

K. G. "Rusty" Smith, Jr.
District #1

Roger M. Poston
District #2

Alphonso Bradley
District #3

Mitchell Kirby
District #4

Johnnie D. Rodgers, Jr.
District #5

Russell W. Culberson
District #6

Waymon Mumford
District #7

James T. Schofield
District #8

H. Morris Anderson
District #9

AGENDA
FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
CITY-COUNTY COMPLEX
180 N. IRBY STREET
COUNCIL CHAMBERS, ROOM 803
FLORENCE, SOUTH CAROLINA
TUESDAY, MAY 31, 2011
8:00 A. M.

I. CALL TO ORDER: K. G. RUSTY SMITH, JR., CHAIRMAN

II. INVOCATION: H. MORRIS ANDERSON, SECRETARY/CHAPLAIN

**III. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG:
WAYMON MUMFORD, VICE CHAIRMAN**

IV. WELCOME: K. G. RUSTY SMITH, JR., CHAIRMAN

**V. SWEARING-IN OF NEWLY ELECTED MEMBER OF COUNCIL:
Judge Michael G. Nettles, Administering the Oath of Office**

Council District 2 Roger M. Poston

V. ORDINANCES IN POSITION:

A. SECOND READING

ORDINANCE NO. 26-2010/11

[1]

An Ordinance Authorizing The Execution And Delivery Of A Fee Agreement Between Florence County, South Carolina, And Project Oliver, As Sponsor, And One Or More Sponsor Affiliates, To Provide For A Fee In Lieu Of *Ad Valorem* Taxes Incentive Agreement, To Include The Grant Of Certain Infrastructure Credits As Part Of The Fee-In-Lieu Of Taxes Arrangement; And Other Related Matters.

B. INTRODUCTION

1. ORDINANCE NO. 27-2010/11 (*By Title Only*) [23]

An Ordinance Authorizing An Amendment To The Master Park Agreement Governing The Multi-County Industrial/Business Park By And Between Florence County, South Carolina, And Williamsburg County, South Carolina, In Order To Expand The Boundaries Of The Park To Include Certain Property Owned By **[Project Oliver]**, And Other Matters Related Thereto.

2. ORDINANCE NO. 28-2010/11 (*By Title Only*) [25]

An Ordinance To Develop A Jointly Owned And Operated Industrial And Business Park In Conjunction With Marion County, Such Industrial/Business Park To Include Property Initially Located In Marion County And Established Pursuant To Section 4-1-170 Of The Code Of Laws Of South Carolina, 1976, As Amended; To Provide For A Written Agreement With Marion County To Provide For The Expenses Of The Park, The Percentage Of Revenue Application, And The Distribution Of Fees In Lieu Of Ad Valorem Taxation; And Other Matters Related Thereto.

VI. BUDGET WORKSESSION:

Council will recess and reconvene in the Conference room to hold a Budget Worksession to discuss matters relating to the Fiscal Year 2012 Budget.

VII. EXECUTIVE SESSION:

Pursuant to Section 30-4-70 of the South Carolina Code of Laws 1976, as amended.

- Contractual matter concerning economic development

VIII. ADJOURN:

FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
May 31, 2011

AGENDA ITEM: Second Reading - Ordinance No. 26-2010/11

DEPARTMENT: Economic Development/County Council

ISSUE UNDER CONSIDERATION:

An Ordinance Authorizing The Execution And Delivery Of A Fee Agreement Between Florence County, South Carolina, And Project Oliver, As Sponsor, And One Or More Sponsor Affiliates, To Provide For A Fee In Lieu Of *Ad Valorem* Taxes Incentive Agreement, To Include The Grant Of Certain Infrastructure Credits As Part Of The Fee-In-Lieu Of Taxes Arrangement; And Other Related Matters.

OPTIONS:

1. *(Recommended)* Approve Second Reading of Ordinance No. 26-2010/11.
2. Provide an alternate directive.

ATTACHMENTS:

Ordinance No. 26-2010.

Sponsor(s) : Economic Development
 First Reading/Introduction : May 19, 2011
 Committee Referral : N/A
 Committee Consideration Date : N/A
 Committee Recommendation : N/A
 Second Reading : May 31, 2011
 Public Hearing :
 Third Reading :
 Effective Date : Immediately

I, _____,
 Council Clerk, certify that this
 Ordinance was advertised for
 Public Hearing on _____.

