


The table below summarizes the number of items and total cost within each activity you have requested funding for. This table will update as you change the items within your grant request details.

## Grant request summary

| Activity     | Number of items | Total cost   |
|--------------|-----------------|--------------|
| Equipment    | 1               | \$210,632.40 |
| <b>Total</b> | 1               | \$210,632.40 |

Is your proposed project limited to one or more of the [following activities](#)  : Planning and development of policies or processes. Management, administrative, or personnel actions. Classroom-based training. Acquisition of mobile and portable equipment (not involving installation) on or in a building.

Yes

## Budget summary

### Budget summary

| Object class categories      | Total        |
|------------------------------|--------------|
| Personnel                    | \$0.00       |
| Fringe benefits              | \$0.00       |
| Travel                       | \$0.00       |
| Equipment                    | \$210,632.40 |
| Supplies                     | \$0.00       |
| Contractual                  | \$0.00       |
| Construction                 | \$0.00       |
| Other                        | \$0.00       |
| <b>Total direct charges</b>  | \$210,632.40 |
| Indirect charges             | \$0.00       |
| <b>TOTAL</b>                 | \$210,632.40 |
| <b>Non-federal resources</b> |              |

| <b>Object class categories</b>                 | <b>Total</b>   |
|--|--|
| Applicant                                      | \$10,030.11  |
| State  | \$0.00   |
| Other sources                                  | \$0.00   |
| Remarks  | The county has a fund set aside for matching grants. The department will be utilizing this fund for non-federal resources. |
| <b>Total Federal and Non-federal resources</b> |  |
| Federal resources                              | \$200,602.29   |
| Non-federal resources                          | \$10,030.11  |
| <b>TOTAL</b>                                   | <b>\$210,632.40</b>  |
| Program income                                 | \$0.00   |

## Contact information

Did any individual or organization assist with the development, preparation, or review of the application to include drafting or writing the narrative and budget, whether that person, entity, or agent is compensated or not and whether the assistance took place prior to submitting the application?

**No**

### Secondary point of contact

Please provide a secondary point of contact for this grant.

The Authorized Organization Representative (AOR) who submits the application will be identified as the primary point of contact for the grant. Please provide one secondary point of contact for this grant below. The secondary contact can be members of the fire department or organizations applying for the grant that will see the grant through completion, are familiar with the grant application, and have the authority to make decisions on and to act upon this grant application. The secondary point of contact can also be an individual who assisted with the development, preparation, or review of the application.

**MR Michael  
Ehrmantraut**  
Assistant Fire Chief

**Primary phone**  
8038991165  
Mobile

**Additional phones**  
8037893636  
Work



## **CHESTER COUNTY COUNCIL MEETING SPECIAL CALLED**

### **R. Carlisle Roddey Chester County Government Complex**

**1476 J.A. Cochran Bypass Chester, SC 29706**

**Wednesday, February 15<sup>th</sup> 2023 at 9:00 AM**

### **MINUTES**

**Present:** Chairman Branham, Vice Chairman Wilson, Councilman Vaughn, Councilwoman Mosley, Councilman Agee, County Attorney Winters and Clerk to Council Lee. Councilman Guy arrived at 9:02 am.

**Absent:** Councilman Killian

1. **Call to Order-** Chairman Branham called the meeting to order.
2. **Executive Session**  
Councilman Vaughn motioned to go into executive session, second by Vice Chairman Wilson.  
Vote 5-0 to approve.
  - a. To receive legal advice regarding Economic Development Projects. Attorney Winters.
3. **Council actions following Executive Session.**  
Vice Chairman Wilson motioned to go back to regular session, second by Councilman Vaughn.  
Vote 6-0 to approve.
  - a. Action taken regarding Economic Development Projects. Taken as information only.
4. **Adjourn-**Councilman Guy motioned to adjourn, second by Councilwoman Mosley. Vote unanimous.

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR CHESTER COUNTY  
ORDINANCE NO. 2023-1

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CHESTER COUNTY, SOUTH CAROLINA (THE "COUNTY") AND IKO GLASS FIBER INC. AND IKO MAT TECH INC., PREVIOUSLY IDENTIFIED AS PROJECT PHOENIX22, ACTING FOR THEMSELVES, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE ACQUISITION, IMPROVEMENT AND EQUIPPING OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE PROJECT; (4) THE ALLOCATION OF FEES IN LIEU OF *AD VALOREM* TAXES RECEIVED FROM THE PROJECT; AND (5) OTHER MATTERS RELATING THERETO.

