



**ORDINANCE NO. 33-2010/11**

An Ordinance To Develop A Jointly Owned And Operated Industrial And Business Park In Conjunction With Williamsburg County, Such Industrial And Business Park To Include Property Initially Located In Florence 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 Williamsburg 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. ORDINANCES IN POSITION:**

**THIRD READING**

**1. ORDINANCE NO. 32-2010/11**

**[2]**

An Ordinance Authorizing The Execution And Delivery Of A Fee Agreement By And Between Florence County, South Carolina And Project Rosebud Providing For A Payment Of A Fee In Lieu Of Taxes, The Issuance Of A Special Source Revenue Credit, And Other Matters Related Thereto.

**2. ORDINANCE NO. 33-2010/11**

**[28]**

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**VII. OTHER BUSINESS:**

**INFRASTRUCTURE**

**TOWN OF OLANTA**

**[40]**

Approve The Expenditure Of Approximately \$8,000 From Council District 5 Infrastructure Funding Allocation To Purchase Waste Receptacles, Benches, And Grill For The Town Of Olanda.

#### **VIII. EXECUTIVE SESSION:**

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

- A Personnel Matter Re: Magistrate Office

#### **IX. ADJOURN:**

**FLORENCE COUNTY COUNCIL  
SPECIAL CALLED MEETING**

July 7, 2011

**AGENDA ITEM:** Public Hearings

**DEPARTMENT:** County Council

**ISSUE UNDER CONSIDERATION:**

Council will hold public hearing to receive public comment with regard to the following:

**ORDINANCE NO. 32-2010/11**

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**FLORENCE COUNTY COUNCIL  
SPECIAL CALLED MEETING**

July 7, 2011

**AGENDA ITEM:** Third Reading - Ordinance No. 32-2010/11

**DEPARTMENT:** Economic Development

**ISSUE UNDER CONSIDERATION:**

(An Ordinance Authorizing The Execution And Delivery Of A Fee Agreement By And Between Florence County, South Carolina, and Project Rosebud Providing For A Payment Of A Fee In Lieu Of Taxes, The Issuance Of A Special Source Revenue Credit, And Other Matters Related Thereto.)

**OPTIONS:**

1. *(Recommended)* Approve Third Reading of Ordinance No. 32-2010/11.
2. Provide an alternate directive.

**ATTACHMENTS:**

Ordinance No. 32-2010/11.

Sponsor(s)	: Economic Development
First Reading/Introduction	: June 22, 2011
Committee Referral	: N/A
Committee Consideration Date	: N/A
Committee Reconsideration	: N/A
Second Reading	: June 30, 2011
Public Hearing	: July 7, 2011
Third Reading	: July 7, 2011
Effective Date	: Immediately

I, \_\_\_\_\_,  
Council Clerk, certify that this  
Ordinance was advertised for  
Public Hearing on June 22, 2011.

## ORDINANCE NO. 32-2010/11

### COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

**(An Ordinance Authorizing The Execution and Delivery of a Fee Agreement by and Between Florence County, South Carolina and Project Rosebud Providing for a Payment of a Fee in Lieu of Taxes, The Issuance of a Special Source Revenue Credit, and Other Matters Related Thereto.)**

#### WHEREAS:

1. Florence County, South Carolina (the "County") acting by and through its County Council (the "County Council") is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), to enter into fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the "State") and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally; and
2. Project Rosebud and/or its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company") intends to invest in the establishment of a manufacturing facility through the acquisition of land, a building, and improvements thereon (the "Land and Building"), the construction of improvements thereon and/or therein, and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, the cost of which is estimated to be \$40,000,000 over five years, and which is anticipated to create at least 360 new full-time jobs with an average wage of \$25.00 per hour (inclusive of any bonus payments but excluding benefits) (the "Project"), all as more fully set forth in the Fee Agreement attached hereto; and
3. Pursuant to an Inducement Resolution dated as of June 30, 2011, the County authorized the execution of an agreement providing for fee in lieu of tax payments; and