ORDINANCE NO. 26-2010/11

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

(An Ordinance Authorizing The Execution And Delivery Of A Fee Agreement Between Florence County, South Carolina, And Project Oliver, As Sponsor, And One Or More Sponsor Affiliates, To Provide For A Fee In Lieu Of *Ad Valorem* Taxes Incentive Agreement, To Include The Grant Of Certain Infrastructure Credits As Part Of The Fee-In-Lieu Of Taxes Arrangement; And Other Related Matters.)

WHEREAS:

1. Florence County, South Carolina ("County"), acting by and through its County Council ("County Council") is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("Act"), (i) to enter into agreements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State of South Carolina will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; and (ii) to covenant with such industry to accept certain payments in lieu of *ad valorem* taxes ("FILOT") with respect to such investment; and
2. Pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended ("MCIP Act"), the County is authorized to develop multi-county industrial parks with other qualifying counties and, in its discretion, include within the boundaries of such parks the property of qualifying industries. Under the authority provided in the MCIP Act, the County has created previously a multi-county park with Williamsburg County ("Park"); and
3. Project Oliver, a corporation, organized and existing under the laws of the State of Wisconsin, but authorized to and conducting business in South Carolina, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities, including one or more Sponsor Affiliates, as defined in Section 12-44-30 of the Code, as amended (collectively, "Company"), is planning an investment consisting of the expenditure of approximately \$155,000,000 and the creation of approximately 264 new, full-time jobs in order to establish and support a new light manufacturing facility and distribution center within the County ("Project"); and
4. The County intends that this Ordinance serve as the official action to identify the Project, for purposes of applicable fee-in-lieu of taxes statutes and otherwise, as required by the Act; and
5. The County has determined to offer the Company a FILOT incentive package at an assessment ratio of ___%, with a fixed millage rate for 30 years, being the millage rate in effect on June 30, 2010 (as permitted under the Act). In addition, the County has determined to include the Company's Project

within the boundaries of the Park. The terms and conditions of each of these incentives are more fully described in the Fee Agreement ("Fee Agreement") attached hereto as Exhibit A.

NOW THEREFORE BE IT ORDAINED BY THE FLORENCE COUNTY COUNCIL DULY ASSEMBLED THAT:

Section 1. *Authorization to Execute and Deliver Fee Agreement.* The Chairman of County Council and the County Administrator are hereby authorized and directed to execute the Fee Agreement which is in substantially final form as hereto attached, with any minor modifications and revisions as may be approved by the Chairman of County Council and the County Administrator, in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same; and the Chairman of County Council and the County Administrator are hereby further authorized and directed to deliver the executed Fee Agreement to the Company.

Section 2. *Statutory Findings.* The County hereby finds: (i) pursuant to the Act, particularly Section 12-44-40(H) and (I), and based on information provided by the Company, that the Project constitutes a "project" as that term is referred to and defined in Section 12-44-30 of the Act; (ii) the Project will benefit the general public welfare of the County by providing service, employment, recreation or other public benefits not otherwise provided locally; (iii) the Project gives rise to no pecuniary liability of the County or incorporated municipality or to no charge against its general credit or taxing power; (iv) the purposes to be accomplished by the Project are proper governmental and public purposes; and (v) the benefits of the Project to the public are greater than the costs to the public.

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project Site, as described on the attached Exhibit B, is hereby authorized and approved.

Section 4. *General Repealer.* All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

ATTEST:

Connie Y. Haselden, Council Clerk

Approved as to Form and Content
D. Malloy McEachin, Jr., County Attorney

SIGNED:

K. G. Rusty Smith, Jr., Chairman

COUNCIL VOTE:

OPPOSED:

ABSENT:

EXHIBIT A

Fee In Lieu of Ad Valorem Taxes Agreement

DRAFT

EXHIBIT B

Description of Property

ALL AND SINGULAR, those certain pieces, parcels or tracts of land situate, lying and being in the County of Florence, State of South Carolina, containing an aggregate of 597.04 acres, more or less, and being shown and designated as TRACT 2 containing 124.14 acres, more or less, TRACT 3 containing 38.35 acres, more or less, and TRACT 4, containing 434.55 acres, more or less, on that certain survey entitled "ALTA/ACSM SURVEY OF SEVEN TRACTS OF LAND" prepared by Ervin engineering Co., Inc., for [Project Oliver], dated August 24, 2010, and recorded August 30, 2010, in Book 97 at Page 258, in the Office of the Clerk of Court for Florence County, South Carolina, said plat being incorporated herein by reference.