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

WHEREAS, IKO Glass Fiber Inc. and IKO Mat Tech Inc., previously identified as Project Phoenix22, each acting for themselves, one or more current or future affiliates, and other project sponsors (collectively, "Company"), propose to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities to be operated primarily for manufacturing facilities, at one or more locations in the County (collectively, "Project") and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of approximately \$363,300,000 and expects to create, or cause to be created, approximately 180 new jobs at the Project;

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

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on January 17, 2023 (“Inducement Resolution”), whereby the County identified the Project as a “project” within the meaning of the Act, and determined to provide certain negotiated FILOT, Special Source Credit, and Multi-County Park benefits with respect to the Project;

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project (“FILOT Agreement”), the form of which is presented to this meeting, and which is to be dated as of February 21, 2023 or such other date as the parties may agree; and

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

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

Section 1. Evaluation of the Project. Based solely on information provided to the County by the Company, County Council has evaluated the Project on the following criteria:

- (a) whether the purposes to be accomplished by the Project are proper governmental and public purposes;
- (b) the anticipated dollar amount and nature of the investment to be made; and
- (c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based solely on information provided to the County by the Company, the County Council hereby finds that:

- (a) the Project will constitute a “project” within the meaning of the Negotiated FILOT Act;
- (b) the Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act;
- (c) the investment by the Company in the Project is anticipated to be approximately \$363,300,000, to be invested within 5 years from the “Commencement Date” as such term is defined in the Negotiated FILOT Act;
- (d) the Project will be located entirely within the County;
- (e) the Project will benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;
- (f) the Project will not give rise to a pecuniary liability of the County or any incorporated municipality nor a charge against its general credit or taxing power of the County or any incorporated municipality;

- (g) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (h) the inducement of the location of the Project is of paramount importance; and
- (i) the benefits of the Project to the public are greater than the costs to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the Negotiated FILOT Act, the Project is designated as “economic development property” under the Negotiated FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT payments to be made with respect to the Project, as more fully set forth in the FILOT Agreement.

Section 4. Special Source Revenue Credits. As an additional inducement, and as reimbursement to the Company for expenditures on Special Source Improvements, the County will provide to the Company Special Source Credits under the Special Source Act, as more fully set forth in the FILOT Agreement.

Section 5. Execution of the FILOT Agreement. The form, provisions, terms, and conditions of the FILOT Agreement, as attached as Exhibit A, and presented to this meeting and filed with the Clerk of County Council be and hereby are approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement was set out in this Ordinance in its entirety. The Chairman of the County Council, the County Administrator, and the Clerk of the County Council be and they are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the County and as shall be approved by the County’s economic development counsel and the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the FILOT Agreement now before this meeting.

Section 6. Inclusion of Project in Multi-County Park. The County will use reasonable efforts to ensure the Project is included, if not already included, and will remain, in the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution, as set forth in the FILOT Agreement.

Section 7. Miscellaneous.

(a) The Chairman of the County Council, the County Administrator, and all other appropriate officials of the County are hereby each authorized, empowered, and directed to execute, deliver, and receive any other agreements and documents as may be required by the County in order to carry out, give effect to, consummate the transactions authorized by this Ordinance, and do any and all things reasonably necessary and prudent 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.

(b) This Ordinance shall become effective immediately upon enactment following the public hearing and third reading by the County Council;

(c) 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; and

(d) All orders, ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

[SIGNATURE PAGE FOLLOWS]  
[REMAINDER OF PAGE INTENTIONALLY BLANK]

**CHESTER COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Joe Branham  
Chairman, County Council

[SEAL]

Attest:

\_\_\_\_\_  
Karen Lee  
Clerk to County Council

First Reading: January 17, 2023  
Second Reading: February 6, 2023  
Public Hearing: February 21, 2023  
Third Reading: February 21, 2023



**EXHIBIT A**  
**FORM OF FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

CHESTER COUNTY, SOUTH CAROLINA

IKO GLASS FIBER INC.;

and

IKO MAT TECH INC.

