P	TCP	P	P	C
2. General Retail 10,000 SF or less	--	--	--	--	--	P	--	--	--	--	--	P	P	P	--	P	P	C
3. General Retail 25,000 SF or less	--	--	--	--	--	P	--	--	--	--	--	P	P	P	--	P	P	C
4. General Retail 50,000 SF or less	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	P	--
Land Use Type	T1 N	T2R	T2 RL	T2 RN	T2 RNO	T2 RC	T3E	T3 HN	T3 N	T3 NO	T4 HC	T4 VC	T4 HCO	T4 NC	C3	C4	C5	SI

"P" indicates a Use that is Permitted By Right.

"C" indicates a Use that is Permitted with Conditions.

"S" indicates a Use that is Permitted as a Special Use.

"TCP" indicates a Use that is permitted only as part of a Traditional Community Plan under the requirements in Division 2.3

"--" indicates a Use that is not permitted.



### 3.1.70 Land Use Definitions

#### 3.1.70 Land Use Definitions

**Table 3.1.70 Land Use Definitions**

#### RESIDENTIAL

Dwelling Unit – A room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, designed to be occupied as a residence by one household.

Land Use Type	Definition
1. Dwelling: Single Family Detached Unit	A structure containing one dwelling unit on a single lot.
2. Dwelling: Single-Family Attached Unit	A structure containing one dwelling unit on a single lot and connected along a property line to another dwelling unit on an adjoining lot by a common wall or other integral part of the principal building such as a breezeway or carport.
3. Dwelling: Two Family Unit (Duplex)	A structure containing two dwelling units on a single lot.
4. Dwelling: Multi-Family Unit	A structure containing three or more dwelling units on a single lot.
5. Dwelling: Accessory Unit	An auxiliary dwelling unit, no larger than 800 SF attached to a principal dwelling unit or located within an accessory structure on the same lot.
6. Dwelling: Family Compound	A form of traditional rural development which provides for the placement of additional single-family detached dwelling units on, and/or subdivisions of, a single parcel of land owned by the same family for at least 50 years.
7. Dwelling: Group Home	Residential facility for nine or fewer mentally or physically handicapped persons providing care on a 24-hour basis and licensed by a state agency or department, or is under contract with a state agency or department, for that purpose.
8. Community Residence	<ol style="list-style-type: none"> <li>1. Dormitory: A building, or portion thereof, which contains living quarters for five or more students, staff, or members of a college, university, primary or secondary boarding school, theological school, or other comparable organization, provided that such building is either owned or managed by such organization, or is under contract with such organization for that purpose.</li> <li>2. Convent or Monastery. The living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.</li> <li>3. Assisted Living Facility: A state-licensed facility for long-term residence exclusively by seniors and persons with disabilities who require assistance with daily activities, and which may include, without limitation, common dining, social and recreational features, special safety and convenience features designed for the needs of the elderly or disabled, such as emergency call systems, grab bars and handrails, special door hardware, cabinets, appliances, passageways, and doorways designed to accommodate wheelchairs, and the provision of social services for residents which must include at least two of the following: meal services, transportation, housekeeping, linen, and organized social activities. May include an accessory skilled nursing component.</li> <li>4. Group Home (more than 9 persons). A state-licensed residential facility for more than 9 mentally or physically handicapped persons providing care on a 24-hour basis.</li> <li>5. Temporary Shelter: A supervised publicly or privately operated shelter and services designed to provide temporary living accommodations to individuals or families who lack a fixed, regular and adequate residence. This does not include residential substance abuse facilities or halfway houses (see "Community Care Facility").</li> </ol>
<u>9. Affordable Housing</u>	<u>See Section 4.1.350</u>
10. Home Office	An office use carried out for gain by a resident and conducted entirely within the resident's home. This use permits the employment of one individual who does not live in the home.
11. Home Business	An office or service use carried out for gain by a resident and conducted entirely within the resident's home and/or accessory structures. This use permits the employment of up to three individuals who do not reside on the premises.

### 3.3.50 Regional Center Mixed Use (C5) Zone Standards

#### A. Purpose

The Regional Center Mixed Use (C5) Zone permits a full range of retail, service, and office uses. The Zone’s intensity accommodates regional and community commercial and business activities. Uses include large, commercial activities that serve the entire County and highway-oriented businesses that need to be located on major highways. While this use intends high-quality, commercial character, the setback or build-to-line, landscaping and other design requirements provide a uniform streetscape that makes provision for pedestrian and transit access. The Zone is intended to be more attractive than commercial areas in other counties to maintain the attractive tourist and business environment and have minimal impact on surrounding residential areas.

