

# Agenda Sumter County Council Regular Meeting

# Tuesday, June 12, 2018 -- Held at 6:00 PM.

# Sumter County Administration Building – County Council Chambers Third Floor, 13 E. Canal Street, Sumter, SC

# 1. CALL TO ORDER:

- 1) Chairman Or Vice Chairman Of Sumter County Chairman Or Vice Chairman Of Sumter County
- 2. INVOCATION: Council Member, Staff, or Member of the Public
- 3. PLEDGE OF ALLEGIANCE:
- 4. APPROVAL OF AGENDA: June 12, 2018
- 5. APPROVAL OF MINUTES: Regular Meeting Held On
  - 1) Regular Meeting Tuesday, May 22, 20182
  - 2) Budget Workshop Tuesday, May 29, 2018

# 6. LAND USE MATTERS AND REZONING REQUESTS:

1) None

# 7. OTHER PUBLIC HEARINGS:

- 1) 18-885-- An Ordinance Authorizing (1) The Execution And Delivery Of A Fee In Lieu Of Tax And Incentive Agreement By And Between Sumter County, South Carolina (The "County") And Becton, Dickinson And Company, A Company Previously Identified As Project Bulldog, Acting For Itself, One Or More Affiliates, And/Or Other Project Sponsors (Collectively, The "Company"), Pursuant To Which The County Shall Covenant To Accept Certain Negotiated Fees In Lieu Of Ad Valorem Taxes With Respect To The Establishment And/Or Expansion Of Certain Facilities In The County (The "Project"); (2) The Benefits Of A Multi-County Industrial Or Business Park To Be Made Available To The Company And The Project; (3) Certain Special Source Revenue Credits In Connection With The Project; And (4) Other Matters Relating Thereto. (Council Will Take Action On Third Reading Immediately After The Public Hearing Or During Old Business.)
- 2) 18-886 An Ordinance (1) Amending The Master Agreement Governing The Sumter-Lee Industrial Park Dated December 31, 2012, Between Lee County, South Carolina And Sumter County, South Carolina So As To Enlarge The Boundaries Of The Park To Include Certain Property Owned And/Or Operated By Becton, Dickinson And Company, A Company Previously Identified As Project Bulldog; And (2) Authorizing Other Matters Related Thereto. (Council Will Take Action On Third Reading Immediately After The Public Hearing Or During Old Business.)

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3) **18-889**—An Ordinance Authorizing The Issuance And Sale Of General Obligation Bonds, Series 2018a, Or Such Other Appropriate Series Designation, In The Principal Amount Of Not Exceeding \$2,500,000; Fixing The Form And Details Of The Bonds; Authorizing The County Administrator To Prescribe Certain Details Relating To The Bonds; Providing For The Payment Of The Bonds And The Disposition Of The Proceeds Thereof; And Other Matters Relating Thereto. *(Council Will Take Action On Third Reading Immediately After The Public Hearing Or During Old Business.)* 

# 8. NEW BUSINESS:

- 1) A Proclamation Proclaiming June 15, 2018, as Elder Abuse Awareness Day In Sumter County, South Carolina.
- 2) A Proclamation Proclaiming June 16, 2018, As Double Dutch Day In Sumter County, South Carolina.
- 3) **R-18-02** -- A Resolution by Members of Sumter County Council Adopting Council's Actions On The 2018-2019 Budget Request Of Sumter School District.
- 4) **18-890 First Reading** An Ordinance To Approve The Revised Sumter-Lee Regional Detention Center Contract **Title Only.**
- 5) It May Be Necessary To Hold An Executive Session To Discuss An Economic Development Matter Or A Personnel Matter, Receive A Legal Briefing, Discuss A Contractual Matter, Or Other Matter Pertaining To An Executive Session, And Take Appropriate Actions Thereafter If Required.

# 9. OLD BUSINESS:

- 1) 18-885-- Third Reading -- An Ordinance Authorizing (1) The Execution And Delivery Of A Fee In Lieu Of Tax And Incentive Agreement By And Between Sumter County, South Carolina (The "County") And Becton, Dickinson And Company, A Company Previously Identified As Project Bulldog, Acting For Itself, One Or More Affiliates, And/Or Other Project Sponsors (Collectively, The "Company"), Pursuant To Which The County Shall Covenant To Accept Certain Negotiated Fees In Lieu Of Ad Valorem Taxes With Respect To The Establishment And/Or Expansion Of Certain Facilities In The County (The "Project"); (2) The Benefits Of A Multi-County Industrial Or Business Park To Be Made Available To The Company And The Project; (3) Certain Special Source Revenue Credits In Connection With The Project; And (4) Other Matters Relating Thereto.
- 2) **18-886 Third Reading** --- An Ordinance (1) Amending The Master Agreement Governing The Sumter-Lee Industrial Park Dated December 31, 2012, Between Lee County, South Carolina And Sumter County, South Carolina So As To Enlarge The Boundaries Of The Park To Include Certain Property Owned And/Or Operated By Becton, Dickinson And Company, A Company Previously Identified As Project Bulldog; And (2) Authorizing Other Matters Related Thereto.

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- 3) **18-889–Third Reading** -- An Ordinance Authorizing The Issuance And Sale Of General Obligation Bonds, Series 2018a, Or Such Other Appropriate Series Designation, In The Principal Amount Of Not Exceeding \$2,500,000; Fixing The Form And Details Of The Bonds; Authorizing The County Administrator To Prescribe Certain Details Relating To The Bonds; Providing For The Payment Of The Bonds And The Disposition Of The Proceeds Thereof; And Other Matters Relating Thereto.
- 4) **18-888 Third Reading** -- An Ordinance To Provide For A Levy Of Taxes For County Purposes Of Sumter County, S. C., (Known As The Budget Ordinance) For The Fiscal Year Of Said County Beginning July 1, 2018, To Direct The Expenditures Of Said Taxes And Other Funds Of Said County, And To Provide For Other Matters Related Thereto.

# **10. COMMITTEE REPORTS:**

1) Report From Council Members On Other Meetings, Trainings, And/Or Conferences; And Any Other Council Comments.

# 11. MONTHLY REPORTS:

- 1) South Carolina Aeronautics Commission Executive Summary
- 2) Sumter County Sheriff's Office
- 3) Charleston Symphony Orchestra
- 4) Lakewood Links Ribbon Cutting
- 5) SCAC Annual Conference
- 6) Motown Review-Recognition of Mr. Conner
- 7) Zoning Board of Adjustment and Appeals
- 8) Downtown Block Party

# 12. COUNTY ADMINISTRATOR'S REPORT:

# 13. PUBLIC COMMENT:

# **14. ADJOURNMENT:**

In compliance with ADA/Section 504, Sumter County Is Prepared To Make Accommodations For Individuals Needing Assistance To Participate In Our Programs, Services, Or Activities.

Pursuant to the Freedom of Information Act, notice of the meeting, date, time, place of meeting and agenda was posted on the bulletin board at the County Administrative Office, 13 East Canal Street, Sumter, SC and the Sumter County website <a href="https://www.sumtercountysc.org">www.sumtercountysc.org</a>

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under Our Council Agenda/Minutes. In addition, the agenda electronically sent to newspapers, radio stations, television, and concerned citizens



# Minutes County Council Regular Meeting

#### Regular Meeting Tuesday, May 22, 2018 -- Held at 6:00 p.m.

County Administration Building -- County Council Chambers 13 E. Canal Street, Sumter, SC

**COUNCIL MEMBERS PRESENT:** James T. McCain, Jr., Chairman; James R. Byrd, Jr., Vice Chairman; Artie Baker; Eugene R. Baten; Charles T. Edens, Vivian Fleming McGhaney, and Chris Sumpter

**COUNCIL MEMBERS ABSENT:** None

**STAFF MEMBERS PREESNT:** Gary Mixon, Mary Blanding, Johnathan Bryan, Allen Dailey, Two County Deputies, James Michaelson, Robert Harden, Joe Perry, Cassandra

**MEDIA:** The Item

**MEMBERS OF THE PUBLIC:** Approximately three members of the public were in attendance.

**CALL TO ORDER:** Chairman James T. McCain called the meeting to order.

**INVOCATION:** Council Member Vivian Fleming McGhaney gave the invocation.

# PLEDGE OF ALLEGIANCE:

APPROVAL OF AGENDA: Regular Meeting Tuesday, May 22, 2018

Chairman McCain stated that he would entertain a motion to approve the agenda for the May 22, 2018, meeting of Sumter Council.

**ACTION:** MOTION was made by Councilman Baten, seconded by Councilman Sumpter, and unanimously carried by Council to grant approval of the agenda as presented.

# **APPROVAL OF MINUTES:**

Chairman McCain asked for a motion concerning the approval of the Minutes for Council's May 8, 2018, minutes.

**ACTION:** MOTION was made by Councilman Edens, seconded by Councilman Sumpter, and unanimously carried by Council to grant approval of the Minutes as presented.

# LAND USE MATTERS AND REZONING REQUESTS: Planned Development/Rezoning Requests

1. None

#### OTHER PUBLIC HEARINGS:

(1) 18-887 - Third Reading -- An Ordinance Authorizing The Lease Of Property To FTC Communications, LLC.

(Council Will Take Action On Third Reading Of This Ordinance Immediately After Public Hearing, Or During Old Business.)

Johnathan Bryan presented this proposed ordinance to Council and the public. Mr. Bryan stated that this ordinance would allow Sumter County to provide a ten year lease of this property to FTC Communications, LLC. This company will install a Cell Tower on the property and pay a lease fee of \$400 per month to the County. There are no changes to the ordinance since second reading. After all comments, the Chairman convened a public hearing. He asked if anyone wished to speak in favor of or opposition to the proposed ordinance. No one spoke during

public hearing; therefore, the Chairman closed the public hearing and Council took action on this matter as listed under Old Business.

(2) 18-888 – Second Reading -- An Ordinance To Provide For A Levy Of Taxes For County Purposes Of Sumter County, S. C., (Known As The Budget Ordinance) For The Fiscal Year Of Said County Beginning July 1, 2018, To Direct The Expenditures Of Said Taxes And Other Funds Of Said County, And To Provide For Other Matters Related Thereto. (Council Will Take Action On Second Reading Of This Ordinance Immediately After Public Hearing, Or During Old Business.)

Gary Mixon presented the proposed ordinance for second reading approval. Mr. Mixon stated that this is the County's Annual Budget Ordinance \$52,752,483 for the general fund, additional requests from other agencies, capital request of \$2.5 Million Bond, use \$700,000 EMS Building, \$300,000 removal and the construction of a parking lot for \$500,000. It is proposed for third reading at June 12, 2018. Additionally there will be an addition to the employee hand book which will be part of the ordinance. Additional information will be provided at third reading.

Then Chairman McCain convened a public hearing asking if anyone wished to speak in favor of or opposition to the proposed ordinance. No one spoke to this issue; therefore, the Chairman closed the public hearing on this matter and Council took action on second reading as listed below under Old Business.

#### **NEW BUSINESS:**

(1) <u>18-889 – First Reading -- An Ordinance Authorizing The Issuance And Sale Of General Obligation Bonds, Series 2018a, Or Such Other Appropriate Series Designation, In The Principal Amount Of Not Exceeding \$2,500,000; Fixing The Form And Details Of The Bonds; Authorizing The County Administrator To Prescribe Certain Details Relating To The Bonds; Providing For The Payment Of The Bonds And The Disposition Of The Proceeds Thereof; And Other Matters Relating Thereto.</u>

Mr. Mixon presented this proposed ordinance to Council for first reading approval. This is a General Obligation Bond or equaling approximately 15 mills equality \$2,500,000 for Capital purchases. Frannie

After the presentation, Council took action on this proposed ordinance as presented.

**ACTION**: Motion was made by Councilman McGhaney, seconded by Councilman Baker, and unanimously carried by Council to grant first reading approval of this proposed ordinance as presented.

(2) <u>It May Be Necessary To Hold An Executive Session To Discuss An Economic Development Matter Or A Personnel Matter, Receive A Legal Briefing, Discuss A Contractual Matter, Or Other Matter Pertaining To An Executive Session, And Take Appropriate Actions Thereafter If Required.</u>

No executive session was held.

# **OLD BUSINESS:**

(1) 18-885 -- Second Reading - An Ordinance Authorizing (1) The Execution And Delivery Of A Fee In Lieu Of Tax And Incentive Agreement By And Between Sumter County, South Carolina (The "County") And A Company Identified For The Time Being As Project Bulldog, Acting For Itself, One Or More Affiliates, And/Or Other Project Sponsors (Collectively, The "Company"), Pursuant To Which The County Shall Covenant To Accept Certain Negotiated Fees In Lieu Of Ad Valorem Taxes With Respect To The Establishment And/Or

Expansion Of Certain Facilities In The County (The "Project"); (2) The Benefits Of A Multi-County Industrial Or Business Park To Be Made Available To The Company And The Project; (3) Certain Special Source Revenue Credits In Connection With The Project; And (4) Other Matters Relating Thereto.

Johnathan Bryan presented this proposed ordinance to Council for second reading approval for a Fee In Lieu of Tax and Incentive Agreement for Project Bulldog. This is the fictitious name for the company since the name has not yet been announce. There have been no changes to this ordinance since first reading. After Mr. Bryan's presentation, the Chairman called for a motion on second reading.

**ACTION:** MOTION was made by Councilman Baker, seconded by Councilman Baten, and unanimously carried by Council to grant second reading approval to this ordinance as presented.

(2) 18-886 – Second Reading – An Ordinance (1) Amending The Master Agreement Governing The Sumter-Lee Industrial Park Dated December 31, 2012 Between Lee County, South Carolina And Sumter County, South Carolina So As To Enlarge The Boundaries Of The Park To Include Certain Property Owned And/Or Operated By A Company Identified For The Time Being As Project Bulldog; And (2) Authorizing Other Matters Related Thereto.

Mr. Bryan, the County Attorney, as presented this proposed ordinance for second reading approval. It was noted by Mr. Bryan that Project Bulldog is requesting that this company be placed in a Multi-County Industrial Park. It is the desire of Sumter County to place this Company in the Sumter Lee Industrial Park. After all comments, the Chairman called for a motion on second reading.

ACTION: MOTION was made by Councilman Baker, seconded by Councilman Vice Chairman Byrd, and unanimously carried by Council to grant second reading as presented.

(3) 18-887 – Third Reading -- An Ordinance Authorizing The Lease Of Property To FTC Communications, LLC.

Mr. Bryan presented this ordinance to Council for third reading approval. After his comments and the public hearing, Council took action on third reading of this ordinance.

**ACTION**: MOTION was made by Councilman Baker, seconded by Vice Chairman Byrd, and unanimously carried by Council to grant third reading approval of this ordinance as presented.

(4) 18-888 - Second Reading -- An Ordinance To Provide For A Levy Of Taxes For County Purposes Of Sumter County, S. C., (Known As The Budget Ordinance) For The Fiscal Year Of Said County Beginning July 1, 2018, To Direct The Expenditures Of Said Taxes And Other Funds Of Said County, And To Provide For Other Matters Related Thereto.

Mr. Mixon presented this proposed ordinance to Council for second reading approval and public hearing. After the public hearing, Council took action on second reading.

**ACTION:** MOTION was made by Councilman Baker, seconded by Councilman Sumpter and unanimously carried by Council to grant second reading approval as presented.

# **COMMITTEE REPORTS:**

(1) <u>Fiscal Tax, and Property Meeting To Be Held On Tuesday, May 22, 2018, At 5:00 p.m. In County Council's Conference Room.</u>

Chairman McCain, the Chairman of the Fiscal, Tax, and Property Committee meeting was held and an executive session matter was discussed in the executive session; no action was taken.

# (2) <u>County Council Budget Workshop/Special Meeting</u> To Be Held On Tuesday, May 22, 2018, At 5:30 p.m. In County Council's Conference Room.

All Council members were present at this the budget workshop along with Gary Mixon, James Michaelson, and Mary Blanding.

# **Budget Calendar:**

May 29, 2018 – Supper at 4:00 p.m. and Meeting at 5:00 p.m. at the Fire Department Training Center – Presentation by the Sumter School District.

- Capital Request Bond -- \$2,500,000
- > \$7000,000 EMS Station
- > \$300,000 Demotion and Removal of Old Jail Building
- > \$500,000 Renovation of and construction of parking lot for Sheriff's Department and renovation of the Training Center.

**June 12, 2018** – 3<sup>rd</sup> Reading of the County's Budget and Discussion and Possible action on Resolution for School District.

# **Capital Bond Ordinance**

- > 1st Reading, May 22, 2018
- > 2<sup>nd</sup> Reading, May 29, 2018
- ➤ 3<sup>rd</sup> Reading, June 12, 2018 Public Hearing

**NOTE:** Councilman McGhaney informed Council that she spoke to the S. C. Ethics Commission concerning her ability to vote on the School District's Resolution. She has received an affirmative from the Ethics Commission that she is free to vote on the resolution.

After all questions, and comments the Workshop was adjourned after a Motion by Councilman Edens, and seconded by Councilman Baker and unanimously carried by Council. Council then began its Regular Meeting at 6:00 p.m.

(3) Report From Council Members On Other Meetings, Trainings, And/Or Conferences; And Any Other Council Comments.



Councilman Baten reported that he attended the OPIOID Summit presented by Santee-Lynches Regional Council On Governments. The Summit had participants from the Regional Counties which included Lee, Kershaw, Clarendon, and Sumter Counties. It was agreed by the participants that this region does have an OPIOID problem. Additionally, it was agreed that Santee Lynches would act as the collection agency to collect all possible information concerning this OPIOID epidemic. The EMS Director stated that EMS has received 134 calls about OPIOID overdoes; however, the Behavioral Health Department has recorded only 11 deaths.

# MONTHLY REPORTS

- 1) Planning Commission Meeting
- 2) Building Department Report
- 3) Iris Festival 2018 And
- 4) Taste of The Gardens
- 5) Memorial Day Ceremony

# COUNTY ADMINISTRATOR'S REPORT

No additional comments.

# **PUBLIC COMMENT**

No one spoke during public comment.

# **ADJOURNMENT**

After all business and comments from the public, upon motion by Councilman Edens, seconded by Councilman Baker, and unanimously carried by Council, the meeting of Sumter County Council adjourned at 6:18 p.m.

Respectfully submitted,

Chairman or Vice Chair	Mary W. Blanding  Clerk to County Council
Sumter County Council	
Approved:	
********** *****	**************************************
I certify that public and required by Freedom of	media notification of the above-mentioned meeting was given prior thereto as follows Information:
Public Notified:	Yes
Manner Notified:	Agendas posted on bulletin board on third floor of the Administration Building.
Date Posted:	May 21, 2017
Media Notified:	Yes
Manner Notified:	Agenda Information is listed on Sumter County's Home Page, and E-mailed to The Item, The Chamber, WIS-TV, WBTW, and Time Warner Cable.
Date Notified:	May 18, 2017 Respectfully submitted,

Mary W. Blanding



# **Minutes**

# **Sumter County Council**

# Budget Workshop-Special Meeting Tuesday, May 29, 2018 - Held at 5:00 p.m.

Fire Training Center, 470 Green Swamp Road, Sumter, SC

NOTE: County Council Members had supper together from 4:00-5:00 p.m. Council members Edens and Baten did not attend the supper. Gary Mixon, Johnathan Bryan, Mary Blanding, James Michaelson, and Joe Perry also attended the supper.

**COUNCIL MEMBERS PRESENT**: James T. McCain, Jr., Chairman; James R. Byrd, Jr., Vice Chairman; Artie Baker; Eugene R. Baten; Charles T. Edens, Vivian Fleming McGhaney, and Chris Sumpter

**COUNCIL MEMBERS ABSENT:** All Council members were present during the meeting.

**STAFF PRESENT:** Gary Mixon, James Michaelson, Lorraine Dennis, Keysa Rogers, Johnathan Bryan, Mary W. Blanding, Joe Perry; Carolina B. Richardson, and Lauretha McCants

**MEDIA PRESENT**: The Item

**PUBLIC:** Approximately 12 members of the public were in attendance.

**CALL TO ORDER** – The Honorable James T. McCain, Jr., Chairman of Sumter County Council, called the meeting to order.

INVOCATION: Councilman Vivian Fleming McGhaney gave the invocation.

**PLEDGE OF ALLEGIANCE:** All in attendance repeated the Pledge of Allegiance to the American Flag.

# **ACTION ON AGENDA:** Tuesday, May 29, 2018

The Chairman asked the Clerk to Council if there were any changes to the agenda. Mrs. Blanding asked Council to consider adding Second Reading to Ordinance 18-889, which is known as the 2018-2019 Bond Ordinance for Capital Improvements. The ordinance was inadvertently left off the agenda.

The Chairman stated that he would entertain a motion concerning action on the agenda and consideration of adding Ordinance 18-889 – Second Reading to the agenda as presented by the Clerk to Council.

**ACTION: MOTION** was made by Councilman Baker, seconded by Councilman Sumpter, and unanimously carried by Council to approve the agenda as present and to add *Ordinance #18-889 – An Ordinance Authorizing The Issuance And Sale Of General Obligation Bonds, Series 2018a, Or Such Other Appropriate Series Designation, In The Principal Amount Of Not Exceeding \$2,500,000; Fixing The Form And Details Of The Bonds; Authorizing The County Administrator To Prescribe Certain Details Relating To The Bonds; Providing For The Payment Of The Bonds And The Disposition Of The Proceeds Thereof; And Other Matters Relating Thereto.* 

# **NEW BUSINESS:**

1. <u>Sumter School District Budget Presentation – Discussions By Council And School District.</u>

Dr. Debbie Hamm, Sumter School District Interim Superintendent, along with Mr. Chris Griner, the District's Finance Director, presented to members of Sumter County Council, the District's

request for this budget cycle. Dr. Hamm made the following requests and provided information about the request through a PowerPoint presentation:

- A millage rate increase of 5.48 mills, which equals to \$1,057,251. The increase would fund five new teachers (\$400,000); a development Coordinator/Grant Writer (\$80,000); A Technology Project Manager (\$75,000), and \$502,251 to contribute to the District's Fund Balance.
- The District's projected total budget for 2018-2019, including the County, State, and Federal funding with a projected fund balance of \$6,000,000, is \$131,854,396.

Mr. Griner, said the District feels it's important to build their fund balance to meet the state level of having one month of expenditures, which is about \$11 million. Currently, the District has \$6 million in the fund balance.

McCain asked about whether the requested \$502,251 contribution to fund balance – as part of the district's \$1,057,251 total request – would help maintain the projected \$6 million fund balance. Griner said no, the \$502,251 would increase the fund balance to \$6.5 million.

Councilman Charles Edens asked about the proposed five new teaching positions for a cost of \$400,000, and asked the School District to give details about those figures. Griner said that the \$400,000 includes salary and benefits. Councilman Edens stated that the positions would be approximately \$80,000 for each position. However, Mr. Griner stated that the retirement and the medical increase are higher than 25% for each employee.

Councilman Edens also asked for a list of the members on the Teachers Advisory Council and Dr. Hamm stated that she would provide a copy to Councilman Edens. He also asked about whether a site was chosen for the elementary alternative school and Dr. Hamm said several are being considered. She will make a recommendation to the Sumter School District Board of Trustees on June 19, 2018.

Chairman McCain asked about Brewington Academy being closed and where those children would go and Dr. Hamm said that the proposal for Brewington Academy will also be addressed at the June 19, 2018, Board meeting.

Councilman Eugene Baten asked about savings and how \$498,010 would be saved from consolidation, while the District is also asking for \$400,000 to create five new teaching positions. Councilman Baten inquired if any teaching positions would be affected by the consolidation or if janitorial and cafeteria workers would lose jobs. Mr. Griner said through attrition and retirements, workers would simply transfer to other schools. Additionally, Dr. Hamm commented that people thought money would be saved on teachers when the consolidation took place; however, the same number of children still need to be taught.

Councilman Baten commented on the School District having financial autonomy from the County. Superintendent Hamm stated that there are pro's and con's throughout the State and Nation on School Districts having financial autonomy.

**ACTION:** Received as information; no action taken.

2. <u>It May Be Necessary To Give A Recap On Fiscal Year 2018-2019 Budget Information For</u> General Fund and Other Budgetary Matters As Needed.

No additional information was provided.

3. <u>Executive Session</u>: It May Be Necessary To Hold An Executive Session To Discuss An Economic Development Matter, Receive A Legal Briefing, And Discuss Other Items Appropriate For Executive Session And Take Actions Thereafter.

No executive session was held.

4. Additional Agenda Item: 18-889 – Second Reading – An Ordinance Authorizing The Issuance And Sale Of General Obligation Bonds, Series 2018a, Or Such Other Appropriate Series Designation, In The Principal Amount Of Not Exceeding \$2,500,000; Fixing The Form And Details Of The Bonds; Authorizing The County Administrator To Prescribe Certain Details Relating To The Bonds; Providing For The Payment Of The Bonds And The Disposition Of The Proceeds Thereof; And Other Matters Relating Thereto.

Sumter County Administrator, Gary Mixon, presented this second reading to Council. Mr. Mixon stated that this proposed ordinance would provide \$2.5 million in General Obligation Bonds so that the County can fund several capital projects. Mr. Mixon further stated that the projects listed in this bond are as followings:

- Patriot Hall renovations -- \$195,000 -- air-conditioning system.
- Sumter Lee Regional Detention Center -- \$400,000 -- roof work, air-conditioner repairs and plumbing issues.
- Sheriff Office -- 15 vehicles for the Sumter County Sheriff's Office,
- 10 Pick-Up Trucks at \$254,500;
- A Custom Brush Truck for the Sumter Fire Department.
- Rescue Tools along with 50 sets of personal protective gear.
- A new Motor-Grader
- Digital Storage Space -- \$110,000.
- Sheriff's Office body and vehicle cameras.

After all comments, the Chairman called for a motion on second reading.

**ACTION: MOTION** was made by Councilman Baten, seconded by Vice Chairman Byrd, and unanimously carried by Council to grant second reading approval as presented

# **OLD BUSINESS**

1. None

# **ADJOURNMENT**

After all comments, the Chairman stated that he would entertain a motion to adjourn the meeting. MOTION was made by Vice Chairman Byrd, seconded by Councilman Sumter, and unanimously carried by Council to adjourn the meeting at 6:12 p.m.

Respectfully submitted,

Mary W. Blanding, Clerk Sumter County Council

# FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

SUMTER COUNTY, SOUTH CAROLINA

and

BECTON, DICKINSON AND COMPANY

Dated as of June 12, 2018

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# FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of June 12, 2018, by and between SUMTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and BECTON, DICKINSON AND COMPANY, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company");

# WITNESSETH:

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

WHEREAS, Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company") proposes to invest in certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$150,000,000, in the aggregate, in the Project and will create, or cause to be created, at least 125 new, full-time jobs, in the aggregate, within the County, as set forth in greater detail herein; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on April 24, 2018 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by Ordinance No. 18-885 enacted by the Council on June 12, 2018, 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:

# ARTICLE I

# **DEFINITIONS**

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

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

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney's fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other 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, an itemized statement of all such expenses incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other 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 Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.06** 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 Sumter 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, 2018 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2026.

"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 (8 years), however, if the Company meets the Enhanced Investment FILOT Minimum Requirement of \$150,000,000 within the Enhanced Investment FILOT Compliance Period (8 years), the County agrees to consider approving the Company's request for an extension of the Investment Period by two (2) years, which approval shall not be unreasonably withheld.

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, 2018, upon any such extension, the Investment Period will end on December 31, 2028.

"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 Special Source Credits Jobs Requirement" shall mean the creation of at least 75 new, full-time jobs in the County by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2017 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 Sumter-Lee Industrial Park by and between the County and Lee 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, 2018 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2023.

"Standard FILOT Minimum Requirement" shall mean investment in the Project of not less than \$2,500,000 within the Enhanced Investment 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.

<u>Section 1.02.</u> <u>References to Agreement.</u> The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

# **ARTICLE II**

# REPRESENTATIONS AND WARRANTIES

- Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) 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.
- (b) On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.
- (c) 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.

- (d) 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.
- <u>Section 2.02.</u> <u>Representations and Warranties by the Company.</u> The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) The Company is a corporation validly existing and in good standing under the laws of the State of South Carolina 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.
- (b) The Company presently intends to operate the Project as facilities primarily for manufacturing medical devices.
- (c) 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.
- (d) 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.
- (e) 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.

# ARTICLE III

# **COVENANTS OF COUNTY**

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

# Section 3.02. Special Source Credits.

- (a) 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, 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 twenty-five percent (25%) of each such FILOT Payment. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Credit Eligible Entities.
- (b) The Special Source Credits to which a Credit Eligible Facility is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.
- Section 3.03. 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 designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best, commercially 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 necessary to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

<u>Section 3.04.</u> <u>Commensurate Benefits</u>. 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 of the Company, the County agrees to use its best efforts, and to take such other steps as may be reasonably necessary, 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.

# ARTICLE IV

# **COVENANTS OF COMPANY**

# Section 4.01. Investment in Project.

- (a) 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, 2021.
- (b) 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.

