

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  
[www.beaufortcountysc.gov](http://www.beaufortcountysc.gov)

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ASHLEY M. JACOBS  
 COUNTY ADMINISTRATOR

SARAH W. BROCK  
 CLERK TO COUNCIL

AGENDA  
 FINANCE COMMITTEE  
 Monday, October 7, 2019  
 2:00 p.m.  
 Council Chambers, Administration Building  
 Beaufort County Government Robert Smalls Complex  
 100 Ribaut Road, Beaufort

Committee Members:  
 Joseph Passiment, Chairman  
 Chris Hervochon, Vice Chairman  
 Gerald Dawson  
 Mark Lawson  
 Paul Somerville

Staff Support:  
 Suzanne Gregory, Employee Service Director  
 Alicia Holland, CPA,  
 Assistant County Administrator, Finance

1. **CALL TO ORDER – 2:00 p.m.**
2. **PLEDGE OF ALLEGIANCE**
3. **INTRODUCTIONS**

*[Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act]*

4. **APPROVAL OF AGENDA**
5. **CITIZEN COMMENTS** (*Comments regarding agenda items only*)
6. **ACTION ITEMS**
  - A. **Approval to Purchase Two New Ambulances through the HGAC Buy Cooperative Contract for \$506,532.00 - Dave Thomas, CPPO, Purchasing Director and Donna Ownby, Director of Emergency Medical Services (backup)**
7. **DISCUSSION**
  - A. **An Ordinance authorizing the execution and delivery of a Fee Agreement between Beaufort County and Project Burnt Church Distillery – John O’Toole, Executive Director, Economic Development Corporation (backup)**
  - B. **Proposed New Riverside Branch Library - Ray McBride, Library Director (backup)**



**C. Jenkins Island Funding Options** - *Robert McFee, PE, Division Director  
Construction, Engineering and Facilities*

**D. Total Allocation of Funds for State A Tax 2%** - *Alicia Holland, Assistant County  
Administrator, Finance (backup)*

**E. Assessors Information Session** – *Ebony Sanders, Assessor*

**8. ADJOURNMENT**

2019-2020 POLICY PRIORITY COMMITTEE ASSIGNMENTS

FINANCE COMMITTEE

Employee Compensation  
Economic Development  
Heritage Tourism Development  
USCB & TCL Campus Expansion  
278 Corridor & SIB Funding



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Emergency Medical Services (EMS) Contract Award Recommendation to purchase two new 2019 Ambulances from the HGAC Buy Cooperative Contract

#### Council Committee:

Governmental Committee

#### Meeting Date:

October 28, 2019

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

Dave Thomas, CPPO, Purchasing Director and Donna Ownby, Director of Emergency Medical Services

#### Issues for Consideration:

The Purchasing Department received a request from Beaufort County's EMS Department to purchase two new 2019 Ford F450 4x2 Ambulance Conversion Trucks. This purchase request will use the HGAC Buy Cooperative Contract, a National Cooperative contract used by state and local governments. The EMS Department, along with First Vehicle Services, recommends the purchase of this ambulance due to their overall performance and the close proximity of the factory to Beaufort County.

#### Points to Consider:

1. The HGAC Buy Contract will provide two new 2019 Ford F450, 4x2, Diesel, Type I Ambulance (see the attached pricing sheet with accessories). The ambulances will be delivered to the County by the end of December 2019.
2. Note in 2018 the County purchased two ambulances from the same contract for \$480,994.00. The reason for the cost increase was a new cooperative bid base price the 2019 models, which increased the new ambulances by \$11,194 each. See the attached letter from Northwestern Emergency Vehicles.
3. EMS is replacing a 2000 and 2011 Ford F450 ambulances with 110,665/127,911 miles.

#### Funding & Liability Factors:

Account #40090011-54003, EMS, Vehicle Purchases.

#### Council Options:

Approve or disapprove the contract award.

#### Recommendation:

The Governmental Committee approve and recommend to County Council the contract award to purchase two Ambulances from the aforementioned contractor for a total cost of \$506,532.00.

***NORTHWESTERN EMERGENCY VEHICLES***

*POST OFFICE BOX 790  
JEFFERSON, NORTH CAROLINA 28640  
PHONE: 800-536-8488  
FAX: 336-246-8978*

September 21, 2019

Beaufort County EMS  
120 Shanklin Road  
Beaufort, SC 29906

Attn: Howell

The letter is in reference to your concern of the price increase from your last purchase. On 10/25/2018 Beaufort County purchase two units under HGAC Contract # AM10-16. The latest quote's you have from AEV/NWEV are under the new contract HGAC Contract # AM10-18 this contract is good through September 30,2020.

Under AM10-16 the base price for your unit was \$148,524.00 under the new AM10-18 the base price for your unit is \$159,718.00 which is an increase of \$11,194.00. The additional increase is due to option pricing. AEV/NWEV could have two units delivered to Beaufort County one by the end of November 2019 and one unit by the end of December 2019.

If you have any questions or concerns, please give me a call 336-977-1015 (cell).

