

AGENDA ITEM:

X-A

Ordinance item A

AN ORDINANCE
Ordinance # O-2022-39

AUTHORIZING CERTAIN AMENDMENTS, MODIFICATIONS AND CHANGES TO THE COUNTY'S CODE OF ORDINANCES; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSOLIDATED FIRE SERVICE AGREEMENT BETWEEN JASPER COUNTY, SOUTH CAROLINA AND LEVY VOLUNTEER FIRE DEPARTMENT; AUTHORIZING THE APPROPRIATION OF COUNTY FUNDS UNDER THE TERMS OF SUCH AGREEMENT; AND OTHER MATTERS RELATING THERETO.

WHEREAS, the County Council of Jasper County (the "*County Council*"), the duly elected governing body of Jasper County, South Carolina ("*County*"), is empowered pursuant to Title 4, Chapter 19 of the Code of Laws of South Carolina 1976, as amended (the "*Fire Service Act*"), "[t]o establish, operate, and maintain a system of fire protection" within the County.

WHEREAS, Levy Fire Protection District (the "*Fire District*") is a fire service area created and existing under the authority of the County pursuant to the Fire Service Act and Ordinance No. 09-19 of County Council dated July 20, 2009, which is now codified at Chapter 9, Article IV, Division 4 of the County's code of ordinances (the "*Fire District Ordinance*").

WHEREAS, the Levy Volunteer Fire Department (the "*Levy VFD*") is a South Carolina non-profit organization organized for the purpose of providing fire protection services within certain unincorporated areas of the County near the City of Hardeeville, South Carolina.

WHEREAS, the geographical boundaries of the Fire District are coterminous with the operating boundaries of Levy VFD (the "*Service Area*"), a map of which is attached hereto as **Exhibit A**, and the County, acting on behalf of the Fire District, has historically contracted with Levy VFD to provide fire protection services within the Fire District utilizing the County's emergency services personnel and Levy VFD volunteers.

WHEREAS, the contractual arrangements for fire protection services within the Service Area between the County and Levy VFD, which presupposed insurance coverage through the County's insurance provider and liability limitations under the South Carolina Tort Claims Act, codified at Title 15, Chapter 78 of the Code of Laws of South Carolina 1976, as amended, are no longer sustainable.

WHEREAS, the Parties now desire to fully transition the provision of fire service in the Service Area from Levy VFD to the Fire District.¹

WHEREAS, County Council is determined to enter into an agreement with the Levy VFD (the "*Consolidated Fire Service Agreement*") providing for (i) the County, acting through the Fire

¹ Even in the absence of such transition, the County, acting through the Fire District, could provide fire service to the exclusion of Levy VFD because Levy VFD is not a political subdivision in contravention of Section 4-19-10(b) of the Fire Service Act.

District, as consolidated with Levy VFD (the "*Consolidated System*"), to provide for fire service to the Service Area, and (ii) the transfer of certain fire-related assets from the Levy VFD to the County.

WHEREAS, the provisions of this Ordinance shall provide for the creation and establishment of the Consolidated System and the provision of fire-services to the Service Area by the Consolidated System under the terms of the Consolidated Fire Service Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF JASPER COUNTY, as follows:

Section 1. Recitals. Each finding or statement of fact set forth in the recitals hereto has been carefully examined and has been found to be in all respects true and correct. The County Council has determined that the Consolidated System satisfies all of the requirements and conditions set forth and established in the Fire Service Act, and the authorization of the Consolidated Fire Service Agreement is in the best interests of the County and within its power and authority to implement, execute, deliver and perform.

Section 2. Approval of the Consolidated Fire Service Agreement; Acceptance of Assets; Accounts.

A. The County Council has received and reviewed the Consolidated Fire Service Agreement. The Consolidated Fire Service Agreement provides Levy VFD's consent and agreement to the acquisition of its fire service assets by the County. The County Council hereby authorizes the County Administrator to execute and deliver the Consolidated Fire Service Agreement in substantially the form attached hereto as **Exhibit B** and agrees to take all necessary actions to comply with, conform to its terms, and implement the same. The consummation of the transactions and undertakings described in the Consolidated Fire Service Agreement, and such additional transactions and undertakings as may be determined by the County Administrator, as necessary or advisable, are hereby approved.

B. The Consolidated Fire Service Agreement and its terms shall become effective upon the "Effective Date and Time" as such term is defined in the Consolidated Fire Service Agreement.