- (c) 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.
- (d) 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:
- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) 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.
- (v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.
- <u>Section 4.02.</u> <u>Failure to Satisfy Minimum Special Source Credits Jobs Requirement.</u> If the Minimum Special Source Credits Jobs Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, each of the following subsections (a) (c) shall apply:
- (a) The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Enhanced Investment FILOT Compliance Period.
- (b) On behalf of each Credit Eligible Entity, the Company shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Special Source Credits previously received, or to be received (upon actual receipt), by each such Credit Eligible Entity for each tax year for which each such Credit Eligible Entity is entitled to receive Special Source Credits under **Section 3.02(a)** hereof and for which a Negotiated FILOT Payment has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Enhanced Investment FILOT Compliance Period (collectively, the "Compliance Period Special Source Credits"), taking into account the highest number of new, full-time jobs created, in the aggregate, at the Project within the period set forth in the Minimum Jobs Requirement at any time during such period (the "Actual Project Jobs"), as compared to the Minimum Special Source Credits Jobs Requirement, as further detailed and illustrated in the formula and examples set forth below:

Formula:

- 1. <u>Actual Project Jobs</u> = Jobs Satisfaction Percentage [JSP] 75 new, full-time jobs
- 2. 100% JSP = Jobs Satisfaction Factor [JSF]
- 3. In the event that determination of the Jobs Satisfaction Factor results in a positive percentage figure, the Jobs Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from the Company. Any such amounts shall be due to be paid by the Company within sixty (60) days of receipt by the Company of written notice from the County of such amounts being due.
  - (c) Each Credit Eligible Entity may continue to be eligible for Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in **Section 3.02(a)** hereof; provided, however, in the event that determination of the Jobs Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the initial Special Source Credits percentage set forth in **Section 3.02(a)** hereof of twenty-five percent (25%) shall be reduced for the remaining such tax years by the percentage equal to such Jobs Satisfaction Factor, as further illustrated in the example set forth below:

# Example:

As an example, assuming a Jobs Satisfaction Factor of twenty percent (20%), the Special Source Credits percentage applicable for the remaining period would be reduced from 25% by 20% of such initial Special Source Credits percentage, down to a Special Source Credits percentage of 20%.

Section 4.03. 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 ninety (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 \$5,000.

<u>Section 4.04.</u> <u>Use of Project for Lawful Activities</u>. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior 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 4.06. 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.

<u>Section 4.07.</u> <u>Funding for Special Source Improvements</u>. 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.

County Transfer of Title to Certain Land to Company. The County Section 4.08. hereby acknowledges and represents that it has entered into that certain Contract of Sale by and between the County and Scott W. Rumph Jr. dated as of October 30, 2017, whereby the County has, under the terms and conditions set forth therein, secured the right to purchase and acquire title to certain land amounting to approximately 15 acres more particularly described as Parcels 231-00-04-002 and 231-00-04-003 in Exhibit B hereto. Following the execution and delivery of this Agreement, the County hereby agrees to, at no cost to the Company, purchase and acquire such land, and subsequently transfer title to same to the Company, as soon thereafter as reasonably practicable, but in any event no later than 90 days from such execution and delivery. Such transfer of title to the Company shall be further set forth and effected in one or more deeds, agreements, instruments or other documents to be entered into by the County and the Company, which documents shall be in form and substance mutually agreeable to the County and the Company. The County hereby acknowledges and agrees that, upon such transfer of title to such land to the Company, such land shall automatically be eligible to become a part of the Land without further action, consent or approval of the County, in the sole discretion of the Company.

# ARTICLE V

#### FEES IN LIEU OF TAXES

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

(a) 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, 2020. 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.

- (b) 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:
- (i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of twenty (20) 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 twenty (20) years.
- The Negotiated FILOT shall be determined using: (1) an (ii) assessment ratio of 4%; provided, that, 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 satisfied by the end of the Standard FILOT Compliance Period, an assessment ratio of 6% shall be applicable retroactively and prospectively; (2) a millage rate of 362.2 mills, which millage rate or millage rates shall adjust every five years pursuant to Section 12-44-50(A)(1)(b)(ii) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, 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.
- (iii) 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.

- (iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.
  - (c) 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):
- (i) 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;
- (ii) 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;
- (iii) 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
- (iv) 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)**.
- (d) 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:
- (i) 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

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

(f)

(i) 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 (ii) 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 Negotiated FILOT Payments shall revert retroactively to ad valorem taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project does not exceed \$5,000,000 by the end of the Standard FILOT Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Standard FILOT Minimum Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to ad valorem taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to satisfy the Standard FILOT Minimum Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

In the event that the Enhanced Investment FILOT Minimum (iii) Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period, but following the Enhanced Investment FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the lowest investment level set forth in the Enhanced Investment FILOT Minimum Requirement by which the Project has qualified as an "enhanced investment" pursuant to Section 12-44-30(7) of the Negotiated FILOT Act, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for Negotiated FILOT Payments set forth in Section 5.01 hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs. 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 Project nevertheless continues to be eligible for Negotiated FILOT Payments pursuant to Section 5.01 hereof, if following the Standard FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below

the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

- (iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor, which qualify as Negotiated FILOT Property shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.
- (g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within sixty (60) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

The Company acknowledges that (i) the calculation of the annual Negotiated FILOT Payment due hereunder is a function of the Department of Revenue and is wholly dependent on the parties intended to receive benefits under this Agreement timely submitting the correct annual property tax returns to the Department of Revenue, (ii) the County has no responsibility for the submission of returns or the calculation of the annual Negotiated FILOT Payment, and (iii) failure by any party to timely submit the correct annual property tax return could lead to loss of all or a portion of the Negotiated FILOT benefits and other incentives provided by this Agreement.

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

#### ARTICLE VI

#### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b)

enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved upon written approval of the County, which approval may take the form of a resolution or ordinance of the Council.

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

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

Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and must be approved by resolution of the Council. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this Section 6.02 within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

#### ARTICLE VII

#### TERM; TERMINATION

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

Section 7.02. Termination. In addition to the termination rights of the County under Section 8.02(a) hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to ad valorem taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive ad valorem taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to ad valorem taxes, and the County's rights arising under Section 5.01 prior to the time of such termination shall survive any such termination.

#### ARTICLE VIII

#### **EVENTS OF DEFAULT AND REMEDIES**

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or any Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

- (a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County;
- (b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph** (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or

administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default; or

(c) if a Cessation of Operations occurs after the Enhanced Investment FILOT Compliance Period. For purposes of this Agreement, a "Cessation of Operations" means a publicly announced closure made by the Company of the Company's facilities in the County, including, but not limited to, the Project.

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

<u>Section 8.02.</u> <u>Remedies on Event of Default.</u> Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

- (a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;
- (b) have access to and inspect, examine, and make copies of the books and, records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof;
- (c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.
- Section 8.03. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

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

#### ARTICLE IX

#### **MISCELLANEOUS**

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

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

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

#### (a) if to the County:

Sumter County Attn.: County Administrator 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 436-2102

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

Johnathan W. Bryan, Esquire Sumter County Attorney 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 774-3877 (c) with a copy (which shall not constitute notice) to:

Ray Jones, Esquire Parker Poe Adams & Bernstein 1221 Main Street, Suite 1100 Columbia, South Carolina 29201 Phone: (803) 253-8917

(d) As to the Company:

Robert Fauvie VP of Global Operations, BD PAS 1 Becton Drive, Mail Code 321 Franklin Lakes, NJ 07417 Phone: (201) 847-7359

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

Ashleigh Kyle, Esquire Assistant General Counsel c/o Lynn Diakogiannakis 730 Central Avenue Murray Hill, NJ 07974 Phone: (207) 572-4040; (207) 480-0445

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

Tushar V. Chikhliker, Esq. Nexsen Pruet, LLC 1230 Main Street, Suite 700 (29201) P.O. Drawer 2426 Columbia, South Carolina 29202 Phone: (803) 540-2188

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

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with

the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

- <u>Section 9.06.</u> <u>Severability</u>. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.
- Section 9.07. <u>Headings and Table of Contents; References</u>. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.
- <u>Section 9.08.</u> <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.
- Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.
- Section 9.11. Further Proceedings. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

#### Section 9.12. Indemnification Covenants.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all third party claims arising from the County's execution of this Agreement, performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement. The Company shall indemnify, defend and save the County harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel of the Company's choice, which is acceptable to

the County (the approval of which shall not be unreasonably withheld or delayed); and whose purported representation of the County in such matters would not present an unwaiveable conflict of interest under the South Carolina Rules of Professional Conduct, the waiveability of which shall be determined by the County, in its reasonable discretion; provided, however, that the Company shall be entitled to manage and control the defense of or respond to any claim, action, prosecution, or proceeding, for itself and any Indemnified Party; provided the Company is not entitled to settle any matter without the consent of that Indemnified Party (other than a settlement for money damages only that will be paid in full by the Company). To the extent any Indemnified Party desires to use separate legal counsel for any reason, that Indemnified Party is responsible for its independent legal costs and expenses, in whole.

- (b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct or breach of this Agreement.
- (c) An Indemnified Party may not avail itself of the indemnification of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.
- Section 9.13. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity
- Section 9.14. <u>Limitation of Liability</u>. The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

[Execution Pages to Follow]

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

## SUMTER COUNTY, SOUTH CAROLINA

	By:  James T. McCain, Jr., Chairman, County Council Sumter County, South Carolina
[SEAL]	
ATTEST:	
By: Mary W. Blanding, Clerk to Sumter County, South Card	
	BECTON, DICKINSON AND COMPANY
	By: Name:

## EXHIBIT A LAND DESCRIPTION

Tax Map No. 231-00-04-001

[A MORE DETAILED PROPERTY DESCRIPTION WILL BE INSERTED POST THIRD READING]

# EXHIBIT B TRANSFERRED LAND DESCRIPTION

An approximately 8.4 acre of the Western most portion of that certain piece, parcel or tract of land
situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231
00-04-002 and an approximately 6.6 acre of the Western most portion of that certain piece, parcel o
tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax
Map No. 231-00-04-003 more particularly depicted as Lot on that certain plat recorded in Pla
Book, Page in the Office of the Register of Deeds for Sumter County, South Carolina.

### FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

SUMTER COUNTY, SOUTH CAROLINA

and

BECTON, DICKINSON AND COMPANY

Dated as of June 12, 2018

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#### FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of June 12, 2018, by and between SUMTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and BECTON, DICKINSON AND COMPANY, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company");

#### WITNESSETH:

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

WHEREAS, Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company") proposes to invest in certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$150,000,000, in the aggregate, in the Project and will create, or cause to be created, at least 125 new, full-time jobs, in the aggregate, within the County, as set forth in greater detail herein; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on April 24, 2018 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by Ordinance No. 18-885 enacted by the Council on June 12, 2018, 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:

#### ARTICLE I

#### **DEFINITIONS**

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

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

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney's fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other 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, an itemized statement of all such expenses incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other 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 Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.06** 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 Sumter 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, 2018 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2026.

"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 (8 years), however, if the Company meets the Enhanced Investment FILOT Minimum Requirement of \$150,000,000 within the Enhanced Investment FILOT Compliance Period (8 years), the County agrees to consider approving the Company's request for an extension of the Investment Period by two (2) years, which approval shall not be unreasonably withheld.

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, 2018, upon any such extension, the Investment Period will end on December 31, 2028.

"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 Special Source Credits Jobs Requirement" shall mean the creation of at least 75 new, full-time jobs in the County by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2017 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 Sumter-Lee Industrial Park by and between the County and Lee 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, 2018 and, in such event, the Standard FILOT Compliance Period will end on December 31, 2023.

"Standard FILOT Minimum Requirement" shall mean investment in the Project of not less than \$2,500,000 within the Enhanced Investment 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.

<u>Section 1.02.</u> <u>References to Agreement</u>. The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

#### ARTICLE II

#### REPRESENTATIONS AND WARRANTIES

- <u>Section 2.01.</u> <u>Representations and Warranties by County.</u> The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) 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.
- (b) On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.
- (c) 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.

- (d) 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.
- <u>Section 2.02.</u> <u>Representations and Warranties by the Company.</u> The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) The Company is a corporation validly existing and in good standing under the laws of the State of South Carolina 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.
- (b) The Company presently intends to operate the Project as facilities primarily for manufacturing medical devices.
- (c) 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.
- (d) 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.
- (e) 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.

#### ARTICLE III

#### **COVENANTS OF COUNTY**

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

#### Section 3.02. Special Source Credits.

- (a) 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, 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 twenty-five percent (25%) of each such FILOT Payment. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Credit Eligible Entities.
- (b) The Special Source Credits to which a Credit Eligible Facility is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.
- Section 3.03. 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 designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best, commercially 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 necessary to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

<u>Section 3.04.</u> <u>Commensurate Benefits</u>. 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 of the Company, the County agrees to use its best efforts, and to take such other steps as may be reasonably necessary, 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.

#### ARTICLE IV

#### **COVENANTS OF COMPANY**

#### Section 4.01. Investment in Project.

- (a) 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, 2021.
- (b) 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.

- (c) 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.
- (d) 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:
- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) 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.
- (v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.
- <u>Section 4.02.</u> <u>Failure to Satisfy Minimum Special Source Credits Jobs Requirement.</u> If the Minimum Special Source Credits Jobs Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, each of the following subsections (a) (c) shall apply:
- (a) The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Standard FILOT Compliance Period.
- (b) On behalf of each Credit Eligible Entity, the Company shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Special Source Credits previously received, or to be received (upon actual receipt), by each such Credit Eligible Entity for each tax year for which each such Credit Eligible Entity is entitled to receive Special Source Credits under **Section 3.02(a)** hereof and for which a Negotiated FILOT Payment has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Enhanced Investment FILOT Compliance Period (collectively, the "Compliance Period Special Source Credits"), taking into account the highest number of new, full-time jobs created, in the aggregate, at the Project within the period set forth in the Minimum Jobs Requirement at any time during such period (the "Actual Project Jobs"), as compared to the Minimum Special Source Credits Jobs Requirement, as further detailed and illustrated in the formula and examples set forth below:

Formula:

- 1. <u>Actual Project Jobs</u> = Jobs Satisfaction Percentage [JSP] 75 new, full-time jobs
- 2. 100% JSP = Jobs Satisfaction Factor [JSF]
- 3. In the event that determination of the Jobs Satisfaction Factor results in a positive percentage figure, the Jobs Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from the Company. Any such amounts shall be due to be paid by the Company within sixty (60) days of receipt by the Company of written notice from the County of such amounts being due.
  - (c) Each Credit Eligible Entity may continue to be eligible for Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in Section 3.02(a) hereof; provided, however, in the event that determination of the Jobs Satisfaction Factor pursuant to Section 4.02(b) hereof results in a positive percentage figure, the initial Special Source Credits percentage set forth in Section 3.02(a) hereof of twenty-five percent (25%) shall be reduced for the remaining such tax years by the percentage equal to such Jobs Satisfaction Factor, as further illustrated in the example set forth below:

### Example:

As an example, assuming a Jobs Satisfaction Factor of twenty percent (20%), the Special Source Credits percentage applicable for the remaining period would be reduced from 25% by 20% of such initial Special Source Credits percentage, down to a Special Source Credits percentage of 20%.

Section 4.03. 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 ninety (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 \$5,000.

<u>Section 4.04.</u> <u>Use of Project for Lawful Activities</u>. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior 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 4.06. 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.

<u>Section 4.07.</u> <u>Funding for Special Source Improvements</u>. 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.

County Transfer of Title to Certain Land to Company. The County Section 4.08. hereby acknowledges and represents that it has entered into that certain Contract of Sale by and between the County and Scott W. Rumph Jr. dated as of October 30, 2017, whereby the County has, under the terms and conditions set forth therein, secured the right to purchase and acquire title to certain land amounting to approximately 15 acres more particularly described as Parcels 231-00-04-002 and 231-00-04-003 in Exhibit B hereto. Following the execution and delivery of this Agreement, the County hereby agrees to, at no cost to the Company, purchase and acquire such land, and subsequently transfer title to same to the Company, as soon thereafter as reasonably practicable, but in any event no later than 90 days from such execution and delivery. Such transfer of title to the Company shall be further set forth and effected in one or more deeds, agreements, instruments or other documents to be entered into by the County and the Company, which documents shall be in form and substance mutually agreeable to the County and the Company. The County hereby acknowledges and agrees that, upon such transfer of title to such land to the Company, such land shall automatically be eligible to become a part of the Land without further action, consent or approval of the County, in the sole discretion of the Company.

#### ARTICLE V

#### FEES IN LIEU OF TAXES

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

(a) 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, 2020. 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.

- (b) 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:
- (i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of twenty (20) 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 twenty (20) years.
- The Negotiated FILOT shall be determined using: (ii) assessment ratio of 4%; provided, that, 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 satisfied by the end of the Standard FILOT Compliance Period, an assessment ratio of 6% shall be applicable retroactively and prospectively; (2) a millage rate of 362.2 mills, which millage rate or millage rates shall adjust every five years pursuant to Section 12-44-50(A)(1)(b)(ii) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, 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.
- (iii) 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.

- (iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.
  - (c) 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):
- (i) 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;
- (ii) 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;
- (iii) 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
- (iv) 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)**.
- (d) 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:
- (i) 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

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

(f)

(i) 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.

(ii) 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 Negotiated FILOT Payments shall revert retroactively to ad valorem taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project does not exceed \$2,500,000 by the end of the Standard FILOT Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Standard FILOT Minimum Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to ad valorem taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to satisfy the Standard FILOT Minimum Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

In the event that the Enhanced Investment FILOT Minimum Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period, but following the Enhanced Investment FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the lowest investment level set forth in the Enhanced Investment FILOT Minimum Requirement by which the Project has qualified as an "enhanced investment" pursuant to Section 12-44-30(7) of the Negotiated FILOT Act, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for Negotiated FILOT Payments set forth in Section 5.01 hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs. 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 Project nevertheless continues to be eligible for Negotiated FILOT Payments pursuant to Section 5.01 hereof, if following the Standard FILOT Compliance Period,

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

- (iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor, which qualify as Negotiated FILOT Property shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.
- (g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within sixty (60) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

The Company acknowledges that (i) the calculation of the annual Negotiated FILOT Payment due hereunder is a function of the Department of Revenue and is wholly dependent on the parties intended to receive benefits under this Agreement timely submitting the correct annual property tax returns to the Department of Revenue, (ii) the County has no responsibility for the submission of returns or the calculation of the annual Negotiated FILOT Payment, and (iii) failure by any party to timely submit the correct annual property tax return could lead to loss of all or a portion of the Negotiated FILOT benefits and other incentives provided by this Agreement.

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

### ARTICLE VI

### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its

rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, buildto-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved upon written approval of the County, which approval may take the form of a resolution or ordinance of the Council.

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

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

Section 6.02. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and must be approved by resolution of the Council. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this Section 6.02 within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

### ARTICLE VII

### TERM; TERMINATION

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

Section 7.02. Termination. In addition to the termination rights of the County under Section 8.02(a) hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to ad valorem taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive ad valorem taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to ad valorem taxes, and the County's rights arising under Section 5.01 prior to the time of such termination shall survive any such termination.

### ARTICLE VIII

### **EVENTS OF DEFAULT AND REMEDIES**

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or any Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

- (a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County;
- (b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph** (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or

administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default; or

(c) if a Cessation of Operations occurs after the Enhanced Investment FILOT Compliance Period. For purposes of this Agreement, a "Cessation of Operations" means a publicly announced closure made by the Company of the Company's facilities in the County, including, but not limited to, the Project.

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

<u>Section 8.02.</u> <u>Remedies on Event of Default.</u> Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

- (a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;
- (b) have access to and inspect, examine, and make copies of the books and, records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof;
- (c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.
- Section 8.03. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

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

### ARTICLE IX

### **MISCELLANEOUS**

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

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

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

# (a) if to the County:

Sumter County Attn.: County Administrator 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 436-2102

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

Johnathan W. Bryan, Esquire Sumter County Attorney 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 774-3877

,

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

Ray Jones, Esquire Parker Poe Adams & Bernstein 1221 Main Street, Suite 1100 Columbia, South Carolina 29201 Phone: (803) 253-8917

(d) As to the Company:

Robert Fauvie VP of Global Operations, BD PAS 1 Becton Drive, Mail Code 321 Franklin Lakes, NJ 07417 Phone: (201) 847-7359

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

Ashleigh Kyle, Esquire Assistant General Counsel c/o Lynn Diakogiannakis 730 Central Avenue Murray Hill, NJ 07974 Phone: (207) 572-4040; (207) 480-0445

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

Tushar V. Chikhliker, Esq. Nexsen Pruet, LLC 1230 Main Street, Suite 700 (29201) P.O. Drawer 2426 Columbia, South Carolina 29202 Phone: (803) 540-2188

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

<u>Section 9.05.</u> <u>Entire Understanding.</u> This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with

the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

- <u>Section 9.06.</u> <u>Severability</u>. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.
- Section 9.07. <u>Headings and Table of Contents; References</u>. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.
- <u>Section 9.08.</u> <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.
- Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.
- <u>Section 9.11.</u> <u>Further Proceedings</u>. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

# Section 9.12. Indemnification Covenants.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all third party claims arising from the County's execution of this Agreement, performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement. The Company shall indemnify, defend and save the County harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel of the Company's choice, which is acceptable to

the County (the approval of which shall not be unreasonably withheld or delayed); and whose purported representation of the County in such matters would not present an unwaiveable conflict of interest under the South Carolina Rules of Professional Conduct, the waiveability of which shall be determined by the County, in its reasonable discretion; provided, however, that the Company shall be entitled to manage and control the defense of or respond to any claim, action, prosecution, or proceeding, for itself and any Indemnified Party; provided the Company is not entitled to settle any matter without the consent of that Indemnified Party (other than a settlement for money damages only that will be paid in full by the Company). To the extent any Indemnified Party desires to use separate legal counsel for any reason, that Indemnified Party is responsible for its independent legal costs and expenses, in whole.

- (b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct or breach of this Agreement.
- (c) An Indemnified Party may not avail itself of the indemnification of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.
- Section 9.13. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity
- Section 9.14. <u>Limitation of Liability</u>. The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

[Execution Pages to Follow]

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

# SUMTER COUNTY, SOUTH CAROLINA By: James T. McCain, Jr., Chairman, County Council, Sumter County, South Carolina [SEAL] ATTEST: By: Mary W. Blanding, Clerk to County Council, Sumter County, South Carolina BECTON, DICKINSON AND COMPANY

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

# EXHIBIT A LAND DESCRIPTION

Tax Map No. 231-00-04-001

[A MORE DETAILED PROPERTY DESCRIPTION WILL BE INSERTED POST THIRD READING]

# EXHIBIT B TRANSFERRED LAND DESCRIPTION

An approximately 8.4 acre of the Western most portion of that certain piece, parcel or tract of land
situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231
00-04-002 and an approximately 6.6 acre of the Western most portion of that certain piece, parcel o
tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax
Map No. 231-00-04-003 more particularly depicted as Lot on that certain plat recorded in Pla
Book, Page in the Office of the Register of Deeds for Sumter County, South Carolina.

# FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

SUMTER COUNTY, SOUTH CAROLINA

and

BECTON, DICKINSON AND COMPANY

Dated as of June 12, 2018

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### FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of June 12, 2018, by and between SUMTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and BECTON, DICKINSON AND COMPANY, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company");

### WITNESSETH:

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

WHEREAS, Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company") proposes to invest in certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$150,000,000, in the aggregate, in the Project and will create, or cause to be created, at least 125 new, full-time jobs, in the aggregate, within the County, as set forth in greater detail herein; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on April 24, 2018 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by Ordinance No. 18-885 enacted by the Council on June 12, 2018, 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:

### ARTICLE I

### **DEFINITIONS**

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

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

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney's fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other 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, an itemized statement of all such expenses incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other 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 Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.06** 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 Sumter 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, 2018 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2026.

"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 (8 years), however, if the Company meets the Enhanced Investment FILOT Minimum Requirement of \$150,000,000 within the Enhanced Investment FILOT Compliance Period (8 years), the County agrees to consider approving the Company's request for an extension of the Investment Period by two (2) years, which approval shall not be unreasonably withheld.

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, 2018, upon any such extension, the Investment Period will end on December 31, 2028.

"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 Special Source Credits Jobs Requirement" shall mean the creation of at least 75 new, full-time jobs in the County by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2017 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 Sumter-Lee Industrial Park by and between the County and Lee 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, 2018 and, in such event, the Enhanced Investment Standard FILOT Compliance Period will end on December 31, 2023.

"Standard FILOT Minimum Requirement" shall mean investment in the Project of not less than \$2,500,000 within the Enhanced Investment 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

<u>Section 1.02.</u> <u>References to Agreement.</u> The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

### ARTICLE II

### REPRESENTATIONS AND WARRANTIES

- <u>Section 2.01.</u> <u>Representations and Warranties by County</u>. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) 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.
- (b) On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.
- (c) 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.

- (d) 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.
- <u>Section 2.02.</u> <u>Representations and Warranties by the Company.</u> The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) The Company is a corporation validly existing and in good standing under the laws of the State of South Carolina 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.
- (b) The Company presently intends to operate the Project as facilities primarily for manufacturing medical devices.
- (c) 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.
- (d) 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.
- (e) 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.

### ARTICLE III

### **COVENANTS OF COUNTY**

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

# Section 3.02. Special Source Credits.

- (a) 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, 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 twenty-five percent (25%) of each such FILOT Payment. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Credit Eligible Entities.
- (b) The Special Source Credits to which a Credit Eligible Facility is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.
- Section 3.03. 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 designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best, commercially 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 necessary to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

<u>Section 3.04.</u> <u>Commensurate Benefits</u>. 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 of the Company, the County agrees to use its best efforts, and to take such other steps as may be reasonably necessary, 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.

### ARTICLE IV

### COVENANTS OF COMPANY

# Section 4.01. Investment in Project.

- (a) 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, 2021.
- (b) 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.

- (c) 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.
- (d) 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:
- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) 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.
- (v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.
- <u>Section 4.02.</u> <u>Failure to Satisfy Minimum Special Source Credits Jobs Requirement.</u> If the Minimum Special Source Credits Jobs Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, each of the following subsections (a) (c) shall apply:
- (a) The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the **Enhanced Investment Standard** FILOT Compliance Period.
- (b) On behalf of each Credit Eligible Entity, the Company shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Special Source Credits previously received, or to be received (upon actual receipt), by each such Credit Eligible Entity for each tax year for which each such Credit Eligible Entity is entitled to receive Special Source Credits under **Section 3.02(a)** hereof and for which a Negotiated FILOT Payment has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Enhanced Investment FILOT Compliance Period (collectively, the "Compliance Period Special Source Credits"), taking into account the highest number of new, full-time jobs created, in the aggregate, at the Project within the period set forth in the Minimum Jobs Requirement at any time during such period (the "Actual Project Jobs"), as compared to the Minimum Special Source Credits Jobs Requirement, as further detailed and illustrated in the formula and examples set forth below:

Formula:

- 1. <u>Actual Project Jobs</u> = Jobs Satisfaction Percentage [JSP] 75 new, full-time jobs
- 2. 100% JSP = Jobs Satisfaction Factor [JSF]
- 3. In the event that determination of the Jobs Satisfaction Factor results in a positive percentage figure, the Jobs Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from the Company. Any such amounts shall be due to be paid by the Company within sixty (60) days of receipt by the Company of written notice from the County of such amounts being due.
  - Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in **Section 3.02(a)** hereof; provided, however, in the event that determination of the Jobs Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the initial Special Source Credits percentage set forth in **Section 3.02(a)** hereof of twenty-five percent (25%) shall be reduced for the remaining such tax years by the percentage equal to such Jobs Satisfaction Factor, as further illustrated in the example set forth below:

# Example:

As an example, assuming a Jobs Satisfaction Factor of twenty percent (20%), the Special Source Credits percentage applicable for the remaining period would be reduced from 25% by 20% of such initial Special Source Credits percentage, down to a Special Source Credits percentage of 20%.

Section 4.03. 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 ninety (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 \$5,000.

<u>Section 4.04.</u> <u>Use of Project for Lawful Activities</u>. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior 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 4.06. 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.

<u>Section 4.07.</u> <u>Funding for Special Source Improvements</u>. 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.

County Transfer of Title to Certain Land to Company. The County Section 4.08. hereby acknowledges and represents that it has entered into that certain Contract of Sale by and between the County and Scott W. Rumph Jr. dated as of October 30, 2017, whereby the County has, under the terms and conditions set forth therein, secured the right to purchase and acquire title to certain land amounting to approximately 15 acres more particularly described as Parcels 231-00-04-002 and 231-00-04-003 in Exhibit B hereto. Following the execution and delivery of this Agreement, the County hereby agrees to, at no cost to the Company, purchase and acquire such land, and subsequently transfer title to same to the Company, as soon thereafter as reasonably practicable, but in any event no later than 90 days from such execution and delivery. Such transfer of title to the Company shall be further set forth and effected in one or more deeds, agreements, instruments or other documents to be entered into by the County and the Company, which documents shall be in form and substance mutually agreeable to the County and the Company. The County hereby acknowledges and agrees that, upon such transfer of title to such land to the Company, such land shall automatically be eligible to become a part of the Land without further action, consent or approval of the County, in the sole discretion of the Company.

### ARTICLE V

### FEES IN LIEU OF TAXES

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

(a) 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, 2020. 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.

- (b) 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:
- (i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of twenty (20) 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 twenty (20) years.
- (ii) The Negotiated FILOT shall be determined using: assessment ratio of 4%; provided, that, 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 satisfied by the end of the Standard FILOT Compliance Period, an assessment ratio of 6% shall be applicable retroactively and prospectively; (2) a millage rate of 362.2 mills, which millage rate or millage rates shall adjust every five years pursuant to Section 12-44-50(A)(1)(b)(ii) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, 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.
- (iii) 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.

- (iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.
  - (c) 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):
- (i) 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;
- (ii) 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;
- (iii) 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
- (iv) 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)**.
- (d) 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:
- (i) 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

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

(f)

(i) 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.

(ii) 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 Negotiated FILOT Payments shall revert retroactively to ad valorem taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project does not exceed \$5,000,000 2,500,000 by the end of the Standard FILOT Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Standard FILOT Minimum Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to ad valorem taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to satisfy the Standard FILOT Minimum Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

In the event that the Enhanced Investment FILOT Minimum (iii) Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period, but following the Enhanced Investment FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the lowest investment level set forth in the Enhanced Investment FILOT Minimum Requirement by which the Project has qualified as an "enhanced investment" pursuant to Section 12-44-30(7) of the Negotiated FILOT Act, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for Negotiated FILOT Payments set forth in Section 5.01 hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs. 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 Project nevertheless continues to be eligible for Negotiated FILOT Payments pursuant to Section 5.01 hereof, if following the Standard FILOT Compliance Period,

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

- (iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor, which qualify as Negotiated FILOT Property shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.
- (g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within sixty (60) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

The Company acknowledges that (i) the calculation of the annual Negotiated FILOT Payment due hereunder is a function of the Department of Revenue and is wholly dependent on the parties intended to receive benefits under this Agreement timely submitting the correct annual property tax returns to the Department of Revenue, (ii) the County has no responsibility for the submission of returns or the calculation of the annual Negotiated FILOT Payment, and (iii) failure by any party to timely submit the correct annual property tax return could lead to loss of all or a portion of the Negotiated FILOT benefits and other incentives provided by this Agreement.