Sincerely,



David Hudler



**CONTRACT PRICING WORKSHEET**  
For MOTOR VEHICLES Only

Contract No.:

AM10-18

Date Prepared:

8/20/2019

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	Beaufort County Council	Contractor:	AEV / NORTHWESTERN EMERGENCY VEHICLES
Contact Person:	Howell Youmaus	Prepared By:	David Hudler
Phone:	843-812-8030	Phone:	336-977-1015 (ccll)
Fax:		Fax:	336-246-8978
Email:	howelly@bcgov.net	Email:	david@nwev.com
Product Code:	AM18AA03	Description:	Type I Ford F-450 4X2 AEV Ambulance

**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** \$159,718.00

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
04-SU-170E Liquid Spring Suspension	3,445.00	05-EL-2424-Stop/Tail Whelen M9	618.00
05-HA-13HX Condenser ACC X717	937.00	05-EL-2430 Turn Whelen M9	702.00
02-BC-0500 Walk through Cab High	877.00	05-EL-2436 Back up Whelen M9	702.00
04-EA-14A8 Running Boards	1,547.00	05-EL256B Entry Door Lights	355.00
04-BW-ABYA Rear Bumper	1,037.00	05-EL-45L4 Left Scene Light	565.00
06-IG-0310 Vanner 20-1050 CUL	1,480.00	05-EL-45TA Right Scene Light	565.00
07-01-SEIV Wise Child Seat	738.00	05-EL-46R4 Rear Load Lights	780.00
07-CA-48ZT Solid Surface	914.00	05PM-LRK3 Whelen M9 Warning Lights	2,898.00
04-HA-1310 Arctic Wedge	1,705.00	04-BW-DP7724	539.00
02-B8-1D80 Body Mod	1,469.00	04-BW-DP2D Aluminum Rear Kick Plate	684.00
04-EA-31C0 Electric Zico Step	2,330.00		
		<b>Subtotal From Additional Sheet(s):</b>	59,780.00
		<b>Subtotal B:</b>	24,887.00

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
GTT Opticom GPS Preemption High Priority Series	4,183.00		
EVS 1790 Seat Slide System ILO /SB	2,948.00		
		<b>Subtotal From Additional Sheet(s):</b>	
		<b>Subtotal C:</b>	7,131.00

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 4%

**D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)**

Quantity Ordered:	2	X Subtotal of A + B + C:	\$251,516.00	=	Subtotal D:	\$503,032.00
					Subtotal E:	\$1,000.00

**E. H-GAC Order Processing Charge (Amount Per Current Policy)**

Description	Cost	Description	Cost
Change the Chassis to a Crew Cab	1,500.00		
		<b>Subtotal F:</b>	1500

**F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

**Delivery Date:** TBD **G. Total Purchase Price (D+E+F):** \$505,532.00









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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Discussion regarding the execution and delivery of a Fee Agreement between Beaufort County and Project Burnt Church Distillery

#### Council Committee:

Finance Committee

#### Meeting Date:

September 3, 2019

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

#### Issues for Consideration:

#### Points to Consider:

Backup items include:  
Ordinance  
Inducement Resolution that was adopted on July 22, 2019  
Fee agreement

#### Funding & Liability Factors:

None.

#### Council Options:

Approve, Modify or Reject

#### Recommendation:

Approve





NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)







made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years for each component of the Project placed in service during the investment period.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

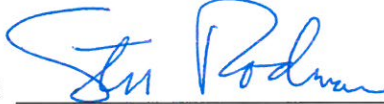
Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this 22<sup>nd</sup> day of July, 2019.

BEAUFORT COUNTY, SOUTH CAROLINA

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

Name: Stewart H. Rodman,

Title: Chairman Beaufort County Council

(SEAL)  
ATTEST:

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

Name: Sarah W. Brock

Title: Clerk to County Council

## Brock, Sarah

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**From:** Johnson, Will <wjohnson@hsblawfirm.com>  
**Sent:** Tuesday, September 17, 2019 10:45 PM  
**To:** Keaveny, Thomas; John A. O'Toole  
**Cc:** Brock, Sarah  
**Subject:** RE: Beaufort County/Burnt Church, 447.33  
**Attachments:** DM 5860264-v1 Fee Agreement - Project Burnt Church - Beaufort County.DOC

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

All,

Attached is the execution copy of the Fee Agreement for Burnt Church. I do not see any highlighted or open items. There must be a prior version that has been circulating.

There is certainly no problem whatsoever getting the final, execution copy to council members at any point in time. I would also highlight the following language that we include in every FILOT ordinance, which appears in the applicable ordinance here:

*The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.*

At times, despite our efforts, we are not able to get company notice information or legal descriptions until after third reading. Because we do not view those items as material, we are 100% comfortable with a council authorizing the form of the Fee Agreement with all substantive items finalized but any immaterial clean-up items to be inserted prior to signatures. Thankfully, that is not the case here, as we have all information completed and the document ready to be signed. I share that observation only to let you know for future reference that the county has the flexibility to deal with any minor/insignificant items post-approval and pre-signing.

Please let me know if you have any questions.