The Zone is not intended to be a strip along all arterials and collectors. In developing areas, the minimum depth of a parcel along an arterial or collector shall be 600’. The minimum zone size shall be 20 acres. In the older, built-up areas, new uses shall have depths and areas equal to or greater than similar uses in the area. This Zone shall be located in areas designated “regional commercial” in the Comprehensive Plan.

#### B. Building Placement

##### Setback (Distance from ROW/Property Line)

Front	25’ min.
Side:	
Side, Main Building	15’ min.
Side, Ancillary Building	15’ min.
Rear	10’ min.

##### Lot Size

Lot Size	21,780 SF min.
Width	150’ min.

##### Note:

For development within a Traditional Community Plan meeting the requirements of Division 2.3, setback, minimum lot size and minimum site area requirements of the transect zone established and delineated on the regulating plan shall apply.

#### C. Building Form

##### Building Height

All Buildings	3 stories max.
Ground Floor Finish Level	No minimum

##### D. Gross Density<sup>1</sup> and Floor Area Ratio

Density	15.0 d.u./acre max. <sup>2</sup>
Floor Area Ratio <sup>2,3</sup>	0.37 max.

<sup>1</sup>Gross Density is the total number of dwelling units on a site divided by the Base Site Area (Division 6.1.40.F)

<sup>2</sup>See Section 4.1.350 for Affordable Housing density bonuses

<sup>3</sup>Requirement applies to non-residential buildings.

#### E. Parking

##### Required Spaces: Residential Uses

Single-family detached	3 per unit
Single-family attached/duplex	2 per unit
Multi-family units	1.25 per unit
Accessory dwelling unit	1 per unit
Community residence	1 per bedroom
Live/work	2 per unit plus 1 per 300 GSF of work area

##### Required Spaces: Services or Retail Uses

Retail, offices, services	1 per 300 GSF
Restaurant, café, coffee shop	1 per 150 GSF
Drive-through facility	Add 5 stacking spaces per drive-through
Gas station/fuel sales	1 per pump plus requirement for retail
Lodging: Bed and breakfast	2 spaces plus 1 per guest room
Lodging: Inn/hotel	1 per room

##### Required Spaces: Industrial Uses

Light manufacturing, processing and packaging	1 per 500 GSF
Warehousing/distribution	1 per 2,000 GSF

For parking requirements for all other allowed uses see Table 5.5.40.B (Parking Space Requirements).

## E. C5 Allowed Uses

Land Use Type <sup>1</sup>	Specific Use Regulations	C5
<b>Agriculture</b>		
Agricultural Support Services		P
Forestry		P
<b>Residential</b>		
Dwelling: Single-Family Detached Unit	2.3	TCP
Dwelling: Single-Family Attached Unit	2.3	TCP
Dwelling: Two Family Unit (Duplex)	2.3	TCP
Dwelling: Multi-Family Unit		P
Dwelling: Accessory Unit	2.3	TCP
Dwelling: Family Compound	2.7.40	C
Dwelling: Group Home	2.3	TCP
Community Residence (dorms, convents, assisted living, temporary shelters)	2.3	TCP
<b>Affordable Housing</b>	<b>4.1.350</b>	<b>C</b>
Home Office	4.2.90	C
Home Business	2.3	TCP
Live/Work		P
<b>Retail &amp; Restaurants</b>		
General Retail		P
General Retail with Drive-Through Facilities	4.1.120 4.1.70	C
Bar, Tavern, Nightclub		P
Gas Station/Fuel Sales	4.1.100	C
Open Air Retail		P
Restaurant, Café, Coffee Shop		P
Restaurant, Café, Coffee Shop with Drive-Through Facilities	4.1.70	C
Vehicle Sales & Rental: Light	4.1.260	C

Land Use Type <sup>1</sup>	Specific Use Regulations	C5
<b>Offices &amp; Services</b>		
General Offices & Services		P
General Offices & Services with Drive-Through Facilities	4.1.110 4.1.70	C
Animal Services: Clinic/Hospital		P
Animal Services: Kennel	4.1.40	C
Day Care: Family Home (up to 8 clients)	2.3	TCP
Day Care: Commercial Center (9 or more clients)	4.1.60	C
Lodging: Bed & Breakfast (5 rooms or less)	2.3	TCP
Lodging: Inn (up to 24 rooms)		P
Lodging: Hotel		P
Medical Services: Clinics/Offices		P
Residential Storage Facility	4.1.220	C
Vehicle Services: Minor Maintenance and Repair	4.1.270	C
Vehicle Services: Major Maintenance and Repair	4.1.270	C

### Key

P	Permitted Use
C	Conditional Use
S	Special Use Permit Required
TCP	Permitted only as part of a Traditional Community Plan under the requirements in Division 2.3
---	Use Not Allowed

### End Notes

<sup>1</sup> A definition of each listed use type is in Table 3.1.70 Land Use Definitions.