Map 367, Block 01, Parcel 009 and Parcel 010

DRAFT

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

BETWEEN

JOHNSON CONTROLS BATTERY GROUP, INC.

AND

FLORENCE COUNTY, SOUTH CAROLINA

DATED: JUNE 30, 2011

PREPARED BY:

**PARKER POE ADAMS & BERNSTEIN LLP
POST OFFICE BOX 1509
COLUMBIA, SOUTH CAROLINA 29202-1509
(803) 255-8000**

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FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("Fee Agreement") is entered into, effective, as of _____, between Florence County, South Carolina ("County"), a body politic and corporate and a political subdivision of the State of South Carolina ("State"), acting through the Florence County Council ("County Council") as the governing body of the County, and [Project Oliver] as Sponsor, its affiliates, related entities and assigns (collectively, "Company" and with County, "Parties," each, a "Party").

WITNESSETH:

(a) The County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("Act") to enter into a fee agreement with qualifying industries to induce such industries to locate in the State and thus make use of and employ manpower and other resources of the State.

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

(c) The Company is planning an investment in real and personal property of not less than One Hundred Fifty Million U.S. Dollars (\$150,000,000) (the "Investment") and the creation of not less than 125 new full-time jobs (the "Jobs") within the County, through the acquisition, construction and purchase of certain land, buildings, furnishings, fixtures, apparatuses, and equipment (the "Project"). The definition of "Jobs" shall include those individuals employed directly by the Company as well as those individuals employed by a third party and working full time for the benefit of the Company within the County.

(d) Pursuant to an Ordinance adopted on June ____, 2011 ("Fee Ordinance"), the County Council formally identified the Project as a "project" as provided in the Act and authorized (i) the execution and delivery of this Fee Agreement with the Company; and (ii) the inclusion of the Project in the Park, as defined in the "Master Agreement Governing the Joint County Industrial Park" between the County and Williamsburg County, effective December 1, 1998 ("Park Agreement"), as subsequently amended.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, Parties agree as follows.

ARTICLE I DEFINITIONS

Section 1.1. Terms. The terms defined in this Article shall for all purposes of this Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

"Chairman" means the Chairman of the County Council of Florence County, South Carolina.

"Clerk of County Council" means the Clerk to County Council of Florence County, South Carolina.

“Code” means the South Carolina Code of Laws, 1976, as amended.

“Commencement Date” means the earlier of: (a) the last day of the first property tax year during which Economic Development Property (defined below) is placed in service and (b) the last day of the property tax year that is three years from the year in which the Parties entered into this Fee Agreement.

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

“County Council” means the Florence County Council, the governing body of the County.

“Diminution of Value,” in respect of any Phase of the Project, means any reduction in the value based on original fair market value as determined in Step 1 of Section 3.1 of this Fee Agreement, of the items which constitute a part of the Phase which may be caused by (i) the Company’s removal of equipment pursuant to Section 3.5 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.6 of this Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.7 of this Fee Agreement.

“Economic Development Property” means all items of real and tangible personal property comprising the Project which qualify as economic development property under the Act, become subject to the Fee Agreement, and which are identified by the Company in connection with their annual filing of a SCDOR PT-100, PT-300 or comparable forms with the South Carolina Department of Revenue (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended by subsequent, formal action of County Council, or automatically as permitted under the Act or under this Fee Agreement. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of Section 12-44-160.

“Equipment” means all of the machinery, equipment, furniture and fixtures, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended, as a part of the Project.

“Event of Default” means any Event of Default specified in Section 3.12 of this Fee Agreement.

“Fee Term” or “Term” means the period from the date of delivery of this Fee Agreement until the last Phase Termination Date unless sooner terminated or extended pursuant to the terms of this Fee Agreement.

“FILOT Payment” means each payment in lieu of taxes which the Company is obligated to pay to the County.