Thanks,



**Will Johnson** | Attorney  
Direct 803.540.7945 | [wjohnson@hsblawfirm.com](mailto:wjohnson@hsblawfirm.com)  
Haynsworth Sinkler Boyd, P.A.  
1201 Main Street, 22nd Floor | Columbia, SC 29201  
Main 803.779.3080 | Mobile 803.240.8019 | Fax 803.765.1243

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

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**From:** Keaveny, Thomas <[tkeaveny@bcgov.net](mailto:tkeaveny@bcgov.net)>  
**Sent:** Tuesday, September 17, 2019 9:19 PM  
**To:** Johnson, Will <[wjohnson@hsblawfirm.com](mailto:wjohnson@hsblawfirm.com)>; John A. O'Toole <[jotoole@beaufortscedc.org](mailto:jotoole@beaufortscedc.org)>  
**Subject:** Fwd: Message from Unknown sender (8439413605)



Will and John,

I am forwarding a VM I just picked up from Joe Passiment, Chairman of Finance Committee. Are you guys going to take care of these issues?

Thomas J. Keaveny, II  
Beaufort County Attorney  
Mobile contact (preferred): (843) 709-3721

This message is being sent from my iPhone. Please excuse typographical errors.

Begin forwarded message:

**From:** Cisco Unity Connection Messaging System <[unityconnection@bcgov.net](mailto:unityconnection@bcgov.net)>  
**Date:** September 17, 2019 at 10:47:21 AM EDT  
**To:** <[tkeaveny@bcgov.net](mailto:tkeaveny@bcgov.net)>  
**Subject:** Message from Unknown sender (8439413605)

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FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

BC DISTILLERY HOLDINGS LLC

Dated as of \_\_\_\_\_, 2019

RECAPITULATION OF CONTENTS OF  
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).



## FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of \_\_\_\_\_, 2019 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and BC DISTILLERY HOLDINGS (previously identified as Project Burnt Church) (the “Company”).

### RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted contemporaneously with the execution of this Fee Agreement (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean BC Distillery Holdings LLC and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes

prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2019 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on



Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 234.34 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2018, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility, and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

## ARTICLE III

### COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company's assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company's liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, if the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES

#### Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall

be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2018, which is 234.34 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but



with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

#### Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from

the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

- (i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and
- (ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the

Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or



(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

## ARTICLE VI

### MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

#### **IF TO THE COMPANY:**

BC Distillery Holdings LLC  
Attn: Jackie Hoven  
1227 May River Road  
Bluffton, SC 29910

#### **IF TO THE COUNTY:**

Beaufort County, South Carolina  
Attn: County Administrator  
P.O. Box 1228  
Beaufort, SC 29901-1228

#### **WITH A COPY TO:**

Haynsworth Sinkler Boyd, P.A.  
Attn: William R. Johnson  
P.O. Box 11889  
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee

Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

## ARTICLE VII

### INDEMNIFICATION, INDIVIDUAL LIABILITY

#### Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its agents, officers, or employees should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and shall be binding upon any

member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)



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

**BEAUFORT COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk to County Council

**BC DISTILLERY HOLDINGS LLC**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Approximately 2.84 acres located at 120 Bluffton Road, Bluffton, SC 29910  
Tax Map Number R600-039-000-0172-0000



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Library System - Proposed New Riverside Branch Library

#### Council Committee:

Finance Committee

#### Meeting Date:

October 7, 2019

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

Ray McBride, Library Director

#### Issues for Consideration:

- Discussion / Pritchardville service area needs and potential branch library construction.

#### Points to Consider:

- Bluffton library 16 years old.
- Growth in Bluffton area cannot be served sufficiently with existing facility.
- Potential branch in the Pritchardville area could serve 30,000 customers now and 50,000 within five years.
- The Beaufort County Board of Voter Registration and Elections has publicly stated it needs additional voting sites in the same area to alleviate pressure/long lines on election days.
- The potential new branch would be 8 miles from the existing branch library.

#### Funding & Liability Factors:

- County Administration recommends G.O. Bond with repayment from Library Impact Fees as most efficient/effective funding mechanism.
- Bluffton library impact fees = \$3,070,577 (as of 10/01/19).
- Library Board of Trustees approved use of Library Impact Fees for this project (09/11/19).

#### Council Options:

- Approve allowing the Library System to move forward with the AVTEX Commercial proposal for a New Riverside library using a general obligation bond with repayment from Library Impact Fees in accordance with the County Comprehensive Plan.
- Provide alternative guidance to staff, if Council does not wish to proceed at this time.

#### Recommendation:

- Approve moving forward the AVTEX Commercial proposal for a New Riverside library using a general obligation bond with repayment from Library Impact Fees in accordance with the County Comprehensive Plan.

# Proposed New Riverside Branch Library

## Beaufort County Library System

October 7, 2019

Beaufort County Council  
Finance Committee



# Beaufort County Comprehensive Plan

## Chapter 11, Community Facilities – Library Facilities Master Plan:

- Original CIP Approved 2010 -Culminates in 2020
- Library Board approved revised Library Facilities Master Plan January 2017

Planned Library Facility and Location	Sq. Footage
New St. Helena Branch, Penn Center (completed 2012)	21,100
Burton Wells Branch, move Admin/Tech Offices from Beaufort, Burton Wells Park	<del>46,200</del> 5,000
Hilton Head Branch, addition	<del>21,800</del>
Beaufort Branch, renovation	<del>12,500</del>
New Lady's Island Branch, no site identified	<del>19,100</del>
New Okatie Branch, Okatie Center	<del>29,500</del>
<b>New Pritchardville Branch, no site identified</b>	<del>29,500</del>
	<b>15,000</b>
Lobeco, addition	4,400

*Source: Library Facilities Master Plan, Beaufort County Library*



# Revised Library Facilities Master Plan

Five existing branch libraries, two new branches and two bookmobiles will provide quality Library services to Beaufort County for the foreseeable future.