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

#### ARTICLE VI

#### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its

rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, buildto-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved upon written approval of the County, which approval may take the form of a resolution or ordinance of the Council.

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

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

Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and must be approved by resolution of the Council. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this Section 6.02 within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

### ARTICLE VII

# TERM; TERMINATION

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

Section 7.02. Termination. In addition to the termination rights of the County under Section 8.02(a) hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to ad valorem taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive ad valorem taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to ad valorem taxes, and the County's rights arising under Section 5.01 prior to the time of such termination shall survive any such termination.

### ARTICLE VIII

#### EVENTS OF DEFAULT AND REMEDIES

<u>Section 8.01.</u> <u>Events of Default.</u> Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or any Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

- (a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County;
- (b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph** (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or

administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default; or

(c) if a Cessation of Operations occurs after the Enhanced Investment FILOT Compliance Period. For purposes of this Agreement, a "Cessation of Operations" means a publicly announced closure made by the Company of the Company's facilities in the County, including, but not limited to, the Project.

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

<u>Section 8.02.</u> <u>Remedies on Event of Default.</u> Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

- (a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;
- (b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof;
- (c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

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

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

### ARTICLE IX

### **MISCELLANEOUS**

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

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

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

# (a) if to the County:

Sumter County Attn.: County Administrator 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 436-2102

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

Johnathan W. Bryan, Esquire Sumter County Attorney 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 774-3877 (c) with a copy (which shall not constitute notice) to:

Ray Jones, Esquire Parker Poe Adams & Bernstein 1221 Main Street, Suite 1100 Columbia, South Carolina 29201 Phone: (803) 253-8917

(d) As to the Company:

Robert Fauvie VP of Global Operations, BD PAS 1 Becton Drive, Mail Code 321 Franklin Lakes, NJ 07417 Phone: (201) 847-7359

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

Ashleigh Kyle, Esquire Assistant General Counsel c/o Lynn Diakogiannakis 730 Central Avenue Murray Hill, NJ 07974 Phone: (207) 572-4040; (207) 480-0445

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

Tushar V. Chikhliker, Esq. Nexsen Pruet, LLC 1230 Main Street, Suite 700 (29201) P.O. Drawer 2426 Columbia, South Carolina 29202 Phone: (803) 540-2188

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

<u>Section 9.05.</u> <u>Entire Understanding.</u> This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with

the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

- <u>Section 9.06.</u> <u>Severability</u>. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.
- Section 9.07. <u>Headings and Table of Contents; References.</u> The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.
- <u>Section 9.08.</u> <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.
- Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.
- <u>Section 9.11.</u> <u>Further Proceedings</u>. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

# Section 9.12. Indemnification Covenants.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all third party claims arising from the County's execution of this Agreement, performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement. The Company shall indemnify, defend and save the County harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel of the Company's choice, which is acceptable to

the County (the approval of which shall not be unreasonably withheld or delayed); and whose purported representation of the County in such matters would not present an unwaiveable conflict of interest under the South Carolina Rules of Professional Conduct, the waiveability of which shall be determined by the County, in its reasonable discretion; provided, however, that the Company shall be entitled to manage and control the defense of or respond to any claim, action, prosecution, or proceeding, for itself and any Indemnified Party; provided the Company is not entitled to settle any matter without the consent of that Indemnified Party (other than a settlement for money damages only that will be paid in full by the Company). To the extent any Indemnified Party desires to use separate legal counsel for any reason, that Indemnified Party is responsible for its independent legal costs and expenses, in whole.

- (b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct or breach of this Agreement.
- (c) An Indemnified Party may not avail itself of the indemnification of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.
- Section 9.13. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity
- Section 9.14. <u>Limitation of Liability</u>. The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

[Execution Pages to Follow]

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

# SUMTER COUNTY, SOUTH CAROLINA

	By:  James T. McCain, Jr., Chairman, County Council, Sumter County, South Carolina
[SEAL]	
ATTEST:	
By: Mary W. Blanding, Clerk to Cour Sumter County, South Carolina	nty Council,
	BECTON, DICKINSON AND COMPANY
	By:
	Name:

# EXHIBIT A LAND DESCRIPTION

Tax Map No. 231-00-04-001

[A MORE DETAILED PROPERTY DESCRIPTION WILL BE INSERTED POST THIRD READING]

# EXHIBIT B TRANSFERRED LAND DESCRIPTION

An approximately 8.4 acre of the Western most portion of that certain piece, parcel or tract of land
situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231-
00-04-002 and an approximately 6.6 acre of the Western most portion of that certain piece, parcel or
tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax
Map No. 231-00-04-003 more particularly depicted as Lot on that certain plat recorded in Plat
Book, Page in the Office of the Register of Deeds for Sumter County, South Carolina.

# **SUMTER COUNTY ORDINANCE NO. 18-886**

AN ORDINANCE (1) AMENDING THE MASTER AGREEMENT GOVERNING THE SUMTER-LEE INDUSTRIAL PARK DATED DECEMBER 31, 2012 BETWEEN LEE COUNTY, SOUTH CAROLINA AND SUMTER COUNTY, SOUTH CAROLINA SO AS TO ENLARGE THE BOUNDARIES OF THE PARK TO INCLUDE CERTAIN PROPERTY OWNED AND/OR OPERATED BY BECTON, DICKINSON AND COMPANY, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT BULLDOG; AND (2) AUTHORIZING OTHER MATTERS RELATED THERETO.

WHEREAS, Sumter County, South Carolina, a political subdivision of the State of South Carolina ("Sumter County"), acting by and through its County Council (the "Sumter County Council"), and Lee County, South Carolina, a political subdivision of the State of South Carolina ("Lee County"), acting by and through its County Council (the "Lee County Council"), are authorized pursuant to Article VIII, Section 13(D) of the Constitution of the State of South Carolina and Title 4, Chapter 1 of the Code of Laws of the State of South Carolina 1976, as amended, and specifically Section 4-1-170 thereof (collectively, the "Park Act"), to develop jointly an industrial or business park within the geographical boundaries of one or more of the member counties; and

WHEREAS, pursuant to the Park Act, Sumter County and Lee County previously entered into that certain Master Agreement Governing the Sumter-Lee Industrial Park dated December 31, 2012 (the "Park Agreement"), whereby they agreed to develop a multi-county industrial/business park including within its boundaries property located in Sumter County and Lee County (the "Park"); and

WHEREAS, pursuant to Section 1.01 of the Park Agreement, Sumter County is authorized to unilaterally increase the Park's boundaries, from time to time by adopting an approving ordinance approving such increase in the Park's boundaries; and

WHEREAS, Sumter County and Lee County desire to amend the Park Agreement to enlarge the boundaries of the Park to include certain property located in Sumter County now or hereafter owned and/or operated by Becton, Dickinson and Company, a company previously identified as Project Bulldog, as identified and described on Exhibit A hereto (the "Becton, Dickinson and Company Property").

# NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL, as follows:

<u>SECTION I.</u> Sumter County hereby approves the amendment of the Park Agreement, and specifically Exhibit A-2 thereto, to enlarge the boundaries of the Park to include the Becton, Dickinson and Company Property.

SECTION II. 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, unconstitutional, or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

<u>SECTION III</u>. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall be effective after third and final reading.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 12th day of June, 2018.

# SUMTER COUNTY, SOUTH CAROLINA

F	By:
[SEAL]	
Attest:	
By:Mary W. Blanding, Clerk to Cour	nty Council,
Sumter County, South Carolina	

First Reading: April 24, 2018
Second Reading: May 22, 2018
Public Hearing: June 12, 2018
Third Reading: June 12, 2018

# EXHIBIT A LAND DESCRIPTION

# BECTON, DICKINSON AND COMPANY PROPERTY

An approximately 8.4 acre of the Western most portion of that certain piece, parcel or tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231-00-04-002 and an approximately 6.6 acre of the Western most portion of that certain piece, parcel or tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231-00-04-003 more particularly depicted as Lot \_\_ on that certain plat recorded in Plat Book \_\_\_\_, Page \_\_\_\_ in the Office of the Register of Deeds for Sumter County, South Carolina.

#### ORDINANCE NO. 18-889

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS, SERIES 2018A, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$2,500,000; FIXING THE FORM AND DETAILS OF THE BONDS; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE CERTAIN DETAILS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA, AS FOLLOWS:

<u>SECTION 1</u>. <u>Findings and Determinations</u>. The County Council (the "County Council"), of Sumter County, South Carolina (the "County"), hereby finds and determines:

- (a) Pursuant to Section 4-9-10, Code of Laws of South Carolina 1976, as amended (the "S.C. Code"), and the results of a referendum held in accordance therewith, the Council-Administrator form of government was adopted and the County Council constitutes the governing body of the County.
- (b) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended (the "Constitution"), provides that each county shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe by general law. Such debt must be incurred for a public purpose and a corporate purpose in an amount not exceeding eight percent (8%) of the assessed value of all taxable property of such county.
- (c) Pursuant to Title 4, Chapter 15 of the S.C. Code (the same being and hereinafter referred to as the "County Bond Act"), the governing bodies of the several counties of the State of South Carolina (the "State") may each issue general obligation bonds to defray the cost of any authorized purpose and for any amount not exceeding its applicable constitutional limit.
- (d) The County Bond Act provides that as a condition precedent to the issuance of bonds an election be held and the result be favorable thereto. Title 11, Chapter 27 of the S.C. Code provides that if an election be prescribed by the provisions of the County Bond Act, but not be required by the provisions of Article X of the Constitution, then in every such instance, no election need be held (notwithstanding the requirement therefor) and the remaining provisions of the County Bond Act shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions.
- (e) Pursuant to Ordinance No. 12-772 adopted by County Council on August 14, 2012, the County has adopted Written Procedures related to Tax-Exempt Debt.
- (f) The assessed value of all the taxable property in the County as of June 30, 2017, is \$311,423,780. Eight percent (8%) of the assessed value is \$24,913,902. As of the date hereof, the outstanding general obligation debt of the County subject to the limitation imposed by Article X, Section 14(7) of the Constitution is \$10,359,000. Thus, the County may incur not exceeding \$14,554,902 of additional general obligation debt within its applicable debt limitation.

(g) It is necessary and in the best interest of the County for the County Council to provide for the issuance and sale of general obligation bonds in an amount of not exceeding \$2,500,000, the proceeds of which will be used for: (i) funding capital projects (the "Projects"); (ii) paying costs of issuance of the Bonds (hereinafter defined); and (iii) such other lawful purposes as the Council shall determine.

SECTION 2. Authorization and Details of Bonds. Pursuant to the aforesaid provisions of the Constitution and laws of the State, there is hereby authorized to be issued not exceeding \$2,500,000 aggregate principal amount of general obligation bonds (the "Bonds") of the County, for the purpose set forth in Section 1(g) and other costs incidental thereto, including without limiting the generality of such other costs, engineering, financial and legal fees.

The Bonds shall be issued as fully registered bonds registrable as to principal and interest; shall be dated their date of delivery to the initial purchaser(s) thereof; shall be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing each year; shall be subject to redemption if such provision is in the best interest of the County; shall be numbered from R-1 upward; shall bear interest from their date payable at such times as hereinafter designated by the County Administrator and/or his lawfully-authorized designee at such rate or rates as may be determined at the time of the sale thereof; and shall mature serially in successive annual installments as determined by the County Administrator and/or his lawfully-authorized designee.

SECTION 3. Delegation of Authority to Determine Certain Matters Relating to the Bonds. Without further authorization, the County Council hereby delegates to the County Administrator and/or his lawfully-authorized designee the authority to determine: (a) the par amount of the Bonds; (b) the maturity dates of the Bonds and the respective principal amounts maturing on such dates; (c) the interest payment dates of the Bonds; (d) redemption provisions, if any, for the Bonds; (e) the date and time of sale of the Bonds; (f) whether the Bonds will be publicly traded or placed with a bank; (g) the authority to receive bids on behalf of the County Council and to award the sale of the Bonds in accordance with the terms of the Notice of Sale or Request for Proposals for the Bonds.

After the sale of the Bonds, the County Administrator and/or his lawfully-authorized designee shall submit a written report to County Council setting forth the details of the Bonds as set forth in this paragraph.

SECTION 4. Registration, Transfer and Exchange of Bonds. The County shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

Each Bond shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such Bond the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee a new fully registered Bond or Bonds, of the same aggregate principal amount, interest rate, and maturity as the surrendered Bond. Any Bond surrendered in exchange for a new registered Bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name any fully registered Bond shall be registered upon the registry books as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring Bonds is exercised, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of Bonds during the fifteen (15) days preceding an interest payment date on such Bonds.

SECTION 5. Record Date. The County hereby establishes a record date for the payment of interest or for the giving of notice of any proposed redemption of Bonds, and such record date shall be the fifteenth (15th) day (whether or not a business day) preceding an interest payment date on such Bond or in the case of any proposed redemption of Bonds, such record date shall be the fifteenth (15th) day (whether or not a business day) prior to the giving of notice of redemption of bonds.

SECTION 6. Mutilation, Loss, Theft or Destruction of Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar shall authenticate and deliver at the principal office of the Registrar, or send by registered mail to the owner thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in an amount as may be required by the laws of the State or such greater amount as may be required by the County and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

SECTION 7. Execution of Bonds. The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chair of the County Council attested by the manual or facsimile signature of the Clerk to the County Council under the seal of the County impressed, imprinted or reproduced thereon; provided, however, the facsimile signatures appearing on the Bonds may be those of the officers who are not in office on the date of enactment of this Ordinance. The execution of the Bonds in such fashion shall be valid and effectual, notwithstanding any subsequent change in such offices. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. Each Bond shall bear a certificate of authentication manually executed by the Registrar in substantially the form set forth herein.

<u>SECTION 8</u>. Form of Bonds. The Bonds and the certificate of authentication shall be in substantially the form set forth in Exhibit A attached hereto.

SECTION 9. Security for Bonds. The full faith, credit, and taxing power of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Bonds as they respectively mature, and for the creation of such sinking fund as may be necessary therefor. There shall be levied annually by the County Auditor and collected by the County Treasurer, in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the County sufficient to pay the principal of and interest on the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

The County Council shall give the County Auditor and County Treasurer written notice of the delivery of and payment for the Bonds and they are hereby directed to levy and collect annually, on all taxable property in the County, a tax, without limit, sufficient to pay the principal of and interest on the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

<u>SECTION 10</u>. <u>Notice of Public Hearing</u>. The County Council hereby ratifies and approves the publication of a notice of public hearing regarding the Bonds and this Ordinance, such notice in substantially the form attached hereto as Exhibit B, having been published in *The Item*, a newspaper of general circulation in the County, not less than 15 days prior to the date of such public hearing.

SECTION 11. Initiative and Referendum. The County Council hereby delegates to the County Administrator and/or his lawfully-authorized designee the authority to determine whether the Notice prescribed under the provisions of Section 5 of Title 11, Chapter 27 of the S.C. Code relating to the initiative and referendum provisions contained in Title 4, Chapter 9, Article 13 of the S.C. Code shall be given with respect to this Ordinance. If said Notice is given, the County Administrator and/or his lawfully-authorized designee are authorized to cause such Notice to be published in a newspaper of general circulation in the County, in substantially the form attached hereto as Exhibit C.

<u>SECTION 12.</u> Exemption from State Taxes. Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the S.C. Code from all State, county, municipal, County and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

SECTION 13. Reimbursement of Certain Expenditures. This Ordinance shall constitute the County's declaration of official intent pursuant to Regulation §1.150-2 of the Internal Code of 1986, as amended (the "Code") to reimburse the County from a portion of the proceeds of the Bonds for expenditures it anticipates incurring (the "Expenditures") with respect to the Project prior to the issuance of the Bonds. The Expenditures which are reimbursed are limited to Expenditures which are: (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Regulation §1.150-2 of the Code) under general federal income tax principals; or (2) certain de minimis or preliminary Expenditures satisfying the requirements of Regulation §1.150-2(f) of the Code. The source of funds for the Expenditures with respect to the Project will be the County's reserve funds or other legally available funds. To be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid; or (b) the date such projects were placed in service, but in no event more than three (3) years after the original Expenditures.

<u>SECTION 14</u>. <u>Tax Covenants</u>. The County hereby covenants and agrees with the holders of the Bonds that it will not take any action which will, or fail to take any action which failure will, cause

interest on the Bonds to become includable in the gross income of the holders of the Bonds for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Bonds. The County further covenants and agrees with the holders of the Bonds that no use of the proceeds of the Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Bonds would have caused the Bonds to be "arbitrage bonds," as defined in Section 148 of the Code, and to that end the County hereby shall:

- (a) comply with the applicable provisions of Sections 103 and 141 through 150 of the Code and any regulations promulgated thereunder so long as the Bonds are outstanding;
- (b) establish such funds, make such calculations and pay such amounts, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and
- (c) make such reports of such information at the time and places required by the Code.

SECTION 15. Book-Entry System. The Bonds initially issued (the "Initial Bonds") will be eligible securities for the purposes of the book-entry system of transfer maintained by The Depository Trust Company, New York, New York ("DTC"), and transfers of beneficial ownership of the Initial Bonds shall be made only through DTC and its participants in accordance with rules specified by DTC. Such beneficial ownership must be of \$5,000 principal amount of Bonds of the same maturity or any integral multiple of \$5,000.

The Initial Bonds shall be issued in fully-registered form, one Bond for each of the maturities of the Bonds, in the name of Cede & Co., as the nominee of DTC. When any principal of or interest on the Initial Bonds becomes due, the Paying Agent, on behalf of the County, shall transmit to DTC an amount equal to such installment of principal and interest. DTC shall remit such payments to the beneficial owners of the Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to DTC in accordance with the provisions of the Ordinance.

If (a) DTC determines not to continue to act as securities depository for the Bonds, or (b) the County has advised DTC of its determination that DTC is incapable of discharging its duties, the County shall attempt to retain another qualified securities depository to replace DTC. Upon receipt by the County the Initial Bonds together with an assignment duly executed by DTC, the County shall execute and deliver to the successor securities depository Bonds of the same principal amount, interest rate, and maturity registered in the name of such successor.

If the County is unable to retain a qualified successor to DTC or the County has determined that it is in its best interest not to continue the book-entry system of transfer or that interests of the beneficial owners of the Bonds might be adversely affected if the book-entry system of transfer is continued (the County undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify beneficial owners of the Bonds by mailing an appropriate notice to DTC, upon receipt by the County the Initial Bonds together with an assignment duly executed by DTC, the County shall execute, authenticate and deliver to the DTC participants Bonds in fully-registered form, in substantially the form set forth in Section 8 of this Ordinance in the denomination of \$5,000 or any integral multiple thereof.

Notwithstanding the foregoing, at the request of the purchaser, the Bonds will be issued as one single fully-registered bond and not issued through the book-entry system.

SECTION 16. Sale of Bonds, Form of Notice of Sale. The Bonds shall be offered for public sale on the date and at the time designated by the County Administrator and/or his lawfully-authorized designee. A Notice of Sale in substantially the form set forth as Exhibit D attached hereto shall be distributed to prospective bidders and a summary of such Notice of Sale shall be published in a newspaper of general circulation in the State and/or in a financial publication published in the City of New York not less than seven (7) days prior to the date set for such sale.

SECTION 17. Preliminary and Final Official Statement. The County Council hereby authorizes and directs the County Administrator and/or his lawfully-authorized designee to prepare, or cause to be prepared, a Preliminary Official Statement to be distributed to prospective purchasers of the Bonds together with the Notice of Sale. The County Council authorizes the County Administrator and/or his lawfully-authorized designee to designate the Preliminary Official Statement as "final" for purposes of Rule 15c2-12 of the Securities Exchange Commission. The County Administrator and/or his lawfully-authorized designee are further authorized to see to the completion of the final form of the Official Statement upon the sale of the Bonds so that it may be provided to the purchaser of the Bonds.

SECTION 18. Filings with Central Repository. In compliance with Section 11-1-85 of the Code, the County covenants that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of the annual financial report of the County within thirty (30) days from the County's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which adversely affects more than five (5%) percent of the revenues of the County or the County's tax base.

SECTION 19. Continuing Disclosure. In compliance with the Securities and Exchange Commission Rule 15c2-12 (the "Rule") the County covenants and agrees for the benefit of the holders from time to time of the Bonds to execute and deliver prior to closing, and to thereafter comply with the terms of a Continuing Disclosure Certificate in substantially the form appearing as Exhibit E attached to this Ordinance. In the event of a failure of the County to comply with any of the provisions of the Continuing Disclosure Certificate, an event of default under this Ordinance shall not be deemed to have occurred. In such event, the sole remedy of any bondholder or beneficial owner shall be an action to compel performance by this Ordinance.

SECTION 20. Bank Placement. In the event the Bonds are sold to a bank pursuant to Section 16 above, the requirements of Sections 15, 17 and 19 hereof shall not be applicable, and the County may serve as Registrar/Paying Agent as described in Section 4 hereof. Also, forms of the attachments to this Ordinance will be revised as necessary and appropriate.

<u>SECTION 21</u>. <u>Deposit and Use of Proceeds</u>. The proceeds derived from the sale of the Bonds shall be deposited with the County Treasurer in a special fund and shall be applied solely to the purposes for which the Bonds have been issued, including payment of costs of issuance of the Bonds.

SECTION 22. <u>Defeasance</u>. The obligations of the County under this Ordinance and the pledges, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any portion of the Bonds, and such Bond or Bonds shall no longer be deemed to be outstanding hereunder when:

- (a) such Bond or Bonds shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent and is canceled or subject to cancellation by the County or the Paying Agent; or
- (b) payment of the principal of and interest on such Bonds either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with a corporate trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment, or (2) Government Obligations (hereinafter defined) maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment and all necessary and proper fees, compensation and expenses of the Paying Agent. At such time as the Bonds shall no longer be deemed to be outstanding hereunder, such Bonds shall cease to draw interest from the due date thereof and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

"Government Obligations" shall mean any of the following:

- (i) direct obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which, in the opinion of the Attorney General of the United States, is fully and unconditionally guaranteed by the United States of America;
- (ii) non-callable, U. S. Treasury Securities State and Local Government Series ("SLGS");
- (iii) general obligation bonds of the State, its institutions, agencies, counties and political subdivisions which, at the time of purchase, carry a AAA rating from Standard & Poor's or a Aaa rating from Moody's Investors Service; and
- (iv) a defeasance obligation as defined in Section 6-5-10 of the S.C. Code as such as may be amended from time to time.
- (c) Such Bond or Bonds shall be defeased as provided in Section 11-14-110 of the S.C. Code as such may be amended from time to time.

SECTION 23. Miscellaneous. The County Council hereby authorizes the Chair of the County Council, the Clerk to the County Council, County Administrator, and County Attorney to execute such documents and instruments as necessary to effect the issuance of the Bonds. The County Council hereby retains McNair Law Firm, P.A., as Bond Counsel and Compass Municipal Advisors, LLC, as Financial Advisor in connection with the issuance of the Bonds. The County Administrator is authorized to execute such contracts, documents or engagement letters as may be necessary and appropriate to effectuate these engagements.

All rules, regulations, Ordinances, and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bonds are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its adoption.

Enacted this	_ day of June, 2018.	
		SUMTER COUNTY, SOUTH CAROLINA
		By: Chair, County Council
(SEAL)		
ATTEST:		
Clerk to County Council		
Date of First Reading: Publication of Notice of Public Hearing:	May 22, 2018	
Date of Second Reading:		
Date of Public Hearing:	June 12, 2018	
Date of Third Reading:	June 12, 2018	

# **FORM OF BOND**

# UNITED STATES OF AMERICA STATE OF SOUTH CAROLINA SUMTER COUNTY GENERAL OBLIGATION BOND, SERIES 2018A

No. R-			
INTEREST RATE	MATURITY _DATE_	ORIGINAL ISSUE DATE	<u>CUSIP</u>
REGISTERED HO	OLDER:		
PRINCIPAL AMO	OUNT:		DOLLARS
"County"), is just specified above, us in the City of principal amount Interest on this 1 or mailed to the per maintained by the (the "Registrar"), each semiannual is coin or currency or specified above, using the coin of the city of the county of the count	ly indebted and, for value or registered assigns, the pon presentation and surrence—, State of	PRESENTS, that Sumter Correceived, hereby promises to principal amount specified a der of this Bond at the principal (the "Paying Agent"), rate per annum specified about 1, 20, and semiannuathis Bond matures, and shall and is registered on the regise, in the fifteenth (15th) day of the principal of and interest on the rest on this fully registered Borrest on the principal of and interest on the rest on this fully registered Borrest on this fully registered Borrest on the principal of and interest on the principal of an analysis of the princ	pay to the registered holder above on the maturity date al office of, and to pay interest on such ove until this Bond matures. ally on 1 and be payable by check or draft tration books of the County, ne calendar month preceding his Bond are payable in any ment, legal tender for public
	bligatory for any purpose, un	any benefit under the Ordina ntil the certificate of authentic	
creation of such s County are irrevo collected by the collected, a tax, w	inking fund as may be necestably pledged and there should be reasured of the County, in ithout limit, on all taxable p	pal and interest, as they respond and interest, as they respond the full faith, could be levied annually by the at the same manner as other roperty in the County sufficient ture and to create such sinking	redit and taxing power of the Auditor of the County and county taxes are levied and nt to pay the principal of and

therefor.

number, denomination, date of maturity, red Dollars (\$ Article X of the Constitution of the State of South Carolina 4, Chapter 15, Code of Laws of South Carolina	of like date of original issue, tenor and effect, except as to demption provisions, and rate of interest, aggregating), issued pursuant to and in accordance with ath Carolina, 1895, as amended (the "Constitution"); Title 1976, as amended; Title 11, Chapter 27, Code of Laws of the No. 18-889 duly enacted by the County Council on
[Redemption Provisions]	
for that purpose at the principal office of the Rauthorized attorney upon surrender of this satisfactory to the Registrar duly executed by Thereupon a new fully registered Bond or Borredemption provisions, if any, and maturity s provided in the Ordinance. The County, the person in whose name this Bond is registered as	n the Ordinance, only upon the books of the County kept Registrar by the registered holder in person or by his duly Bond together with a written instrument of transfer by the registered holder or his duly authorized attorney, and of the same aggregate principal amount, interest rate hall be issued to the transferee in exchange therefor as Registrar and the Paying Agent may deem and treat the as the absolute owner hereof for the purpose of receiving f and interest due hereon and for all other purposes.
exempt from all State, county, municipal, Cou	arolina (the "State"), this Bond and the interest hereon are unty and all other taxes or assessments, except estate or or special, whether imposed for the purpose of general
and laws of the State to exist, to happen and to exist, have happened and have been performed law; that the amount of this Bond, together with applicable limitation of indebtedness under the the levy and collection of a tax, without limit, or	Il acts, conditions and things required by the Constitution be performed precedent to or in the issuance of this Bond in regular and due time, form and manner as required by all other indebtedness of the County, does not exceed the e laws of the State; and that provision has been made for on all taxable property in the County sufficient to pay the ame shall respectively mature and to create such sinking
be signed with the manual or facsimile signat	COUNTY, SOUTH CAROLINA, has caused this Bond to ture of the Chair of the County Council, attested by the he County Council and the seal of the County impressed,
	SUMTER COUNTY, SOUTH CAROLINA
(SEAL)	Chair, County Council
ATTEST:	
Clerk, County Council	

# [FORM OF REGISTRAR'S CERTIFICATE OF AUTHENTICATION]

Date of Authentication:	
This bond is one of the Bonds County, South Carolina.	described in the within mentioned Ordinance of Sumter
	as Registrar
	By:Authorized Officer
The following abbreviations, w be construed as though they were written out in	then used in the inscription on the face of this Bond shall full according to applicable laws or regulations.
TEN COM - As tenants in common	UNIF GIFT MIN. ACT
TEN ENT - As tenants by the entireties	Custodian (Minor)
JT TEN - As joint tenants with right of survivorship and not as tenants in	under Uniform Gifts to Minors
common	(State)
Additional abbreviations may also be us	sed though not in list above.
[FORM C	OF ASSIGNMENT]
FOR VALUE RECEIVED, the	undersigned sells, assigns and transfers unto
the within Bond and does hereby irrevocably	address of Transferee)  constitute and appoint attorney to registration thereof, with full power of substitution in the
Signature Guaranteed:	(Authorizing Officer)
Signature(s) must be guaranteed by an institution which is a participant in the Securities	NOTICE: The signature to this agreement this agreement must correspond with the name of the registered holder as it appears

A-4

upon the face of the within Bond in every

or any change whatever.

particular, without alteration or enlargement

program.

Transfer Agents Medallion

Program ("STAMP") or similar

A copy of the final approving opinion to be rendered shall be attached to each Bond and preceding the same a certificate shall appear, which shall be signed on behalf of the County with a manual or facsimile signature of the Clerk to the County Council. The certificate shall be in substantially the following form:

# [FORM OF CERTIFICATE]

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the complete final approving opinion (except for date and letterhead) of McNair Law Firm, P.A., Columbia, South Carolina, approving the issue of Bonds of which the within Bond is one, the original of which opinion was manually executed, dated and issued as of the date of delivery of and payment for the Bonds and a copy of which is on file with the County Council of Sumter County, South Carolina.

By:		
-	Clerk, County Council	

SUMTER COUNTY, SOUTH CAROLINA

# FORM OF NOTICE OF PUBLIC HEARING

#### NOTICE OF PUBLIC HEARING

The purpose of the public hearing is to consider an Ordinance providing for the issuance and sale of General Obligation Bonds, Series 2018A or such other appropriate series designation, of Sumter County, South Carolina, in the principal amount of not exceeding \$2,500,000 (the "Bonds"). The proceeds of the Bonds will be used for: (i) funding capital projects (ii) paying costs of issuance of the Bonds; and (iii) such other lawful purposes as the Council shall determine.