C. All real property, personal property (excluding certain all cash and investments) and other assets of the Levy VFD, as recited in the Consolidated Fire Service Agreement, are accepted, ratified and received and may be further accepted and received prior to the Effective Date and Time as deemed necessary to effect and implement the provisions of the Consolidated Fire Service Agreement. Further, all real property, personal property (excluding certain all cash and investments) and other assets of the Levy VFD, as transferred and conveyed to the County under the Consolidated Fire Service Agreement or as may be otherwise authorized under this Ordinance, are assumed and received.

D. The County expressly appropriates a sum equal to the Purchase Price (as such term is defined in the Consolidated Fire Service Agreement) to Levy VFD under the terms of the

Consolidated Fire Service Agreement. The Purchase Price shall be made and payable from the County's general fund, and to the extent not specifically budgeted, such amount shall be made available from the County's capital reserve fund.

Section 3. Amendment and Restatement of Fire District Ordinance. The Fire District Ordinance, as codified in the County's code of ordinances at Chapter 9 – "Civil Emergencies", Article IV – "Fire Protection Districts", Division 4 – "Levy Fire Protection District" (Section 9-96) shall be amended and restated to now read as provided below. Additionally, to the extent the Fire Service Act does not permit amendments to existing fire protection districts created thereunder, the provisions hereinbelow shall be considered to effect the termination of the existing Fire District and as the establishment Consolidated System, as a fire protection district, under the Fire Service Act that shall be specifically tasked and authorized to perform the functions and powers described hereinbelow.

Chapter 9 – CIVIL EMERGENCIES

Article IV – Fire Protection Districts

Division 4 – Levy Fire Protection District

Sec. 9-96. Levy Fire Protection District - Generally.

(1) Pursuant to the provisions of Title 4, Chapter 9 of the Code of Laws of South Carolina 1976, as amended and Title 4, Chapter 19 of the Code of Laws of South Carolina 1976, as amended (together, the "Act"), the Levy Volunteer Fire Department (the "Levy VFD") shall be administratively consolidated by the County thereby reconstituting the Levy Fire Protection District.

(2) **Formal Name.** Upon the inclusion of Levy VFD, the consolidated fire service area shall continue to be known and referred to as "Levy Fire Protection District."

(3) **Administration.** The Levy Fire Protection District shall initially be operated as a commission under the authority of the County called the "Levy Fire Protection District Board" (the "Board"). The Board shall initially consist of five (5) voting members. Three (3) members of the Board shall be appointed by the County Council from the Levy Fire Protection District service area (the "Appointed Members") and, for purposes of the initial appointees, at least two (2) of the three (3) Appointed Members shall be former board members of Levy VFD. The Chair and Vice Chair of the County Council shall also serve on the Board in an *ex-officio* capacity. Other than the *ex officio* members, who shall serve for a period of time conforming to their respective positions, the Appointed Members shall serve staggered terms. The initial Appointed Members shall serve terms as follows: one Appointed Member shall serve an initial term until June 30, 2023, one Appointed Member shall serve an initial term until June 30, 2024; and Appointed Member shall serve an initial term until June 30, 2025. As the terms of the initial Appointed

Members expire, Appointed Members will be appointed to serve three-year terms thereafter. All Appointed Members of the Board may serve for successive terms of appointment, but in no event may any Appointed Member serve more than three consecutive terms. All Appointed Members shall serve until a qualified successor is appointed to serve. Any vacancy of an Appointed member, regardless of how such vacancy occurs, shall be filled by Council for the remainder of such member's term. The Board shall organize and arrange meetings as necessary and shall further make arrangements to elect necessary officers, including a chair to preside over meetings.

Sec. 9-96A - Powers, Duties and Responsibilities.

(1) The Board shall have the power to recommend policies, practices and procedures for final approval by County Council regarding the following matters:

(a) Acquisition of capital items, including facilities, rolling stock and equipment as necessary for the purpose of controlling fire(s) within its service area;

(b) Suggest sites or places within its service area where fire-fighting equipment must be kept;

(c) Review and make recommendations regarding senior personnel assigned to the Levy Fire Protection District;

(d) Establishment and operation of a fire auxiliary task force, consisting of community volunteers to assist in the day-to-day operations in support of Levy Fire Protection District;

(e) Make recommendations on the use of available capital funding sources; and

(f) Promulgate such regulations as may be necessary to ensure that fire operations and equipment are being used to the best advantage of the Levy Fire Protection District.