# Developer's Proposed Options



August 1, 2003

Ray McBride, Director  
Beaufort County Library System  
311 Scott Street  
Beaufort, South Carolina 29902

**Re: Bluffton County Library Proposal**

Dear Mr. McBride:

We are pleased to be able to offer you the prominent site in our proposed development in Bluffton County as shown on our conceptual site plan, a copy of which is enclosed herein.

We are willing to sell up to 1.25 acres to the County utilities, and offsite detention are included.

The second proposal is for a lease, for which, based on our experience, we have detailed the development costs and lease rate. If this option is attractive to the County, we would require a minimum term of fifteen (15) years.

Finally, we discussed the possibility of a lease with the option to buy, which we would be willing to do at the end of the tenth year of the lease term for appraised value.

I have added to my calendar your presentation to Beaufort County Council on August 19 at 2:00 p.m. and will look forward to attending. Please do not hesitate to contact me should you need additional information in the meantime.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Small, Jr.', is written over a printed name.

Robert S. Small, Jr.

Enclosures

RSS/ech

P.O. Drawer 10287  
Greenville, SC 29603  
Office: (864) 271.1900  
Fax: (864) 233.0639

**Re: Bluffton County Library Proposal**

Dear Mr. McBride:

We are pleased to be able to offer you the prominent site in our proposed development in Bluffton County as shown on our conceptual site plan, a copy of which is enclosed herein.

We are willing to sell up to 1.25 acres to the County for \$800,000.00 per acre. All rough grading, utilities, and offsite detention are included.

The second proposal is for a lease, for which, based upon our experience, we have detailed the development costs and lease rate. If this option is attractive to the County, we would require a minimum term of fifteen (15) years.

Finally, we discussed the possibility of a lease with the option to buy, which we would be willing to do at the end of the tenth year of the lease term for appraised value.

I have added to my calendar your presentation to Beaufort County Council on August 19 at 2:00 p.m. and will look forward to attending. Please do not hesitate to contact me should you need additional information in the meantime.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Small, Jr.', is written over a printed name.

Robert S. Small, Jr.



DEVELOPMENT SUMMARY				
Parcel	Acre	Use	Sqft.	Parking
1	1.4	Commercial	5,000	1/10
2	1.2	Commercial	5,000	1/10
3	1.3	Commercial	5,000	1/10
4	1.3	Commercial	5,000	1/10
5	1.3	Restaurant	5,000	1/10
6	4.0	Commercial	20,000	1/10
7	9.8	Multi-Family	220 Units	1.5/ unit
8	5.5	Townhouses	49 units	2/unit
9	1.5	Office	16,000	3/1000
10	1.1	Civic/Library	15,000	3/1000
Open Space	6.1	Buffers/Pond/Parks/Trails		

**THOMAS & HUTTON**  
ARCHITECTS  
 1000 W. 10th Street, Suite 100, Beaufort, NC 28520  
 Phone: 252.738.1111 Fax: 252.738.1112  
 www.thomashutton.com

CONCEPT SKETCH PLAN  
**NEW RIVERSIDE VILLAGE**



Project: *Library*  
 Size: 15,000

**DEVELOPMENT BUDGET**

	<u>Total Cost</u>
<b>LAND:</b> 1.25 ac.	\$ 1,000,000
<b>SOFT COSTS:</b>	
Permits/Impact Fees	\$ 30,000
Engineering/Architectural	360,000
Testing/Environmental	25,000
Developer Fees	150,000
Leasing Fees	176,000
Construction Interest	80,000
Insurance/Taxes	20,000
Loan Fees	30,000
Legal/Title Fees	<u>40,000</u>
<b>TOTAL SOFT COSTS</b>	<b>\$ 911,000</b>
<b>HARD COSTS:</b>	
Site Work	\$ 200,000
Water System	-
Signage	-
Buildings	4,500,000
Lease Concessions	
Dumpster Enclosures	20,000
Landscaping	50,000
Contingency	<u>100,000</u>
<b>TOTAL HARD COSTS</b>	<b>\$ 4,870,000</b>
<b>TOTAL DEVELOPMENT COSTS</b>	<b><u><u>\$ 6,781,000</u></u></b>

	<u>Term</u>	<u>Total</u>
15,000sf	\$29.33	\$ 440,000
sf		-
sf		-
sf		-
sf		-
sf		-
sf		-
sf		<u>-</u>

**Gross Possible Income** **\$ 440,000**

# Preliminary Project Cost Estimates

- \$6.5 million total construction cost
- Projected annual operating and staffing = \$477,000