“Improvement” means each improvement, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended.

“Initial Investment Period” means the period commencing on the first day Economic Development property is purchased or acquired and ending on the last day of the eighth (8th) property tax year following the later of the first property tax year in which Economic Development property is placed in service or the property tax year in which this Fee Agreement is executed (such ending date is anticipated to be December 31, 2019); provided a later date may apply in accordance with Section 3.1 of

this Fee Agreement, or may otherwise be agreed to by the Company and County, in writing, pursuant to the Act.

“MCIP” or “Park” means the multi-county industrial park that the County has previously created, pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended (“MCIP Act”) with Williamsburg County, South Carolina by that agreement titled “Master Agreement Governing the Joint County Industrial Park,” between the County and Williamsburg County, effective December 1, 1998, as subsequently amended.

“Phase” means the Equipment, Improvements and Real Property, if any, placed in service during each year of the Investment Period.

“Phase Termination Date” means, with respect to each Phase of the Project, the day that is twenty-nine (29) years after each such Phase, which period may be extended as provided herein, of the Project becomes subject to the terms of this Fee Agreement. Anything contained herein to the contrary notwithstanding, the last Phase Termination Date shall be no later than December 31st of the year of the expiration of the maximum period of years that the annual fee payment is available to the Company under this Agreement or under Section 12-44-30(20) of the Act, as amended.

“Project” means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in phases. The Project involves an initial investment of sufficient sums to qualify under the Act.

“Real Property” means real property, together with all and singular the rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Fee Agreement.

“Removed Component” means the following types of components or Phases of the Project or portions thereof, all of which the Company, as the case may be, 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; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to remove pursuant to the terms of this Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any item of Equipment or any Improvement which is scrapped or sold by the Company and treated as a Removed Component under Section 3.5 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

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

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

Section 2.1. Representations of the County. The County hereby represents and warrants to the Company:

(a) The County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to enter into the transactions contemplated by this Fee Agreement 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.

(b) Based on representation of the Company, the Project constitutes a "project" within the meaning of the Act.

(c) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property under the Act.

Section 2.2. Representations of the Company. The Company hereby represents and warrants to the County:

(a) The Company is qualified to do business in the State of South Carolina and has power to enter into this Fee Agreement.

(b) The Company's execution and delivery of this Fee Agreement and its compliance with the provisions hereof will not result in a default, not waived or cured, under any Company restriction or any agreement or instrument to which the Company is now a party or by which it is bound.

(c) The Company intends to operate the Project as a "project" within the meaning of the Act as in effect on the date hereof.

(d) The availability of the payment in lieu of taxes with regard to the Economic Development Property authorized by the Act has, in part, induced the Company to undertake the Project in the County.

(e) In accordance with the Act, the Company, as sponsor, will make the statutorily required investment of Two Million Five Hundred Thousand Dollars (\$2,500,000) by the end of the first five (5) years of the Investment Period.

**ARTICLE III
FILOT PAYMENTS**

Section 3.1. Negotiated FILOT Payments. Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes ("FILOT Payments") on all Economic Development Property comprising the Project and placed in service during the Investment Period. The amount of such annual FILOT Payments shall be determined by the following procedure:

- Step 1: Determine the fair market value of the Phase of the Project placed in service in any given year for such year and for the following twenty-nine (29) years, for a total of thirty (30) years, which term may be extended as provided herein, using original income tax basis for State income tax purposes for any real property (provided, if real property is constructed

for the fee or is purchased in an arms length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue and Taxation will determine fair market value by appraisal) and original income tax basis for State income tax purposes less depreciation for each year allowable to the Company for any personal property as determined in accordance with Title 12 of the Code, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to the Company under State law, if the property were taxable, except those exemptions specifically disallowed under Section 12-44-50(A)(2) of the Act, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement.