The full faith, credit, and taxing power of the County will be pledged for the payment of the principal of and interest on the Bonds and a tax, without limit, will be levied on and collected annually, in the same manner other County taxes are levied and collected, on all taxable property of the County sufficient to pay to principal of and interest on the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

At the public hearing all taxpayers and residents of the County and any other interested persons who appear will be given an opportunity to express their views for or against the Ordinance and the issuance of the Bonds.

COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA

### FORM OF NOTICE

#### NOTICE

NOTICE IS HEREBY GIVEN that the County Council (the "County Council") of Sumter County, South Carolina (the "County"), on \_\_\_\_\_\_ enacted Ordinance No. \_\_\_\_ entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS, SERIES 2018A, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$2,500,000; FIXING THE FORM AND DETAILS OF THE BONDS; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE CERTAIN DETAILS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF AND OTHER MATTERS RELATING THERETO" (the "Ordinance"). The Ordinance authorized the issuance and sale of not exceeding \$2,500,000 General Obligation Bonds, Series 2018A (the "Bonds") of the County.

The proceeds of the Bonds will be used for any one or more of the following purposes: (i) funding capital projects; (ii) paying costs of issuance of the Bonds; and (iii) such other lawful purposes as the County Council shall determine.

Pursuant to Section 11-27-40(8) of the South Carolina Code of Laws, 1976, as amended, unless a notice, signed by not less than five (5) qualified electors of the County, of the intention to seek a referendum is filed both in the office of the Clerk of Court of the County and with the Clerk of the County Council, the initiative and referendum provisions of South Carolina law, Sections 4-9-1210 to 4-9-1230, South Carolina Code of Laws 1976, as amended, shall not be applicable to the Ordinance. The notice of intention to seek a referendum must be filed within twenty (20) days following the publication of this notice of the adoption of the aforesaid Ordinance in a newspaper of general circulation in Sumter County.

COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA

### FORM OF NOTICE OF SALE

\$\_\_\_\_\_ GENERAL OBLIGATION BONDS, SERIES 2018A,
OF SUMTER COUNTY, SOUTH CAROLINA

Time and Place of Sale: NOTICE IS HEREBY GIVEN that sealed bids and electronic bids will
be received on behalf of Sumter County, South Carolina (the "County"), until 11:00 a.m., South Carolina
time, on,, 2018, at which time said proposals will be publicly opened for the purchase of \$, General Obligation Bonds, Series 2018A, of the County (the
"Bonds").
<u>Bids:</u> Electronic proposals only submitted through i-Deal's Parity Electronic Bid Submission System ("Parity") will be accepted. No electronic bids from any other providers of electronic bidding services will be accepted. Information about the electronic bidding services of Parity may be obtained from i-Deal, 1359 Broadway, 2 <sup>nd</sup> Floor, New York, New York 10018, Customer Support, telephone (212) 849-5021.
Book-Entry-Only Bonds: The Bonds will be issued in fully-registered form. One Bonds representing each maturity will be issued to and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), as registered owner of the Bonds and each such Bond will be immobilized in the custody of DTC. DTC will act as securities depository for the Bonds. Individual purchases will be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing each year; Purchasers will not receive physical delivery of certificates representing their interest in the Bonds purchased. The winning bidder, as a condition to delivery of the Bonds, will be required to deposit the Bond certificates representing each maturity with DTC.
The Bonds will be issued in fully-registered form registered as to principal and interest; will be dated, 2018; will be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing in each year; and will mature serially in successive annual installments on in each of the years and in the principal amounts as follows:
Year Principal Amount* Year Principal Amount*
*Preliminary, subject to adjustment.  Adjustment of Maturity Schedule. The County reserves the right, in its sole discretion, either to

precedent to the award of the Bonds, bidders must disclose to the County in connection with their respective bids the price (or yield to maturity) at which each maturity of the Bonds will be reoffered to the public.

decrease or increase the principal amount of the Bonds maturing in any year (all calculations to be rounded to the near \$5,000), provided that any such decrease or increase shall not exceed 10% of the Bonds. Such adjustment(s), if any, shall be made within twenty-four (24) hours of the award of the Bonds. In order to calculate the yield on the Bonds for federal tax law purposes and as a condition

In the event of any adjustment of the maturity schedule for the Bonds as described herein, no rebidding or recalculation of the proposals submitted will be required or permitted. Nevertheless, the

award of the Bonds will be made to the bidder whose proposal produces the lowest true interest cost solely on the basis of the Bonds offered, without taking into account any adjustment in the amount of the Bonds pursuant to this paragraph.

	The Bonds will bear interest from the date thereof payable semiannually on				
and _	of each year, commencing	, until they mature.			
	[Redemption Provisions]				

Registrar/Paying Agent: Regions Bank, Atlanta, Georgia will serve as Registrar/Paying Agent for the Bonds.

Bid Requirements: Bidders shall specify the rate or rates of interest per annum which the Bonds are to bear, to be expressed in multiples of 1/20 or 1/8 of 1% and the interest rate specified for any maturity shall not be lower than the interest rate specified for any previous maturity. Bidders are not limited as to the number of rates of interest named, but the rate of interest on each separate maturity must be the same single rate for all Bonds of that maturity from their date to such maturity date. A bid for less than all the Bonds, a bid at a price less than par or a bid which includes a premium in excess of 10% of the par amount of the Bonds will not be considered. In addition to the bid price, the successful bidder must pay accrued interest from the date of the Bonds to the date of full payment of the purchase price.

Award of Bid. The Bonds will be awarded to the bidder or bidders offering to purchase the Bonds at the lowest true interest cost (TIC) to the County. The TIC will be the nominal interest rate which, when compounded semiannually and used to discount all debt service payments on the Bonds (computed at the interest rates specified in the bid and on the basis of a 360-day year of twelve 30-day months) to the dated date of the Bonds, results in an amount equal to the price bid for the Bonds. In the case of a tie bid, the winning bid will be awarded by lot. The County reserves the right to reject any and all bids or to waive irregularities in any bid. Bids will be accepted or rejected no later than 3:00 p.m., South Carolina time, on the date of the sale.

Security: The full faith, credit, and taxing power of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Bonds as they respectively mature, and for the creation of such sinking fund as may be necessary therefor. There shall be levied annually by the Auditor of the County and collected by the Treasurer of the County, in the same manner as other county taxes are levied and collected, an ad valorem tax, without limit, on all taxable property in the County sufficient to pay the principal and interest of the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

Good Faith Deposit: No good faith deposit is required.

Official Statement: Upon the award of the Bonds, the County will prepare an official statement (the "Official Statement") in substantially the same form as the preliminary official statement subject to minor additions, deletions and revisions as required to complete the Official Statement. Within seven (7) business days after the award of the Bonds, the County will deliver the Official Statement to the successful bidder in sufficient quantity to comply with Rule G-32 of the Municipal Securities Rulemaking County Council. The successful bidder agrees to supply to the County all necessary pricing information and any Underwriter identification necessary to complete the Official Statement within 24 hours after the award of the Bonds.

Continuing Disclosure: In order to assist the bidders in complying with S.E.C. Rule 15c2-12(b)(5), the County will undertake, pursuant to an ordinance and a continuing disclosure certificate, to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement.

<u>Legal Opinion</u>: The County Council shall furnish upon delivery of the Bonds the final approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, which opinion shall accompany each Bond, together with the usual closing documents, including a certificate of the County that no litigation is pending affecting the Bonds.

<u>Certificate as to Issue Price</u>: [TO BE PROVIDED]

<u>Financial Advisor</u>: Compass Municipal Advisors, LLC has acted as Financial Advisor to the School District in connection with the issuance of the Bonds. In this capacity, Compass Municipal Advisors, LLC provided technical assistance in the preparation of the offering documents and assisted the School District in preparing for this financing.

<u>Delivery</u>: The Bonds will be delivered on or about \_\_\_\_\_\_, 2018, in New York, New York, at the expense of the County. The balance of the purchase price then due, including the amount of accrued interest, must be paid in federal funds or other immediately available funds.

Additional Information: The Preliminary Official Statement of the County with respect to the Bonds is available via the internet at officialstatements.compassmuni.com and will be furnished to any person interested in bidding for the Bonds upon request. The Preliminary Official Statement shall be reviewed by bidders prior to submitting a bid. Bidders may not rely on this Notice of Sale as to the complete information concerning the Bonds. Persons seeking additional information should communicate with the County's bond counsel, Francenia B. Heizer, Esquire, McNair Law Firm, P.A., 1221 Main Street, Suite 1800, Columbia, South Carolina, 29201, telephone (803) 799-9800, e-mail: <a href="mailto:theizer@mcnair.net">theizer@mcnair.net</a> or with the County's financial advisor, R. Michael Gallagher, Director, Compass Municipal Advisors, LLC, 1310 Pulaski Street, Columbia, South Carolina 29201; telephone (803) 765-1004; e-mail: mike.gallagher@compassmuni.com.

SUMTER COUNTY, SOUTH CAROLINA

### FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by Sumter County, South Carolina (the "County") in connection with the issuance of \$\_\_\_\_\_\_ General Obligation Bonds, Series 2018A (the "Bonds"). The Bonds are being issued pursuant to an Ordinance adopted by the County Council of the County (the "Council"). The County covenants and agrees as follows:

<u>SECTION 1.</u> <u>Purpose of the Disclosure Certificate</u>. This Disclosure Certificate is being executed and delivered by the County for the benefit of the beneficial owners and in order to assist the Participating Underwriters (defined below) in complying with the Rule (defined below).

SECTION 2. Definitions. The following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the County pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Bonds" shall	mean the \$	General Obligation	Bonds,	Series	2018A,	Sumter	County,
South Carolina, dated	, 2018.						

"<u>Dissemination Agent</u>" shall mean the County or any successor Dissemination Agent designated in writing by the County and which has filed with the County a written acceptance of such designation.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"Repository" shall mean for purposes of the Rule, the Electronic Municipal Market Access (EMMA) system created by the Municipal Securities Rulemaking County Council.

"<u>Participating Underwriter</u>" shall mean \_\_\_\_\_ and any other original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"<u>Rule</u>" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

# SECTION 3. Provision of Annual Reports.

(a) The County shall, or shall cause the Dissemination Agent to provide, not later than February 1 of each year, commencing in 2019, to the Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than fifteen (15) business days prior to such date the County shall provide the Annual Report to the Dissemination Agent, if other than the County; provided, that if the audited financial statements required pursuant to Section 4 hereof to be included in the Annual Report are not available for inclusion in the Annual Report as of such date, unaudited financial statements of the County may be included in such Annual Report in lieu thereof, and the County shall replace such unaudited financial statements with audited financial statements within fifteen (15) days after such audited financial statements become available for distribution. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the

audited financial statements of the County may be submitted separately from the balance of the Annual Report.

- (b) If the County is unable to provide to the Repository an Annual Report by the date required in subsection (a), the County shall send a notice to the Municipal Securities Rulemaking County Council and State Depository, if any, in substantially the form attached hereto as *Exhibit A*.
  - (c) The Dissemination Agent shall:
    - (1) determine each year prior to the date for providing the Annual Report the name and address of the Repository; and
    - (2) if the Dissemination Agent is other than the County, file a report with the County and (if the Dissemination Agent is not the Registrar) the Registrar certifying whether the Annual Report has been provided pursuant to this Disclosure Certificate, and, if provided, stating the date it was provided, and listing the Repository to which it was provided.

SECTION 4. Content of Annual Reports. The County's Annual Report shall contain or incorporate by reference the most recent audited financial statements, which shall be prepared in conformity with generally accepted accounting principles (or, if not in such conformity, to be accompanied by a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information) applicable to governmental entities such as the County, and shall, in addition, contain or incorporate by reference the following for the most recently completed fiscal year:

- (a) Population;
- (b) State appropriations subject to withholding under Article X, Sec. 14, South Carolina Constitution;
- (c) Outstanding general obligation indebtedness;
- (d) Assessed Value/Market Value of taxable property;
- (e) Tax rates:
- (f) Tax collections; and
- (g) Ten largest taxpayers (including fee-in-lieu-of-tax).

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the County is an "obligated person" (as defined by the Rule), which have been filed with the Repository. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking County Council. The County shall clearly identify each such other document so incorporated by reference.

# SECTION 5. Reporting of Significant Events.

- (a) Pursuant to the provisions of this Section 5, the County shall give, or cause to be given, notice of the occurrence of any of the following events (the "Listed Events"):
  - (1) Principal and interest payment delinquencies;
  - (2) Non-payment related defaults;
  - (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
  - (4) Unscheduled draws on credit enhancements reflecting financial difficulties;

- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders;
- (8) Bond calls;
- (9) Tender offers;
- (10) Defeasances;
- (11) Release, substitution, or sale of property securing repayment of the securities;
- (12) Rating changes;
- (13) Bankruptcy, insolvency, receivership or similar event of the County;
- (14) The consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the County other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;
- (15) Appointment of a successor or additional trustee or the change of name of a trustee.
- (b) Upon the occurrence of a Listed Event described in subsections (a)(2), (7), (8), (11), (14), or (15) above, the County shall as soon as possible determine if such event would be material under applicable federal securities laws. If the County determines that the occurrence of such event would be material under applicable federal securities laws, the County shall promptly, and no later than 10 days after the occurrence of the event, file a notice of such occurrence with the Repository.
- (c) Upon the occurrence of a Listed Event described in subsections (a)(1), (3), (4), (5), (6), (9), (10), (12), or (13) above, the County shall promptly, and no later than 10 days after the occurrence of the event, file a notice of such occurrence with the Repository.
- (d) Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8), (9), and (10) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to owners of affected Bonds. For the purposes of the event identified in (a)(13) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the County in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the County, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the County.
- <u>SECTION 6.</u> <u>Termination of Reporting Obligation</u>. The County's obligations under this Disclosure Certificate shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds.
- <u>SECTION 7.</u> <u>Dissemination Agent.</u> The County may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be the County.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the County may amend this Disclosure Certificate and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the County, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Certificate, the County shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the County, or the Dissemination Agent to comply with any provision of this Disclosure Certificate, any beneficial owner may take such actions as may be necessary and appropriate, including seeking injunctive relief or specific performance by court order, to cause the County, or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Ordinance, and the sole remedy under this Disclosure Certificate in the event of any failure of the County, or the Dissemination Agent to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of the Dissemination Agent. The provisions of this Section 11 shall apply if the Issuer is not the Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the County agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the County under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

SECTION 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the County, the Dissemination Agent, the Participating Underwriters, and Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

<u>SECTION 13.</u> <u>Counterparts</u>. This Disclosure Certificate may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SUMTER COUNTY, SOUTH CAROLINA

		By:	
		<i>,</i> —	County Administrator
Dated:	, 2018		

#### NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT

Name of County:	Sumter	County, South Carolina
Name of Bond Issue:	\$Sumter	General Obligation Bonds, Series 2018A County, South Carolina
Date of Issuance:		, 2018
provided an Annual Report Continuing Disclosure Cer	t with respect tificate execu	that Sumter County, South Carolina (the "County") has not to the above-named Bonds as required by Sections 3 and 4 of the sted and delivered by the County as Dissemination Agent. The Annual Report will be filed by
Dated:	_	
		SUMTER COUNTY, SOUTH CAROLINA

E-7

WHEREAS: Older adults deserve to be treated with respect and dignity to enable them

to serve as leaders, mentors, volunteers and vital participating members of

our communities;

WHEREAS: In 2006, the International Network for the Prevention of Elder Abuse, in

support of the United Nations International Plan of Action, proclaimed a day to recognize the significance of elder abuse as a public health and human

rights issue; and

WHEREAS: June 15, 2018 marks the 12th Annual World Elder Abuse Awareness Day.

Its recognition will promote a better understanding of abuse and neglect of

older adults; and

WHEREAS: The National Center on Elder Abuse (NCEA) and the Santee-Lynches

Regional Council of Governments recognize the importance of taking action to raise awareness, prevent and address elder abuse; and

WHEREAS: As our population lives longer, we are presented with an opportunity to

think about our collective needs and future as a nation; and

WHEREAS: Ageism and social isolation are major causes of elder abuse in the United

States: and

WHEREAS: Recognizing that it is up to all of us, to ensure that proper social structures

exist so people can retain community and societal connections, reducing

the likelihood of abuse; and

WHEREAS: Preventing abuse of older adults through maintaining and improving social

supports like senior centers, human services and transportation will allow everyone to continue to live as independently as possible and contribute to

the life and vibrancy of our communities; and

WHEREAS: Where there is justice there can be no abuse; therefore, NCEA urges

all people to restore justice by honoring older adults.

WHEREAS: Join us in our engaging and empowering movement, and putting an end to

abuse.

THEREFORE; We, Sumter County Council, do hereby proclaim June 15, 2018 as World

Elder Abuse Awareness Day in Sumter County, and encourage all of our communities to recognize and celebrate older adults and their ongoing

contributions to the success and vitality of our country.

Dated on this 12<sup>th</sup> day of June, 2018 by





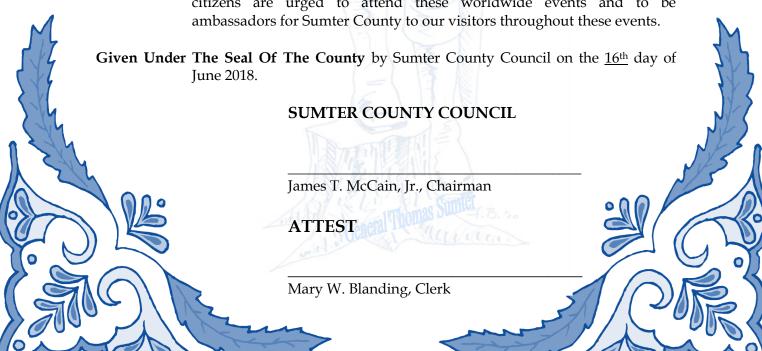
physical health, well-being of individuals, and our communities; and

Whereas, It is the right of everyone regardless of race, color, religion, gender, or national origin to participate in Double Dutch Programs and activities.

Now Therefore Be It Resolved, I, James T. McCain, Jr., Chairman of Sumter County Council, do hereby proclaim the days of June 14-16, 2018, as

#### "Double Dutch Days" in the County of Sumter, South Carolina

And I commend those who are participating in the Forty-third Annual American Double Dutch League World Invitational Championship. All citizens are urged to attend these worldwide events and to be



# State of South Carolina ) County of Sumter )

## Resolution

R-18-02 -- A Resolution by Members of Sumter County Council Adopting Council's Actions On The 2018-2019 Budget Request Of Sumter School District.

**Be It Resolved** by the County Council for Sumter County, South Carolina, in Council duly assembled:

- 1. That in accordance with the general law and local law, any millage increase over the prior fiscal year millage must be approved by the governing body of Sumter County.
- 2. The provisions of §6-1-320(A)(1) of the Code of Laws of South Carolina, allow for an increase in millage, based on the consumer price indices for the prior calendar year and the percentage increase in the previous year in the population of Sumter County as determined by the Office of Research and Statistics of the State Budget and Control Board. The maximum permissible millage increase for fiscal year 2018-2019 is \_\_\_\_\_ mills which is \_\_\_\_\_ % of \_\_\_\_\_ mills.
- 3. That the annexed copy of the proposed budget (the Budget) for the Sumter School District, which was submitted for approval to the County Council for Sumter County, South Carolina, by the Sumter School District pursuant to the provisions of South Carolina Act 387 of 2008, as amended by Act 112 of 2009 of the General Assembly of the State of South Carolina, is, together with any changes or amendments heretofore made thereon, made a part hereof, and incorporated into this Resolution by reference.
- 4. That the annexed Budget, inclusive of any and all changes and amendments thereto heretofore made thereon as are reflected on the annexed copy thereof, is hereby approved by the County Council for Sumter County, South Carolina.
- 5. That the appropriate officials of Sumter County, South Carolina, are authorized and directed to determine, assess, levy, collect, and disburse the Ad Valorem taxes which will be generated by mills, which Ad Valorem taxes will be approximately \$
- Notwithstanding any other provision of this resolution, should the total millage needed to fund any other amount appropriated herein exceed the **millage approved herein**, the amounts appropriated herein shall be automatically reduced to the amounts actually generated by the approved millage rate of \_\_.

7. This Resolution shall take effect upon its adoption.

Adopted this 12th day of June 2018.



## THE COUNTY COUNCIL FOR SUMTER COUNTY, SOUTH CAROLINA (SEAL)

By:_				
	James T. McCain, Jr., Chairman			
Its:	Sumter County Council			
ATTEST:				
By: _				
Ma	ry W. Blanding			
Its:	Clerk to Sumter County Council			

#### FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

SUMTER COUNTY, SOUTH CAROLINA

and

BECTON, DICKINSON AND COMPANY

Dated as of June 12, 2018

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#### FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of June 12, 2018, by and between SUMTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and BECTON, DICKINSON AND COMPANY, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company");

#### WITNESSETH:

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

WHEREAS, Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, acting for itself, one or more affiliates, and/or other project sponsors (the "Company") proposes to invest in certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$150,000,000, in the aggregate, in the Project and will create, or cause to be created, at least 125 new, full-time jobs, in the aggregate, within the County, as set forth in greater detail herein; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on April 24, 2018 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by Ordinance No. 18-885 enacted by the Council on June 12, 2018, 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:

#### ARTICLE I

#### **DEFINITIONS**

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

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

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney's fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other 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, an itemized statement of all such expenses incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other 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 Becton, Dickinson and Company, a company previously identified as Project Bulldog, a corporation organized and existing under the laws of the State of New Jersey, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.06** 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 Sumter 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, 2018 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2026.

"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 (8 years), however, if the Company meets the Enhanced Investment FILOT Minimum Requirement of \$150,000,000 within the Enhanced Investment FILOT Compliance Period (8 years), the County agrees to consider approving the Company's request for an extension of the Investment Period by two (2) years, which approval shall not be unreasonably withheld.

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, 2018, upon any such extension, the Investment Period will end on December 31, 2028.

"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 Special Source Credits Jobs Requirement" shall mean the creation of at least 75 new, full-time jobs in the County by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2017 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 Sumter-Lee Industrial Park by and between the County and Lee 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, 2018 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2023.

"Standard FILOT Minimum Requirement" shall mean investment in the Project of not less than \$2,500,000 within the Enhanced Investment 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.

<u>Section 1.02.</u> <u>References to Agreement.</u> The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole.

#### **ARTICLE II**

#### REPRESENTATIONS AND WARRANTIES

- Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) 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.
- (b) On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.
- (c) 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.

- (d) 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.
- <u>Section 2.02.</u> <u>Representations and Warranties by the Company.</u> The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) The Company is a corporation validly existing and in good standing under the laws of the State of South Carolina 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.
- (b) The Company presently intends to operate the Project as facilities primarily for manufacturing medical devices.
- (c) 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.
- (d) 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.
- (e) 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.

#### ARTICLE III

#### **COVENANTS OF COUNTY**

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

#### Section 3.02. Special Source Credits.

- (a) 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, 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 twenty-five percent (25%) of each such FILOT Payment. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Credit Eligible Entities.
- (b) The Special Source Credits to which a Credit Eligible Facility is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.
- Section 3.03. 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 designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best, commercially 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 necessary to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

<u>Section 3.04.</u> <u>Commensurate Benefits</u>. 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 of the Company, the County agrees to use its best efforts, and to take such other steps as may be reasonably necessary, 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.

#### ARTICLE IV

#### **COVENANTS OF COMPANY**

#### Section 4.01. Investment in Project.

- (a) 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, 2021.
- (b) 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.

- (c) 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.
- (d) 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:
- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) 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.
- (v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.
- <u>Section 4.02.</u> <u>Failure to Satisfy Minimum Special Source Credits Jobs Requirement.</u> If the Minimum Special Source Credits Jobs Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, each of the following subsections (a) (c) shall apply:
- (a) The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Enhanced Investment FILOT Compliance Period.
- (b) On behalf of each Credit Eligible Entity, the Company shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Special Source Credits previously received, or to be received (upon actual receipt), by each such Credit Eligible Entity for each tax year for which each such Credit Eligible Entity is entitled to receive Special Source Credits under **Section 3.02(a)** hereof and for which a Negotiated FILOT Payment has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Enhanced Investment FILOT Compliance Period (collectively, the "Compliance Period Special Source Credits"), taking into account the highest number of new, full-time jobs created, in the aggregate, at the Project within the period set forth in the Minimum Jobs Requirement at any time during such period (the "Actual Project Jobs"), as compared to the Minimum Special Source Credits Jobs Requirement, as further detailed and illustrated in the formula and examples set forth below:

Formula:

- 1. <u>Actual Project Jobs</u> = Jobs Satisfaction Percentage [JSP] 75 new, full-time jobs
- 2. 100% JSP = Jobs Satisfaction Factor [JSF]
- 3. In the event that determination of the Jobs Satisfaction Factor results in a positive percentage figure, the Jobs Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from the Company. Any such amounts shall be due to be paid by the Company within sixty (60) days of receipt by the Company of written notice from the County of such amounts being due.
  - (c) Each Credit Eligible Entity may continue to be eligible for Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in **Section 3.02(a)** hereof; provided, however, in the event that determination of the Jobs Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the initial Special Source Credits percentage set forth in **Section 3.02(a)** hereof of twenty-five percent (25%) shall be reduced for the remaining such tax years by the percentage equal to such Jobs Satisfaction Factor, as further illustrated in the example set forth below:

#### Example:

As an example, assuming a Jobs Satisfaction Factor of twenty percent (20%), the Special Source Credits percentage applicable for the remaining period would be reduced from 25% by 20% of such initial Special Source Credits percentage, down to a Special Source Credits percentage of 20%.

Section 4.03. 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 ninety (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 \$5,000.

<u>Section 4.04.</u> <u>Use of Project for Lawful Activities</u>. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior 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 4.06. 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.

<u>Section 4.07.</u> <u>Funding for Special Source Improvements</u>. 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.

County Transfer of Title to Certain Land to Company. The County Section 4.08. hereby acknowledges and represents that it has entered into that certain Contract of Sale by and between the County and Scott W. Rumph Jr. dated as of October 30, 2017, whereby the County has, under the terms and conditions set forth therein, secured the right to purchase and acquire title to certain land amounting to approximately 15 acres more particularly described as Parcels 231-00-04-002 and 231-00-04-003 in Exhibit B hereto. Following the execution and delivery of this Agreement, the County hereby agrees to, at no cost to the Company, purchase and acquire such land, and subsequently transfer title to same to the Company, as soon thereafter as reasonably practicable, but in any event no later than 90 days from such execution and delivery. Such transfer of title to the Company shall be further set forth and effected in one or more deeds, agreements, instruments or other documents to be entered into by the County and the Company, which documents shall be in form and substance mutually agreeable to the County and the Company. The County hereby acknowledges and agrees that, upon such transfer of title to such land to the Company, such land shall automatically be eligible to become a part of the Land without further action, consent or approval of the County, in the sole discretion of the Company.

#### ARTICLE V

#### FEES IN LIEU OF TAXES

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

(a) 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, 2020. 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.

- (b) 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:
- (i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of twenty (20) 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 twenty (20) years.
- The Negotiated FILOT shall be determined using: (1) an (ii) assessment ratio of 4%; provided, that, 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 satisfied by the end of the Standard FILOT Compliance Period, an assessment ratio of 6% shall be applicable retroactively and prospectively; (2) a millage rate of 362.2 mills, which millage rate or millage rates shall adjust every five years pursuant to Section 12-44-50(A)(1)(b)(ii) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, 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.
- (iii) 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.

- (iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.
  - (c) 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):
- (i) 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;
- (ii) 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;
- (iii) 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
- (iv) 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)**.
- (d) 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:
- (i) 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

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

(f)

(i) 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 (ii) 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 Negotiated FILOT Payments shall revert retroactively to ad valorem taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project does not exceed \$5,000,000 by the end of the Standard FILOT Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Standard FILOT Minimum Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to ad valorem taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to satisfy the Standard FILOT Minimum Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

In the event that the Enhanced Investment FILOT Minimum (iii) Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period, but following the Enhanced Investment FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the lowest investment level set forth in the Enhanced Investment FILOT Minimum Requirement by which the Project has qualified as an "enhanced investment" pursuant to Section 12-44-30(7) of the Negotiated FILOT Act, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for Negotiated FILOT Payments set forth in Section 5.01 hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs. 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 Project nevertheless continues to be eligible for Negotiated FILOT Payments pursuant to Section 5.01 hereof, if following the Standard FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below

the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

- (iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor, which qualify as Negotiated FILOT Property shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.
- (g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within sixty (60) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

The Company acknowledges that (i) the calculation of the annual Negotiated FILOT Payment due hereunder is a function of the Department of Revenue and is wholly dependent on the parties intended to receive benefits under this Agreement timely submitting the correct annual property tax returns to the Department of Revenue, (ii) the County has no responsibility for the submission of returns or the calculation of the annual Negotiated FILOT Payment, and (iii) failure by any party to timely submit the correct annual property tax return could lead to loss of all or a portion of the Negotiated FILOT benefits and other incentives provided by this Agreement.

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

#### ARTICLE VI

#### THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b)

enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved upon written approval of the County, which approval may take the form of a resolution or ordinance of the Council.

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

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

Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and must be approved by resolution of the Council. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this Section 6.02 within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

#### ARTICLE VII

#### TERM; TERMINATION

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

Section 7.02. Termination. In addition to the termination rights of the County under Section 8.02(a) hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to ad valorem taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive ad valorem taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to ad valorem taxes, and the County's rights arising under Section 5.01 prior to the time of such termination shall survive any such termination.