# New Riverside Branch

<b><u>PERSONNEL</u></b>		est. all personnel cost	
Librarian IV	Branch Manager		\$76,203
Librarian II	Youth Services Manager		\$59,144
Library Assistant IV	Circ Manager		\$39,985
Library Assistant III	Programmer		\$37,883
Library Assistant I x <u>6</u>	circ., etc.		\$160,190
			<b>\$373,404</b>
<b><u>OPERATING</u></b>			
Telephone	Data line(8400)	\$	9,600
Electricity	based on BLU	\$	34,000
Water/Sewer	based on BLU	\$	3,600
Equipment Rental	based on BLU	\$	1,500
Maintenance Contracts	based on BLU	\$	50,000
Office Supplies	copies	\$	2,000
		<b>\$</b>	<b>100,700</b>
<b><u>Add to admin cost center</u></b>			
Training		\$	700
Memberships		\$	225
Office Supplies		\$	1,200
DP supplies		\$	500
		<b>\$</b>	<b>2,625</b>
<b>Estimated Total:</b>			<b>\$476,729</b>
October 7, 2019			

# Bluffton Library Impact Fees

- Current Bluffton Library impact fee accrual = \$3,070,577
- FY19 annual accrual = \$407,000
- FY20 annual accrual to-date = \$251,577



# Staff Recommendation to support Comprehensive Plan

- Borrow full amount for purchase and use Bluffton Library impact fees for repayment
- Similar to the County's process with the Buckwalter Recreation Center Expansion Project
- Need Council to provide alternative guidance, if it does not wish to proceed at this time

**Beaufort County**  
**State Accommodations Tax (2%)**  
**Preliminary and Unaudited**

	Fiscal Year ending June 30,										<i>Projected</i>
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>Revenues</b>											
State Accommodations Tax Revenue	\$ 456,652	\$ 770,038	\$ 939,935	\$ 724,235	\$ 516,780	\$ 668,774	\$ 715,101	\$ 767,057	\$ 755,903	\$ 824,968	\$ 850,000
City of Beaufort Revenue (2017 Air Show contribution)	-	-	-	-	-	-	-	15,000	-	-	-
Interest Revenue	-	73	551	496	138	102	357	215	-	-	-
<b>Total Revenues</b>	<b>456,652</b>	<b>770,111</b>	<b>940,486</b>	<b>724,731</b>	<b>516,918</b>	<b>668,876</b>	<b>715,458</b>	<b>782,272</b>	<b>755,903</b>	<b>824,968</b>	<b>850,000</b>
<b>Expenditures</b>											
Direct Subsidies											
via State Accommodations Tax Board	280,000	207,000	252,000	463,100	497,000	490,000	499,500	546,000	550,000	490,000	575,000
Other Subsidies (2017 Air Show LEO services)	-	-	-	-	-	-	-	30,000	-	-	-
HHI - Bluffton Chamber of Commerce <sup>1</sup>	64,748	111,756	137,240	104,885	127,931	96,566	103,515	111,309	109,635	119,995	123,250
Beaufort Regional Chamber of Commerce <sup>1</sup>	64,748	111,756	137,240	104,885	127,931	96,566	103,515	111,309	109,635	119,995	123,250
<b>Total Expenditures</b>	<b>409,496</b>	<b>430,512</b>	<b>526,480</b>	<b>672,871</b>	<b>752,861</b>	<b>683,132</b>	<b>706,530</b>	<b>798,617</b>	<b>769,271</b>	<b>729,990</b>	<b>821,500</b>
Excess (deficiency) of revenues over expenditures	47,156	339,599	414,006	51,860	(235,943)	(14,256)	8,928	(16,345)	(13,368)	94,978	28,500
<b>Other Financing Sources (Uses)</b>											
Transfer from Hospitality Tax Fund <sup>2</sup>	-	-	-	-	-	200,000	-	-	-	-	-
Transfer to General Fund <sup>1</sup>	(46,583)	(62,252)	(70,747)	(59,962)	(49,589)	(57,189)	(59,505)	(62,103)	(61,545)	(64,998)	(68,000)
Transfer to Hospitality Tax Fund <sup>2</sup>	-	-	-	-	-	(50,000)	(50,000)	(50,000)	(50,000)	-	-
Transfer to Rural and Critical Lands Program <sup>3</sup>	-	-	-	-	-	(10,000)	-	-	-	-	-
<b>Total Other Financing Sources (Uses)</b>	<b>(46,583)</b>	<b>(62,252)</b>	<b>(70,747)</b>	<b>(59,962)</b>	<b>(49,589)</b>	<b>82,811</b>	<b>(109,505)</b>	<b>(112,103)</b>	<b>(111,545)</b>	<b>(64,998)</b>	<b>(68,000)</b>
<b>Net Change in Fund Balance</b>	<b>573</b>	<b>277,347</b>	<b>343,259</b>	<b>(8,102)</b>	<b>(285,532)</b>	<b>68,555</b>	<b>(100,577)</b>	<b>(128,448)</b>	<b>(124,913)</b>	<b>29,980</b>	<b>(39,500)</b>
<b>Fund Balance (Deficit), beginning</b>	<b>(26,108)</b>	<b>(25,535)</b>	<b>251,812</b>	<b>595,071</b>	<b>586,969</b>	<b>301,437</b>	<b>369,992</b>	<b>269,415</b>	<b>140,967</b>	<b>16,054</b>	<b>46,034</b>
<b>Fund Balance (Deficit), ending</b>	<b>\$ (25,535)</b>	<b>\$ 251,812</b>	<b>\$ 595,071</b>	<b>\$ 586,969</b>	<b>\$ 301,437</b>	<b>\$ 369,992</b>	<b>\$ 269,415</b>	<b>\$ 140,967</b>	<b>\$ 16,054</b>	<b>\$ 46,034</b>	<b>\$ 6,534</b>

Note 1: Distributions made in accordance with Beaufort County Ordinance 2009/15.