4. The Company has caused to be prepared and presented to this meeting the form of the Fee Agreement by and between the County and the Company (the "Fee Agreement"), which provides for fee in lieu of tax payments utilizing a 6% assessment ratio for a period of 30 years for the Project or each component thereof placed in service during the investment period and the issuance of a special source revenue credit equal to 90% of the fee in lieu of tax ("FILOT") payments due in years 1-5, 75% of the FILOT payments due in years 6-15, and 50% of the FILOT payments due in years 16-30, with such special source revenue credit also applying to any investments that are not eligible for negotiated FILOT treatment by virtue of Section 12-44-110 of the Act and the payments in lieu of tax arising with respect to such investments; and
5. It appears that the Fee Agreement, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

**BE IT ORDAINED BY THE COUNTY COUNCIL OF FLORENCE COUNTY, SOUTH CAROLINA:**

SECTION I: 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 II: 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 to both the County and the State.
- (g) The benefits of the Project to the public will be greater than the costs to the public.

SECTION III: 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 IV: The County Council hereby approves the provision of a cash grant to the Company of \$1,000 per employee who is both a legal resident of the County and remains employed by the Company in connection with the Project for a three-year period at any time prior to December 31, 2016, provided that the grants are available for up to 400 employees paid an average wage of \$25.00 per hour (inclusive of any bonus payments but excluding benefits). The Company may select any new full time jobs at the Project to measure the number of qualifying jobs (up to 400) for purposes of the grants pursuant to this Section IV.

SECTION V: 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 VI: 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 VII: 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 Follows)

ATTEST:

SIGNED:

\_\_\_\_\_  
Connie Y. Haselden, Council Clerk

\_\_\_\_\_  
K.G. Rusty Smith, Jr., Chairman

COUNCIL VOTE:

OPPOSED:

ABSENT:

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

DRAFT

FEE AGREEMENT

Between

FLORENCE COUNTY, SOUTH CAROLINA

and

PROJECT ROSEBUD

Dated as of July 7, 2011

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).

DRAFT

## FEE AGREEMENT

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into as of July 7, 2011 by and between FLORENCE 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 Florence County Council (the "County Council") as the governing body of the County, and Project Rosebud, a corporation organized and existing under the laws of the State of South Carolina (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(I)(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 date of this Fee Agreement (the "Fee Ordinance") authorizes the County 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 mutual representations and agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 For all purposes of this Fee Agreement, the terms that this section defines shall 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 in property eligible as economic development property under the Act.

“Clawback Minimum Requirements” shall mean an investment by the Company of at least \$40,000,000 in property subject to *ad valorem* taxation (in the absence of this Fee Agreement and/or the Industrial Development Park) by the Company and the creation of at least 360 new full time jobs by the Company with an average wage of \$25.00 per hour (inclusive of any bonus payments but excluding benefits). The Company may select any new full time jobs at the Project for measuring compliance with the Clawback Minimum Requirements. In the event the Company fails to meet the 360 new full time jobs and the average \$25.00 per hour requirement, the number of new full time jobs that calculate to the average \$25.00 per hour requirement will be used to calculate the Clawback. Failure to comply with the Clawback Minimum Requirements may require a reduction of the Infrastructure Credits in accordance with Section 4.2(b) below. The purchase price of the Real Property and Improvements shall be included in the calculation of the investment of at least \$40,000,000.

“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 Project Rosebud 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 Florence 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 Florence County Council, the governing body of the County.

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

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

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

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

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

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

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

“Fee Agreement” shall mean this Fee Agreement.

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

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

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Infrastructure” shall mean infrastructure serving the Project, including the Improvements, to the extent that the MCIP Act permits.

“Infrastructure Credit” (also commonly referred to as a “Special Source Revenue Credit” or “SSRC”) shall mean the annual infrastructure credit provided to the Company pursuant to the MCIP Act and Section 4.1(c) hereof, with respect to the Infrastructure.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement

Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

"MCIP Act" shall mean Section 4-1-170 *et seq.* and Section 4-29-68 of the Code of Laws of South Carolina, 1976, as amended.

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

"Project" shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2011 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, except as authorized by Section 12-44-110 of the Act.

"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.

"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 29th 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 29th 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 30 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.

Section 1.2 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 1.3 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 295.0 mills.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will use its best efforts to include the Project in an Industrial Development Park.