#### ARTICLE VIII

#### **EVENTS OF DEFAULT AND REMEDIES**

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or any Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

- (a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County;
- (b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph** (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or

administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default; or

(c) if a Cessation of Operations occurs after the Enhanced Investment FILOT Compliance Period. For purposes of this Agreement, a "Cessation of Operations" means a publicly announced closure made by the Company of the Company's facilities in the County, including, but not limited to, the Project.

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

<u>Section 8.02.</u> <u>Remedies on Event of Default.</u> Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

- (a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;
- (b) have access to and inspect, examine, and make copies of the books and, records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof;
- (c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.
- Section 8.03. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

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

#### ARTICLE IX

#### **MISCELLANEOUS**

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

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

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

# (a) if to the County:

Sumter County Attn.: County Administrator 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 436-2102

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

Johnathan W. Bryan, Esquire Sumter County Attorney 13 E. Canal Street Sumter, South Carolina 29150 Phone: (803) 774-3877 (c) with a copy (which shall not constitute notice) to:

Ray Jones, Esquire Parker Poe Adams & Bernstein 1221 Main Street, Suite 1100 Columbia, South Carolina 29201 Phone: (803) 253-8917

(d) As to the Company:

Robert Fauvie VP of Global Operations, BD PAS 1 Becton Drive, Mail Code 321 Franklin Lakes, NJ 07417 Phone: (201) 847-7359

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

Ashleigh Kyle, Esquire Assistant General Counsel c/o Lynn Diakogiannakis 730 Central Avenue Murray Hill, NJ 07974 Phone: (207) 572-4040; (207) 480-0445

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

Tushar V. Chikhliker, Esq. Nexsen Pruet, LLC 1230 Main Street, Suite 700 (29201) P.O. Drawer 2426 Columbia, South Carolina 29202 Phone: (803) 540-2188

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

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with

the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

- <u>Section 9.06.</u> <u>Severability</u>. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.
- Section 9.07. <u>Headings and Table of Contents; References</u>. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.
- <u>Section 9.08.</u> <u>Multiple Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.
- Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.
- Section 9.11. Further Proceedings. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

# Section 9.12. Indemnification Covenants.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all third party claims arising from the County's execution of this Agreement, performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement. The Company shall indemnify, defend and save the County harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel of the Company's choice, which is acceptable to

the County (the approval of which shall not be unreasonably withheld or delayed); and whose purported representation of the County in such matters would not present an unwaiveable conflict of interest under the South Carolina Rules of Professional Conduct, the waiveability of which shall be determined by the County, in its reasonable discretion; provided, however, that the Company shall be entitled to manage and control the defense of or respond to any claim, action, prosecution, or proceeding, for itself and any Indemnified Party; provided the Company is not entitled to settle any matter without the consent of that Indemnified Party (other than a settlement for money damages only that will be paid in full by the Company). To the extent any Indemnified Party desires to use separate legal counsel for any reason, that Indemnified Party is responsible for its independent legal costs and expenses, in whole.

- (b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct or breach of this Agreement.
- (c) An Indemnified Party may not avail itself of the indemnification of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.
- Section 9.13. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity
- Section 9.14. <u>Limitation of Liability</u>. The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

[Execution Pages to Follow]

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

# SUMTER COUNTY, SOUTH CAROLINA

	By:  James T. McCain, Jr., Chairman, County Council Sumter County, South Carolina
[SEAL]	
ATTEST:	
By: Mary W. Blanding, Cle Sumter County, South	
	BECTON, DICKINSON AND COMPANY
	By: Name:

# EXHIBIT A LAND DESCRIPTION

Tax Map No. 231-00-04-001

[A MORE DETAILED PROPERTY DESCRIPTION WILL BE INSERTED POST THIRD READING]

# EXHIBIT B TRANSFERRED LAND DESCRIPTION

An approximately 8.4 acre of the Western most portion of that certain piece, parcel or tract of land
situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231
00-04-002 and an approximately 6.6 acre of the Western most portion of that certain piece, parcel o
tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax
Map No. 231-00-04-003 more particularly depicted as Lot on that certain plat recorded in Pla
Book, Page in the Office of the Register of Deeds for Sumter County, South Carolina.

# **SUMTER COUNTY ORDINANCE NO. 18-886**

AN ORDINANCE (1) AMENDING THE MASTER AGREEMENT GOVERNING THE SUMTER-LEE INDUSTRIAL PARK DATED DECEMBER 31, 2012 BETWEEN LEE COUNTY, SOUTH CAROLINA AND SUMTER COUNTY, SOUTH CAROLINA SO AS TO ENLARGE THE BOUNDARIES OF THE PARK TO INCLUDE CERTAIN PROPERTY OWNED AND/OR OPERATED BY BECTON, DICKINSON AND COMPANY, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT BULLDOG; AND (2) AUTHORIZING OTHER MATTERS RELATED THERETO.

WHEREAS, Sumter County, South Carolina, a political subdivision of the State of South Carolina ("Sumter County"), acting by and through its County Council (the "Sumter County Council"), and Lee County, South Carolina, a political subdivision of the State of South Carolina ("Lee County"), acting by and through its County Council (the "Lee County Council"), are authorized pursuant to Article VIII, Section 13(D) of the Constitution of the State of South Carolina and Title 4, Chapter 1 of the Code of Laws of the State of South Carolina 1976, as amended, and specifically Section 4-1-170 thereof (collectively, the "Park Act"), to develop jointly an industrial or business park within the geographical boundaries of one or more of the member counties; and

WHEREAS, pursuant to the Park Act, Sumter County and Lee County previously entered into that certain Master Agreement Governing the Sumter-Lee Industrial Park dated December 31, 2012 (the "Park Agreement"), whereby they agreed to develop a multi-county industrial/business park including within its boundaries property located in Sumter County and Lee County (the "Park"); and

WHEREAS, pursuant to Section 1.01 of the Park Agreement, Sumter County is authorized to unilaterally increase the Park's boundaries, from time to time by adopting an approving ordinance approving such increase in the Park's boundaries; and

WHEREAS, Sumter County and Lee County desire to amend the Park Agreement to enlarge the boundaries of the Park to include certain property located in Sumter County now or hereafter owned and/or operated by Becton, Dickinson and Company, a company previously identified as Project Bulldog, as identified and described on Exhibit A hereto (the "Becton, Dickinson and Company Property").

# NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL, as follows:

<u>SECTION I.</u> Sumter County hereby approves the amendment of the Park Agreement, and specifically Exhibit A-2 thereto, to enlarge the boundaries of the Park to include the Becton, Dickinson and Company Property.

SECTION II. 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, unconstitutional, or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

<u>SECTION III</u>. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall be effective after third and final reading.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 12th day of June, 2018.

# SUMTER COUNTY, SOUTH CAROLINA

F	By:
[SEAL]	
Attest:	
By:Mary W. Blanding, Clerk to Cour	nty Council,
Sumter County, South Carolina	

First Reading: April 24, 2018
Second Reading: May 22, 2018
Public Hearing: June 12, 2018
Third Reading: June 12, 2018

# EXHIBIT A LAND DESCRIPTION

# BECTON, DICKINSON AND COMPANY PROPERTY

An approximately 8.4 acre of the Western most portion of that certain piece, parcel or tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231-00-04-002 and an approximately 6.6 acre of the Western most portion of that certain piece, parcel or tract of land situate, lying and being in the County of Sumter, State of South Carolina bearing Tax Map No. 231-00-04-003 more particularly depicted as Lot \_\_ on that certain plat recorded in Plat Book \_\_\_\_, Page \_\_\_\_ in the Office of the Register of Deeds for Sumter County, South Carolina.

#### ORDINANCE NO. 18-889

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS, SERIES 2018A, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$2,500,000; FIXING THE FORM AND DETAILS OF THE BONDS; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE CERTAIN DETAILS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA, AS FOLLOWS:

<u>SECTION 1</u>. <u>Findings and Determinations</u>. The County Council (the "County Council"), of Sumter County, South Carolina (the "County"), hereby finds and determines:

- (a) Pursuant to Section 4-9-10, Code of Laws of South Carolina 1976, as amended (the "S.C. Code"), and the results of a referendum held in accordance therewith, the Council-Administrator form of government was adopted and the County Council constitutes the governing body of the County.
- (b) Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended (the "Constitution"), provides that each county shall have the power to incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe by general law. Such debt must be incurred for a public purpose and a corporate purpose in an amount not exceeding eight percent (8%) of the assessed value of all taxable property of such county.
- (c) Pursuant to Title 4, Chapter 15 of the S.C. Code (the same being and hereinafter referred to as the "County Bond Act"), the governing bodies of the several counties of the State of South Carolina (the "State") may each issue general obligation bonds to defray the cost of any authorized purpose and for any amount not exceeding its applicable constitutional limit.
- (d) The County Bond Act provides that as a condition precedent to the issuance of bonds an election be held and the result be favorable thereto. Title 11, Chapter 27 of the S.C. Code provides that if an election be prescribed by the provisions of the County Bond Act, but not be required by the provisions of Article X of the Constitution, then in every such instance, no election need be held (notwithstanding the requirement therefor) and the remaining provisions of the County Bond Act shall constitute a full and complete authorization to issue bonds in accordance with such remaining provisions.
- (e) Pursuant to Ordinance No. 12-772 adopted by County Council on August 14, 2012, the County has adopted Written Procedures related to Tax-Exempt Debt.
- (f) The assessed value of all the taxable property in the County as of June 30, 2017, is \$311,423,780. Eight percent (8%) of the assessed value is \$24,913,902. As of the date hereof, the outstanding general obligation debt of the County subject to the limitation imposed by Article X, Section 14(7) of the Constitution is \$10,359,000. Thus, the County may incur not exceeding \$14,554,902 of additional general obligation debt within its applicable debt limitation.

(g) It is necessary and in the best interest of the County for the County Council to provide for the issuance and sale of general obligation bonds in an amount of not exceeding \$2,500,000, the proceeds of which will be used for: (i) funding capital projects (the "Projects"); (ii) paying costs of issuance of the Bonds (hereinafter defined); and (iii) such other lawful purposes as the Council shall determine.

SECTION 2. Authorization and Details of Bonds. Pursuant to the aforesaid provisions of the Constitution and laws of the State, there is hereby authorized to be issued not exceeding \$2,500,000 aggregate principal amount of general obligation bonds (the "Bonds") of the County, for the purpose set forth in Section 1(g) and other costs incidental thereto, including without limiting the generality of such other costs, engineering, financial and legal fees.

The Bonds shall be issued as fully registered bonds registrable as to principal and interest; shall be dated their date of delivery to the initial purchaser(s) thereof; shall be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing each year; shall be subject to redemption if such provision is in the best interest of the County; shall be numbered from R-1 upward; shall bear interest from their date payable at such times as hereinafter designated by the County Administrator and/or his lawfully-authorized designee at such rate or rates as may be determined at the time of the sale thereof; and shall mature serially in successive annual installments as determined by the County Administrator and/or his lawfully-authorized designee.

SECTION 3. Delegation of Authority to Determine Certain Matters Relating to the Bonds. Without further authorization, the County Council hereby delegates to the County Administrator and/or his lawfully-authorized designee the authority to determine: (a) the par amount of the Bonds; (b) the maturity dates of the Bonds and the respective principal amounts maturing on such dates; (c) the interest payment dates of the Bonds; (d) redemption provisions, if any, for the Bonds; (e) the date and time of sale of the Bonds; (f) whether the Bonds will be publicly traded or placed with a bank; (g) the authority to receive bids on behalf of the County Council and to award the sale of the Bonds in accordance with the terms of the Notice of Sale or Request for Proposals for the Bonds.

After the sale of the Bonds, the County Administrator and/or his lawfully-authorized designee shall submit a written report to County Council setting forth the details of the Bonds as set forth in this paragraph.

SECTION 4. Registration, Transfer and Exchange of Bonds. The County shall cause books (herein referred to as the "registry books") to be kept at the offices of the Registrar/Paying Agent, for the registration and transfer of the Bonds. Upon presentation at its office for such purpose the Registrar/Paying Agent shall register or transfer, or cause to be registered or transferred, on such registry books, the Bonds under such reasonable regulations as the Registrar/Paying Agent may prescribe.

Each Bond shall be transferable only upon the registry books of the County, which shall be kept for such purpose at the principal office of the Registrar/Paying Agent, by the registered owner thereof in person or by his duly authorized attorney upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar/Paying Agent duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any such Bond the Registrar/Paying Agent on behalf of the County shall issue in the name of the transferee a new fully registered Bond or Bonds, of the same aggregate principal amount, interest rate, and maturity as the surrendered Bond. Any Bond surrendered in exchange for a new registered Bond pursuant to this Section shall be canceled by the Registrar/Paying Agent.

The County and the Registrar/Paying Agent may deem or treat the person in whose name any fully registered Bond shall be registered upon the registry books as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the County nor the Registrar/Paying Agent shall be affected by any notice to the contrary. In all cases in which the privilege of transferring Bonds is exercised, the County shall execute and the Registrar/Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. Neither the County nor the Registrar/Paying Agent shall be obliged to make any such transfer of Bonds during the fifteen (15) days preceding an interest payment date on such Bonds.

SECTION 5. Record Date. The County hereby establishes a record date for the payment of interest or for the giving of notice of any proposed redemption of Bonds, and such record date shall be the fifteenth (15th) day (whether or not a business day) preceding an interest payment date on such Bond or in the case of any proposed redemption of Bonds, such record date shall be the fifteenth (15th) day (whether or not a business day) prior to the giving of notice of redemption of bonds.

SECTION 6. Mutilation, Loss, Theft or Destruction of Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the owner, the County shall execute and the Registrar shall authenticate and deliver at the principal office of the Registrar, or send by registered mail to the owner thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and of the ownership thereof, and also such security and indemnity in an amount as may be required by the laws of the State or such greater amount as may be required by the County and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder.

All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

SECTION 7. Execution of Bonds. The Bonds shall be executed in the name of the County with the manual or facsimile signature of the Chair of the County Council attested by the manual or facsimile signature of the Clerk to the County Council under the seal of the County impressed, imprinted or reproduced thereon; provided, however, the facsimile signatures appearing on the Bonds may be those of the officers who are not in office on the date of enactment of this Ordinance. The execution of the Bonds in such fashion shall be valid and effectual, notwithstanding any subsequent change in such offices. The Bonds shall not be valid or become obligatory for any purpose unless there shall have been endorsed thereon a certificate of authentication. Each Bond shall bear a certificate of authentication manually executed by the Registrar in substantially the form set forth herein.

<u>SECTION 8</u>. Form of Bonds. The Bonds and the certificate of authentication shall be in substantially the form set forth in Exhibit A attached hereto.

SECTION 9. Security for Bonds. The full faith, credit, and taxing power of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Bonds as they respectively mature, and for the creation of such sinking fund as may be necessary therefor. There shall be levied annually by the County Auditor and collected by the County Treasurer, in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the County sufficient to pay the principal of and interest on the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

The County Council shall give the County Auditor and County Treasurer written notice of the delivery of and payment for the Bonds and they are hereby directed to levy and collect annually, on all taxable property in the County, a tax, without limit, sufficient to pay the principal of and interest on the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

<u>SECTION 10</u>. <u>Notice of Public Hearing</u>. The County Council hereby ratifies and approves the publication of a notice of public hearing regarding the Bonds and this Ordinance, such notice in substantially the form attached hereto as Exhibit B, having been published in *The Item*, a newspaper of general circulation in the County, not less than 15 days prior to the date of such public hearing.

SECTION 11. Initiative and Referendum. The County Council hereby delegates to the County Administrator and/or his lawfully-authorized designee the authority to determine whether the Notice prescribed under the provisions of Section 5 of Title 11, Chapter 27 of the S.C. Code relating to the initiative and referendum provisions contained in Title 4, Chapter 9, Article 13 of the S.C. Code shall be given with respect to this Ordinance. If said Notice is given, the County Administrator and/or his lawfully-authorized designee are authorized to cause such Notice to be published in a newspaper of general circulation in the County, in substantially the form attached hereto as Exhibit C.

<u>SECTION 12.</u> Exemption from State Taxes. Both the principal of and interest on the Bonds shall be exempt, in accordance with the provisions of Section 12-2-50 of the S.C. Code from all State, county, municipal, County and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

SECTION 13. Reimbursement of Certain Expenditures. This Ordinance shall constitute the County's declaration of official intent pursuant to Regulation §1.150-2 of the Internal Code of 1986, as amended (the "Code") to reimburse the County from a portion of the proceeds of the Bonds for expenditures it anticipates incurring (the "Expenditures") with respect to the Project prior to the issuance of the Bonds. The Expenditures which are reimbursed are limited to Expenditures which are: (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Regulation §1.150-2 of the Code) under general federal income tax principals; or (2) certain de minimis or preliminary Expenditures satisfying the requirements of Regulation §1.150-2(f) of the Code. The source of funds for the Expenditures with respect to the Project will be the County's reserve funds or other legally available funds. To be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid; or (b) the date such projects were placed in service, but in no event more than three (3) years after the original Expenditures.

<u>SECTION 14</u>. <u>Tax Covenants</u>. The County hereby covenants and agrees with the holders of the Bonds that it will not take any action which will, or fail to take any action which failure will, cause

interest on the Bonds to become includable in the gross income of the holders of the Bonds for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Bonds. The County further covenants and agrees with the holders of the Bonds that no use of the proceeds of the Bonds shall be made which, if such use had been reasonably expected on the date of issue of the Bonds would have caused the Bonds to be "arbitrage bonds," as defined in Section 148 of the Code, and to that end the County hereby shall:

- (a) comply with the applicable provisions of Sections 103 and 141 through 150 of the Code and any regulations promulgated thereunder so long as the Bonds are outstanding;
- (b) establish such funds, make such calculations and pay such amounts, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and
- (c) make such reports of such information at the time and places required by the Code.

SECTION 15. Book-Entry System. The Bonds initially issued (the "Initial Bonds") will be eligible securities for the purposes of the book-entry system of transfer maintained by The Depository Trust Company, New York, New York ("DTC"), and transfers of beneficial ownership of the Initial Bonds shall be made only through DTC and its participants in accordance with rules specified by DTC. Such beneficial ownership must be of \$5,000 principal amount of Bonds of the same maturity or any integral multiple of \$5,000.

The Initial Bonds shall be issued in fully-registered form, one Bond for each of the maturities of the Bonds, in the name of Cede & Co., as the nominee of DTC. When any principal of or interest on the Initial Bonds becomes due, the Paying Agent, on behalf of the County, shall transmit to DTC an amount equal to such installment of principal and interest. DTC shall remit such payments to the beneficial owners of the Bonds or their nominees in accordance with its rules and regulations.

Notices of redemption of the Initial Bonds or any portion thereof shall be sent to DTC in accordance with the provisions of the Ordinance.

If (a) DTC determines not to continue to act as securities depository for the Bonds, or (b) the County has advised DTC of its determination that DTC is incapable of discharging its duties, the County shall attempt to retain another qualified securities depository to replace DTC. Upon receipt by the County the Initial Bonds together with an assignment duly executed by DTC, the County shall execute and deliver to the successor securities depository Bonds of the same principal amount, interest rate, and maturity registered in the name of such successor.

If the County is unable to retain a qualified successor to DTC or the County has determined that it is in its best interest not to continue the book-entry system of transfer or that interests of the beneficial owners of the Bonds might be adversely affected if the book-entry system of transfer is continued (the County undertakes no obligation to make any investigation to determine the occurrence of any events that would permit it to make any such determination), and has made provision to so notify beneficial owners of the Bonds by mailing an appropriate notice to DTC, upon receipt by the County the Initial Bonds together with an assignment duly executed by DTC, the County shall execute, authenticate and deliver to the DTC participants Bonds in fully-registered form, in substantially the form set forth in Section 8 of this Ordinance in the denomination of \$5,000 or any integral multiple thereof.

Notwithstanding the foregoing, at the request of the purchaser, the Bonds will be issued as one single fully-registered bond and not issued through the book-entry system.

SECTION 16. Sale of Bonds, Form of Notice of Sale. The Bonds shall be offered for public sale on the date and at the time designated by the County Administrator and/or his lawfully-authorized designee. A Notice of Sale in substantially the form set forth as Exhibit D attached hereto shall be distributed to prospective bidders and a summary of such Notice of Sale shall be published in a newspaper of general circulation in the State and/or in a financial publication published in the City of New York not less than seven (7) days prior to the date set for such sale.

SECTION 17. Preliminary and Final Official Statement. The County Council hereby authorizes and directs the County Administrator and/or his lawfully-authorized designee to prepare, or cause to be prepared, a Preliminary Official Statement to be distributed to prospective purchasers of the Bonds together with the Notice of Sale. The County Council authorizes the County Administrator and/or his lawfully-authorized designee to designate the Preliminary Official Statement as "final" for purposes of Rule 15c2-12 of the Securities Exchange Commission. The County Administrator and/or his lawfully-authorized designee are further authorized to see to the completion of the final form of the Official Statement upon the sale of the Bonds so that it may be provided to the purchaser of the Bonds.

SECTION 18. Filings with Central Repository. In compliance with Section 11-1-85 of the Code, the County covenants that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of the annual financial report of the County within thirty (30) days from the County's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which adversely affects more than five (5%) percent of the revenues of the County or the County's tax base.

SECTION 19. Continuing Disclosure. In compliance with the Securities and Exchange Commission Rule 15c2-12 (the "Rule") the County covenants and agrees for the benefit of the holders from time to time of the Bonds to execute and deliver prior to closing, and to thereafter comply with the terms of a Continuing Disclosure Certificate in substantially the form appearing as Exhibit E attached to this Ordinance. In the event of a failure of the County to comply with any of the provisions of the Continuing Disclosure Certificate, an event of default under this Ordinance shall not be deemed to have occurred. In such event, the sole remedy of any bondholder or beneficial owner shall be an action to compel performance by this Ordinance.

SECTION 20. Bank Placement. In the event the Bonds are sold to a bank pursuant to Section 16 above, the requirements of Sections 15, 17 and 19 hereof shall not be applicable, and the County may serve as Registrar/Paying Agent as described in Section 4 hereof. Also, forms of the attachments to this Ordinance will be revised as necessary and appropriate.

<u>SECTION 21</u>. <u>Deposit and Use of Proceeds</u>. The proceeds derived from the sale of the Bonds shall be deposited with the County Treasurer in a special fund and shall be applied solely to the purposes for which the Bonds have been issued, including payment of costs of issuance of the Bonds.

SECTION 22. <u>Defeasance</u>. The obligations of the County under this Ordinance and the pledges, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any portion of the Bonds, and such Bond or Bonds shall no longer be deemed to be outstanding hereunder when:

- (a) such Bond or Bonds shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent and is canceled or subject to cancellation by the County or the Paying Agent; or
- (b) payment of the principal of and interest on such Bonds either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with a corporate trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment, or (2) Government Obligations (hereinafter defined) maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment and all necessary and proper fees, compensation and expenses of the Paying Agent. At such time as the Bonds shall no longer be deemed to be outstanding hereunder, such Bonds shall cease to draw interest from the due date thereof and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

"Government Obligations" shall mean any of the following:

- (i) direct obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which, in the opinion of the Attorney General of the United States, is fully and unconditionally guaranteed by the United States of America;
- (ii) non-callable, U. S. Treasury Securities State and Local Government Series ("SLGS");
- (iii) general obligation bonds of the State, its institutions, agencies, counties and political subdivisions which, at the time of purchase, carry a AAA rating from Standard & Poor's or a Aaa rating from Moody's Investors Service; and
- (iv) a defeasance obligation as defined in Section 6-5-10 of the S.C. Code as such as may be amended from time to time.
- (c) Such Bond or Bonds shall be defeased as provided in Section 11-14-110 of the S.C. Code as such may be amended from time to time.

SECTION 23. Miscellaneous. The County Council hereby authorizes the Chair of the County Council, the Clerk to the County Council, County Administrator, and County Attorney to execute such documents and instruments as necessary to effect the issuance of the Bonds. The County Council hereby retains McNair Law Firm, P.A., as Bond Counsel and Compass Municipal Advisors, LLC, as Financial Advisor in connection with the issuance of the Bonds. The County Administrator is authorized to execute such contracts, documents or engagement letters as may be necessary and appropriate to effectuate these engagements.

All rules, regulations, Ordinances, and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Bonds are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its adoption.

Enacted this	_ day of June, 2018.	
		SUMTER COUNTY, SOUTH CAROLINA
		By:Chair, County Council
(SEAL)		
ATTEST:		
Clerk to County Council		
Date of First Reading: Publication of Notice of Public Hearing:	May 22, 2018	
Date of Second Reading:		
Date of Public Hearing:	June 12, 2018	
Date of Third Reading:	June 12, 2018	

# **FORM OF BOND**

# UNITED STATES OF AMERICA STATE OF SOUTH CAROLINA SUMTER COUNTY GENERAL OBLIGATION BOND, SERIES 2018A

No. R-			
INTEREST RATE	MATURITY _DATE_	ORIGINAL ISSUE DATE	<u>CUSIP</u>
REGISTERED HO	OLDER:		
PRINCIPAL AMO	OUNT:		DOLLARS
"County"), is just specified above, us in the City of principal amount Interest on this 1 or mailed to the per maintained by the (the "Registrar"), each semiannual is coin or currency or specified above, using the coin of the city of the county of the count	ly indebted and, for value or registered assigns, the pon presentation and surrence, State of	PRESENTS, that Sumter Correceived, hereby promises to principal amount specified a der of this Bond at the principal (the "Paying Agent"), rate per annum specified about 1, 20, and semiannuathis Bond matures, and shall and is registered on the regise, in the fifteenth (15th) day of the principal of and interest on the rest on this fully registered Borrest on the principal of and interest on the rest on this fully registered Borrest on this fully registered Borrest on the principal of and interest on the principal of an analysis of the princ	pay to the registered holder above on the maturity date all office of
	bligatory for any purpose, un	any benefit under the Ordina ntil the certificate of authentic	
creation of such s County are irrevo collected by the collected, a tax, w	inking fund as may be necestably pledged and there should be reasured of the County, in ithout limit, on all taxable p	pal and interest, as they respond and interest, as they respond the full faith, could be levied annually by the at the same manner as other roperty in the County sufficient ture and to create such sinking	redit and taxing power of the Auditor of the County and county taxes are levied and nt to pay the principal of and

therefor.

number, denomination, date of maturity, red Dollars (\$	of like date of original issue, tenor and effect, except as to demption provisions, and rate of interest, aggregating), issued pursuant to and in accordance with uth Carolina, 1895, as amended (the "Constitution"); Title 1976, as amended; Title 11, Chapter 27, Code of Laws of the No. 18-889 duly enacted by the County Council on
[Redemption Provisions]	
for that purpose at the principal office of the Rauthorized attorney upon surrender of this satisfactory to the Registrar duly executed by Thereupon a new fully registered Bond or Borredemption provisions, if any, and maturity sprovided in the Ordinance. The County, the person in whose name this Bond is registered as	In the Ordinance, only upon the books of the County kept Registrar by the registered holder in person or by his duly Bond together with a written instrument of transfer by the registered holder or his duly authorized attorney, and of the same aggregate principal amount, interest rate hall be issued to the transferee in exchange therefor as Registrar and the Paying Agent may deem and treat the as the absolute owner hereof for the purpose of receiving f and interest due hereon and for all other purposes.
exempt from all State, county, municipal, Cou	arolina (the "State"), this Bond and the interest hereon are unty and all other taxes or assessments, except estate or or special, whether imposed for the purpose of general
and laws of the State to exist, to happen and to exist, have happened and have been performed law; that the amount of this Bond, together with applicable limitation of indebtedness under the the levy and collection of a tax, without limit,	Il acts, conditions and things required by the Constitution be performed precedent to or in the issuance of this Bond in regular and due time, form and manner as required by all other indebtedness of the County, does not exceed the e laws of the State; and that provision has been made for on all taxable property in the County sufficient to pay the ame shall respectively mature and to create such sinking
be signed with the manual or facsimile signat	COUNTY, SOUTH CAROLINA, has caused this Bond to ture of the Chair of the County Council, attested by the he County Council and the seal of the County impressed,
	SUMTER COUNTY, SOUTH CAROLINA
(SEAL)	Chair, County Council
ATTEST:	
Clerk, County Council	

# [FORM OF REGISTRAR'S CERTIFICATE OF AUTHENTICATION]

Date of Authentication:	
This bond is one of the Bonds County, South Carolina.	described in the within mentioned Ordinance of Sumter
	as Registrar
	By:Authorized Officer
The following abbreviations, w be construed as though they were written out in	then used in the inscription on the face of this Bond shall full according to applicable laws or regulations.
TEN COM - As tenants in common	UNIF GIFT MIN. ACT
TEN ENT - As tenants by the entireties	Custodian (Minor)
JT TEN - As joint tenants with right of survivorship and not as tenants in	under Uniform Gifts to Minors
common	(State)
Additional abbreviations may also be us	sed though not in list above.
[FORM C	OF ASSIGNMENT]
FOR VALUE RECEIVED, the	undersigned sells, assigns and transfers unto
the within Bond and does hereby irrevocably	address of Transferee)  constitute and appoint attorney to registration thereof, with full power of substitution in the
Signature Guaranteed:	(Authorizing Officer)
Signature(s) must be guaranteed by an institution which is a participant in the Securities	NOTICE: The signature to this agreement this agreement must correspond with the name of the registered holder as it appears

A-4

upon the face of the within Bond in every

or any change whatever.

particular, without alteration or enlargement

program.

Transfer Agents Medallion

Program ("STAMP") or similar

A copy of the final approving opinion to be rendered shall be attached to each Bond and preceding the same a certificate shall appear, which shall be signed on behalf of the County with a manual or facsimile signature of the Clerk to the County Council. The certificate shall be in substantially the following form:

# [FORM OF CERTIFICATE]

IT IS HEREBY CERTIFIED that the following is a true and correct copy of the complete final approving opinion (except for date and letterhead) of McNair Law Firm, P.A., Columbia, South Carolina, approving the issue of Bonds of which the within Bond is one, the original of which opinion was manually executed, dated and issued as of the date of delivery of and payment for the Bonds and a copy of which is on file with the County Council of Sumter County, South Carolina.