Division 4.1: Specific to Use

4.1.350 Affordable Housing

A. Findings. County Council finds that affordable housing is the essential foundation upon which to build a more sustainable future for Beaufort County and to grow a more competitive workforce to meet the challenges of our regional, state, and global economy. County Council finds that zoning regulations can be an effective tool for implementing the strategies to address the needs for affordable housing stock within Beaufort County. County Council finds that the Regional Center Mixed Use (C5) zone district is an appropriate place for certain incentives provided in this chapter for the development of affordable housing types.

B. Purpose. This chapter is intended to promote a diversity of housing stock by providing certain incentives and regulatory standards for the creation of affordable housing units in the C5 zone district.

C. Availability. The affordable housing incentives and regulations provided in this chapter are available to all landowners in the C5 zone district as a conditional use when an applicant has demonstrated compliance with the conditions provided herein.

D. Definitions. For the purpose of this chapter, the following terms shall mean:

- a. Owner occupied affordable housing unit: A dwelling unit where at least one occupant is an owner, and where all occupants have, in the aggregate, household income less than or equal to one-hundred (100%) percent of the area median income (AMI) for owner occupied units. Area median income (AMI) shall be determined annually by the United States Department of Housing and Urban Development (HUD) as adjusted by the Beaufort County Human Services Department or its successor.
- b. Rental affordable housing unit: A dwelling unit, where occupants have, in the aggregate, household income less than or equal to eighty (80%) percent of the area median income (AMI) for rental units. AMI shall be determined annually by HUD as adjusted by the Beaufort County Human Services Department or its successor.
- c. Qualified household: Households where occupants have, in the aggregate, a household income less than or equal to one-hundred (100%) percent of the AMI for owner occupied units, and a household income less than or equal to eighty (80%) percent of the AMI for rental units.
- d. Initial maximum allowable sales price: An amount equal to three (3) times one-hundred (100%) percent of the AMI plus any subsidy available to the buyer.

- e. Affordable rent: Affordable rent is based on an amount not to exceed thirty (30%) percent of eighty (80%) percent of the AMI as published annually by HUD based on household size, inclusive of a utility allowance. Utility allowances are as provided by HUD guidelines.
- f. Household income: All sources of financial support, both cash and in kind, of adult occupants of the housing unit, to include wages, salaries, tips commissions, all forms of self-employment income, interest, dividends, net rental income, income from estates or trusts, Social Security benefits, pension benefits, or any other sources of financial support.

E. Applicability. Any development or redevelopment within the Regional Center Mixed Use (C5) zone district that includes residential dwelling units may elect to develop the residential portion according to the standards in this chapter provided that the applicant demonstrates strict compliance with conditions stated herein.

F. Land Use Standards. A development or redevelopment within the Regional Center Mixed Use (C5) zone district may elect to provide for Affordable Housing units, in accordance with the following standards:

a. The number of owner occupied affordable housing units and/or rental affordable housing units per development shall be one of the following at the election of the applicant:

i. Thirty (30%) percent of the dwelling units, rounded up to the whole number, shall be restricted by deed as owner occupied affordable housing units and/or rental affordable housing units for a period of at least twenty (20) years; or

ii. Twenty (20%) percent of the dwelling units, rounded up to the whole number, shall be restricted by deed as owner occupied affordable housing units and/or rental affordable housing units for a period of at least twenty-five (25) years.

b. The affordable housing units shall be sized, in terms of square footage and number of bedrooms, comparable and proportional to the square footage and number of bedrooms of the market rate units in the development as a whole. The smallest affordable housing unit by bedroom count shall not be smaller than the smallest market rate unit with the same number of bedrooms. The affordable housing units shall be integrated and intermixed within the market rate units in a development and may not be clustered together or segregated from the market rate

units. When a development contains multiple buildings, it shall incorporate into each building, affordable housing units comparable and in proportion, to the number of market rate units in the building so that affordable housing units are disbursed proportionately throughout the development. Exterior finishes of affordable housing units shall be indistinguishable from exterior finishes of market rate units.

c. Density bonus. Housing developments or re-developments located within the Regional Center Mixed Use (C5) zone district may elect to development land in compliance with this chapter. As an incentive for development under this chapter, there shall be no maximum density or minimum lot size requirements.

d. Impact fees. Impact fees shall be reduced in proportion to the number of affordable housing units being provided in accordance with Beaufort County Code of Ordinances Section 82-32. A project approved under this chapter shall be determined to be a project that creates affordable housing for the purpose of exempting impact fees in proportion to the number of affordable housing units created.

e. All other land use and developments standards of the Regional Center Mixed Use (C5) zone district for multi-family development shall be provided, including but not limited to standards for height, area, setbacks, parking, and buffers.

f. For mixed use projects, the standards and incentives provided in this chapter shall apply only to the housing portions of the mixed use project.