- Step 2: Multiply the fair market value by an assessment ratio of ____ percent (___%) to establish the taxable value of each Phase of the Project in the year it is placed in service and in each of the twenty-nine (29) years thereafter, for a total of thirty (30) years, or such longer period of years that the annual fee payment is permitted to be made by the Company pursuant to this Fee Agreement or under the Act, as amended, if such longer period is approved by County Council, in writing.
- Step 3: Multiply the taxable value for each year by **[0.2976 (value given by County Assessor)]** mills, which is intended to be the lower of the millage rate on June 30, 2010, or the millage rate applicable at the time of execution of this Fee Agreement (which millage rate shall be a fixed rate for the term of this Fee Agreement), to determine the amount of the FILOT Payments which would be due in each year of the Fee Term on the payment dates prescribed by the County for such payments or such longer period of years that the annual fee payment is permitted to be made by the Company pursuant to this Fee Agreement or under the Act, as amended, if such longer period is approved by County Council, in writing.

If the Company fails to invest at least One Hundred Fifty Million U.S. Dollars (\$150,000,000) and create 125 new full-time jobs within an eight (8) year period or otherwise satisfy the requirements of Section 12-44-30(7) of the Code ("Enhanced FILOT"), then the Fee Agreement (defined below) shall provide that the Company automatically continue to receive a prospective FILOT benefit with a six (6) percent assessment ratio and a fixed millage rate of .2976 for the remainder of the term of the FILOT. Pursuant to Section 12-44-100 of the Code, there shall be no retroactive recapture of the Enhanced FILOT benefits provided to the Company if the Company does not meet the requirements of the Enhanced FILOT within the allowable eight (8) year initial investment period ("Initial Investment Period").

Pursuant to Section 12-44-30(13) of the Act, if the Company satisfies the requirements of the Enhanced FILOT at any time during the initial investment period of eight (8) years and has more than Five Hundred Million U.S. Dollars (\$500,000,000) invested in the State and employs more than One Thousand (1,000) people in the State (collectively, "Incentive Enhancement Threshold"), and provides written notice of same to the County Administrator prior to the end of the Initial Investment Period, then the Initial Investment Period shall automatically extend to a total of fifteen (15) years. The additional seven (7) years added to the Initial Investment Period shall be comprised of the automatic two (2) year extension, as well as the discretionary five (5) year extension, both as provided under Section 12-44-30(13) (as extended, the Initial Investment Period shall be referred to as "Extended Investment Period").

Moreover, if the Company satisfies the requirements of the Section 12-44-30(13) to achieve the Extended Investment Period, and provides the required written notice of same to the County

Administrator prior to the end of the Initial Investment Period, there shall also be an automatic extension of the term of the FILOT arrangement by a period of ten (10) years.

If the Company fails to provide the required written notice to the County Administrator ("Written Notice") of its achievement of the Incentive Enhancement Threshold, the extensions of the Initial Investment Period and the term of the FILOT arrangement shall not occur automatically. In such event, the County may, in its sole discretion, consider the grant of an extension of the Initial Investment Period up to a period of five (5) years or the term of the FILOT arrangement up to a period of ten (10) years. For purposes of this Fee Agreement, Investment shall include, but not be limited to (i) non-taxable capital expenditures, without regard to depreciation, made by the Company at the Project, on- or off-site, that are made towards or for the benefit of the Project; (ii) capital expenditures, without regard to the depreciation, made by the Company, that are made towards or for the benefit of the Project, regardless of the source of payment of such expenditures; and (iii) other taxable capital expenditures, without regard to depreciation, made by the company in the County.

If it is determined by a final order of a court of competent jurisdiction or by agreement of Parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, then the payment shall be reset at the minimum permitted level so determined, but never lower than the level provided in this Fee Agreement without subsequent written approval by County Council.

If legislation reducing the minimum assessment ratio shall be enacted by the State, the County agrees to use its best efforts to amend any inducement agreement, resolution, ordinance, fee-in-lieu of tax agreement or lease agreement, as the case may be, prospectively, to afford the Company the lowest assessment ratio permitted by law. Moreover, if taxes on real or personal property shall be abolished in the County or the State, the Company and the County may negotiate an agreement to terminate the FILOT with no penalty to the Company.