(2) In order to properly operate, maintain and manage the Levy Fire Protection District, the County Council shall have all powers granted under the Act as necessary to govern the Levy Fire Protection District.

Sec. 9-96C - Procurement.

The Levy Fire Protection District shall be governed by the administrative rules of procedure governing other County agencies/departments and shall additionally comply with and be governed by the County's procurement code. Equipment and facilities, to the extent practicable, shall be compatible with other County equipment and facilities.

Sec. 9-96D - Taxes and Fees.

- (1) There may be levied ad valorem property taxes within the boundaries of the Levy Fire Protection District for operation and maintenance purposes. All real and personal property currently within the boundaries of the Levy Fire Protection District shall be assessed and taxed in accordance with the provisions of South Carolina law.
- (2) The Levy Fire Protection District may impose rates and charges for operation and maintenance purposes in the discretion of the County Council.
- (3) However, and in lieu of the levy of taxes or fees within the Levy Fire Protection District, funds, as determined in the annual budget of the County Council and as further described in Sec. 9-96E below, may be directly appropriated by the County in which case only a portion of, or none of, the taxes and fees authorized in subsections (a) or (b) above will be levied.

Sec. 9-96E - Use of Revenues; Budget.

- (1) All revenues and funds collected for the benefit and use of the Levy Fire Protection District shall be deposited with the County Treasurer under the name of the Levy Fire Protection District.
- (2) Disbursements shall be made under the terms and conditions of the annual budget, as approved by County Council. No funds shall be expended for purposes other than as allocated in the annual budget unless authorized or approved by the County Council through an amendment to the annual budget.

Sec. 9-96F - Bonds.

In order to provide for facilities, rolling stock, equipment and other needs of the Levy Fire Protection District, the County may issue, with or without an election, general obligation bonds (in a single issue or several separate issues) by the County on behalf of the Levy Fire Protection District; such bonds shall be secured by the full faith, credit and taxing power of the County and shall be initially payable from ad valorem taxes levied and collected within the Levy Fire Protection District.

Sec. 9-96F - Auditing.

The Levy Fire Protection District shall be subject to an audit by the County's auditing firm in the same manner as any other department of the County.

Sec. 9-96F - Certain Actions Requiring Approval.

Absent the written approval of the County Council, the Levy Fire Protection District shall not (a) enter into any contract to purchase, lease, convey or sell real estate, (b) borrow any

money (including lease-obligations), or (c) enter into any contracts, which have not been previously ratified through the budget process.

Sec. 9-96G – Geographic limits of the Levy Fire Protection District.

The geographic limits of the Levy Fire Protection District are as follows:

The Levy Fire Protection District encompasses that portion of southern Jasper County bounded on the north by Union Creek, the limits of the City of Hardeeville, thence along the northern boundaries of TMS numbers 009-00-06-016, 009-00-06-048, 009-00-06-011, 009-00-06-013, 009-00-06-047, 009-00-06-075, 009-00-06-096, 009-00-06-112, 009-00-06-189, 009-00-06-115, 009-00-06-133, 009-00-06-132, 009-00-06-131, 009-00-06-130, 009-00-06-161, to the intersection of Freedom Parkway (S.C. Hwy 170); then along the boundary of Freedom Parkway to its intersection with Plantation Drive (S. C. Hwy 46); then north along Plantation Drive to the northern boundary of TMS number 040-00-04-004 and then along that boundary to the New River; on the east by the New River and the Atlantic Ocean; and on the south and west by the Savannah River. All of which is more particularly shown on a map of the proposed district included as an Exhibit to the approval ordinance and on display at the Offices of the Jasper County Emergency Services, 1509 Grays Highway, Ridgeland, South Carolina 29936, and which may be viewed during normal business hours.

Section 4. Public Hearing. Prior to the date of enactment of this Ordinance, the County did hold a public hearing on January 17, 2023 regarding the implementation and establishment of the Consolidated System. The Notice of Public Hearing was published three-times in the *Island Packet*, which is a newspaper of general circulation in the County. First publication of such notice did occur not less than sixteen (16) days prior to the date of the public hearing and all interested parties were given an opportunity to speak in favor of or against this Ordinance.