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#### G. Submittal Requirements, Procedures and Enforcement.

a. Prior to receiving a building permit for any portion of a development, the owner thereof shall provide, in writing, in the form of a Memorandum of Understanding to be filed with the Beaufort County Register of Deeds, to the satisfaction of the Beaufort County Human Services Department, or its successor, information identifying the total number of efficiency, one bedroom, two bedroom, etc. and the respective square footage of the same and provide a breakdown of the number, location, size, square footage, bedrooms etc. of the affordable housing units. Prior to the issuance of a certificate of occupancy for any portion of a development, the owner thereof shall identify, in writing, to the Beaufort County Human Services Department, or its successor, the units designated as owner occupied affordable housing units and/or rental affordable housing units. Affordable housing units shall not be changed, modified, or amended in location, size, square footage etc. without first notifying and receiving in writing, approval from Beaufort County Human Services Department.

b. Prior to the issuance of a certificate of occupancy for any portion of a development permitted pursuant to this chapter, the owner shall execute covenants satisfactory to the County that identifies the owner occupied affordable housing units and/or the rental affordable housing units. The executed covenants shall restrict such units to occupancy or ownership by qualified households for a period of twenty (20) years when thirty (30%) percent of the units are set aside as affordable housing units or twenty-five (25) years when twenty (20%) percent of the units are set aside as affordable housing units pursuant to Section 4.1.350(F)(a)(i-ii) above. The executed covenants shall be filed with the Register of Deeds prior to the issuance of a certificate of occupancy.

c. Prior to the issuance of a development permit, the owner shall submit plans in accordance with Article 7 of the Community Development Code. The plans shall demonstrate compliance with the standards provided in this chapter.

d. The covenants for affordable housing units shall provide:

i. For owner occupied affordable housing units, the covenants shall identify the maximum allowable sales price, and provide that the initial maximum allowable sale price may be adjusted annually for inflation based on the increase in the area median income (AMI) or Consumer Price Index, whichever is greater. Each owner of such units, prior to initial occupancy, shall be required to submit to the Beaufort County Human Services Department, or its successor, a verified income report of household income of all members of the household. The covenants shall require notice to the Beaufort County Human Services Department, or its successor, of any transfer of the owner occupied affordable housing units and verification that the purchaser is a qualified household. Owner occupied affordable housing units shall be subject to these resale restrictions for no fewer than the numbers of years elected by the developer provided for in Section 4.1.350(F)(a)(i-ii) above. Such restrictions shall be recorded as deed restrictions for the affordable housing unit identified in the memorandum of understanding executed pursuant to the requirements in this chapter.

ii. For rental affordable housing units, the covenants shall require the owner to provide proof to the Beaufort County Human Services Department, or its successor, at inception of every tenancy, and on an annual basis thereafter, that no more than affordable rent is being charged for the affordable housing units. The owner or licensed property manager acting on behalf of the owner, shall provide verified income reports of household income of all occupants of rental affordable housing units at the request of Beaufort County Human Services Department, or its successor. Rental affordable

housing units shall be subject to these restrictions for no fewer than the number of years elected by the developer provided for in subsections 4.1.350(F)(a)(i-ii) above.

iii. If an affordable housing unit is converted from rental occupied to owner occupied occupancy during the term of the covenants, the unit shall be subject to the owner occupied affordable housing unit requirements as set out in subsection 4.1.350(F)(d)(i) above (to include an Initial Maximum Sales Price) for a term of months equal to the number resulting when subtracting from 300 months, the number of months the unit has been subject to the rental affordable housing covenants.

iv. Conversion of an affordable housing unit from owner occupied to renter occupied occupancy shall not be permitted.

v. Covenants shall require written notice to the Beaufort County Human Services Department prior to any conversion taking place and shall require that the necessary covenant(s) and amendment(s) to the memorandum of understanding be filed with the Register of Deeds.

e. The covenants and memorandum of understanding shall accord to the Beaufort County Human Services Department, or its assignee, successor or agent, rights of enforcement by any legal and/or equitable means, including the revocation of a certificate of occupancy, and in all events, writings, agreements or understandings between the developer and Beaufort County, be subject to approval by the Beaufort County Attorney.

f. If the development is to be phased, each phase shall include affordable housing units concurrently with the market rate units in the particular phase in the same proportions in relations to the overall development requirements for affordable housing units. A phasing in plan must make the affordable housing units available concurrently with the market rates in proportions based on the overall percentages elected pursuant to this code.

g. Upkeep and maintenance of affordable housing rental units must be maintained at the same or better level provided to the market rate units.