By:		
-	Clerk, County Council	

SUMTER COUNTY, SOUTH CAROLINA

# FORM OF NOTICE OF PUBLIC HEARING

#### NOTICE OF PUBLIC HEARING

The purpose of the public hearing is to consider an Ordinance providing for the issuance and sale of General Obligation Bonds, Series 2018A or such other appropriate series designation, of Sumter County, South Carolina, in the principal amount of not exceeding \$2,500,000 (the "Bonds"). The proceeds of the Bonds will be used for: (i) funding capital projects (ii) paying costs of issuance of the Bonds; and (iii) such other lawful purposes as the Council shall determine.

The full faith, credit, and taxing power of the County will be pledged for the payment of the principal of and interest on the Bonds and a tax, without limit, will be levied on and collected annually, in the same manner other County taxes are levied and collected, on all taxable property of the County sufficient to pay to principal of and interest on the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

At the public hearing all taxpayers and residents of the County and any other interested persons who appear will be given an opportunity to express their views for or against the Ordinance and the issuance of the Bonds.

COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA

#### FORM OF NOTICE

#### NOTICE

NOTICE IS HEREBY GIVEN that the County Council (the "County Council") of Sumter County, South Carolina (the "County"), on \_\_\_\_\_\_ enacted Ordinance No. \_\_\_\_ entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS, SERIES 2018A, OR SUCH OTHER APPROPRIATE SERIES DESIGNATION, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$2,500,000; FIXING THE FORM AND DETAILS OF THE BONDS; AUTHORIZING THE COUNTY ADMINISTRATOR TO PRESCRIBE CERTAIN DETAILS RELATING TO THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS AND THE DISPOSITION OF THE PROCEEDS THEREOF AND OTHER MATTERS RELATING THERETO" (the "Ordinance"). The Ordinance authorized the issuance and sale of not exceeding \$2,500,000 General Obligation Bonds, Series 2018A (the "Bonds") of the County.

The proceeds of the Bonds will be used for any one or more of the following purposes: (i) funding capital projects; (ii) paying costs of issuance of the Bonds; and (iii) such other lawful purposes as the County Council shall determine.

Pursuant to Section 11-27-40(8) of the South Carolina Code of Laws, 1976, as amended, unless a notice, signed by not less than five (5) qualified electors of the County, of the intention to seek a referendum is filed both in the office of the Clerk of Court of the County and with the Clerk of the County Council, the initiative and referendum provisions of South Carolina law, Sections 4-9-1210 to 4-9-1230, South Carolina Code of Laws 1976, as amended, shall not be applicable to the Ordinance. The notice of intention to seek a referendum must be filed within twenty (20) days following the publication of this notice of the adoption of the aforesaid Ordinance in a newspaper of general circulation in Sumter County.

COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA

#### FORM OF NOTICE OF SALE

\$\_\_\_\_\_ GENERAL OBLIGATION BONDS, SERIES 2018A,
OF SUMTER COUNTY, SOUTH CAROLINA

Time and Place of Sale: NOTICE IS HEREBY GIVEN that sealed bids and electronic bids will
be received on behalf of Sumter County, South Carolina (the "County"), until 11:00 a.m., South Carolina
time, on,, 2018, at which time said proposals will be publicly opened for the purchase of \$, General Obligation Bonds, Series 2018A, of the County (the
"Bonds").
<u>Bids:</u> Electronic proposals only submitted through i-Deal's Parity Electronic Bid Submission System ("Parity") will be accepted. No electronic bids from any other providers of electronic bidding services will be accepted. Information about the electronic bidding services of Parity may be obtained from i-Deal, 1359 Broadway, 2 <sup>nd</sup> Floor, New York, New York 10018, Customer Support, telephone (212) 849-5021.
Book-Entry-Only Bonds: The Bonds will be issued in fully-registered form. One Bonds representing each maturity will be issued to and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), as registered owner of the Bonds and each such Bond will be immobilized in the custody of DTC. DTC will act as securities depository for the Bonds. Individual purchases will be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing each year; Purchasers will not receive physical delivery of certificates representing their interest in the Bonds purchased. The winning bidder, as a condition to delivery of the Bonds, will be required to deposit the Bond certificates representing each maturity with DTC.
The Bonds will be issued in fully-registered form registered as to principal and interest; will be dated, 2018; will be in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount of Bonds maturing in each year; and will mature serially in successive annual installments on in each of the years and in the principal amounts as follows:
Year Principal Amount* Year Principal Amount*
*Preliminary, subject to adjustment.  Adjustment of Maturity Schedule. The County reserves the right, in its sole discretion, either to

precedent to the award of the Bonds, bidders must disclose to the County in connection with their respective bids the price (or yield to maturity) at which each maturity of the Bonds will be reoffered to the public.

decrease or increase the principal amount of the Bonds maturing in any year (all calculations to be rounded to the near \$5,000), provided that any such decrease or increase shall not exceed 10% of the Bonds. Such adjustment(s), if any, shall be made within twenty-four (24) hours of the award of the Bonds. In order to calculate the yield on the Bonds for federal tax law purposes and as a condition

In the event of any adjustment of the maturity schedule for the Bonds as described herein, no rebidding or recalculation of the proposals submitted will be required or permitted. Nevertheless, the

award of the Bonds will be made to the bidder whose proposal produces the lowest true interest cost solely on the basis of the Bonds offered, without taking into account any adjustment in the amount of the Bonds pursuant to this paragraph.

	The Bonds will bear interest from the date thereof payable semiannually on				
and _	of each year, commencing	, until they mature.			
	[Redemption Provisions]				

Registrar/Paying Agent: Regions Bank, Atlanta, Georgia will serve as Registrar/Paying Agent for the Bonds.

Bid Requirements: Bidders shall specify the rate or rates of interest per annum which the Bonds are to bear, to be expressed in multiples of 1/20 or 1/8 of 1% and the interest rate specified for any maturity shall not be lower than the interest rate specified for any previous maturity. Bidders are not limited as to the number of rates of interest named, but the rate of interest on each separate maturity must be the same single rate for all Bonds of that maturity from their date to such maturity date. A bid for less than all the Bonds, a bid at a price less than par or a bid which includes a premium in excess of 10% of the par amount of the Bonds will not be considered. In addition to the bid price, the successful bidder must pay accrued interest from the date of the Bonds to the date of full payment of the purchase price.

Award of Bid. The Bonds will be awarded to the bidder or bidders offering to purchase the Bonds at the lowest true interest cost (TIC) to the County. The TIC will be the nominal interest rate which, when compounded semiannually and used to discount all debt service payments on the Bonds (computed at the interest rates specified in the bid and on the basis of a 360-day year of twelve 30-day months) to the dated date of the Bonds, results in an amount equal to the price bid for the Bonds. In the case of a tie bid, the winning bid will be awarded by lot. The County reserves the right to reject any and all bids or to waive irregularities in any bid. Bids will be accepted or rejected no later than 3:00 p.m., South Carolina time, on the date of the sale.

Security: The full faith, credit, and taxing power of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Bonds as they respectively mature, and for the creation of such sinking fund as may be necessary therefor. There shall be levied annually by the Auditor of the County and collected by the Treasurer of the County, in the same manner as other county taxes are levied and collected, an ad valorem tax, without limit, on all taxable property in the County sufficient to pay the principal and interest of the Bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

Good Faith Deposit: No good faith deposit is required.

Official Statement: Upon the award of the Bonds, the County will prepare an official statement (the "Official Statement") in substantially the same form as the preliminary official statement subject to minor additions, deletions and revisions as required to complete the Official Statement. Within seven (7) business days after the award of the Bonds, the County will deliver the Official Statement to the successful bidder in sufficient quantity to comply with Rule G-32 of the Municipal Securities Rulemaking County Council. The successful bidder agrees to supply to the County all necessary pricing information and any Underwriter identification necessary to complete the Official Statement within 24 hours after the award of the Bonds.

Continuing Disclosure: In order to assist the bidders in complying with S.E.C. Rule 15c2-12(b)(5), the County will undertake, pursuant to an ordinance and a continuing disclosure certificate, to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement.

<u>Legal Opinion</u>: The County Council shall furnish upon delivery of the Bonds the final approving opinion of McNair Law Firm, P.A., Columbia, South Carolina, which opinion shall accompany each Bond, together with the usual closing documents, including a certificate of the County that no litigation is pending affecting the Bonds.

<u>Certificate as to Issue Price</u>: [TO BE PROVIDED]

<u>Financial Advisor</u>: Compass Municipal Advisors, LLC has acted as Financial Advisor to the School District in connection with the issuance of the Bonds. In this capacity, Compass Municipal Advisors, LLC provided technical assistance in the preparation of the offering documents and assisted the School District in preparing for this financing.

<u>Delivery</u>: The Bonds will be delivered on or about \_\_\_\_\_\_, 2018, in New York, New York, at the expense of the County. The balance of the purchase price then due, including the amount of accrued interest, must be paid in federal funds or other immediately available funds.

Additional Information: The Preliminary Official Statement of the County with respect to the Bonds is available via the internet at officialstatements.compassmuni.com and will be furnished to any person interested in bidding for the Bonds upon request. The Preliminary Official Statement shall be reviewed by bidders prior to submitting a bid. Bidders may not rely on this Notice of Sale as to the complete information concerning the Bonds. Persons seeking additional information should communicate with the County's bond counsel, Francenia B. Heizer, Esquire, McNair Law Firm, P.A., 1221 Main Street, Suite 1800, Columbia, South Carolina, 29201, telephone (803) 799-9800, e-mail: <a href="mailto:theizer@mcnair.net">theizer@mcnair.net</a> or with the County's financial advisor, R. Michael Gallagher, Director, Compass Municipal Advisors, LLC, 1310 Pulaski Street, Columbia, South Carolina 29201; telephone (803) 765-1004; e-mail: mike.gallagher@compassmuni.com.

SUMTER COUNTY, SOUTH CAROLINA

#### FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by Sumter County, South Carolina (the "County") in connection with the issuance of \$\_\_\_\_\_\_ General Obligation Bonds, Series 2018A (the "Bonds"). The Bonds are being issued pursuant to an Ordinance adopted by the County Council of the County (the "Council"). The County covenants and agrees as follows:

<u>SECTION 1.</u> <u>Purpose of the Disclosure Certificate</u>. This Disclosure Certificate is being executed and delivered by the County for the benefit of the beneficial owners and in order to assist the Participating Underwriters (defined below) in complying with the Rule (defined below).

SECTION 2. Definitions. The following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the County pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Bonds" shall	mean the \$	General Obligation	Bonds,	Series	2018A,	Sumter	County,
South Carolina, dated	, 2018.						

"<u>Dissemination Agent</u>" shall mean the County or any successor Dissemination Agent designated in writing by the County and which has filed with the County a written acceptance of such designation.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"Repository" shall mean for purposes of the Rule, the Electronic Municipal Market Access (EMMA) system created by the Municipal Securities Rulemaking County Council.

"<u>Participating Underwriter</u>" shall mean \_\_\_\_\_ and any other original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"<u>Rule</u>" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

# SECTION 3. Provision of Annual Reports.

(a) The County shall, or shall cause the Dissemination Agent to provide, not later than February 1 of each year, commencing in 2019, to the Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than fifteen (15) business days prior to such date the County shall provide the Annual Report to the Dissemination Agent, if other than the County; provided, that if the audited financial statements required pursuant to Section 4 hereof to be included in the Annual Report are not available for inclusion in the Annual Report as of such date, unaudited financial statements of the County may be included in such Annual Report in lieu thereof, and the County shall replace such unaudited financial statements with audited financial statements within fifteen (15) days after such audited financial statements become available for distribution. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the

audited financial statements of the County may be submitted separately from the balance of the Annual Report.

- (b) If the County is unable to provide to the Repository an Annual Report by the date required in subsection (a), the County shall send a notice to the Municipal Securities Rulemaking County Council and State Depository, if any, in substantially the form attached hereto as *Exhibit A*.
  - (c) The Dissemination Agent shall:
    - (1) determine each year prior to the date for providing the Annual Report the name and address of the Repository; and
    - (2) if the Dissemination Agent is other than the County, file a report with the County and (if the Dissemination Agent is not the Registrar) the Registrar certifying whether the Annual Report has been provided pursuant to this Disclosure Certificate, and, if provided, stating the date it was provided, and listing the Repository to which it was provided.

SECTION 4. Content of Annual Reports. The County's Annual Report shall contain or incorporate by reference the most recent audited financial statements, which shall be prepared in conformity with generally accepted accounting principles (or, if not in such conformity, to be accompanied by a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information) applicable to governmental entities such as the County, and shall, in addition, contain or incorporate by reference the following for the most recently completed fiscal year:

- (a) Population;
- (b) State appropriations subject to withholding under Article X, Sec. 14, South Carolina Constitution;
- (c) Outstanding general obligation indebtedness;
- (d) Assessed Value/Market Value of taxable property;
- (e) Tax rates:
- (f) Tax collections; and
- (g) Ten largest taxpayers (including fee-in-lieu-of-tax).

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the County is an "obligated person" (as defined by the Rule), which have been filed with the Repository. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking County Council. The County shall clearly identify each such other document so incorporated by reference.

# SECTION 5. Reporting of Significant Events.

- (a) Pursuant to the provisions of this Section 5, the County shall give, or cause to be given, notice of the occurrence of any of the following events (the "Listed Events"):
  - (1) Principal and interest payment delinquencies;
  - (2) Non-payment related defaults;
  - (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
  - (4) Unscheduled draws on credit enhancements reflecting financial difficulties;

- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders;
- (8) Bond calls;
- (9) Tender offers;
- (10) Defeasances;
- (11) Release, substitution, or sale of property securing repayment of the securities;
- (12) Rating changes;
- (13) Bankruptcy, insolvency, receivership or similar event of the County;
- (14) The consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the County other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;
- (15) Appointment of a successor or additional trustee or the change of name of a trustee.
- (b) Upon the occurrence of a Listed Event described in subsections (a)(2), (7), (8), (11), (14), or (15) above, the County shall as soon as possible determine if such event would be material under applicable federal securities laws. If the County determines that the occurrence of such event would be material under applicable federal securities laws, the County shall promptly, and no later than 10 days after the occurrence of the event, file a notice of such occurrence with the Repository.
- (c) Upon the occurrence of a Listed Event described in subsections (a)(1), (3), (4), (5), (6), (9), (10), (12), or (13) above, the County shall promptly, and no later than 10 days after the occurrence of the event, file a notice of such occurrence with the Repository.
- (d) Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8), (9), and (10) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to owners of affected Bonds. For the purposes of the event identified in (a)(13) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the County in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the County, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the County.
- <u>SECTION 6.</u> <u>Termination of Reporting Obligation</u>. The County's obligations under this Disclosure Certificate shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds.
- <u>SECTION 7.</u> <u>Dissemination Agent.</u> The County may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be the County.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the County may amend this Disclosure Certificate and any provision of this Disclosure Certificate may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to the County, to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Certificate, the County shall have no obligation under this Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the County, or the Dissemination Agent to comply with any provision of this Disclosure Certificate, any beneficial owner may take such actions as may be necessary and appropriate, including seeking injunctive relief or specific performance by court order, to cause the County, or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Ordinance, and the sole remedy under this Disclosure Certificate in the event of any failure of the County, or the Dissemination Agent to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of the Dissemination Agent. The provisions of this Section 11 shall apply if the Issuer is not the Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the County agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the County under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

<u>SECTION 12.</u> <u>Beneficiaries.</u> This Disclosure Certificate shall inure solely to the benefit of the County, the Dissemination Agent, the Participating Underwriters, and Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

<u>SECTION 13.</u> <u>Counterparts</u>. This Disclosure Certificate may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SUMTER COUNTY, SOUTH CAROLINA

		By:	
		<i>,</i> —	County Administrator
Dated:	, 2018		

#### NOTICE TO REPOSITORY OF FAILURE TO FILE ANNUAL REPORT

Name of County:	Sumter	County, South Carolina
Name of Bond Issue:	\$Sumter	General Obligation Bonds, Series 2018A County, South Carolina
Date of Issuance:		, 2018
provided an Annual Report Continuing Disclosure Cer	t with respect tificate execu	that Sumter County, South Carolina (the "County") has not to the above-named Bonds as required by Sections 3 and 4 of the ted and delivered by the County as Dissemination Agent. The Annual Report will be filed by
Dated:	_	
		SUMTER COUNTY, SOUTH CAROLINA

E-7

#### **ORDINANCE <u>NO. 18-888</u>**

An Ordinance To Provide For A Levy Of Taxes For County Purposes Of Sumter County, S. C., (Known As The Budget Ordinance) For The Fiscal Year Of Said County Beginning July 1, 2018, To Direct The Expenditures Of Said Taxes And Other Funds Of Said County, And To Provide For Other Matters Related Thereto.

**BE IT ORDAINED** by the County Council of Sumter County (the County), South Carolina, in council duly assembled:

WHEREAS, the County Council (Council) for Sumter County, South Carolina (the County) has estimated that for the County's fiscal year beginning July 1, 2018, that the aggregate amount of all anticipated funds, moneys and revenues (funds) available to the County from all sources except ad valorem taxes for the County's General Fund for the fiscal year beginning July 1, 2018, as set forth on the annexed Exhibit A, Fiscal Year 2018-2019 Projected Revenue Summary, (which is attached hereto and made a part hereof by reference) will be approximately §28,438,230.

**WHEREAS,** Council finds that it is necessary that the additional funds needed to provide for the expenditures appropriated herein should and must be raised from the imposition of ad valorem taxes; and

**WHEREAS,** Council further finds, based on the estimated value of the millage imposed herein, that, in order to provide for the expenditures hereinafter appropriated, the millages hereinafter established should be and hereinafter are established and applied for the purposes hereinafter set forth; and

**WHEREAS;** Council further finds that the expenditures for the appropriations hereinafter made are all necessary, are all in the best interest of the citizens of the County, and are all for proper public and corporate purposes of the County.

**NOW, THEREFORE**, the following ordinance is hereby adopted:

**Section I.** For purposes of this ordinance and for purposes of the records of the County related to the levying of taxes and the expenditure of funds by the County for the County's fiscal year beginning July 1, 2018, and ending June 30, 2019, the following definitions shall apply:

Tax District #1 - that portion of Sumter County in Fire District 1.

Tax District #2 - that portion of Sumter County in Fire District 2.

Tax District #17 - that portion of Sumter County within the corporate limits of the City of Sumter.

Tax District #18 – that portion of Sumter County in Fire District 2 within the corporate limits of the Town of Mayesville.

Tax District #27 – that portion of Sumter County in Fire District 2 within the corporate limits of the Town of Pinewood.

Tax District #717 – The Tax Increment Financing District within the corporate limits of the City of Sumter.

**Section II.** The following amounts are hereby appropriated for operating expenditures of the County's General Fund for the fiscal year beginning July 1, 2018, and ending June 30, 2019, for the purposes indicated:

County Operations:	
General Government Administration	\$16,070,246
Public Safety	20,791,134
Transportation	794,314
Health and Human Services	5,056,703
Recreation	4,107,398
Appropriations for other agencies – Exhibit C	2,872,629
Other general expenditures	3,060,059
<b>Total General Fund Appropriations</b>	52,752,483

Section III. Provided, however, notwithstanding anything set forth in Section II or any other provisions of this ordinance to the contrary, the County Administrator of Sumter County should have the authority to add to or reduce from any appropriations made in this ordinance for County Operations amounts not in excess of \$10,000 or 10% of any appropriations made in this ordinance, whichever is the lesser, provided any such additions to any appropriations shall be taken out of one or more appropriations that have been reduced by the County Administrator within the guidelines of this proviso prior to expenditure thereof.

**Section IV.** The above appropriations shall be kept separate and expended for the purposes for which each was appropriated. Except as otherwise specifically provided herein, there shall not be expended or contracted to expend any sum greater than the amount appropriated except with the approval of a majority of the County Council for the County (County Council) and no account against the County shall be approved or paid except an expenditure authorized by this ordinance or further action of County Council.

Section V. The exact amounts the County is required to expend for the following items are set by state law, to-wit: jury pay and court expenses - Clerk of Court; Coroner's juries, inquests, etc.; per diem - Tax Assessor's and appeals board; advertising tax sales, bids, notices, etc.; officials and employees' bond premiums; workers' compensation benefits and/or premiums; state retirement - county's share; social security - county's share; unemployment compensation; legal expenses for the defense of indigent; and other legal expenses. The amounts herein appropriated for the items enumerated in this section are based on estimated requirements, but may, in fact, vary in accordance with the requirements of state law. Accordingly, notwithstanding anything contained in this ordinance to the contrary, payment of the items enumerated in this section as from time to time required by state law is authorized even if the amount thereof should exceed the estimated amount hereof appropriated in this ordinance for any such item.

**Section VI.** The amounts of the salaries of the following officials by this ordinance for the fiscal year for said County beginning July 1, 2018, shall be as follows, which amount shall be paid out of and deducted from the appropriations made for their respective offices to wit:

Sheriff	123,588
Clerk of Court	92,162
Judge of Probate	87,525
Coroner	75,402

In addition to their county salaries, the salaries of the following County officials are provided a <u>cost-of-living</u> <u>increase</u> beginning at the first pay period of January after a General Election, as budgeted for other County Employees and a one-time salary adjustment of 3%. **Exhibit A** 

Chairman, Sumter County Council	16,895
Vice Chairman, Sumter County Council	15,855
Member, Sumter County Council (\$73,915 = \$14,783 x 5 members)	14,783

That, in addition to state salaries, the salaries of the following County officials are supplemented by the County as follows:

Auditor	55,444
Treasurer/Tax Collector	75,402

The amounts herein provided for the salaries or supplements to the salaries of the officials mentioned in this section shall be in lieu of all fees collected by these officials and the amounts herein provided shall be the salaries or supplements to the salaries of such officials for all their services for the fiscal year of the County commencing July 1, 2018. However, said salaries as set out in this section are exclusive of any supplements thereto paid to any of said officials by the State of South Carolina and said officials are hereby authorized to accept any such supplements to their salaries. Any such supplements received by the County on behalf of a respective official shall be paid over by the County to the applicable official.

<u>Section VII.</u> Salaries provided herein for the Sheriff, the Clerk of Court, the Judge of Probate, the Coroner, the Auditor, and the Treasurer/Tax Collector are appropriated for the present holders of the aforesaid offices and in the event vacancies occur in any of these offices, the beginning salaries and appropriations therefore shall be determined by the County Council.

Section VIII. That the positions of the various County employees set forth on the annexed Exhibit B, Position Control, (which is attached hereto and made a part hereof by reference) are hereby ratified, approved, and authorized in order to carry out the functions of the County. The County Administrator is authorized to fill these positions with such employees as the County Administrator deems in the best interest of the County consistent with applicable laws, ordinances, regulations, and policies. The County Administrator is not required to fill any position that is or becomes vacant where the County Administrator deems it in the best interest of the County that said position be vacant. Except as otherwise provided in this section and except also as County Council might from time to time by resolution otherwise direct, the County Administrator is authorized, from time to time, to assign, amend, and vary the duties and responsibilities of County employees, to increase or decrease salaries applicable to a respective position, move County employees from one position with the County to another position with the County (either within a department or to another department), and to combine one or more positions or portions thereof into a single position. The County Administrator is authorized to change the title of the position of a County employee unless the change will require an increase in expenditures in excess of those available and budgeted. Provided, nothing in this section shall authorize the expenditure of any county funds except for the purposes authorized in this ordinance. Provided further, the County Administrator shall

not, without authorization granted by resolution of County Council, create any new position nor increase the total number of County employees from the total number of regular, full time positions herein approved. Notwithstanding anything in this section to the contrary, the County Administrator is authorized to employ additional persons for temporary contract labor for a period not to exceed six (6) months per person in any one fiscal year.

Section IX. The Sumter County Personnel Handbook has the following change effective July 1, 2018:

Employees, under no circumstances, are allowed to bring children to work at any given time or day. Department Managers **are not** authorized to allow employees to bring children to work.

Section X. No magistrate in the County shall receive a salary unless and until such magistrate shall have first filed a monthly statement with the County Treasurer to be submitted to the County Council showing all cases handled during the past month and the disposition thereof and certifying that all fines due to the County shall

have been paid to the County Treasurer.

Section XI. The Auditor is authorized and directed to levy such millage upon all taxable property within the County as necessary to provide funds required to meet the appropriation made in this ordinance for County purposes and to retire, according to the respective schedules for repayment, the general obligation bonds of the County.

<u>Section XII.</u> In addition to funds normally received and to <u>ad valorem</u> taxes imposed for other purposes, the Auditor of Sumter County (the Auditor) is hereby authorized and directed to make the following levies on all taxable property within the areas specified:

- 1. Within the entire County, <u>84.4</u> mills for general countywide purposes and <u>15</u> mills for general obligation bond purposes;
- 2. Within Fire District 1, 28.9 mills for fire protection;
- 3. Within Fire District 2, 17.3 mills for fire protection;
- 4. Capital Improvement Fund, <u>1</u> mill;
- 5. Central Carolina Technical College, <u>4.5</u> mills;
- 6. USC Sumter, 2.0 mills;

- 7. General Fund Legislative Mandates 1.6 mills;
- 8. Solid Waste Disposal 4.0 mills;
- 9. Solid Waste Disposal Unfunded Legislative Mandates, 0.7 mills

Expenditures by the County for the purposes specified above out of the funds so raised and those other funds remitted to the County by State agencies, raised by other ordinances of the County, and obtained by the County from all other sources are hereby authorized.

**Section XIII.** The County Tax Assessor shall furnish to the County Auditor the assessed values on all property within the County on or before June 30, 2019.

**Section XIV.** The Auditor shall deliver the tax books to the County Treasurer not later than September 15, 2018. The Auditor is authorized to use the same millage as was used for the County's prior fiscal year unless notified in writing on or before July 15, 2018, of a change in estimated millage values.

**Section XV.** Administrative Fees -- Sumter County shall collect for the administration and collection of municipal taxes for the City of Sumter, Pinewood, and Mayesville. The Administrative Fees shall \$1.92 per transaction for the City of Sumter, the Town of Pinewood, and for the Town of Mayesville respectively.

**Section XVI.** No additional levy for school purposes shall be made in any district unless approved by a majority of the County Council.

**Section XVII.** All boards and commissions receiving funds from the County shall send to County Council a copy of the minutes of each meeting within thirty (30) days thereof and shall annually submit financial reports to the County Council.

**Section XVIII.** No funds appropriated herein shall be used for payment of expenditures or obligations of the County or any agency or office thereof incurred prior to the effective date of this ordinance except for retirement of general obligation bonds and payment on lease purchase agreements that come due after the effective date of this ordinance. Notwithstanding the foregoing, any line items previously appropriated and/or properly encumbered as of June 30, 2018 shall be carried forward as an appropriation of fiscal year 2018-2019.

**Section XIX.** Through the adoption of this ordinance County Council hereby approves the budgets of all other special revenue, debt service, and capital project funds, submitted herewith as "other funds" as **Exhibit D**.

**Section XX.** Twenty (20%) percent of the revenue from all property in any multi-county park in Sumter County will be allocated to the Infrastructure Fund for Fiscal Year 2018-2019. The remaining eighty percent of the revenue from all property in any multi-county park in Sumter County shall be allocated among the applicable taxing districts on a pro-rata basis using the mills for each taxing district for fiscal year 2017-2018 to determine the ratio for distribution.

<u>Section XXI.</u> The Solid Waste Disposal Fee for 2018-2019 charged to each residential unit shall be \$47.76. The tipping fee for 2018–2019 charged to commercial waste haulers who use the Sumter County transfer station shall be \$44.51 per ton.

**Section XXII.** County Council hereby approves appropriating \$1,500,000 from General Fund Balance for the EMS building conversion, old Detention Center demolition, and Training Center/Sheriff parking improvements. **Section XXIII.** This ordinance shall take effect on the **1st** day of July **2018**.

COUNTY	COUNCIL	FOR SUMTER	COUNTY	
COUNTY	COUNCIL	FUR SUMIER	COUNTY.	D. U.

(SEAL)

ER CON	
STATE OF THE PARTY	Chairman – James T. McCain, Jr.
	Attest By Its Clerk - Mary W. Blanding
CAROL!	