Section 5. Notice of Enactment. Subsequent to the enactment of this Ordinance, a notice of enactment of this Ordinance, the form of which is attached hereto as **Exhibit C**, shall be published once a week for two (2) successive weeks in the *Island Packet*, which is a newspaper of general circulation in the County.

Section 6. Further Action. The County Administrator, in his individual capacity, is hereby authorized to take such other and further actions as he deems necessary or appropriate to carry out the terms and the intent of this Ordinance. Any actions previously undertaken by the County Administrator, County Council or Levy VFD in connection with the execution and delivery of the implementation Consolidated Fire Service Agreement prior to the enactment of this Ordinance are ratified and confirmed.

Section 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, is held or determined to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 8. Limitation of Rights. That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 9. Inconsistency. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 10. Effective Date. This Ordinance shall take effect immediately upon its enactment by the County Council; however, the provisions of the Consolidated Fire Service Agreement shall not become effective until the Effective Date and Time (as such term is defined in the Consolidated Fire Service Agreement).

DONE AND ENACTED BY COUNCIL ASSEMBLED this ___ day of _____, 2023.

JASPER COUNTY, SOUTH CAROLINA

(SEAL)

L. Martin Sauls IV, Chairman
Jasper County Council

ATTEST:

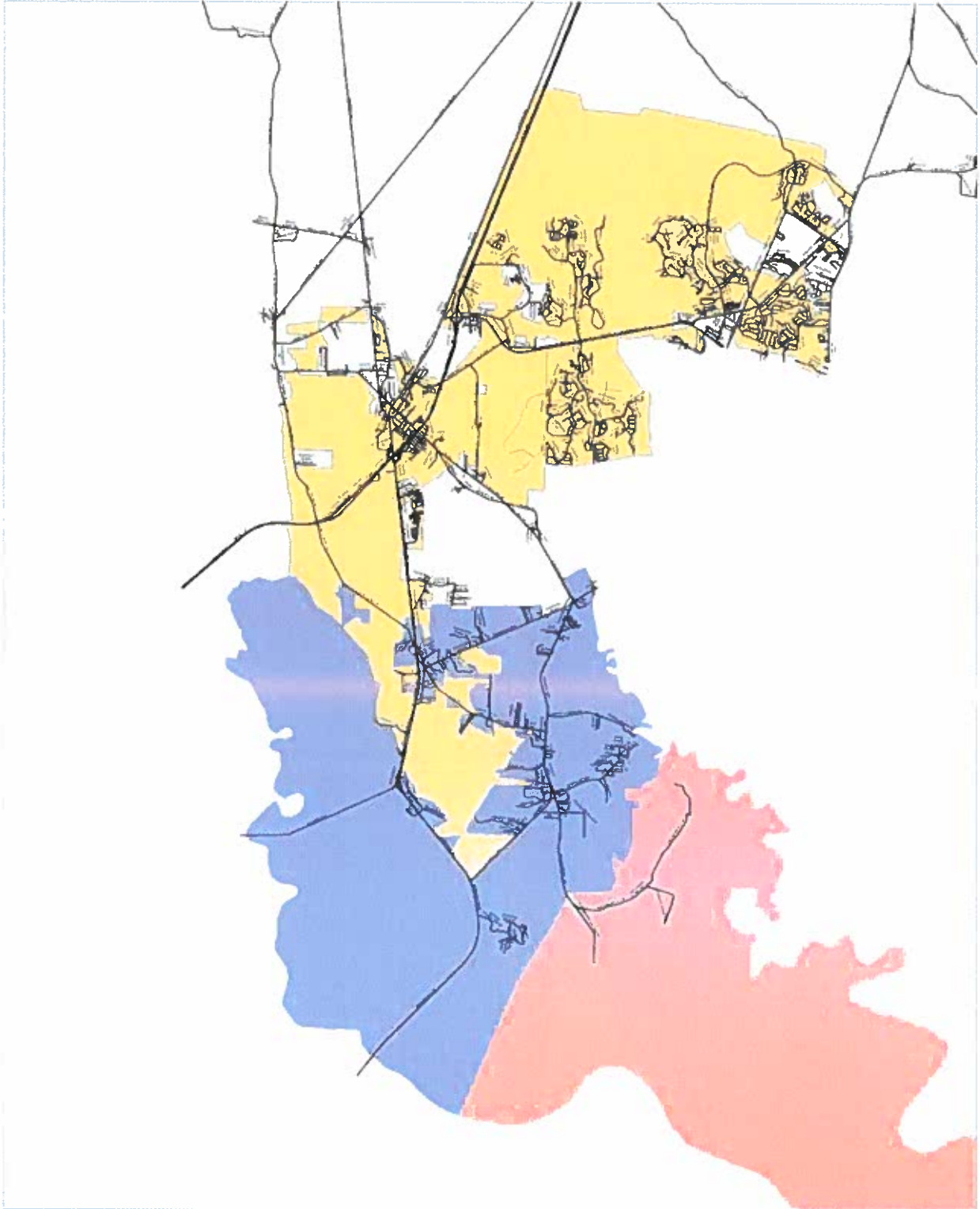
Wanda Simmons
Clerk to Council

Ordinance # O-2022-39

First Reading: December 5, 2022
Public Hearing: January 17, 2023
Second Reading: January 17, 2023
Third Reading: February 6, 2023

EXHIBIT A

MAP OF SERVICE AREA



(Yellow = City of Hardeeville, Lavender/Pink = Fire District)

EXHIBIT B

FORM OF CONSOLIDATED FIRE SERVICE AGREEMENT

EXHIBIT C

NOTICE OF ENACTMENT

On February 6, 2023, the Jasper County Council (the "**County Council**"), the governing body of Jasper County, South Carolina (the "**County**") enacted an Ordinance entitled, "AN ORDINANCE AUTHORIZING CERTAIN AMENDMENTS, MODIFICATIONS AND CHANGES TO THE COUNTY'S CODE OF ORDINANCES; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSOLIDATED FIRE SERVICE AGREEMENT BETWEEN JASPER COUNTY, SOUTH CAROLINA AND LEVY VOLUNTEER FIRE DEPARTMENT; AUTHORIZING THE APPROPRIATION OF COUNTY FUNDS UNDER THE TERMS OF SUCH AGREEMENT; AND OTHER MATTERS RELATING THERETO" (the "**Ordinance**"). As required by Section 4-19-20(5) of the Code of Laws of South Carolina 1976, as amended, you are advised of the following:

1. Levy Fire Protection District (the "**Fire District**") is a fire service area created and existing under the authority of the County pursuant to Title 4, Chapter 19 of the Code of Laws of South Carolina 1976, as amended (the "**Fire Service Act**") and Ordinance No. 09-19 of County Council dated July 20, 2009, which is now codified at Chapter 9, Article IV of the County's code of ordinances (the "**Original Fire District Ordinance**" and together with the Ordinance, the "**Fire District Ordinance**").

2. The Levy Volunteer Fire Department (the "**Levy VFD**") is a South Carolina non-profit organization organized for the purpose of providing fire protection services within certain unincorporated areas of the County near the City of Hardeeville, South Carolina.

3. Under the terms of the Fire District Ordinance, and subject to the execution and delivery of that certain Consolidated Fire Service Agreement between the County (on behalf of the Fire District) and Levy VFD (the "**Agreement**"), the County has authorized the consolidation of Levy VFD into the Fire District.

4. The service area and boundaries of the Fire District shall consist of all those areas described in the Fire District Ordinance (the "**Service Area**").

5. Upon the Effective Date and Time (as defined in the Agreement), the County (acting on behalf of the Fire District) shall be authorized to assess and collect ad valorem taxes within the Service Area for the operation and maintenance of the Fire District. Additionally, the County shall be further authorized to impose rates and charges within the Service Area for operation and maintenance of the Fire District. However, the taxes, rates and charges may be reduced or diminished to the extent funds for the operation and maintenance of the Fire District are appropriated by the County in the annual budget for the Fire District.

6. The Fire District shall be governed by a five member board, consisting of three appointed members and two ex officio members of the County Council. The Fire District shall be authorized to issue general obligation bonds, payable from ad valorem taxes levied within the Fire District, in order to defray the costs of providing fire protection services within the Service Area. Any general obligation bonds must be issued by, and are subject to the express approval of, the

County. To the extent any indebtedness of the Levy VFD remains or exists as of the date hereof, the County has committed to timely exercise the redemption of such obligations under the terms of the Agreement.