In the event that the Fee Act and/or the above-described FILOT payments are declared invalid or unenforceable, in whole or in part, for any reason, the Parties express their intention that such payments and the Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company the benefits to be derived hereunder. If the Project is deemed to be subject to *ad valorem* taxation, the payment in lieu of *ad valorem* taxes to be paid to the County by the Company shall be equal to the amount which 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 Project were and had not been Economic Development Property as defined under the Act. In such event, any amount determined to be due and owing to the County from the Company, as the case may be, with respect to a year or years for which payments in lieu of *ad valorem* taxes have been previously remitted by the Company to the County hereunder, shall be reduced by the total amount of payments in lieu of *ad valorem* taxes made by the Company with respect to the Project pursuant to the terms hereof, and further reduced, if applicable, by any abatements that would have otherwise been permitted as provided by the Code or more specifically as set forth in Section 12-37-220 of the Code and Article X, Section 3 of the Constitution.

Further, the County understands and agrees that the Company, its parents and/or other affiliated companies, may make additional investment(s) within the County. Such investments, including any related new jobs, may be in the form of increased investment and employment in the Company and/or other business or manufacturing endeavors. In the event such additional investment(s) is/are made in the County, then, to the extent allowed by law, including, without limitation, the Act, such amounts/employees shall be considered additive to the amounts/employees that the Company has stated

as its proposed investment in this Fee Agreement, and cumulative to such amounts/employees for the purpose of achieving the requirements necessary to qualify for the FILOT. The County acknowledges and agrees that it shall make every commercially reasonable effort necessary to assist the Company, to the fullest extent allowed by law, to realize the benefits of this Section 3.1, including, but not limited to, working with the State to modify or change existing legislation or enacting new legislation to accomplish the intent and purpose of this Section and the other provisions of this Fee Agreement.

Section 3.2. *FILOT Payments 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 Project, 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 as follows:

(a) to the extent that the income tax basis of the Replacement Property (“Replacement Value”) is less than or equal to the original income tax basis of the Removed Components (“Original Value”) the amount of the FILOT Payments to be made by the Company with respect to such Replacement Property shall be calculated in accordance with Section 3.1 hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 3.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to 30 (or, if greater, the maximum number of years for which the annual fee payments are available to the Company for each portion of the Project under the Act, as amended) minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(b) to the extent that the Replacement Value exceeds the Original Value of the Removed Components (“Excess Value”), the FILOT Payments to be made by the Company with respect to the Excess Value shall be equal to the payment that would be due if the property were not Economic Development Property.

Section 3.3. *Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.* In the event of a Diminution in Value of any Phase of the Project, the FILOT Payment with regard to that Phase of the Project shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 3.1 hereof.

Section 3.4. *Place and Allocation of FILOT Payments.* The Company shall make the above-described FILOT Payments directly to the County in accordance with applicable law.

Section 3.5. *Removal of Equipment.* The Company shall be entitled to remove, in its sole discretion, components of or Phases of the Project from the Project with the result that said components or Phases (“Removed Components”) shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Fee Agreement.

Section 3.6. *Damage or Destruction of Project.*

(a) *Election to Terminate.* In the event the Project is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement.

(b) *Election to Rebuild.* In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Agreement, the Company may in its sole

discretion commence to restore the Project with such reductions or enlargements in the scope of the Project, 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 substitutions of the destroyed portions of the Project and shall be considered part of the Project for all purposes hereof, including, but not limited to any amounts due by the Company to the County under Section 3.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project shall be treated as Removed Components, to the extent allowed by law.

Section 3.7. Condemnation.

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the entire Project 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, or by voluntary transfer under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued occupancy of the Project commercially infeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement as of the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company; or (iii) to treat the portions of the Project so taken as Removed Components.

Section 3.8. Maintenance of Existence. The Company agrees (i) that it shall not take any action which will materially impair the maintenance of its corporate existence and (ii) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing provisions, the Company may at any time engage on an as-needed basis in any corporate restructuring or merger activities, the result of which may be the transfer or assignment of the benefits granted hereunder to a new entity, subject always to compliance with the Act and with this Agreement.

Section 3.9. Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing equipment and techniques and that a disclosure of any information relating to such equipment or techniques, including, but not limited to, disclosures of financial or other information concerning the Company's operations could result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (iii) shall knowingly and intentionally disclose or otherwise divulge any such clearly identified and marked confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable,

individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections. To the extent that any confidential or proprietary information provided by the Company is requested through the South Carolina Freedom of Information Act, the County shall, promptly following receipt of a such request and prior to making such disclosure, provide the Company written notice of such request so that the Company may take action to safeguard its interests, and the County shall cooperate with the Company in seeking to preserve the confidentiality of the information requested.