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

(a) The Company is in good standing under the laws of the State of New Jersey, 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, engineering, logistics, and distribution 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.

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 in its annual PT-300S form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

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

#### Section 3.3 Filings and Reports.

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

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

#### ARTICLE IV

#### PAYMENTS IN LIEU OF TAXES

##### Section 4.1 Negotiated Payments; Infrastructure Credits.

(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 FILOT Payments in accordance therewith. The Company shall make FILOT Payments on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make FILOT Payments 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 FILOT Payments 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, which should be its purchase price paid by the Company. 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 29 years thereafter.
- Step 3: Apply a fixed millage rate equal to 295.0 mills, in accordance with Section 12-44-50(A)(1)(d) of the Act, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) The FILOT Payments shall be in lieu of all *ad valorem* tax payments and any other charges that would have appeared on the property tax bills otherwise generated by the County in the absence of this Fee Agreement.

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 hereof 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.

(c) The County agrees that all qualifying capital expenses of the Company during the Investment Period (including property subject to negotiated FILOT payments under this Fee Agreement and property that would constitute part of the Project but for the requirements of Section 12-44-110 of the Act) shall qualify for Infrastructure Credits. The Company shall receive annual Infrastructure Credits in amounts equal to 90% of the FILOT payments for the Project during years 1-5, 75% of the FILOT payments for the Project during years 6-15, and 50% of the FILOT payments for the Project during years 16-30, to offset the aggregate Infrastructure costs incurred. For purposes of this Section 4.1(c), FILOT payments include payments in lieu of taxes with respect to property that would constitute part of the Project but for the requirements of Section 12-44-110 of the Act. The Infrastructure Credits shall be applied as setoffs against the FILOT or payments in lieu of taxes owed for each year and shall be subject to the requirements of Section 4.2 below.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement; Failure to Achieve or Maintain Clawback Minimum Requirements.

(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 owed pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) In the event that the Company does not satisfy the Clawback Minimum Requirements as of the end of the Investment Period, the Infrastructure Credits shall be reduced by the Reduction Factor (as defined below), prospectively and retroactively. With respect to Infrastructure Credits already received, the Company shall repay to the County an amount equal to the product of (1) the Infrastructure Credits already received and (2) the Reduction Factor, together with interest at the statutory rate applicable to the late payment of property taxes.

On every fifth anniversary of the Investment Period (the end of the Investment Period and each fifth anniversary thereafter, a "Measurement Date"), if the Company does not satisfy the Clawback Minimum Requirements at such time, and if the Overall Achievement Percentage has declined (using the investment and employment figures as of such Measurement Date rather than as of the end of the Investment Period) since the prior Measurement Date, the Infrastructure Credits shall be adjusted prospectively and retroactively (for the prior five-year period) in the same manner. The Company shall report to the County on its compliance with the Clawback Minimum Requirements and any required adjustments under this Section 4.2(b) within 90 days after each Measurement Date.

The "Reduction Factor" shall equal 100% minus the "Overall Achievement Percentage."

The "Overall Achievement Percentage" shall equal the average of the "Investment Achievement Percentage" and the "Job Achievement Percentage."

The "Investment Achievement Percentage" shall equal the Company's investment in property subject to *ad valorem* taxation (in the absence of this Fee Agreement and/or the Industrial Development Park) in the County in connection with the Project as of the end of the Investment Period (without regard to depreciation), divided by \$40,000,000 (but not to exceed 100%).

The "Job Achievement Percentage" shall equal the number of new, full time jobs created by the Company in the County in connection with the Project with an average wage of \$25.00 per hour (inclusive of any bonus payments but excluding benefits) as of the end of the Investment Period, divided by 360 (but not to exceed 100%).