Based on Beaufort County Ordinance 2009/15, approximately 38% of State Accommodations Tax is disbursed three ways: 1) County General Fund, 2) HHI-Bluffton Chamber of Commerce, and 3) Beaufort Regional Chamber of Commerce. This results is approximately 62% of State Accommodations Tax Revenue being available for the State Accommodations Tax Board each year.

Note 2: County Council approved a \$200,000 transfer from the local hospitality tax fund to the State Accommodation Tax (2%) Fund on October 27, 2014. This amount was repaid in four equal annual installments of \$50,000 from fiscal year 2015, 2016, 2017, and 2018.

Note 3: The transfer to the Rural and Critical Lands Program was for the Fort Fremont project.

# ADD-ONS

The document(s) herein were provided to Council for information and/or discussion after release of the official agenda and backup items.



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Emergency Medical Services (EMS) Contract Award Recommendation to purchase two new 2019 Ambulances from the HGAC Buy Cooperative Contract

Council Committee:

Governmental Committee

Meeting Date:

October 28, 2019

Committee Presenter (Name and Title):

Dave Thomas, CPPO, Purchasing Director and Donna Ownby, Director of Emergency Medical Services

Issues for Consideration:

The Purchasing Department received a request from Beaufort County's EMS Department to purchase two new 2019 Ford F450 4x2 Ambulance Conversion Trucks. This purchase request will use the HGAC Buy Cooperative Contract, a National Cooperative contract used by state and local governments. The EMS Department, along with First Vehicle Services, recommends the purchase of this ambulance due to their overall performance and the close proximity of the factory to Beaufort County.

Points to Consider:

- 1. The HGAC Buy Contract will provide two new 2019 Ford F450, 4x2, Diesel, Type I Ambulance (see the attached pricing sheet with accessories). The ambulances will be delivered to the County by the end of December 2019.
- 2. Note in 2018 the County purchased two ambulances from the same contract for \$480,994.00. The reason for the cost increase was a new cooperative bid base price the 2019 models, which increased the new ambulances by \$11,194 each. See the attached letter from Northwestern Emergency Vehicles
- 3. EMS is replacing a 2000 and 2011 Ford F450 ambulances with 110,665/127,911 miles.

Funding & Liability Factors:

Account #40090011-54003, EMS, Vehicle Purchases.

*10001230 - 54000 General Fund*      *10001230 - 54000*  
*General Fund*

Council Options:

Approve or disapprove the contract award.

Recommendation:

The Governmental Committee approve and recommend to County Council the contract award to purchase two Ambulances from the aforementioned contractor for a total cost of \$506,532.00.

# Topics for Discussion

- **Quadrennial Reassessment**
- **Assessable Transfer of Interest (ATIs)**
- **Legal Residency special Assessment (4%)**
- **Agricultural Use Classification**
- **Appeals**

# Quadrennial Reassessment

## §12-43-217 – Quadrennial Reassessment

(A) ...once every fifth year ...Property valuation must be completed at the end of December of the fourth year ....In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

# Quadrennial Reassessment

## Valuing Property §12-43-217 (cont.)

“....based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and which the assessment is based.”



## Quadrennial Reassessment (cont.)

§ 12-37-3140. Determining fair market value.

**(A)(1)** For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:

**(d) as it may be adjusted as determined in a countywide reassessment program ...**

**Quadrennial Reassessment (cont.)**  
**Capping § 12-37-3140**

**Market Value Increase More Than Fifteen Percent**  
**From the Previous Reassessment**

(B) “Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to Section 12-43-217 is limited to **fifteen percent** within a **five-year period** to the otherwise applicable fair market value.”

## Quadrennial Reassessment (cont.)

### Capping § 12-37-3140

### Capping Exceptions

(B) “...this limit **does not** apply to the fair market value of additions or improvements to real property in the year those additions or improvements are **first subject to property tax**, nor do they apply to the **fair market value of real property when an assessable transfer of interest** occurred in the year that the transfer value is first subject to tax.”

# Assessable Transfer of Interest (ATIs) South Carolina Code of Laws

- §12-37-3130 – Defines ATIs
- §12-37-3140 – Date of fair market value
- §12-37-3150 – When to appraise

## §12-37-3130 – Defines ATIs

(4) **“Assessable transfer of interest”** means a transfer of an existing interest in real property that subjects the real property to appraisal.

## §12-37-3135 – ATI Fair Market

(4) **ATI fair market value** means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.”