Section 3.10. Assignment and Subletting. This Fee Agreement may be assigned in whole or in part and the Project may be subleased as a whole or in part by the Company so long as such assignment or sublease is made in compliance with Section 12-44-120 of the Act. The County must receive written notice from the Company of any such assignment or sublease and hereby consents to same. To the extent any further consent is requested, the County may grant such consent by adoption of a Resolution.

Section 3.11. Leased Equipment. To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from at least one third party, under any form of lease, then that personal property, at the Company's sole election, will become subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement, upon proper application of the law and applicable procedures by the Company. This Fee Agreement is interpreted or modified as appropriate to give proper application to this Fee Agreement to the additional personal property without any amendment to this Fee Agreement; therefore, no action by County Council is required. The County Administrator, after consulting with the County Attorney, is authorized to make modifications, if any, as may be appropriate to give effect to this Section.

Section 3.12. 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, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by the Company to perform any of the other material terms, conditions, obligations or covenants of the Company hereunder, which failure shall continue for a period of ninety (90) days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the County shall agree in writing to an extension of such time prior to its expiration.

Notwithstanding the occurrence of the any of the events set forth above and subject to the conditions set forth in Section 3.1, the benefits of the Company shall continue, as provided for under Section 12-44-100 of the Act, so long as the Company has achieved the statutory minimum investment required under the Act.

Section 3.13. Remedies on Default. Whenever any Event of Default shall have occurred and shall be continuing, the County, after having given written notice to the Company of such default and after the expiration of a 30 day cure period, shall have the option to take any one or more of the following remedial actions:

- (a) Terminate the Fee Agreement; or
- (b) Take whatever action at law or in equity that may appear necessary or desirable to collect the other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Fee Agreement.

Section 3.14. Remedies Not Exclusive. No remedy conferred upon or reserved to the County under this Fee Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be herein expressly required and such notice required at law or equity which the Company is not competent to waive.

Section 3.15. Future Filings. As permitted under Section 12-44-55 of the Act, the Company and County hereby waive application of any of the recapitulation requirements as set forth in Section 12-44-55. Whenever the Company shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents while this Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney the completed form of such required documents together with a certification by the Company or owner of the Project that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision and provided that the County provides 30 days prior written notice to the Company of such non-compliance, the Company or owner agrees to pay the statement for reasonable attorneys' fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within 30 days after presentation by the County, and to promptly pay any reasonable fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents.

Section 3.16. Fiscal Year; Property Tax Year. If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

ARTICLE IV MISCELLANEOUS

Section 4.1. Other Incentives. Separate agreements between the Company and the County shall be executed to govern the terms of other incentives to be provided by the County to the Company for the Project, including, without limitation, the transfer of real property and any additional procedures, enforcement, or recapture provisions applicable to such incentives or such separate agreement.

Section 4.2. 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:

AS TO THE COUNTY: Florence County, South Carolina
Richard A. Starks, County Administrator
180 North Irby Street
Florence, South Carolina 29501
Telephone: (843) 665-3035
Facsimile: (843) 665-3070

WITH A COPY TO: County Attorney
D. Malloy McEachin, Esquire
2117-C West Palmetto Street
Florence, South Carolina 29501-3902
Telephone: (843) 665-0135
Facsimile: (843) 665-0716

AS TO THE COMPANY: _____

Telephone:
Facsimile:

WITH A COPY TO: Michael Kozlarek, Esquire
(does not constitute notice) Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
Email: michaelkozlarek@parkerpoe.com

Section 4.3. Binding Effect. This Fee Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and 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 4.4. Counterparts. This Fee Agreement may be executed in any number of counterparts, in original, by facsimile or by other electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 4.5. 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.

Section 4.6. 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 4.7. Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by an agreement or agreements entered into between Parties.

Section 4.8. Further Assurance. From time to time the County agrees to execute and deliver to the Company such additional instruments as either may reasonably request to effectuate the purposes of this Fee Agreement.

Section 4.9. Severability. 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 so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company a strong inducement to locate the Project in the County.

Section 4.10. Limited Obligation. ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OR A CHARGE AGAINST THE COUNTY'S TAXING POWER.