*For example, and by way of example only, if the Company's investment in property subject to ad valorem taxation (in the absence of this Fee Agreement and/or the Industrial Development Park) in the County in connection with the Project as of the end of the Investment Period is \$30,000,000 and the number of new, full time jobs created by the Company in the County in connection with the Project with an average wage of \$25.00 per hour (inclusive of any bonus payments but excluding benefits) as of the end of the Investment Period is 288, then the Reduction Factor would be calculated as follows:*

*"Job Achievement Percentage" =  $288 / 360 = 80\%$*

*"Investment Achievement Percentage" =  $\$30,000,000 / \$40,000,000 = 75\%$*

*"Overall Achievement Percentage" =  $(75\% + 80\%) / 2 = 77.5\%$*

*"Reduction Factor" =  $100\% - 77.5\% = 22.5\%$*

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 (provided that this Section 4.3 shall not preclude the inclusion of such property as part of the Project and eligible for FILOT treatment if such property is placed in service during the Investment Period). 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 incentives 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. If Section 12-44-120 of the Act or any successor provision requires consent to an assignment, the Company may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, in either event not to be unreasonably withheld. 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.

Section 4.11 No Double Payment.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, the Company shall not 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, and the Company shall not 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.

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 attorneys' fees (the "Administration

Expenses"). As used in this section, "Administration Expenses" shall include the reasonable and necessary out-of-pocket expenses, including attorneys' fees, incurred by the County with respect to: (i) this Fee Agreement; (ii) the Industrial Development Park; (iii) state grand funding for the benefit of the Company; (iv) all other documents related to this Fee Agreement, the Industrial Development Park, state grand funding for the benefit of the Company, and any related documents; (v) the fulfillment of its obligations under this Fee Agreement, the Industrial Development Park, state grand funding for the benefit of the Company, and any related documents and the implementation and administration of the terms and provisions of the documents after the date of execution thereof.

## 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; 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.

### 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:

- (i) terminate the Fee Agreement; or
- (ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder; or
- (iii) 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.

(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:

- (i) terminate the Fee Agreement;
- (ii) 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 from the unsuccessful party of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

## ARTICLE VI

### MISCELLANEOUS

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

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

Project Rosebud

Attn: \_\_\_\_\_

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

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

Driscoll Sheedy, P.A.

Attn: James W. Sheedy

11520 N. Community House Road

Suite 200  
Charlotte, NC 28277

**IF TO THE COUNTY:**

Florence County, South Carolina  
Attn: County Administrator  
180 N. Irby Street  
Florence, SC 29501

**WITH A COPY TO:**

D. Malloy McEachin, Jr.  
2117-C West Palmetto Street  
Florence, SC 29501

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 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 6.8 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 Fee Agreement.

Section 6.9 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 6.10 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 6.11 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 6.12 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 civil contempt, *mandamus*, or specific performance.

(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 Chairman of County Council 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.

FLORENCE COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_  
Name: K.G. Rusty Smith, Jr., Chairman

ATTEST:

Signature: \_\_\_\_\_  
Name: Connie Y. Haselden, Council Clerk

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

PROJECT ROSEBUD

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

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

[Insert legal description here.]

DRAFT

**FLORENCE COUNTY COUNCIL  
SPECIAL CALLED MEETING**

July 7, 2011

**AGENDA ITEM:** Third Reading - Ordinance No. 33-2010/11

**DEPARTMENT:** Economic Development

**ISSUE UNDER CONSIDERATION:**

(To Develop A Jointly Owned And Operated Industrial And Business Park In Conjunction With Williamsburg County, Such Industrial And Business Park To Be Initially Located In Florence 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 Williamsburg 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)* Approve Third Reading of Ordinance No. 33-2010/11.
2. Provide an alternate directive.

**ATTACHMENTS:**

Ordinance No. 33-2010/11.

Sponsor(s) : Economic Development  
 First Reading/Introduction : June 22, 2011  
 Committee Referral : N/A  
 Committee Consideration Date : N/A  
 Committee Reconsideration : N/A  
 Second Reading : June 30, 2011  
 Public Hearing : July 7, 2011  
 Third Reading : July 7, 2011  
 Effective Date : Immediately

I, \_\_\_\_\_,  
 Council Clerk, certify that this  
 Ordinance was advertised for  
 Public Hearing on June 22, 2011.