First Reading: May 8, 2018
a 15 4 44 44 54 54 54 54 54 54 54 54 54 54
Second Reading: May 22, 2017
Public Hearing Held: May 22, 2017
Third Reading and Adoption:June 12, 2017
Sumter School District Resolution: , 2017

#### Sumter County Exhibit A FY 2019 Projected Revenue Summary

	FY 2017 Actual	FY 2018 Budget	FY 2019 Budget
Revenue			
Ad valorem taxes	\$ 23,813,841	\$ 24,642,147	\$ 24,314,253
Local options taxes	7,972,554	7,700,000	8,177,359
Licenses and permits	2,665,193	2,466,500	2,491,500
Intergovernmental revenue	7,482,693	8,607,421	8,006,835
Service revenue and charges	6,911,328	6,170,442	6,804,060
Fines and forfeitures	1,750,269	1,671,100	1,661,000
Miscellaneous	1,952,098	 1,760,779	1,297,476
Total revenue	\$ 52,547,976	\$ 53,018,389	\$ 52,752,483

#### Exhibit B

DEPARTMENT	TITLE	TOTAL
ADMINISTRATION	COUNTY ADMINISTRATOR	1
	ASSISTANT ADMINISTRATOR	1
	OFFICE MANAGER	1
ADMINISTRATION Total		3
AIRPORT	MANAGER	1
	ASSISTANT MANAGER	1
AIRPORT Total		2
ASSESSOR	ADMINISTRATIVE ASSISTANT	1
	CLERK II	1
	CLERK III	1
	DEPUTY TAX ASSESSOR	1
	GIS COORDINATOR	1
	GIS ANALYST	1
	SECRETARY	1
	STAFF APPRAISER SUPERVISOR	1
	STAFF APPRAISER	5
	TAX ASSESSOR	1
ASSESSOR Total		14
AUDITOR	ACCOUNTING CLERK II	3
	ACCOUNTING CLERK III	1
	AUDITOR	1
	DEPUTY AUDITOR	2
AUDITOR Total		7
CLERK OF COURT	ACCOUNTING CLERK III	1
	CHIEF DEPUTY CLERK	1
	CLERK II	3
	CLERK OF COURT	1
	LEGAL CLERK	2
	BAILIFF- PART-TIME	6
	CLERK II - PART TIME	1
CLERK OF COURT Total		15
CORONER	CORONER	1
	DEPUTY CORONER	1
	DEPUTY CORONER - PART-TIME	1
CORONER Total		3
COUNTY ATTORNEY	ATTORNEY	1
COUNTY ATTORNEY Total		1
COUNTY COUNCIL	CLERK TO COUNCIL	1

	CHAIRMAN- PART-TIME	1
	COUNCIL MEMBER-PART-TIME	5
	VICE CHAIRMAN- PART-TIME	1
COUNTY COUNCIL Total		8
DETENTION CENTER	ASSISTANT DIRECTOR	1
	CAPTAIN	3
	CENTER DIRECTOR	1
	CORPORAL	8
	CORRECTIONAL OFFICER	51
	CORRECTIONAL OFFICER- JUDICIAL	2
	CENTER	_
	LIEUTENANT	6
	SERGEANT	14
	KITCHEN SUPERVISOR	1
	PC LAN SPECIALIST II	1
DETENTION CENTER Total		88
DEVELOPMENT BOARD	CEO/ PRESIDENT	1
	ECONOMIC DEVELOPMENT/EXISTING	1
	INDUSTRY MANAGER	-
	COMMUNICATIONS & STRATEGIC	1
	INITIATIVES MANAGER	
	INVESTOR/ PUBLIC RELATIONS	1
	MANAGER	
	RESEARCH & ADMINISTRATIVE	1
	ASSOCIATE	_
DEVELOPMENT BOARD Total		5
EMERGENCY MGMT	EMERGENCY MANAGEMENT DIRECTOR	1
	EXECUTIVE SECRETARY	1
<b>EMERGENCY MGMT Total</b>		2
EMS	EMS DIRECTOR	1
	EMS ASSISTANT DIRECTOR	1
	CLERK II	1
	EMS SHIFT SUPERVISOR	4
	EMS ASST. SUPERVISOR	4
	SENIOR PARAMEDIC	4
	PARAMEDIC	20
	PART-TIME PARAMEDIC	8
	EMT INTERMEDIATE/AEMT	8
	PART-TIME INTERMEDIATE/AEMT	4
	EMT BASIC	24
	PART-TIME EMT BASIC	4
EMS Total		83

FAMILY COURT	ACCOUNTING CLERK II	1
	ACCOUNTING CLERK III	1
	CLERK II	8
	CLERK III	1
	CHIEF DEPUTY CLERK	1
	RESEARCH & DOCKET CLERK	1
FAMILY COURT Total		13
FAMILY COURT TITLE IV-D	CLERK II	2
	BOOKKEEPER/ACCOUNTING CLERK	1
	COURT COORDINATOR	1
	PROJECT COORDINATOR	1
FAMILY COURT TITLE IV-D	TROJECT COORDINATOR	5
Total		
FINANCE	ACCOUNTANT	2
	ACCOUNTING CLERK III	2
	FINANCE DIRECTOR	1
	GRANTS ADMINISTRATOR	1
FINANCE Total		6
HUMAN RESOURCES	HR- DIRECTOR	1
	HR - ASSISTANT	1
	BENEFITS ADMINISTRATOR	1
	PAYROLL MANAGER	1
HUMAN RESOURCES Total		4
INFORMATION TECHNOLOGY	DIRECTOR OF IT	1
	SENIOR PROGRAMMER ANALYST	1
	SERVICE MANAGER	1
	PC LAN SPECIALIST	3
	NETWORK ENGINEER	1
	PROGRAMMER II	1
	SYSTEMS ADMINISTRATOR	1
	COMMUNICATIONS COORDINATOR	1
INFORMATION TECHNOLOGY Total		10
MAGISTRATE	BOND CLERK	1
	CHIEF MAGISTRATE	1
	CLERK	1
	CLERK II	7
	CLERK III	1
	COURT ADMNISTRATOR	1
	MAGISTRATE	3
	MAGISTRATE (PART-TIME)	2
	RECEPTIONIST	1
	MECH HOMOI	1

MAGISTRATE Total		18
MASTER IN EQUITY	MASTER IN EQUITY	1
	SECRETARY	1
	BOOKKEEPER (PART-TIME)	1
MASTER IN EQUITY Total		3
PATRIOT HALL	EXECUTIVE DIRECTOR - CULTURAL CENTER	1
	OFFICE MANAGER II	1
	TECHNICAL DIRECTOR	1
	MAINTENANCE (CUSTODIAL AND GROUNDS)	1
	EVENT ATTENDANTS( PART-TIME AS NEEDED)	4
	TECHNICIANS - (PART-TIME AS NEEDED)	2
	DIRECTOR OF ART GALLERY	1
PATRIOT HALL Total		11
PROBATE	ASSOCIATE PROBATE JUDGE	1
	CLERK II	2
	CLERK II - PART TIME	1
	DEPUTY PROBATE JUDGE	1
	PROBATE JUDGE	1
PROBATE Total	_	6
PUBLIC BUILDINGS	MAINTENANCE MANAGER	1
	CUSTODIAL MANAGER	1
	MAINTENANCE WORKER	3
	FACILITIES MANAGER	1
	CUSTODIAL MAINTENANCE	9
PUBLIC BUILDINGS Total		15
PUBLIC DEFENDER	OFFICE MANAGER	1
	RECEPTIONIST	1
	LEGAL CLERK	4
	DATA ENTRY CLERK	2
	ASSISTANT PUBLIC DEFENDER	10
	CHIEF PUBLIC DEFENDER	1
PUBLIC DEFENDER Total		19
PUBLIC WORKS	ASSISTANT DIRECTOR	1
	ASST SHOP SUPERVISOR	1
	CLERK III	1
	ELECTRICIAN	1
	EQUIPMENT MECHANIC	1
	EQUIPMENT OPERATOR II	2
	HEAVY EQUIPMENT OPERATOR I	1

	HEAVY EQUIPMENT OPERATOR II (16	22
	assigned to Roads)	
	LABOR SUPERVISOR II (2 assigned to Roads)	5
	MECHANIC	4
	OFFICE MANAGER II	1
	PUBLIC WORKS DIRECTOR	1
	SHOP SUPERVISOR	1
	EQUIPMENT OPERATOR I	2
PUBLIC WORKS Total	EQUIFMENT OF EXATOR 1	44
PUBLIC WORKS - LANDFILL	OFFICE MANAGER	
PUBLIC WORKS - LANDFILL		1
	HEAVY EQUIPMENT OPERATOR	6
	LANDFILL MANAGER	1
	LANDFILL SUPERVISOR	1
PUBLIC WORKS - LANDFILL Total		9
PUBLIC WORKS - RECYCLING	HEAVY EQUIPMENT OPERATOR II	1
PUBLIC WORKS - RECYCLING Total		1
PURCHASING	CLERK II	1
	PURCHASING AGENT	1
	PROPERTY MANAGER	1
	BUYER	1
PURCHASING Total		4
RECREATION	ATHLETIC FIELD COORDINATOR - PART- TIME	2
	ATHLETIC DIRECTOR	2
	COMMUNITY CENTER AIDES	7
	COMMUNITY CENTER DIRECTOR	9
	CLERK	1
	CIVIC CENTER DIRECTOR	1
	CIVIC CENTER MAINTENANCE	1
	MANAGER	-
	CIVIC CENTER CUSTODIAN -PART-TIME	2
	MAINTENANCE SUPERVISOR	1
	MAINTENANCE WORKER	11
	OFFICE MANAGER	1
	PROGRAM SUPERVISOR	1
	RECREATION DIRECTOR	1
	TEMP- PART TIME (CONCESSIONS,	20
	EVENT ATTENDANTS ETC.)	-3
RECREATION Total		60

GOLDF COURSE COORDINATOR  ASST. MAINTENANCE COORDINATOR  SHOP CLERK  MAINTENANCE WORKER  MAINTENANCE WORKER (PART-TIME)  RECREATION - CRYSTAL	1 1 3 1 1 8
SHOP CLERK  MAINTENANCE WORKER  MAINTENANCE WORKER (PART-TIME)  RECREATION - CRYSTAL	3 1 1 8
MAINTENANCE WORKER  MAINTENANCE WORKER (PART-TIME)  RECREATION - CRYSTAL	1 1 8
MAINTENANCE WORKER (PART-TIME)  RECREATION - CRYSTAL	1 8 1
RECREATION - CRYSTAL	8
	1
LAKES Total	
REGISTER OF DEEDS CHIEF DEPUTY CLERK	3
CLERK II	
LEGAL CLERK	1
RECORDS MANAGER	1
REGISTER OF DEEDS	1
REGISTER OF DEEDS Total	7
SHERIFF CAPTAIN	4
CODES ENFORCEMENT	2
CORPORAL	23
DATA ENTRY CLERK	2
CLERK/GRANTS WRITER	1
DEPUTY	7
EVIDENCE CUSTODIAN	1
INVESTIGATIVE SERGEANT	2
INVESTIGATOR	14
LIEUTENANT	12
MAJOR	2
PINEWOOD - CORPORAL	1
SECRETARY	7
SENIOR CORPORAL	13
SENIOR DEPUTY	8
SENIOR INVESTIGATOR	5
SERGEANT	11
SHERIFF	1
SRO - CORPORAL	1
SRO - SENIOR CORPORAL	5
PARALEGAL	1
CHEMIST	1
DEPUTY PT	4
ATTORNEY	1
ANIMAL CONTROL	1
PC LAN SPECIALIST III	1
STAFF SERGEANT	6

	MAYESVILLE- CORPORAL	1
	DEPUTY - MAGISTRATE COURT	1
	PUBLIC INFORMATION OFFICER	1
	SEX OFFENDER REGISTRY	1
SHERIFF Total		141
SHILOH COMMUNITY CENTER	CENTER LEADER - PART-TIME	1
	MAINTENANCE WORKER - PART-TIME	1
SHILOH COMMUNITY CENTER Total		2
SOLICITOR	ASSISTANT SOLICITOR	14
	OFFICE MANAGER	1
	SECRETARY	2
	CLERK II	2
	PRE-TRIAL INTERVENTION COORDINATOR	1
	PRE-TRIAL INTERVENTION COUNSELOR	1
	INVESTIGATOR	1
	VICTIMS COUNSELOR	4
	CASE MANAGER	1
	ADMINISTRATIVE CLERK	1
SOLICITOR Total	TABLET TO THE TABLET THE TABLET TO THE TABLET TO THE TABLET TO THE TABLET TO THE TABLE	28
SC COM DEV COMM (CDC)	PROGRAM COORDINATOR - PART-TIME	1
20 001122 (02 0)	PROGRAM ASSISTANT- PART-TIME	1
SC COM DEV COMM Total		2
S. SUMTER RESOURCE CENTER	CENTER COORDINATOR	1
	CENTER DIRECTOR	1
	CUSTODIAN- PART-TIME	1
S. SUMTER RESOURCE CENTER Total		3
STORM WATER UTILITY	ENVIRONMENTAL ENGINEER	1
	ENVIRONMENTAL TECHNICIAN	2
	HEAVY EQUIPMENT OPERATOR/TRAINER	1
	HEAVY EQUIPMENT OPERATOR II	2
	CLERK	1
	STORM WATER ENGINEER/ MANAGER	1
STORM WATER UTILITY Total	STORM WATER ENGINEER MANAGER	8
TREASURER	TAX CLERK	5
INLAGUNER	BOOKKEEPER	1
	CHIEF DEPUTY TREASURER	1
	CHIEF DEFULL IKEASUKEK	1

	TREASURER	1
	DEPUTY TAX COLLECTOR	1
TREASURER Total		9
VECTOR CONTROL	VECTOR CONTROL SUPERVISOR	1
	(Seasonal)	
	VECTOR CONTROL TECHNICIAN (Seasonal	4
	- Temporary)	
VECTOR CONTROL Total		5
VETERAN'S AFFAIRS	BENEFITS COUNSELOR	1
	V.A. OFFICER	1
VETERAN'S AFFAIRS Total		2
VICTIMS ASSISTANCE -	VICTIM ADVOCATE/COUNSELOR	2
SHERIFF		
VICTIMS ASSISTANCE -		2
SHERIFF Total		
VOTER'S REGISTRATION	CLERK III	1
	DEPUTY DIRECTOR	2
	DIRECTOR	1
<b>VOTER'S REGISTRATION Total</b>		4
WEDGEFIELD-STATEBURG	OFFICE MANAGER	1
WATER		
	WATER OPERATOR TRAINEE	1
WEDGEFIELD-STATEBURG		2
WATER Total		
GRAND TOTAL		682

## Sumter County Budget Ordinance 18-888 Fiscal Year 2018-2019

#### Exhibit C

Legislative Delegation	\$ 40,000
Planning Commission	478,082
Building Inspections	502,598
Small Business Development Center	10,000
Mental Health Center	29,160
Sumter United Ministries	5,000
American Red Cross	5,000
Sumter Senior Services	19,565
Soil and Water Conservation District	29,549
Clemson Extension	50,410
Base Defense	34,500
Santee Lynches	98,911
Library	1,183,379
Gallery of Art	55,000
Sumter Green	5,000
Genealogical Society	5,000
United Way/Diamonds	25,050
Sumter County Museum	60,000
Sumter County Historical Commission	15,425
Sumter Little Theater	10,000
Santee Wateree RTA	150,000
Animal shelter Contract	30,000
Fatherhood Program	31,000
	\$ 2,872,629

#### **Sumter County Other Funds**

Sumter County Other Funds	Fxł	nibit D
Solicitor Fund	LXI	
Sumter County	\$	1,278,691
Lee County	*	161,602
Clarendon County		283,054
Williamsburg County		131,215
Solicitor Fund		1,854,562
Portion funded by the General Fund		(483,479)
Net funded by special revenue	\$	1,371,083
	<u>*</u>	
Public Defender		
Sumter County	\$	839,002
Lee County	-	58,692
Clarendon County		231,418
Williamsburg County		139,684
Public Defender Fund		1,268,796
Portion funded by the General Fund		(225,000)
Net funded by special revenue	\$	1,183,480
Title IV-D		503,823
Victims Assistance		167,534
"C" Funds		2,100,000
Sheriff's Drug Unit		215,000
Hospitality Tax		325,000
Sumter County CDC		367,985
Solid Waste		
Tires		45,000
Recycling Centers		1,904,238
Landfill		3,649,803
Total Solid Waste		5,599,041
Road User		2,117,031
Stormwater		1,021,844
I-95 Sewer Plant		131,802
Wedgefield Water		366,964
Shiloh Water		187,346
Capital Improvement Fund		300,000
Debt Service Fund		4,500,000
DESC SCIVICE FAIR		7,300,000

The Other Capital Projects and Infrastructure Funds are budgeted on a project basis and are authorized to continue during FY 2019 to the extent funding is available.

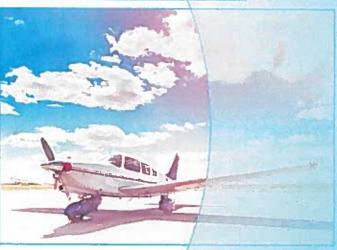
SOUTH CAROLINA
AERONAUTICS
COMMISSION

# Executive Summary













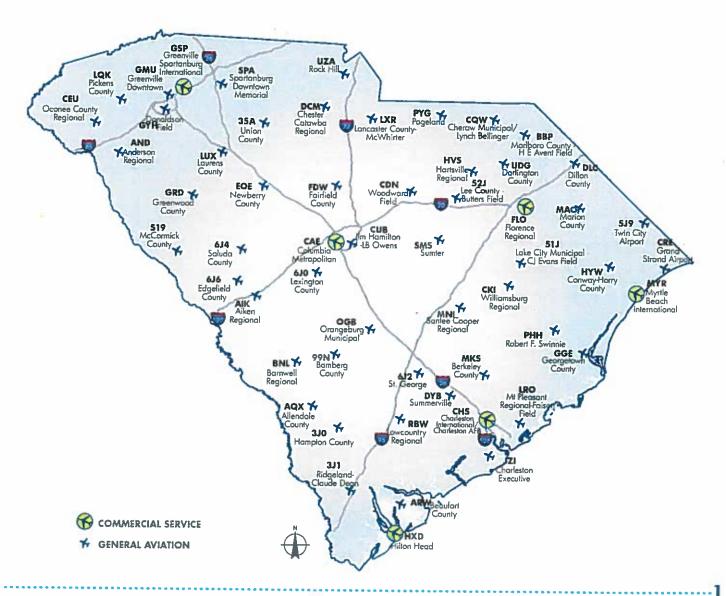




#### **OVERVIEW**

South Carolina has a well-developed system of publicly owned commercial service and general aviation airports. Airports are essential to the state's transportation infrastructure and to many sectors of its diversified economy. To help guide the future development of South Carolina's airport system and to measure how that system contributes to the state's economy, the South Carolina Aeronautics Commission (SCAC) undertook comprehensive analyses to update its Statewide Aviation System Plan and Economic Impact Study.

Starting in the fall of 2016, SCAC, in partnership with the Federal Aviation Administration (FAA) and public airports in South Carolina, undertook steps to estimate the annual economic impact for all study airports and to identify how each airport should be developed to meet state objectives. Details on both studies can be obtained on SCAC's website: <a href="https://www.scaeronautics.com">www.scaeronautics.com</a>. This summary focuses on annual economic impacts associated with the state's public airport system. The summary also documents how aviation demand in South Carolina is expected to grow and how airports will need to be improved to meet established objectives for airport development and maintenance.





### ····· STUDY RESULTS ·····

SCAC's Statewide Economic Impact Study measured economic impacts associated with 51 public general aviation and six commercial airports. Statewide, total annual economic impacts from South Carolina's commercial and general aviation airports were estimated as follows:



This summary provides an overview of all airport-related economic impacts estimated in the SCAC study and of the process used to estimate the statewide annual economic impacts shown above.





## TOTAL ANNUAL STATEWIDE ECONOMIC IMPACTS FROM AIRPORT MANAGEMENT

Most of the 57 study airports have employees dedicated to the daily operation of an airport. In some instances, airport management employees are full-time; and in others, they are part-time or seasonal. Most airports in South Carolina are owned by a public municipality, such as a city or county. Consequently, many airports also have either full-time or part-time employees who support an airport's daily operation, without being located at the airport. Off-airport jobs are often found in categories such as maintenance, human resources, accounting, grants administration, and legal services. For some general aviation airports, the municipality owning the airport also functions as the Fixed Base Operator (FBO) providing services such as aircraft fueling.

In this study, for employment in all five impact categories, part-time and seasonal jobs were converted to full-time-equivalent jobs. This conversion was accomplished considering either the number of hours worked or the annual compensation for each less-than-full-time position.

The table here shows all annual impacts identified for the airport management function at South Carolina's general aviation and commercial airports. Annual economic activity, shown here, represents total annual airport spending for goods and services to operate the airport, plus annual payroll. Indirect and induced impacts were estimated using the IMPLAN model.

#### TOTAL ANNUAL STATEWIDE ECONOMIC IMPACTS FROM AIRPORT MANAGEMENT

	DIRECT	INDIRECT/INDUCED	TOTAL
EMPLOYMENT	707	667	1,374
PAYROLL	\$33,490,180	\$31,196,550	\$64,686,730
SPENDING	\$37,927,620	\$31,191,460	\$69,119,080
ECONOMIC ACTIVITY	\$71,417,800	\$62,388,010	\$133,805,810









## TOTAL ANNUAL STATEWIDE ECONOMIC IMPACTS FROM COMMERCIAL VISITOR SPENDING

South Carolina has six airports that have scheduled commercial airline service. Airport records indicate that, combined, South Carolina's commercial airports serve a total of 4.7 million boarding passengers or enplanements. Some of these enplanements are residents and some are visitors. The United States Department of Transportation (USDOT) estimates that more than 2.6 million visitors arrive annually in South Carolina on a commercial airline flight. Communities served by commercial airports in South Carolina are important destinations for business travelers, but the state also has some the nation's and the world's major tourist destinations.

South Carolina's commercial airports helped to conduct surveys that collected information from visitors regarding their trip purpose, trip duration, and average spending per trip. Estimated spending patterns show that the roughly 2.6 million visitors to South Carolina who arrive on a commercial airline flight had annual spending of over \$4.1 billion. This estimate represents direct spending for lodging, food, ground transportation, entertainment, retail spending, and other purchases. As with spending associated with general aviation visitors, the IMPLAN model was used to identify jobs and payroll primarily in the state's hospitality industry supported by commercial visitor spending. Total estimated annual economic impacts associated with commercial airline visitors are shown here.

## TOTAL ANNUAL STATEWIDE ECONOMIC IMPACTS FROM COMMERCIAL VISITOR SPENDING

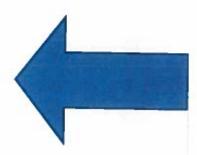
AIRPORT NAME	EMPLOYMENT	ANNUAL PAYROLL	ANNUAL SPENDING	ANNUAL ECONOMIC ACTIVITY
CHARLESTON INTERNATIONAL AIRPORT	45 598	\$1,430,159,240	\$3,950,259,450	\$5,380,418,690
COLUMBIA METROPOLITAN AIRPORT	4,495	\$121,673,530	\$371,430 610	\$493,104,140
FLORENCE REGIONAL AIRPORT	194	\$4,509,960	\$14,746,180	\$19,256,140
GREENVILLE-SPARTANBURG INTERNATIONAL AIRPORT (ROGER MILLIKEN FIELD)	8,081	\$235 827,310	\$711,407,830	\$947,235,140
HILTON HEAD AIRPORT	<b>6</b> 26	\$21,305,110	\$59,455,450	\$80,760,560
MYRTLE BEACH INTERNATIONAL AIRPORT	23,474	\$688,803,990	\$2,003,376,340	\$2.692180,330
TOTAL FOR ALL COMMERCIAL AIRPORTS	82,468	\$2,502,279,140	\$7,110,675,860	<b>\$</b> 9,612,955,000



## SUMMARY OF TOTAL ANNUAL ECONOMIC IMPACTS FROM SOUTH CAROLINA AIRPORTS

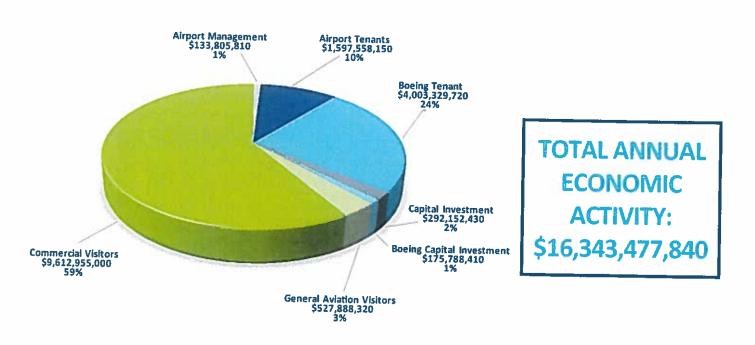
As discussed, the 57 public general aviation and commercial airports in South Carolina have economic impacts associated with one or more of the following categories: airport management, airport tenants, capital investment, general aviation visitor spending, and/or commercial visitor spending. The information below shows total annual statewide economic impacts for all five impact categories. When direct and indirect/induced impacts for all categories are considered, the South Carolina airports:

- Support a total of 122,759 jobs
- Support annual payroll estimated at \$4.8 billion
- Support annual spending estimated at \$11.5 billion



Subsequent pages of this summary show the estimated annual economic impact for each airport included in the SCAC analysis. It is important to remember that not all airports have activities that support impacts in each of the five categories analyzed in this research and the total impact, shown here, includes all direct, indirect, and induced impacts.

### TOTAL ANNUAL ECONOMIC ACTIVITY BY SECTOR OF CONTRIBUTION





### TOTAL ANNUAL AIRPORT ECONOMIC IMPACTS

CITY	AIRPORT NAME	TOTAL EMPLOYMENT	TOTAL ANNUAL PAYROLL	TOTAL ANNUAL SPENDING	TOTAL ANNUAL ECONOMIC ACTIVITY	TOTAL ANNUAL TAX REVENUE
CHARLESTON	CHARLESTON INTERNATIONAL AIRPORT	72,472	\$3 146 588 160	\$7,008.682 620	\$10,155,270,780	\$408,960,650
COLUMBIA	COLUMBIA METROPOLITAN AIRPORT	6,642	\$202,155,960	\$545,855,490	\$748,011,450	\$30,935,520
FLORENCE	FLORENCE REGIONAL AIRPORT	411	\$13,298,590	\$33,410,310	\$46,708,900	\$2,108,100
GREER	GREENVILLE-SPARTANBURG INTERNATIONAL (ROGER MILLIKEN FIELD)	10,317	\$325,861,360	\$894,906,920	\$1,220,768,280	\$48,921,860
HILTON HEAD ISLAND	HILTON HEAD AIRPORT	1,286	\$44,187,000	\$122,044,440	\$166.231,440	\$6,833,690
MYRTLE BEACH	MYRTLE BEACH INTERNATIONAL AIRPORT	25,781	\$778,878,690	\$2,193.821.310	\$2,972,700.000	\$119,872,710
TOTAL COMME	RCIAL SERVICE AIRPORTS	116,909	\$4,510,960,760	\$10,798,721,090	\$15,309,690,850	\$617,632,530
AIKEN	AIKEN REGIONAL AIRPORT	178	\$5,286,030	\$19,699,640	\$24,985,670	\$1,051,640
ALLENDALE	ALLENDALE COUNTY AIRPORT	15	\$534,000	\$1,252,800	\$1,786,800	\$79,840
ANDERSON	ANDERSON REGIONAL AIRPORT	107	\$3,824,430	\$9,142.680	\$12,967,110	\$554,380
ANDREWS	ROBERT F. SWINNIE AIRPORT	6	\$242,180	\$618,170	\$860,350	\$34,720
BAMBERG	BAMBERG COUNTY AIRPORT	2	\$90,360	\$129,250	\$219,610	\$7,920
BARNWELL	BARNWELL REGIONAL AIRPORT	15	\$537,760	\$984,300	\$1,522,060	\$64,500
BEAUFORT	BEAUFORT COUNTY AIRPORT	110	\$3,928,920	\$8,595,860	512,524,780	\$512,500
BENNETTSVILLE	MARLBORO COUNTY AIRPORT - H E AVENT FIELD	9	5286,910	5905,320	\$1,192,230	\$52,120
BISHOPVILLE	LEE COUNTY AIRPORT-BUTTERS FIELD	6	\$256,930	\$484,550	\$741,480	\$33,830
CAMDEN	WOODWARD FIELD	61	\$2,535,470	\$4,775,610	\$7,311,080	\$304,170
CHARLESTON	CHARLESTON EXECUTIVE AIRPORT	434	\$14,539,430	\$40,087,520	\$54,626,950	\$2,362,200
CHERAW	CHERAW MUNICIPAL/LYNCH BELLINGER FIELD	14	\$533,900	\$1,410,290	\$1,944,190	\$85,060
CHESTER	CHESTER CATAWBA REGIONAL AIRPORT	49	\$1,685,600	\$3,495,660	\$5,181,260	\$218,560
CLEMSON	OCONEE COUNTY REGIONAL AIRPORT	94	\$3,277,160	\$7,620,120	\$10,897,280	\$453,360
COLUMBIA	JIM HAMILTON -LB OWENS AIRPORT	116	\$4,029,500	\$12,090,710	\$16,120,210	\$688,900
CONWAY	CONWAY-HORRY COUNTY AIRPORT	72	\$3,239,860	\$5,856,660	\$9,096,520	\$382.660
DARLINGTON	DARLINGTON COUNTY AIRPORT	34	\$1,535,300	52,996,120	\$4,531,420	\$203,800
DILLON	DILLON COUNTY AIRPORT	1	\$49 560	\$67,610	\$117,170	\$4,400
GEORGETOWN	GEORGETOWN COUNTY AIRPORT	157	\$5,070,860	\$14,430,880	\$19,501,740	\$804,350
GREENVILLE	GREENVILLE DOWNTOWN AIRPORT	547	\$24,975,210	\$43,871,670	\$68,846,280	\$2,695,320
GREENVILLE	DONALDSON FIELD	1,872	\$129,265,380	\$393,141,590	\$522,406,970	\$18,035,650
GREENWOOD	GREENWOOD COUNTY AIRPORT	54	\$2,119,210	\$5,598.250	\$7,717,460	\$289,290



### TOTAL ANNUAL AIRPORT ECONOMIC IMPACTS (CONTINUED)

CITY	AIRPORT NAME	TOTAL EMPLOYMENT	TOTAL ANNUAL PAYROLL	TOTAL ANNUAL SPENDING	TOTAL ANNUAL ECONOMIC ACTIVITY	TOTAL ANNUAL TAX REVENUE
HAMPTON	HAMPTON COUNTY AIRPORT	30	\$1,532,870	\$1,857,060	\$3,389,930	\$149,570
HARTSVILLE	HARTSVILLE REGIONAL AIRPORT	18	\$532,340	\$1,575,110	\$2,107,450	\$92,170
KINGSTREE	WILLIAMSBURG REGIONAL AIRPORT	18	\$751,970	\$2,388,640	\$3,140,610	* \$146,730
LAKE CITY	LAKE CITY MUNICIPAL AIRPORT CJ EVANS FIELD	1	\$53,090	\$62,910	\$116,000	\$2,590
LANCASTER	LANCASTER COUNTY-MCWHIRTER FIELD	34	\$1209,400	\$3,307,880	\$4,517,280	\$200,990
LAURENS	LAURENS COUNTY AIRPORT	18	\$703.840	\$1,453,570	\$2,157,410	\$92,060
LORIS	TWIN CITY AIRPORT	2	\$70,450	\$125,520	\$195,970	\$7,850
MANNING	SANTEE COOPER REGIONAL AIRPORT	15	\$459 630	\$1,643,860	\$2,103,490	\$88,830
MARION	MARION COUNTY AIRPORT	34	\$1,701,660	\$2,234,240	\$3,935,900	\$176,080
MCCORMICK	MCCORMICK COUNTY AIRPORT	1	\$55,850	\$39,270	\$95,120	\$3,610
MONCKS CORNER	BERKELEY COUNTY AIRPORT	51	\$2,090,190	\$4,893,160	\$6,933,350	\$295,590
MOUNT PLEASANT	MT PLEASANT REGIONAL-FAISON FIELD	77	\$2,588,200	\$6,205,970	\$8,794,170	\$384,860
NEWBERRY	NEWBERRY COUNTY AIRPORT	36	\$1,471,130	\$4,085,140	\$5,556,270	\$241,620
NORTH MYRTLE BEACH	GRAND STRAND AIRPORT	385	\$12,334,580	\$31,173,930	\$43,508,510	\$1,824,820
ORANGEBURG	ORANGEBURG MUNICIPAL AIRPORT	44	\$1,558,770	\$3,812,550	\$5,371,320	\$220,300
PAGELAND	PAGELAND AIRPORT	5	\$195,360	\$498,670	\$694.030	\$32,110
PELION	LEXINGTON COUNTY AIRPORT	17	\$451,530	\$1,392,560	\$1,844,090	\$79,290
PICKENS	PICKENS COUNTY AIRPORT	61	\$2,091,620	\$4,667,700	\$6,759,320	\$285,760
RIDGELAND	RIDGELAND-CLAUDE DEAN AIRPORT	54	52,141,690	\$6,142,280	\$8,283,970	\$382,450
ROCK HILL	ROCK HILL/YORK CO/BRYANT FIELD	224	\$9,973,210	\$30,560,820	\$40,534,030	\$1,632,110
SALUDA	SALUDA COUNTY AIRPORT	6	\$180,120	\$428,580	\$608 700	\$28,310
SPARTANBURG	SPARTANBURG DOWNTOWN MEMORIAL AIRPORT	328	\$12,487,820	\$29,308,880	\$41,796,700	\$1,621,250
ST GEORGE	ST. GEORGE AIRPORT	3	\$95,310	\$192,370	\$287,680	\$10,600
SUMMERVILLE	SUMMERVILLE AIRPORT	44	\$1,603,900	\$4,010,280	\$5,614,180	\$234,460
SUMTER	SUMTER AIRPORT	120	\$5,631,230	\$11,467.390	\$17,098,620	\$767,200
TRENTON	EDGEFIELD COUNTY AIRPORT	2	\$50,070	\$38,170	\$138,240	\$4,970
UNION	UNION COUNTY, TROY SHELTON FIELD	15	\$568,620	\$1,040,800	\$1,609,420	\$61,840
WALTERBORO	LOWCOUNTRY REGIONAL AIRPORT	227	\$7,649.500	\$18,789,530	\$26,439,030	\$1,153,050
WINNSBORO	FAIRFIELD COUNTY AIRPORT	33	\$1,261,130	\$3,745,850	\$5,006,980	\$199,230
TOTAL GENERA TOTAL ALL AIR	AL AVIATION AIRPORTS PORTS	5.850 122.759	\$279,339,040	\$754,447,950 \$11,853,169,040	\$1,035,786,990	\$39,339,470 \$656,972,000





#### SYSTEM BENEFITS

As SCAC's economic impact analyses have shown, annually the state's public general aviation and commercial airports are contributing an estimated \$16.3 billion to state and local economies throughout South Carolina. This annual benefit is significantly greater than the annual financial need for the system, estimated on a conservative basis to be approximately \$153.7 million. South Carolina airports are providing an economic benefit that far exceeds the anticipated financial need to maintain and develop the airport system. South Carolina's airports are well worth the investment!