Section 4.11. 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, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 4.12. Execution Disclaimer. Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the County Council Chairman and to be attested by the Clerk to County Council, effective as of the day and year first above written.

FLORENCE COUNTY, SOUTH CAROLINA

By: _____
K.G. Smith, Jr., Chairman of County Council
Florence County, South Carolina

Reviewed by:

By: D. Malloy McEachin
Its: County Attorney

(SEAL)
ATTEST:

By: _____
Connie Y. Haselden, Clerk to County Council
Florence County, South Carolina

DRAFT

IN WITNESS WHEREOF, the Company, acting by and through its duly authorized representative(s), has caused this Fee Agreement to be executed in its name and on its behalf, effective as of the day and year first above written.

[Project Oliver]

By: _____
Name:

Title:

[Project Oliver]

By: _____
Name:

Title:

DRAFT

**FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
May 31, 2011**

AGENDA ITEM: Introduction - Ordinance No. 27-2010/11-Title Only

DEPARTMENT: Economic Development

ISSUE UNDER CONSIDERATION:

(An Ordinance Authorizing An Amendment To The Master Park Agreement Governing The Multi-County Industrial/Business Park By And Between Florence County, South Carolina, And Williamsburg County, South Carolina, In Order To Expand The Boundaries Of The Park To Include Certain Property Owned By Project Oliver, And Other Matters Related Thereto.)

OPTIONS:

1. *(Recommended)* Introduce Ordinance No. 27-2010/11 by Title Only.
2. Provide alternate directive.

ATTACHMENTS:

Ordinance No. 27-2010/11 Title.

Sponsor(s)	: Economic Development	
First Reading/Introduction	: May 31, 2011	I. _____,
Committee Referral	: N/A	Council Clerk, certify that this
Committee Consideration Date	: N/A	Ordinance was advertised for
Committee Recommendation	: N/A	Public Hearing on _____.
Public Hearing	:	
Second Reading	:	
Third Reading	:	
Effective Date	: Immediately	

ORDINANCE NO. 27-2010/11

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

(An Ordinance Authorizing An Amendment To The Master Park Agreement Governing The Multi-County Industrial/Business Park By And Between Florence County, South Carolina, And Williamsburg County, South Carolina, In Order To Expand The Boundaries Of The Park To Include Certain Property Owned By Project Oliver, And Other Matters Related Thereto.)

**FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
May 31, 2011**

AGENDA ITEM: Introduction - Ordinance No. 28-2010/11-Title Only

DEPARTMENT: Economic Development

ISSUE UNDER CONSIDERATION:

(An Ordinance to Develop a Jointly Owned and Operated Industrial and Business Park in Conjunction with Marion County, Such Industrial/Business Park to Include Property Initially Located in Marion County and Established Pursuant to Sec. 4-1-170 of the Code of Laws of South Carolina, 1976, as Amended; to Provide for a Written Agreement with Marion County to Provide for the Expenses of the Park, the Percentage of Revenue Application, and the Distribution of Fees in Lieu of Ad Valorem Taxation; and Other Matters Related Thereto.)

OPTIONS:

1. *(Recommended)* Introduce Ordinance No. 28-2010/11 by Title Only.
2. Provide alternate directive.

ATTACHMENTS:

Ordinance No. 28-2010/11 Title.

Sponsor(s)	: Economic Development	
First Reading/Introduction	: May 31, 2011	I, Connie Y. Haselden,
Committee Referral	: N/A	Council Clerk, certify that this
Committee Consideration Date	: N/A	Ordinance was advertised for
Committee Recommendation	: N/A	Public Hearing on _____.
Second Reading	:	
Public Hearing	:	
Third Reading	:	
Effective Date	: Immediately	

ORDINANCE NO. 28-2010/11

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

(An Ordinance to Develop a Jointly Owned and Operated Industrial and Business Park in Conjunction with Marion County, Such Industrial/Business Park to Include Property Initially Located in Marion County and Established Pursuant to Sec. 4-1-170 of the Code of Laws of South Carolina, 1976, as Amended; to Provide for a Written Agreement with Marion County to Provide for the Expenses of the Park, the Percentage of Revenue Application, and the Distribution of Fees in Lieu of Ad Valorem Taxation; and Other Matters Related Thereto.)