## ORDINANCE NO. 33-2010/11

### COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

**(An Ordinance to Develop a Jointly Owned and Operated Industrial and Business Park in Conjunction with Williamsburg County, Such Industrial and Business Park to Include Property Initially Located in Florence 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 Williamsburg 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.)**

**BE IT ORDAINED BY THE COUNTY COUNCIL OF FLORENCE COUNTY, SOUTH CAROLINA:**

SECTION I: Florence County is hereby authorized to develop an industrial and business park jointly with Williamsburg County (the "Park"). The Park shall initially consist of land located only in Florence County as authorized by Sec. 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

SECTION II: Florence County will enter into a written agreement to develop the Park jointly with Williamsburg County in substantially the form attached hereto as Exhibit A and incorporated herein by reference (the "Park Agreement"). The Chairman of Florence County Council is hereby authorized to execute the Park Agreement on behalf of Florence County, with such changes thereto as the Chairman shall deem, upon advice of counsel, necessary, provided that such changes do not materially change the import of the matters contained in the form of agreement set forth in Exhibit A.

SECTION III: The businesses or industries located in the Park will pay a fee in lieu of *ad valorem* taxes as provided for in their respective FILOT agreements which fees will be divided between the two Counties as set forth in the Park Agreement. With respect to properties located in the Florence County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Florence County. That portion of such revenues allocated pursuant to the Park Agreement to Williamsburg County shall be thereafter paid by the Treasurer of Florence County to the Treasurer of Williamsburg County as soon as practical but no later than forty-five (45) business days following receipt thereof. With respect to properties located in the Williamsburg County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Williamsburg County. That portion of such revenues allocated pursuant to

the Park Agreement to Florence County shall be thereafter paid by the Treasurer of Williamsburg County to the Treasurer of Florence County as soon as practical but no later than forty-five (45) business days following receipt thereof. Penalties for late payment by taxpayers will be assessed at the same rate as late tax payments. Any late payment by the counties to each other beyond the dates set forth herein will accrue interest at the rate of statutory judgment interest. The counties, acting by and through the Treasurers of Florence County and Williamsburg County, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

SECTION IV: Any ordinances of Florence County and Williamsburg County concerning zoning, health and safety regulations, and building code requirements will apply for the respective portions of the Park in Florence County and Williamsburg County. In no event, for example, will the zoning, health and safety regulations, and building code requirements in Williamsburg County apply to property located solely in Florence County.

SECTION V: The Sheriffs' Departments of Florence County and Williamsburg County will have jurisdiction to make arrests and exercise all authority and power within the boundaries of the respective portions of the Park in Florence County and Williamsburg County.

SECTION VI: Revenues generated from industries or businesses located in the Park to be retained by Florence County pursuant to the Park Agreement shall be distributed within Florence County in the following manner:

First, unless Florence County elects to pay or credit the same from only those revenues which Florence County would otherwise be entitled to receive as provided under "Third" below, to pay annual debt service on any special source revenue bonds issued by Florence County pursuant to, or to be utilized as a credit in the manner provided in the second paragraph of, Section 4-1-175, Code of Laws of South Carolina, 1976, as amended, or any successor statutes or provisions, payable in whole or in part by or from revenues generated from any properties in the Park;

Second, at the option of Florence County, to reimburse Florence County for any expenses incurred by it in the development, operation, maintenance and promotion of the Park or the businesses located therein and to fund economic development activities (including any incentives provided to industries and businesses) inside and outside the Park as determined by the County Council of Florence County from time to time; and

Third, to taxing districts within Florence County, in a pro-rata fashion based on comparative millage rates for the year in question of such taxing districts;

provided, that (i) all taxing districts which overlap the applicable properties in the Park shall receive some portion of the revenues generated from such properties; (ii) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of such taxing entity; and (iii) the County may, by

ordinance, from time to time, amend the distribution of the fee in lieu of tax payments to all taxing entities.

SECTION VII: This Ordinance shall supersede and amend in its entirety any other ordinances or resolutions of Florence County Council pertaining to the Park.

SECTION VIII: Should any section of this Ordinance be, for any reason, held void or invalid, it shall not affect the validity of any other section hereof which is not itself void or invalid.

SECTION IX: This Ordinance shall be effective after third and final reading thereof.