Dated as of February 21, 2023

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## FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (“Agreement”) dated as of February 21, 2023, by and between CHESTER COUNTY, SOUTH CAROLINA (“County”), a body politic and corporate and a political subdivision of the State of South Carolina, IKO GLASS FIBER INC., and IKO MAT TECH INC., previously identified as Project Phoenix22, acting for themselves, one or more affiliates, and/or other project sponsors (“Company”);

### W I T N E S S E T H:

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

WHEREAS, IKO Glass Fiber Inc. and IKO Mat Tech Inc., previously identified as Project Phoenix22, each acting for themselves, one or more current or future affiliates, and other project sponsors (collectively, “Company”), propose to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities to be operated primarily for manufacturing facilities, at one or more locations in the County (“Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of approximately \$363,300,000 and expects to create, or cause to be created, approximately 180 new jobs at the Project; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on January 17, 2023 (“Inducement Resolution”), whereby the County identified the Project as a “project” within the meaning of the Act, and agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business

park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, based on information provided to the County by the Company, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by Ordinance No. 2023-1 enacted by the County Council on February 21, 2023, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

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

## DEFINITIONS

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

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

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney’s fees under arrangements which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the Company, or other Co-Investor, required to pay such expense hereunder, shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and the County shall have furnished to such Company, or such other Co-Investor, as the case may be, a general statement of all such expenses incurred, provided, further, the County shall not be required to provide an itemized statement of legal fees and/or expenses.

“*Affiliate*” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other Co-Investor, as the case may be, or which is now or hereafter owned in whole or in part by the Company or any other Co-Investor, as the case may be, or by any partner, shareholder or owner of the Company or any other Co-Investor, as the case may be, and shall also include any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company or any other Co-Investor, as the case may be, as described in Section 267(b) of the Internal Revenue Code.

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

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

“*Co-Investor*” shall mean the Company, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act. As of the date of the original execution and delivery of this Agreement, the Company is the only Co-Investor.

“*Company*” shall mean IKO Glass Fiber Inc. and IKO Mat Tech Inc., previously identified as Project Phoenix22, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

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

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

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

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

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

“*Enhanced Investment FILOT Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the eighth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2023, and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2031.

“*Enhanced Investment FILOT Minimum Requirement*” shall mean either (a) investment in the Project of at least \$150,000,000 (without regard to depreciation or other diminution in value) and creation of at least 125 new full-time jobs at the Project within the Enhanced Investment FILOT Compliance Period; or alternatively (b) investment in the Project of at least \$400,000,000 (without regard to depreciation or other diminution in value) within the Enhanced Investment FILOT Compliance Period, in accordance with Section 12-44-30(7) of the Negotiated FILOT Act.

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

“*Existing Property*” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property;

provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

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

“*FILOT Payment*” or “*FILOT Payments*” shall mean the FILOT payments to be made by the Company or any other Co-Investor with respect to the Project, whether made as Negotiated FILOT Payments pursuant to **Section 5.01** hereof or as FILOT payments made pursuant to the Multi-County Park Act.

“*Investment Period*” shall mean the period for completion of the Project, which shall equal the Enhanced Investment FILOT Compliance Period, as provided by the Act, however, if the Company meets the Enhanced Investment FILOT Minimum Requirement of \$150,000,000 within the Enhanced Investment FILOT Compliance Period, then the County agrees to consider approving the Company’s request for an extension of the Investment Period, which extension may be approved by resolution of the County Council.

In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on December 31, 2023, upon any such extension, the Investment Period will end, unless extended, on December 31, 2031.

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

“*Minimum Contract Investment Requirement*” shall mean the investment of at least \$327,000,000 on the Land and in the County, by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2023, and ending at the end of the Enhanced Investment FILOT Compliance Period.

“*Minimum Special Source Credits Jobs Requirement*” shall mean the creation of at least 162 new, full-time jobs in the County by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2023, and ending at the end of the Enhanced Investment FILOT Compliance Period.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Act and the Multi-County Park Agreement, and any multi-county industrial or



business park which now or hereafter includes the Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

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

*“Multi-County Park Agreement”* shall mean that certain Master Agreement governing the York-Chester Industrial Park by and between the County and York County, South Carolina dated as of December 31, 2012 as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

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

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

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

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

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

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

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

“*Released Property*” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(d)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

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

“*Retroactive FILOT Payment*” shall mean a payment made by the Company or any other Co-Investor, to the County in an amount an amount equal to the difference between the FILOT Payments theretofore made, after application of the Special Source Credits, and the amount of the FILOT Payments which would have otherwise been due if determined with an assessment ratio of 6%, after application of the Special Source Credits.