### **SUMMARY OF FINDINGS**

- The five-year financial need for the system will be at least \$768.6 million.
- Estimated annual funds available from FAA and SCAC to meet annual financial needs have averaged from \$71.3 million to \$37.3 million, based on historic information. At these levels of funding, between 50% and 75% of all investment needs will not be met. The average annual financial need will be \$153.7 million.
- 7% of the state's employment relies on the airports.
- Annual economic impact for all airports considering direct, indirect & induced impacts is \$16.3 billion.
- Annual state & local airport tax revenue contributions on direct economic impacts is \$657 million.

## TOTAL STATEWIDE ANNUAL ECONOMIC IMPACTS FROM SOUTH CAROLINA AIRPORTS BY CATEGORY

	EMPLOYMENT	PAYROLL	SPENDING	ECONOMIC ACTIVITY
AIRPORT MANAGEMENT	1,374	\$64,686,730	\$69,119,080	\$133,805,810
AIRPORT TENANTS	10,987	\$495,176,940	\$1,102,381,210	\$1,597,558,150
BOEING	21,773	\$1,518,019,620	\$2,661,098 510	\$4,179,118,130
CAPITAL INVESTMENT	1,567	\$72,389,180	\$219,763,250	\$292152,430
GENERAL AVIATION VISITORS	4,590	\$137,757,190	\$390,131,130	\$527,8\$8,320
COMMERCIAL VISITORS	82,468	\$2,502,279,140	\$7,110,675,860	\$9,612,955,000
TOTAL FOR ALL SOUTH CAROLINA AIRPORTS	122,759	\$4,790,308,800	\$11,553,169,040	\$16,343,477,840



## SUMTER COUNTY SHERIFF'S OFFICE ANTHONY DENNIS, SHERIFF

To:

Sumter County Council

From:

Anthony Dennis, Sheriff

Date:

June 5, 2018

Reference:

Monthly Activity Report - Sumter County Sheriff's Office

The following Monthly Activity Report is submitted for the month of May, 2018 from the Sheriff's Office:

#### **EXECUTIVE TEAM:**

#### **LEGAL/INTERNAL AFFAIRS**

Contractual Matters - 2

FOIA Requests -8

Subpoenas – 3

Discovery Requests - 15

Lawsuits:

Filed - 0

Disposed - 1

Appeals - 0

Jury / Bench Trials Disposed - 3

Status conferences: 0

Cases scheduled: 0

DMV Hearings: 0

Fines assessed –

\$1,185.00

Fines suspended –

\$ 0.00

Total fines -

\$1,185.00

Incarcerations - 0

Internal Affairs Investigations - 0

Mileage - 1,659

Training Hours – 9

Civil Papers - 1

Miscellaneous Legal: 3

#### PROFESSIONAL STANDARDS

#### **RECRUITING AND HONOR GUARD:**

Mileage - 2,566

Applications received – 20

Interviews -6

Recruiting events - 5

Hiring boards conducted -0

Public relation events attended - 1

Honor guard events -0

Background Checks - 0

Special Assignment – 0

#### **GRANTS AND TESTING:**

Grants researched – 4

Grants applied for -3

Grants Awarded - 0

#### **SEX OFFENDER REGISTRY:**

Complaints - 0

Arrests - 0

Training Hours – 1

Mileage - 820

Fines assessed –

\$900.00

Fines suspended –

\$ 0.00

Total fines -

\$900.00

Required Home Visits - 0

Scheduled Appointments – 69

Special Operations - 0

Warrants Signed - 0

Transfers in/out of county – 1

Agency / Division Meetings – 1

Hearings /Trials -0

#### **INFORMATION TECHNOLOGY**

Software - 12

Hardware - 3

Virus - 2

E-Mail - 13

Printer - 6

Meetings/Projects – 2

Server Issues - 4

#### **PATROL DIVISION:**

#### **PATROL**

Accidents Investigated - 7

Arrests - 54

Assist motorists – 42

Complaints – 2,981

Driver's license checks – 9

DUI/Data Master - 3

DUS arrests - 25

Escorts - 40

Fines assessed – \$40,180.00

Fines suspended – \$11,560.00 Total fines – \$28,620.00

Mental Patients – 6 Mileage –78,549 Other citations – 63 School visits – 8 Training hours - 403

Work hours – 5,665

Agencies assisted - Sumter Sheriff's Office - N/A

Sumter Sheriff's Office -N/A SC Highway Patrol -N/A Sumter Police Department -N/A Other -50

#### CAT TEAM:

Accidents investigated – 0

Arrests - 21

Assisted motorists - 16

Complaints – 114 COP Meetings – 4

D.U.I. / Data Master - 2

D.U.S. - 25

Driver license checks - 19

Fines assessed – \$31,225.00 Fines suspended – \$0.00 Total fines – \$31,225.00

Interdiction hours – 469.5

Mileage - 16,618

Petitions - 0

Saturation hours -0Training hours -108

Work hours – 1,401

Agencies assisted - Sumter Sheriff's Office -N/ASumter Police Department -N/A

SC Highway Patrol – N/A Other – 160

#### **CANINE UNIT:**

Search Warrants - 33 Training Hours - 304

Agencies assisted -

Sumter Sheriff's Office - N/A

Sumter Police Department – N/A

SC Highway Patrol – 2 Other – 11

#### CRIME PREVENTION:

Complaints: 68 COP meetings: 23 DARE Classes: 6 Mileage: 2,413 School Visits: 9 Training hours: 31 Work hours: 338

#### SCHOOL RESOURCE OFFICERS / ADMINISTRATION:

Arrests - 7

Assisted Motorists - 1

Complaints – 248

COP Meetings - 0

DUI - 0

Fines Assessed - \$0.00

Fines Suspended - \$0.00

Total Fines - \$0.00

Mental Patients – 0

Mileage - 8,992

Other Violations - 1

Petitions - 2

School visits - 72

Training hours - 21

Agencies assisted -

Sumter Sheriff's Office - N/A

Sumter Police Department – N/A

SC Highway Patrol – N/A

Other - 8

#### **INVESTIGATIONS:**

#### CRIME ANALYSIS AND POLYGRAPH:

Crime analysis reports – 0

Polygraphs - 0

#### VICTIM ADVOCATE:

Called to scene – 0

Child forensic interviews – 2

Court Appearances –11

Debriefings & Defusings - 0

Interviews of Victims/Witnesses - 0

Meetings (interoffice) - 90

Meetings (other agencies) - 19

Meetings (Prosecutors & Court Officials) – 9

Meetings with Victims and/or families) – 101

Special Assignments - 1

Training (Attended & Conducted) – 0

Mileage - 2,035

 $Disciplinary\ Hearing/Inmate\ Representative-0$ 

#### **CRIMINAL INVESTIGATIONS DIVISION:**

Accidental/natural death/suicides – 0

Arrests -47 (Adults -46) (Juveniles -1)

Arson - 1

Assaults (general) – 15

Assaults (sexual) -4

Assist other agencies - 16

B & E auto –23

Bomb threats -0

Breach of trust - 6

Burglaries - 40

Child abuse/neglect - 9

Contributing to the delinquency of a minor -0

Counterfeit/credit card fraud/fraud/forgery - 19

Crime scene hours –73

Crime scenes worked - 29

Criminal domestic violence - 19

Criminal warrants – 44

Emergency protective custody -0

Fugitive from justice – 3

Identity theft – 14

Incorrigible child – 3 Indecent exposure – 1 Interfering with the operation of a school bus -0Kidnapping - 0 Larcenies (auto) – 21 Larcenies (general) – 34 Lynching - 2 Malicious injury to property – 7 Mileage - 28,908 Missing Person – 2 Murder - 0Petitions – 1 (Juvenile) Pointing/presenting a firearm – 4 Recovered property - \$53,950.00 Robberies – 8 Runaways -0Search warrants - 18 Stakeouts - 0 Stalking - 0 Stolen Property -\$164,561.00 Threatening a public official – 0 Training Hours – 113

#### **NARCOTICS DIVISION:**

Unlawful use of telephone - 0 Weapons violations – 0

Arrests - 3 Fines Assessed - \$0.00 Fines Suspended – \$0.00 Total Fines -\$0.00 Mileage - 12,049 Search warrants - 1 Training hours –57

Drug complaints - 23 Seizures – currency - \$7,720.00

vehicle(s) - 0

Surveillance – 237 hours

Agencies assisted - Sumter Sheriff's Office - N/A

SC Highway Patrol – 0

Sumter Police Department – 0 Other - 242

Recovered narcotics:

Marijuana wt. - 162.8 grams Crack cocaine - 1.2 grams

Marijuana Plants - 0 Heroin - 12 grams

Cocaine powder – 2.15 grams All Pills -0

MDMA - 0 Steroids - 0

Methamphetamine – 90.96 grams Other drugs – 0

#### FORENSICS:

Autopsy - 1

Autopsy Hours – 2

#### **CIVIL PROCESS:**

#### **WARRANTS DIVISION**

Arrests -2

Attempted service - 321

Bench warrants - 3

Civil Papers - 585

Complaints – 37

Criminal warrants – 3

Executions – 7

Fines Assessed - \$155.00

Fines Suspended -\$0.00

Total Fines -

\$155.00

Mileage - 8,371

Sheriff's fees - \$5,570.00

Training hours- 60

#### FAMILY COURT DIVISION:

Arrests - 0

Bench warrants – 18

Criminal warrants – 7

Family Court Security - 22 days 880 hours

Fines Assessed - \$39,156.21

Fines Suspended - \$0.00

Total Fines -

\$39,156.21

Mileage - 7,170

Non-service - 33

Petitions - 12

Training hours – 88

Total papers – 500 issued, 371 served = 74% service

Total value of process – \$664,609.28

Transportation, adult -0

Transportation, juvenile -0

#### **SPECIAL OPERATIONS:**

#### **TRAINING**

Assist Motorists - 0

Fines Assessed - \$0.00

Fines Suspended - \$0.00

Total Fines - \$0.00

Meetings - 4

Mileage - 4,757

Training hours – 89

Training Classes - 5

Work Hours - 846

#### ANIMAL CONTROL:

Animal control complaints – 173

Animals picked up – 112

Mileage - 3,175

Money collected - \$688.50

#### **CODES ENFORCEMENT:**

Certified mail – 5

Complaints-77

Fines assessed – \$465.00

Fines suspended - \$265.00

Total fines -

\$200.00

Mileage - 3,996

Training hours - 0

<u>QUARTERMASTER:</u> Uniform & Equipment – 37

#### **TOTALS FOR ALL DEPARTMENTS:**

Complaints -3,721

Arrests - 135

Civil Papers – 586

Currency Seizures - \$7,720.00

Training Hours – 1,284

Mileage - 182,078

Petitions - 15

Mental Patients - 6

Fines assessed –

\$113,954.71

Fines suspended –

\$ 11,825.00

Total fines -

\$102,129.71

Stolen Property –

\$164,561.00

Recovered property - \$53,950.00 Sheriff fees -

\$ 5,570.00

Codes Violations – 0

Escorts – 40

Agencies assisted -

Sumter Sheriff's Office – 0

SC Highway Patrol – 2

Sumter Police Department – 0

Recovered narcotics: Marijuana wt. - 162.8 grams

Crack cocaine - 1.2 grams

Marijuana Plants - 0 Heroin – 12 grams

Other - 487

Cocaine powder – 2.15 grams

MDMA - 0

All Pills - 0

Steroids - 0

Methamphetamine – 90.96 grams Other drugs – 0

#### STATISTICS BELOW REPORTED TO SLED

Homicide – 0

Robbery - 9

All other larceny – 53

Arson - 1

Assaults (Simple) – 66

Assaults (Aggravated) - 19

Assaults (sexual) – 2

Theft (motor vehicle) -21

Theft from motor vehicle – 46

Theft motor vehicle parts/accessories - 4

Burglaries - 44

Kidnapping - 0

DUI - 4

Suicide – 2

Missing Person – 3

Respectfully submitted,

Anthony Dennis, Sheriff



SUMTER COUNTY CULTURAL CENTER

&
THE HEART OF SUMTER NEIGHBORHOOD ASSOCIATION

invite you to



JUNE 23rd, 2018 ~ 6pm to 8pm LOCATED OUTSIDE PATRIOT HALL

free event open to the public DESSERTS & LEMONADE

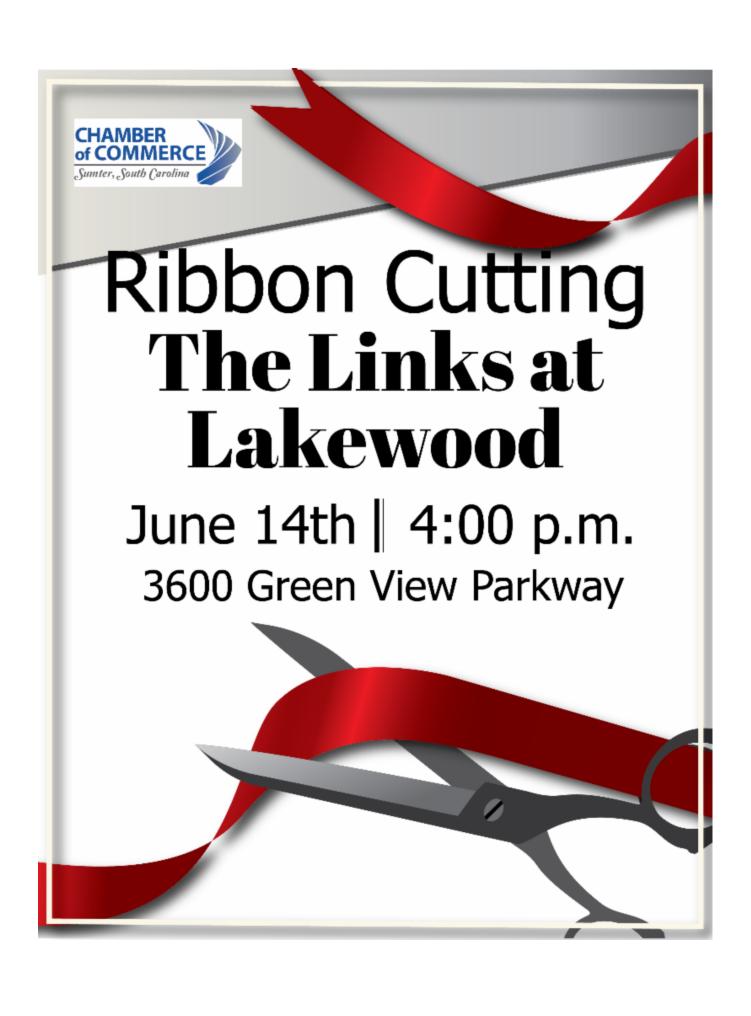








CHARLESTON SYMPHONY ORCHESTRA Ken Lam Music Director





Local Leaders. Statewide Strength.®



#### SCAC's 51st Annual Conference

#### Registration

The registration fee for the Annual Conference covers the cost of coffee breaks, receptions and the 2018 Annual Banquet for delegates and their spouses. Registration for county delegates, patron and corporate supporters is \$430.00 until July 13; after this date and on-site, the fee is \$455.00. Registration for **non-members** is \$570.00 until July 13; after this date and on-site, the fee is \$595.00. There is no additional charge for a spouse or guest to attend the Annual Banquet. Tickets must be purchased for children who want to attend the Annual Banquet with their parents. These tickets will be sold at the registration desk at actual cost, if available.

#### **Cancellations for Conference**

To cancel a registration, you must notify the SCAC Office in writing. Registrations cancelled by 5 P.M. on July 13 will be assessed a \$25.00 service charge. After this date, no refunds will be made — no exceptions.

#### **Dress**

For the comfort of our delegates, casual attire is acceptable at all business sessions. Attire will be dressy casual for the receptions and dressy for the Annual Banquet. Dressing in layers is recommended due to room temperature variations.



## SOUTH CAROLINA ASSOCIATION OF COUNTIES

#### Receptions

The Exhibitors' Reception will be held from 6:00 to 7:00 P.M. on Sunday, August 5. During the Exhibitors' Reception, door prizes will be announced. The President's Reception will be held from 5:30 to 6:30 P.M. on Monday, August 6.

#### **Meeting App**

Attendees can get up-to-the-minute meeting information directly on their smart phones and tablets by using our Annual Conference app. The app is free and contains everything you'll need to know about the 2018 Annual Meeting. Links to the app will be placed on the SCAC website in July. Visit **SCCounties.org** for more information.

## Betty T. Roper Elected Women Officials' Luncheon

All elected women officials are invited to attend and participate in the Elected Women Officials' Luncheon on Monday, August 6. The registration fee for this event is \$60.00 per person. There will be no on-site registration and no refunds after July 13.

#### **Institute of Government**

The South Carolina Association of Counties, in cooperation with the Joseph P. Riley Jr. Center for Livable Communities, College of Charleston, and the Strom Thurmond Institute of Government, Clemson University, will hold the **Institute of Government for County Officials** (Level I, Level II and Advanced) on Saturday, August 4 and Sunday, August 5, 2018.

Credit for Level II courses will be given to county officials who have graduated from Level I or are within nine (9) hours of graduating from Level I.

Each course is three credit hours. Credits for courses are valid for four years. To receive a certificate for Level I, 27 hours of instruction, including 18 hours of required and 9 hours of elective topics, must be completed. To receive a certificate for Level II, 18 hours of instruction in Level II topics

must be completed. There is no certificate program for the Advanced Level.

#### **Cancellations for Institute**

To cancel a registration, you must notify the SCAC Office in writing. Registrations cancelled by 5 P.M. on July 13 will be assessed a \$10.00 service charge. After this date, no refunds will be made-no exceptions.

#### Register and Pay Online

You may register online via **SCCounties.org**, instead of using the attached registration form. If you are mailing a registration form, however, <u>please do not also register online</u>. Payment must be received at the SCAC Office within 48 hours of online registration.

## Registration

### **SCAC's 51st Annual Conference**

IMPORTANT: Payment must be received at the SCAC Office within 48 hours.

(Please print) County or Company Name	e						
Name of Registrant	First or Informal Name (for name badge)						
Title	Email						
Phone No	Emergency Contact Name 8	& No					
Mailing Address	City			State _	Zip		
The following information must be completed for name badges and/or ticked Spouse or Guest* Attending? Yes No			tets for a spouse or guest. *Guest cannot be a county official or employee.				
	anquet: Yes No	hana	banquet ticket. —				
Spouse/Guest Name (for n	name badge)						
		Fe (before )		Fee (Late/On-Site)	Please Check	Total	
<b>Delegate Registration:</b>		\$43	30	\$455			
Non-Member Registration:	:	\$57	70	\$595			
I di de G							
Institute of Government							
Saturday, Augu Level I:	<u>18t 4</u>						
10:00 A.M. to 1:00 P.M.	Public Budgeting [R]	\$7	0	\$80			
	Developing Good Leadership Skills [E]	\$7	0	\$80			
2:00 p.m. to 5:00 p.m.	Orientation II [R]	\$7	0	\$80			
	Employment Law: What Counties Need to Kn	ow [E] \$7	0	\$80			
<u>Level II:</u> 10:00 A.M. to 1:00 P.M.	Measuring and Reporting County Performance	e \$7	0	\$80			
Advanced: 2:00 P.M. to 5:00 P.M.	Going from Good to Great: The Journey for Communities	\$7	0	\$80			
Sunday, August	<u>t 5</u>						
<u>Level I:</u> 9:00 A.M. to 12:00 Noon	Planning and Land Use [R]*	\$7	0	\$80			
Level II: 9:00 A.M. to 12:00 Noon	Current Issues Facing County Government: Building Resilient Communities	\$7 \$7		\$80 \$80			
[R] – Required course [E] – Elective course * Approved for three hours of continuing education credit for planning/zoning officials and employees							
Monday, Augus	<u>st 6</u>						
Betty T. Roper Elected Women Officials' Luncheon (No on-site registration and no refunds after July 13)		\$6	0	N/A			
Person Completing Form		Ch	Check enclosed in the amount of \$				
	) Check No En						

#### PAYMENT AND ONLINE REGISTRATION INFORMATION

You may register and pay with a credit card online at **SCCounties.org**. A "bill me" option is available for those needing to pay by check (payable to SCAC). If you prefer to mail your registration with payment, please complete and mail the registration information with your check to SCAC.

### **Program at a Glance**

#### Sunday, August 5, 2018

8:00 A.M. — 9:00 A.M. Worship Service

10:30 A.M. — 5:00 P.M. Registration

10:30 A.M. — 5:00 P.M. Exhibit Area Open

1:00 P.M. J. Mitchell Graham/Barrett Lawrimore Memorial Awards

Competition

2:00 P.M. — 5:00 P.M. Clerks to Council

3:00 P.M. Nominating Committee

3:30 P.M. Constitution, Resolutions and Bylaws Committee

6:00 P.M. — 7:00 P.M. Exhibitors' Reception



Greg Cox NACo First Vice President Speaker for General Session

#### Monday, August 6, 2018

8:30 A.M. — 12:00 NOON Exhibit Area Open

8:30 A.M. — 5:00 P.M. Registration

9:00 A.M. — 12:00 P.M. County Council Coalition Meeting

9:00 A.M. — 12:00 P.M. County Managers, Administrators and Supervisors Meeting

12:30 P.M. — 1:30 P.M. Betty T. Roper Elected Women Officials' Luncheon -

Ticket Required

2:00 P.M. — 4:00 P.M. Workshops (*Tentative*)

Preventing and Mitigating Cyberattacks

• The Role of HR during Emergency Planning and Response

• Designing Safer Communities

• Opioid Epidemic Roundtable

• 2018 Legislative Update

5:30 P.M. — 6:30 P.M. President's Reception

### Tuesday, August 7, 2018

8:30 A.M. — 12:00 P.M. Registration

9:30 A.M. — 12:00 P.M. General Session

6:45 P.M. — 9:00 P.M. Annual Conference Banquet -

Ticket Required

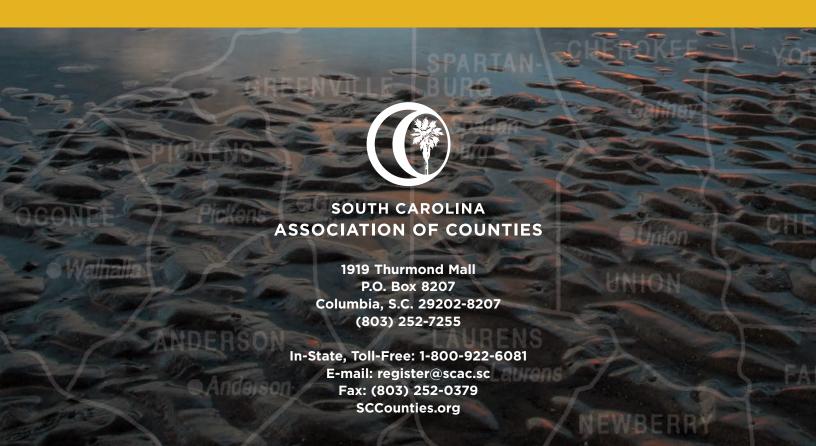
9:00 P.M. — 12:00 A.M. Dance/Cash Bars





**Deas-Guyz** 









#### **BOARD OF ZONING APPEALS**

#### WEDNESDAY, JUNE 13, 2018 @ 3:00 FOURTH FLOOR COUNCIL CHAMBERS SUMTER OPERA HOUSE 21 N. MAIN STREET

#### I. APPROVAL OF MINUTES – MAY 9, 2018

#### II. <u>NEW BUSINESS</u>

#### BOA-18-10, 21 Glade Dr. (County)

The applicant is requesting an 11 foot variance from the required 35 ft. front setback as per *Article 3*, *Section 3.n.5.b.* of the Sumter County Zoning and Development Standards Ordinance to allow a 24 ft. front setback in order to construct an attached carport to house. The property is located at 21 Glade Dr. The property is zoned Agricultural Conservation (AC) and represented by Tax Map #099-11-05-006.

#### BOA-18-11, 320 Miller Rd. (City)

The applicant is requesting a variance from the parking regulations for child care center as required per *Article 8, Section 8.i.3.b, Parking Regulations* and a variance from landscaping as per *Article 9 Landscaping, Buffer, And Tree Protection Requirements* of the City Zoning and Development Standards Ordinance. The property is located at 320 Miller Rd. represented by Tax Map #229-16-03-034 and zoned Professional Office (PO).

#### BOA-18-12, 699 Bultman Dr. (City)

The applicant is requesting a variance of 12 feet from the required 20 ft. front yard setback to allow an 8 ft. setback from Wise Dr. as required per *Article 3, Section I, General Commercial (GC)* front setbacks as listed in *Section 3.i.5.b. of* the *City of Sumter Zoning Ordinance* in order to construct a covered outdoor structure to allow accessory on-premise consumption. The property is located at 699 Bultman Dr., and is represented by Tax Map # 229-08-03-062 and 229-08-03-010, and zoned GC (General Commercial).

#### BOA-18-13, 802 N. Main St. (City)

The applicant is requesting a 39 sq. ft. variance from the maximum 40 sq. ft. allowed for signage as per *Article 8, Exhibit 8-5 Maximum Total Sign Area by Use, Number, Dimensions and Location of Individual Signs (Note # 6)* of the City of Sumter Zoning and Development Standards Ordinance in order to erect a 79 sq. ft. monument sign on property located at 802 N. Main St. The property is represented by Tax Map # 229-12-04-020 and is zoned Residential-6 (R-6).

#### BOA-18-14, 2250 Peach Orchard Rd. (County)

The applicant is requesting a variance from the Landscaping Standards per *Article 8, Section 8.d.7.c.2* of the Sumter County Zoning and Development Standards Ordinance in order to reduce the amount of landscaping on the previously approved plan for this site. The property is located at 2250 Peach Orchard Rd., represented by Tax Map #133-02-02-004 and zoned General Commercial (GC).

#### III. OTHER BUSINESS

NONE

#### IV. ADJOURNMENT

## DOWNTOWN BLOCK PARTY



## PARTY on the MOON®

E<sup>3</sup> Conference Attendees, Presenters, and a Guest are invited to attend a Downtown Block Party Wednesday, June 13, 2018
5-9 PM

La Piazza on Main Street
Must wear wristband to enter.
The event will include heavy hors d'oeuvres.

## PRESENTED BY