ATTEST:

SIGNED:

\_\_\_\_\_  
Connie Y. Haselden, Council Clerk

\_\_\_\_\_  
K.G. Rusty Smith, Jr., Chairman

COUNCIL VOTE:

OPPOSED:

ABSENT:

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

**Exhibit A**

**Form of Park Agreement**

DRAFT

STATE OF SOUTH CAROLINA	)	
	)	AGREEMENT FOR THE DEVELOPMENT
	)	OF A JOINT INDUSTRIAL
COUNTY OF WILLIAMSBURG	)	AND BUSINESS PARK
COUNTY OF FLORENCE	)	(PROJECT ROSEBUD)

---

This multi-county park agreement initially applies only to the following property located entirely in Florence County: (i) the Project Rosebud Parcel, as more fully described on Exhibit A (Florence) hereto.

This multi-county park agreement does not initially apply to any property in Williamsburg County.

More specific information on the property subject to the agreement, which can be expanded from time to time, may be found in the body of this agreement and in the exhibits.

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This agreement for the development of a joint industrial and business park to be located within Williamsburg County, South Carolina ("Williamsburg County") and Florence County, South Carolina ("Florence County") is made and entered into as of this 11th day of July, 2011, by and between Williamsburg County and Florence County (the "Agreement").

**WITNESSETH:**

WHEREAS, Williamsburg County and Florence County are contiguous counties which, pursuant to Article VIII, Section 13(D) of the South Carolina Constitution, Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, as well as Ordinance No. \_\_\_\_\_, adopted by Florence County Council on July 7, 2011, and Ordinance No. \_\_\_\_\_ adopted by Williamsburg County Council on July 11, 2011 (collectively, the "Enabling Ordinances"), have each determined that, in order to promote economic development and thus encourage investment and provide additional employment opportunities within both of said counties, there should be established in Florence County and in Williamsburg County a Joint County Industrial and Business Park (the "Park"), to be located upon property described in Exhibit A (Florence) and Exhibit B (Williamsburg) hereto, respectively; and

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

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

1. Binding Agreement. This Agreement serves as a written instrument setting forth the entire agreement between the parties and is binding on Williamsburg County and Florence County, and their successors and assigns.

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

3. Location of the Park. (A) As of the date of this Agreement, the Park consists of property located in Florence County, as further identified in Exhibit A (Florence) to this Agreement. It is specifically recognized that the Park may, from time to time, consist of non-contiguous properties within each county. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances of the County Councils of both Williamsburg County and Florence County. If any property proposed for inclusion in the Park, in whole or in part, is located within the boundaries of a municipality, then the municipality must give its consent prior to the inclusion of such property in the Park. As of the date of the Agreement, no property subject to the Agreement is located within the boundaries of a municipality.

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

(C) Prior to the adoption by Williamsburg County Council and by Florence County Council of ordinances authorizing the diminution of the boundaries of the Park, separate public hearings shall first be held by Williamsburg County Council and by Florence County Council. Notice of such public hearings shall be published in newspapers of general circulation in Williamsburg County and Florence County, respectively, at least once and not less than fifteen (15) days prior to such hearing. Notice of such public hearings shall also be served in the manner of service of process at least fifteen (15) days prior to such public hearing upon the

owner and, if applicable, the lessee of any real property which would be excluded from the Park by virtue of the diminution.

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

5. Allocation of Expenses. Williamsburg County and Florence County shall bear any expenses, including, but not limited to, development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

If property is in the Williamsburg County portion of the Park:

(1)	Williamsburg County	100%
(2)	Florence County	0%

If property is in the Florence County portion of the Park:

(1)	Williamsburg County	0%
(2)	Florence County	100%

6. Allocation of Revenues. Williamsburg County and Florence County shall receive an allocation of revenue generated by the Park through payment of fees in lieu of *ad valorem* property taxes in the following proportions:

If property is in the Williamsburg County portion of the Park:

(1)	Williamsburg County	99%
(2)	Florence County	1%

If property is in the Florence County portion of the Park:

(1)	Williamsburg County	1%
(2)	Florence County	99%

7. Revenue Allocation Within Each County. (A) Revenues generated by the Park through the payment of fees in lieu of *ad valorem* property taxes shall be distributed to Williamsburg County and to Florence County, as the case may be, according to the proportions established by Paragraph 6 of this Agreement. With respect to revenues allocable to Williamsburg County or Florence County by way of fees in lieu of taxes generated from property located within its own County (the "Host County"), such revenue shall be distributed within the Host County in the manner provided by ordinance of the county council of the Host County; provided, that (i) all taxing districts which overlap the applicable revenue-generating portion of

the Park shall receive at least some portion of the revenues generated from such portion, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body of such taxing entity shall allocate the revenues received to operations and/or debt service of such entity. Each Host County is specifically authorized to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the county council of the Host County.