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

“*Special Source Credits*” shall mean the special source revenue credits described in **Section 3.02** hereof.

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

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

“*Standard FILOT Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section

12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2023, and, in such event, the Standard FILOT Compliance Period will end on December 31, 2028.

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

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

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

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

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

## REPRESENTATIONS AND WARRANTIES

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

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

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

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

To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any

governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

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

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

The Company presently intends to operate the Project as facilities primarily for manufacturing of glass and fiberglass mats.

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

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

(j) The Company has retained legal counsel to advise or has had a reasonable opportunity to consult legal counsel to advise, of its eligibility for the Negotiated FILOT and other incentives granted by this Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the Negotiated FILOT and other incentives granted by this Agreement.

## COVENANTS OF COUNTY

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

### Special Source Credits.

As reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County hereby agrees that the Company and each other Co-Investor (each, a "Credit Eligible Entity") shall be entitled to receive, and the County shall provide, subject to Section 4.02, Special Source Credits against each FILOT Payment due from each such Credit Eligible Entity with respect to the Project for a period of ten (10) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project, in an annual amount

equal to fifty-five percent (55%) of each such year's FILOT Payments for years one (1) through five (5) and in an amount equal to twenty-five percent (25%) of each such year's FILOT Payments for years six (6) through ten (10). The Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Credit Eligible Entities. In no event shall the aggregate amount of any annual Special Source Credits available to the Company and/or all Sponsor Affiliates exceed the amount of the then-current, annual FILOT Payment.

As provided in Section 4-29-68 of the Code, to the extent any Special Source Credit is taken against any FILOT Payment(s) on personal property, and the personal property is removed from the Project at any time during the term of this Agreement (and not replaced with qualifying replacement property), the amount of the FILOT Payment due on the personal property for the year in which the personal property was removed from the Project shall be due for the two years immediately following such removal.

To claim each Special Source Credit, the Company, shall, no less than 45 days prior to the date after which *ad valorem* taxes become delinquent, file with the County Administrator, the County Auditor, and the County Treasurer, an Annual Special Source Credit Certification, the form of which is attached as Exhibit C, showing the amount of aggregate investment in qualifying infrastructure and the calculation of the Special Source Credit. The County is entitled to confirm the information (including the calculation) on the Annual Special Source Credit Certification prior to amending and transmitting the applicable tax bill(s). If the information contained on the Annual Special Source Credit Certification is correct, then the County shall (i) reduce the applicable tax bill(s) by the amount of the Special Source Credit and provide updated tax bill(s) to the Company, or (ii) if such tax bill(s) have been paid without application of the Special Source Credit, refund the amount of the Special Source Credit within 30 days after receiving the Company's Annual Special Source Credit Certification. If the Company fails to file the Annual Special Source Credit Certification no less than 45 days prior to the date after which *ad valorem* taxes become delinquent, but files the Annual Special Source Credit Certification within 120 days after the date which *ad valorem* taxes become delinquent, then the County shall (i) reduce the applicable tax bill(s) by the amount of the Special Source Credit and provide updated tax bill(s) to the Company, or (ii) if such tax bill(s) have been paid without application of the Special Source Credit, refund the amount of the Special Source Credit within 30 days after receiving the Company's Annual Special Source Credit Certification. The Company shall not be entitled to receive the Special Source Credit in an applicable year if it does not file the Annual Special Source Credit Certification within 120 days after the date which *ad valorem* taxes become delinquent for such year, but shall be entitled to receive the Special Source Credit in future years if the Annual Special Credit Certification is timely provided in accordance with this subsection. In no event is the County required to remit any payment to the Company while any of the Company's taxes or FILOT Payments have been invoiced by the County but remain outstanding, excluding any taxes or FILOT Payments that may have been protested by the Company, until such outstanding amounts have been paid.