# §12-37-3140 – Determining Fair Market Value ATIs

**(A)(1)(b) “December thirty-first of the year in which an assessable transfer of interest has occurred;”**

# §12-37-3150 – Determining When to Appraise

## ➤ Triggers – To Appraise

- ✓ Conveyance by Deed or Land Contract
- ✓ Conveyance from or to a Trust unless settlor or settlor's spouse or both are sole beneficiaries of the Trust
- ✓ Change in the sole beneficiary of a trust
- ✓ Transfer of more than 50% ownership – Partnerships, LLC, LLP or other legal entity
- ✓ Change in use - agricultural property



# §12-37-3150 – Determining When to Appraise

## ➤ Triggers - To Appraise (cont.)

- ✓ Change in use as result of zoning ordinance
- ✓ Partial Interest Sales - more than 50%
- ✓ Mobile Homes either by title or deed
- ✓ Distribution by will (exceptions - transfers to a spouse or 4% properties that transfer to a child)
- ✓ Conveyance by lease – lease purchase option or lease and options > 20 yr.

# §12-37-3150 – Determining When to Appraise (cont.)

## ➤ Non-Triggers

- ✓ Transfers between spouses
- ✓ Transfers not subject to federal income tax:  
1033, 1041, 351, 355, 368, 721
- ✓ Transfer through foreclosure or forfeiture
- ✓ Transfer of life estate however retained by transferor
- ✓ Transfers among affiliated groups

# §12-37-3150 – Determining When to Appraise (cont.)

## ➤ Non-Triggers (cont.)

- ✓ Transfer by redemption property previously sold for taxes
- ✓ Conveyance to a trust if settler remains beneficiary to trust
- ✓ Transfer for security or assignment or discharge of a security interest
- ✓ Transfers among Corp, Partnerships, LLC, LLP or other legal entity if entities are commonly controlled
- ✓ Transfer of an interest in a timeshare unit by deed or lease

## Valuation In Non-Reassessment Years

“An assessor may reassess property in a non-countywide reassessment year if a property experiences a change in conditions on the property (S.C. Code Ann. § 12-37-90(c) (Rev. 2000)), if that property was omitted from taxation (S.C. Code Ann. § 12-39-220 (Rev. 2000)), or upon specific directive from the South Carolina Department of Revenue...”

Bertrand v. Beaufort County Assessor, 2011 WL 2413245 (2011) citing Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997).”

## Valuation In Non-Reassessment Years

“The South Carolina Supreme Court has established that an assessor may only reassess a property's value in a non-countywide reassessment year if one of the aforementioned exceptions applies.”

Bertrand v. Beaufort County Assessor, 2011 WL 2413245 (2011) citing Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997).”

## Valuation In Non-Reassessment Years (Cont.)

“By their request, the taxpayers have essentially sought an order requiring the Assessor to reassess property values whenever a property's value changes. By the plain language of the statutes, which mandate a quadrennial countywide reassessment, and provide only an extremely limited set of exceptions to the countywide reassessment, an assessor is tightly constrained in performing reassessments...

Bertrand v. Beaufort County Assessor, 2011 WL 2413245 (2011) citing Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997).”

## Valuation of Properties In Non-Reassessment Years (cont.)

“ . . . . Moreover, were assessors required to reassess properties whenever values changed, such a requirement would impose significant administrative and financial burdens upon county assessors across the state, would severely limit a taxing authority's ability accurately to project its tax revenue from year to year, and would potentially jeopardize the fiscal integrity of school districts, counties, and municipal budgets throughout the State.”

Bertrand v. Beaufort County Assessor, 2011 WL 2413245 (2011) citing Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997).”

# The Four Classifications of Property



Class	Ratio	Defined
Owner-Occupied	4%	Owner- Occupied LR, up to 5 ac.of land
Other Property	6%	Real property not classified as “owner-occupied residential” or the “Ag. Use”
Agricultural Market Value	6%	Assessed value less the assessed value from “Ag. Use” generates rollback taxes
Agricultural Use	4% or 6%	Properties approved for Ag. Use. 4% - Privately Owned 6% - Corporate

# Legal Residence Special Tax Assessment Ratio - §12-43-220

Residential property that is the owner's primary residence is assessed at 4% (assessment ratio) of its taxable value.

The assessed value is then multiplied by the millage rate to arrive at the amount of taxes.

Keep in mind that 4% properties are exempt from the school operations millage.

# Legal Residence Special Tax Assessment Ratio - §12-43-220 (cont.)

## Requirements:

- ✓ “Owner-occupant must actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year.”

# Legal Residence Special Tax Assessment Ratio - §12-43-220 (cont.)

## Requirements:

- ✓ “...not more than five acres contiguous....
- ✓ “any member of... household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose...
- ✓ Claim the special assessment ratio...on another residence.”

# Legal Residence Special Tax Assessment Ratio - §12-43-220 (cont.)

## Requirements:

- ✓ Apply on or before January 15<sup>th</sup>. “...before the first penalty date for the payment of taxes for the tax year which the owner first claims eligibility for this assessment ratio.”

# Legal Residence Special Tax Assessment Ratio - §12-43-220 (cont.)

## Requirements:

- ✓ Cannot rent the residence for no more than 72-days out of the calendar year. (to avoid the removal of the assessment ratio, potential penalties and interest, the owner is required to notify the assessor's office within 6-months)

# Legal Residence Special Tax Assessment Ratio - §12-43-220 (cont.)

## Requirements:

- ✓ *Completed and signed “Legal Residence Application,”*
- ✓ South Carolina vehicle(s) registration,
- ✓ South Carolina driver's license or identification card,
- ✓ Most recently filed South Carolina Income tax return,
- ✓ Trust agreement (only if property is held in a Trust), and
- ✓ Other proof required by the assessor necessary to determine eligibility.
  