(B) Revenues allocable to Williamsburg County by way of fees in lieu of taxes generated from property located within Florence County shall be distributed solely to Williamsburg County. Revenues allocated to Florence County by way of fees in lieu of taxes generated from property located within Williamsburg County shall be distributed solely to Florence County.

8. Fees in Lieu of Taxes Pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina, 1976, as Amended. It is hereby agreed that the entry by Williamsburg County into any one or more fee in lieu of tax agreements pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina, 1976, as amended ("Negotiated FILOT Agreements"), with respect to property located within the Williamsburg County portion of the Park and the terms of such agreements shall be at the sole discretion of Williamsburg County. It is further agreed that entry by Florence County into any one or more Negotiated FILOT Agreements with respect to property located within the Florence County portion of the Park and the terms of such agreements shall be at the sole discretion of Florence County.

9. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code of Laws of South Carolina, 1976, as amended, allocation of the assessed value of property within the Park to Williamsburg County and Florence County and to each of the taxing entities within the participating counties shall be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Paragraphs 6 and 7 of this Agreement.

10. Severability. To the extent, and only to the extent, that any provision or any part of a provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

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

12. Counterpart Execution. This Agreement may be executed in multiple counterparts.

13. Termination. Notwithstanding any provision of this Agreement to the contrary, Williamsburg County and Florence County agree that this Agreement may be terminated only upon approval of an ordinance to that effect by the governing body of each county.

Notwithstanding the foregoing, this Agreement may not be terminated to the extent that either Williamsburg County or Florence County has outstanding contractual commitments to any owner or lessee of property located in the Park requiring designation of such property as part of a multi-county industrial or business park pursuant to Article VIII, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), unless such County shall first (i) obtain the written consent of such owner or lessee or (ii) designate such parcel as part of another multi-county industrial or business park pursuant to the Act effective immediately upon termination of this Agreement.

IT IS HEREBY AGREED.

FLORENCE COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_  
Name: K.G. Rusty Smith, Jr., Chairman

ATTEST:

Signature: \_\_\_\_\_  
Name: Connie Y. Haselden, Council Clerk

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

WILLIAMSBURG COUNTY, SOUTH  
CAROLINA

Signature: \_\_\_\_\_  
Name: Stanley S. Pasley, Supervisor/Chairman

ATTEST:

Signature: \_\_\_\_\_  
Name: Tammi McClary, Council Clerk

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EXHIBIT A

FLORENCE COUNTY PARCELS

PROJECT ROSEBUD PARCEL

[Insert legal description here.]

DRAFT

**EXHIBIT B**

**WILLIAMSBURG COUNTY PARCELS**

None as of July 11, 2011

DRAFT

**Florence County Council**  
**Special Called Meeting**  
July 7, 2011

**AGENDA ITEM:** Other Business  
Infrastructure Project  
Requested by Council District 5

**DEPARTMENT:** County Council

**ISSUE UNDER CONSIDERATION:**

Approve The Expenditure Of Approximately \$8,000 From Council District 5 Infrastructure Funding Allocation To Purchase Waste Receptacles, Benches, And Grill For The Town Of Olanta.

**FUNDING SOURCE:**

XXX Infrastructure                      \_\_\_\_\_ Road System Maintenance                      \_\_\_\_\_ Utility

**Amount:** \$8,000

**Signed:** \_\_\_\_\_  
                  Johnnie D. Rodgers, Jr.

Date: 07/07/11

**ATTACHMENTS:**

1. None.

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I, Connie Y. Haselden, Clerk to County Council, certify this item was approved by the Florence County Council at the above-referenced meeting, at which a majority of members were present.

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Connie Y. Haselden, Clerk to Council