**THE SPECIAL SOURCE CREDITS ARE PAYABLE SOLELY FROM THE FILOT PAYMENTS, ARE NOT SECURED BY, OR IN ANY WAY ENTITLED TO, A PLEDGE OF THE FULL FAITH, CREDIT OR TAXING POWER OF THE COUNTY, ARE NOT AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, ARE PAYABLE SOLELY FROM A SPECIAL SOURCE THAT DOES NOT INCLUDE REVENUES FROM ANY TAX OR LICENSE, AND ARE NOT A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY.**

Multi-County Park Designation. The County hereby represents and acknowledges that the property comprising the Land as of the original execution and delivery of the Incentive Agreement is located

within the boundaries of the Multi-County Park. The County agrees to use reasonable efforts to designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its reasonable efforts to maintain the Project within the boundaries of the Multi-County Park for the duration of this Agreement pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution. The County hereby further agrees to take such further actions as may be reasonably necessary and prudent to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

Section 2. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Co-Investor the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request and expense of the Company, the County agrees to use its reasonable efforts to take such action as may be reasonably necessary and prudent, to extend to the Company and each other Co-Investor the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and the Special Source Credits and agrees, if requested by the Company, to enter into a lease purchase agreement with the Company and each other Co-Investor pursuant to Section 12-44-160 of the Negotiated FILOT Act and Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, the terms of which shall be mutually agreeable to the County and the Company. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and each other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement, including, but not limited to, the Special Source Credits, as then permitted by law, including, without limitation, any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law.

## COVENANTS OF COMPANY

### Investment in Project.

The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2026.

(a) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment in Negotiated FILOT Property and job creation in the County at the Project by any and all other permitted Co-Investors shall together with investment in Negotiated FILOT Property and job creation in the County at the Project by the Company, count to the full

extent permitted by the Negotiated FILOT Act, the Enhanced Investment FILOT Minimum Requirement, the Minimum Special Source Credits Jobs Requirement, and the Standard FILOT Minimum Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's assets listed on a SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

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

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

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

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

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

(4) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project while retaining such property for use as part of its operations in the County, all as permitted herein, the Company or such Co-Investor shall deliver to the

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

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

Failure to Satisfy Minimum Special Source Credit Requirements. If the Company does not satisfy at least 50% of the Minimum Special Source Credits Jobs Requirement and the Minimum Contract Investment Requirement by the end of the Enhanced Investment FILOT Compliance Period, without extension, then the Company shall not be entitled to receive the Special Source Credit and shall repay all Special Source Credits received by the Company. If the Company does not meet either the Minimum Special Source Credits Jobs Requirement or the Minimum Contract Investment Requirement by the end of the Enhanced Investment FILOT Compliance Period, without extension, but satisfies at least 50% of the Minimum Special Source Credits Jobs Requirement and the Minimum Contract Investment Requirement, then the Company (i) shall repay the Repayment Amount, as calculated below, if any, and (ii) if a Repayment Amount is due, the percentage of any future Special Source Credit shall be reduced by a percentage equal to the amount multiplied against the Aggregate SSRC previously received when calculating the Repayment Amount. The Repayment Amount is calculated as follows:

Aggregate SSRC previously received \*

$((1-(\text{Actual Investment}/\text{Minimum Contract Investment Requirement})) + (1-(\text{Actual Jobs}/\text{Minimum Special Source Credits Jobs Requirement}))) / 2$

= "Repayment Amount"

For example, if the Company has claimed an aggregate of \$500,000 in Special Source Credits during the applicable credit period but does not meet the Minimum Special Source Credits Jobs Requirement or the Minimum Contract Investment Requirement by the end of the Enhanced Investment Period, but instead only makes an investment of \$294,300,000 and creates 162 new, full-time equivalent jobs by the end of the Enhanced Investment FILOT Compliance Period, then the Company would be required to repay to the County approximately \$25,000, calculated as follows:

$$294,300,000 / 327,000,000 = 0.90$$

$$1 - 0.90 = 0.10$$

$$162 / 162 = 1.0$$



$$1 - 1.0 = 0.0$$

$$= 0.10 + 0.0 = 0.10 / 2 = 0.05$$

$$500,000 * 0.05$$

In addition, the Special Source Credit for any remaining years would be reduced by 5.0%.