CC Presentation 6/11/2018 2<sup>nd</sup>  
Reading As Amended

# Beaufort County Proposed Affordable Housing Ordinance

Hotel conversion text amendment background:

- PC 2/5/2018- Vote 3-2 recommend approval w/ conditions
- NRC 3/19/18- Recommend approval.
- CC 3/26/2018 – 1<sup>st</sup> Reading approved
- CC 4/9/2018- referred back to NRC
- NRC 4/16/2018- deferred to 5/21 for staff recommendations
- NRC 5/21/2018- recommend approval contingent on PC review
- PC 6/4/2018- Vote 8-1 recommend approval



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# Beaufort County Proposed Affordable Housing Ordinance

## 3 ISSUES

### 1. Parking

1. 20% waiver available when supported by study
2. Potential design alternatives available
3. Convert some efficiencies to 1 bed

### 2. Assurances for affordable rents

1. See “nuts and bolts” and “monitoring and enforcement” below

### 3. School impact fee

1. No study
2. No D.A.
3. Fractional impact



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# Beaufort County Proposed Affordable Housing Ordinance

## **Nuts & Bolts of the Ordinance- Step 1**

Landowner elects to set aside for affordable housing:

1. 20% of units for 25 years; or
2. 30% of units for 20 years



# Beaufort County Proposed Affordable Housing Ordinance

## **Nuts & Bolts of the Ordinance- Step 2**

Affordable housing means:

1. Rental affordable units- rent may not exceed 30% of 80% of AMI as defined by HUD annual report
2. Owner affordable units- aggregate household income not to exceed 100% of AMI



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# Beaufort County Proposed Affordable Housing Ordinance

## **Nuts & Bolts of the Ordinance- Step 3**

Incentives for development:

1. No maximum density \*
2. Waiver of impact fees for affordable units

All other C5 standards must be met

\*density is constrained by setbacks, parking, height, buffers, stormwater etc. and is only available in the Regional Commercial C5 district.



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# Beaufort County Proposed Affordable Housing Ordinance

## **Monitoring and Enforcement:**

1. Affordable Housing Coordinator position is budgeted and in process for hire
2. Applicant files deed restricted covenants
3. Applicant enters MOU w/ County identifying AU, rents, size, etc. MOU is filed w/ ROD
4. Annual reporting required; inspections available; submittal requirements
5. **County may revoke C.O. when found in non-compliance**



# Beaufort County Proposed Affordable Housing Ordinance

## Application of Ordinance

AMI Family of 4	\$72,200	
80% of AMI for 1 person/ 2 person	\$40,450/\$46,200	
30% household expense/ mo. w/o utilities-est.	\$1,011/\$1083* <b>\$866/\$923</b>	0BD/1BD

\*includes utilities approx. \$140/\$160 0BD/1BD- U.S. Dept. HUD Beaufort Housing Authority



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# Beaufort County Proposed Affordable Housing Ordinance

## **Application of Ordinance to Suburban Lodge**

149 Units (6 1BD)- Advertised rates= \$895-\$1450 (w/o utilities)

30% = 48 Units

20%= 30 Units





# Beaufort County Proposed Affordable Housing Ordinance

## **Application of Ordinance to Suburban Lodge**

149 Units (6 1BD)

Parking: 1.25 per OBD; 1.5 per 1BD

Req'd parking  $188 - 38^* = 150$

\*20% waiver allowed when supported by a parking study.

140 stalls on site. Deficiency  $\pm 10$  assuming 20% is app'd



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# Beaufort County Proposed Affordable Housing Ordinance

## **Application of Ordinance to Suburban Lodge**

Potential options available:

1. Parking study
2. Re-design parking to find more spaces
3. Land acquisition for parking/easement agreements w/ utility
4. Convert 0BD to 1BD

Hotel conversion text amendment included the same parking req't.



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# Beaufort County Proposed Affordable Housing Ordinance

## **CONCERNS/OPPORTUNITIES FOR FUTURE CONSIDERATION**

1. Enforcement/Management
2. Effect on commercial district



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# Beaufort County Proposed Affordable Housing Ordinance

# Questions