- ✓ **United States Active Duty Military:** (in addition to the documents listed above):
  - ✓ PCS Orders and Military ID(s)
  - ✓ Current Leave and Earnings Statement (LES)

## Legal Residence Special Tax Assessment Ratio - §12-43-220 (cont.)

“...the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires...”



# Legal Residence v. Non-Legal Residence Ratio

## Non-Legal Residential At 6% Ratio (w/ School Operations)

Taxable Value	100,000
Non-Legal Res.	X <u>.06</u>
Assessed	6,000
Bluffton O/S Mills	<u>.23670</u>
<b><u>Est.</u></b> Taxes w/o Fees	\$1,420.20

## Legal Residential At 4% (w/o School Operations)

Taxable Value	100,000
Non-Legal Res.	X <u>.04</u>
Assessed	4,000
Bluffton O/S Mills	<u>.12270</u>
<b><u>Est.</u></b> Taxes w/o Fees	\$490.80

# Legal Residence Special Tax Assessment (cont.)

## 4% Removal Triggers:

- ✓ Name Change
- ✓ Change of Address
- ✓ Conveyance (i.e. deed or title)
- ✓ Active duty service member(s) are required to apply annually
- ✓ Failure to provide requested documents
- ✓ Death (except for properties with JTROS )

# Agricultural Special Assessment

- §12-43-220 – Classification and procedures for claiming, classification, and roll-back taxes
- §12-43-230 – Treatment of agricultural real property
- §12-43-232 – Requirements for agricultural use
- § 48-23- 205 – Local regulation of development affecting forest land.

## Agricultural Exemption Qualification Provisions - §12-43-230

(a) “For the purposes of this article, unless otherwise required by the context, the words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means.”

## Agricultural Exemption §12-43-230

Agricultural Exemption includes but is not limited to:

- ✓ Christmas Tree Farms
- ✓ Mariculture
- ✓ Dairy
- ✓ Horticulture
- ✓ Grazing
- ✓ Agriculture
- ✓ Agritourism

## Agricultural Exemption Do Not Qualify §12-43-232

The following uses of real property **do not** qualify as agricultural:

- ✓ Recreation
- ✓ Hunting Clubs
- ✓ Fishing Clubs
- ✓ Vacant Land (land lying dormant)
- ✓ Any other similar use.

# Agricultural Exemption Requirements

## §12-43-232

- ✓ Timberland
  - ✓ Five (5+) acres or more
- ✓ Non-Timberland
  - ✓ Ten (10+) acres or more

\*\*Tracts that do not meet the minimal acreage requirement may be eligible for agricultural classification under another part of the statute\*\*

# Agricultural Exemption Requirements

## §12-43-232 (cont.)

- ✓ Application on or before January 15<sup>th</sup>.
- ✓ 4% Applied to qualified land and buildings
- ✓ Taxes are based on the “use value” not the “market value”



## **Agricultural Exemption** **Roll-Back Taxes §12-43-232**

When real property is valued, assessed, and taxed as agricultural use and the use changes to a use other than agriculture, the property is subject to additional taxes.

## Agricultural Use Exemption Roll-Back Taxes §12-43-232

- The rollback tax is the difference between the taxes paid on the **valuation as agricultural property** and the tax amount(s) based on **the assessor's market value**.
- Real property is subject to rollback taxes up to 5 years immediately preceding the year the property use changed.

# Appeals

## Administrative Tax Appeal Process

- §12-60-2510 – Tax assessment notice; contents; written notice of objection
- §12-60-2520 – Written request; protest; contents
- §12-60-2530 – Board of Assessment Appeals (BAA)
- §12-60-2540 – Contest hearing; appealing to the Administrative Law Court (ALJ)
- §12-60-2545 - (Agricultural Use Appeals)

# Appeals

## §12-60-2510

### Taxpayer can appeal:

- ✓ the fair market value;
- ✓ the special use, if applicable;
- ✓ the assessment ratio;
- ✓ the property tax assessment;
- ✓ the number of acres or lots;
- ✓ the location of the property;
- ✓ the tax map number; and
- ✓ the appeal procedure

# Appeals

## §12-60-2520

- ✓ Must be in writing
- ✓ Submittal Date: January 16<sup>th</sup> to January 15<sup>th</sup>  
(Exception) – “In years when there is a notice of property tax assessment, the taxpayer, within 90-days...”

**\*\*Taxpayer Only Appeal once in a Given Tax  
Year\*\***

# Appeals Valuation Determination

“S.C. Code Ann. § 12-43-215 (Supp. 2010),  
“When a property owner...appeals the value of a property assessment, the assessor shall...make any adjustments, if warranted, based on the market values of real property **as they existed in the year that the equalization and reassessment program was conducted....**”

The Country Club of Lexington v. Lexington County Assessor, 11-ALJ-17-0104-CC (2011)

[www.beaufortcountysc.gov/assessor/](http://www.beaufortcountysc.gov/assessor/)

**Citizen's Guide**

**Beaufort County Reassessment Program 2018**

**reassessment**





# Beaufort County Assessors Office



Ebony F. Sanders  
Beaufort County Assessor