For purpose of performing the calculation described above, any job creation above the Minimum Special Source Credits Jobs Requirement or investment above the Minimum Contract Investment Requirement, as applicable, shall be taken into account to the extent the applicable increase does not exceed 10% of the applicable requirement. For example, if the Company has claimed an aggregate of \$500,000 in Special Source Credits during the applicable credit period but does not meet the Minimum Contract Investment Requirement by the end of the Enhanced Investment FILOT Compliance Period, but instead only makes an investment of \$294,300,000 and creates 178 new, full-time equivalent jobs by the end of the Enhanced Investment FILOT Compliance Period, then the Company would be required to repay to the County approximately \$308.75, calculated as follows:

$$294,300,000 / 327,000,000 = 0.90$$

$$1 - .90 = 0.10$$

$$178 / 162 = 1.098765$$

$$1 - 1.098765 = (0.098765)$$

$$= 0.10 + (0.098765) = 0.001235 / 2 = 0.0006175.$$

$$500,000 * 0.0006175$$

In addition, the Special Source Credit for any remaining years would be reduced by 0.061750%, provided, however, in no event shall the County be required to provide any additional Special Source Credit for investment and/or job creation above the Minimum Contract Investment Requirement or the Minimum Special Source Credits Jobs Requirement.

Any payment made under this Section 4.02, shall be due no more than 15 days after the date after which ad valorem taxes become delinquent and shall be treated as a FILOT Payment under this Agreement and shall be subject to statutory interest if not paid when due pursuant to Section 12-54-25 of the Code, as allowed under the FILOT Act.

Section 3. Payment of Administration Expenses. The Company or any other Co-Investor will reimburse, or cause reimbursement of, the County from time to time for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement's terms and provisions, with respect to the Company or such other Co-Investor, respectively, promptly upon written request therefor, but in no event later than 90 days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, and, aside from the attorneys' fees set forth below, the County anticipates no out of pocket expenses in connection with this Agreement and the

transactions authorized hereby. The parties understand that the County has incurred, and will incur, legal fees and other expenses for review of the Inducement Resolution, this Agreement, the Multi-County Park Agreement and all resolutions, ordinances and other documentation related thereto in an amount not to exceed \$7,500.

Section 4. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 5. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed; and

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

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

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

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

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

Section 6. Records and Reports. The Company and each other Co-Investor will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

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

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

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

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Co-Investor believes contains proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company or any such other Co-Investor with respect to maintaining the confidentiality of such designated segments, to the extent allowed by law. Except to the extent required by law, unless the County has provided at least ten (10) days advance written notice to the Company or such other Co-Investor of such proposed release, the County shall not knowingly and voluntarily release any Filing, documents, or other information provided to the County by the Company or

any other Co-Investor in connection with the Project, whether or not such information has been designated as confidential or proprietary by the Company or any other Co-Investor.

Section 7. Funding for Special Source Improvements. The Company and each other Co-Investor shall provide, or cause the provision of, funding for the Special Source Improvements related to its respective portion of the Project.

## FEES IN LIEU OF TAXES

### Payment of Fees in Lieu of Ad Valorem Taxes.

In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2025. If the Company designates any other Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if such consent is required pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such additional Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments due hereunder with respect to such Sponsor or Sponsor Affiliate's respective portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments due with respect to such Negotiated FILOT Property.

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

For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of forty (40) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of forty (40) years.

The Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%; (2) a fixed millage rate of 488.4 mills; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, only in a writing approved by the Council, at a later date to amend this Agreement as to Negotiated FILOT property owned by the Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT Act.

All such calculations shall take into account all deductions for depreciation or other diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code; provided, however, the Company or any other Sponsor or Sponsor Affiliate shall not be entitled to extraordinary obsolescence with respect to Negotiated FILOT Property as set forth in Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act.

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

To the extent not prohibited by the Department of Revenue, Negotiated FILOT Payments are to be recalculated (subject, always to the continuing requirements of **Section 5.01(f)**, hereof):

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

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

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

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

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

Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes, or to the FILOT payments pursuant to the Multi-County Park Act, as the case may be, which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for

the remaining portion of the Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property

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

(a) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes, or from FILOT payments pursuant to the Multi-County Park Act, as the case may be, provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and each other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes, or make FILOT payments pursuant to the Multi-County Park Act, as the case may be, hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to such entity's portion of the Negotiated FILOT Property in question, an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, or as FILOT payments pursuant to the Multi-County Park Act, as the case may be, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Standard FILOT Minimum Requirement is nevertheless satisfied by the end of the Standard FILOT Compliance Period, then the Project shall continue to be eligible for Negotiated FILOT Payments as set forth in **Section 5.01** hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, retroactively and prospectively. In such event, and subject to the provisions of **Section 3.02(a)** hereof, the Company and each Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of Negotiated FILOT Property, shall be required to remit the Retroactive FILOT Payment.

In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period and the Standard FILOT Minimum Requirement is not satisfied by the end of the Standard FILOT Compliance Period, then all