AGREEMENT FOR CONSOLIDATED FIRE SERVICE BY AND BETWEEN JASPER COUNTY AND THE LEVY VOLUNTEER FIRE DEPARTMENT

This **AGREEMENT FOR CONSOLIDATED FIRE SERVICE** (this “*Agreement*”) is entered into as of the 7th day of February 2023 at 12:00:01 a.m. (the “*Effective Date and Time*”) by and between Jasper County, South Carolina (the “*County*”), acting on behalf of the Levy Fire Protection District (the “*Fire District*”), and the Levy Volunteer Fire Department (the “*Levy VFD*” and together with the County, the “*Parties*”). However, it is expressly recognized and understood that certain actions herein may occur or may be required to occur on or before the Effective Date and Time.

WHEREAS, Levy VFD is a South Carolina nonprofit organization organized for the purpose of providing fire protection services within certain unincorporated areas of the County near the City of Hardeeville, South Carolina.

WHEREAS, the County Council of Jasper County (the “*County Council*”), the duly elected governing body of the County, is empowered pursuant to Title 4, Chapter 19 of the Code of Laws of South Carolina 1976, as amended (the “*Fire Service Act*”), “[t]o establish, operate, and maintain a system of fire protection” within the County. By the terms of Ordinance No. 09-19 dated July 20, 2009, as amended and reestablished by Ordinance No. 22-__ dated February 6, 2023 (as amended, the “*Fire District Ordinance*”)¹, County Council created the Fire District under the provisions of the Fire Service Act.²

WHEREAS, the geographical boundaries of the Fire District are coterminous with the operating boundaries of Levy VFD (the “*Service Area*”), and the County, acting on behalf of the Fire District, has historically contracted with Levy VFD to provide fire protection services within the Fire District utilizing the County’s emergency services personnel and Levy VFD volunteers.

WHEREAS, the Parties now desire to fully transition the provision of fire service in the Service Area from Levy VFD to the Fire District.

WHEREAS, the County and Levy VFD have determined that it is in their respective best interests that the assets of the Levy VFD be transferred to the County, thereby consolidating the assets of both Levy VFD and the Fire District into an integrated system of fire service and protection under the terms of this Agreement.

NOW, THEREFORE, and in consideration of the promises and mutual covenants and obligations contained herein, the sufficiency of which are agreed by the Parties, the County and Levy VFD do hereby agree as follows:

¹ All references to the approvals for this Agreement in the Fire District Ordinance shall reference to the most recent amendment, a copy of which is attached hereto as **EXHIBIT A**.

² Now codified at Chapter 9, Article IV of the County’s code of ordinances.

**ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION**

SECTION 1.1. Definitions. The terms defined below are used in this Agreement with meanings ascribed thereto unless a different meaning is plainly intended.

“Agreement” means this Agreement for the Consolidated Fire Service by and between Levy VFD and the County.

“Consolidated System” means Levy VFD System and the Fire District System, as consolidated into a single system under the ownership and control of Fire District pursuant to the provisions hereof, as may be amended from time to time in the sole discretion of the County

“Environmental Laws” means any federal, state, local, or foreign law (including, without limitation, common law), treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit, or governmental restriction or any agreement with any governmental body or other third party, whether now or hereafter in effect, relating to the environment, human health and safety, or to pollutants, contaminants, wastes, or chemicals or any toxic, radioactive, ignitable, corrosive, reactive, or otherwise hazardous substances, wastes, or materials.

“Fire District System” means the fire service and protection system owned operated by the County for the benefit of the Fire District.

“Levy VFD System” means all of the assets of the Levy VFD, as such assets are further described in **EXHIBITS C, D, and E** and any Non-Enumerated Real Property Interests (as described in Section 2.3(b) herein).

“Levy VFD Resolution” the resolution of Levy VFD dated _____, 2022 approving this Agreement and the actions herein.

“Purchase Price” means the total sum of \$1,494,500.00 to be paid by the County into an account established for the benefit of the Fire District and Levy VFD in full and complete payment for the rights, interests and assets to be transferred pursuant to this Agreement.

“Transfer Date” means the date and time immediately following the enactment of the Fire District Ordinance (as amended) and the adoption of the Levy VFD Resolution.

**ARTICLE II
AGREEMENT TO TRANSFER AND ACQUIRE CERTAIN ASSETS**

SECTION 2.1. Services; Term

(a) **Efficient Service.** The County and Levy VFD agree that the customers and users of Levy VFD System and the residents of Levy VFD will obtain safer, more economical, and efficient fire protection services if Levy VFD System is consolidated with the existing Fire District System into the Consolidated System under the ownership and control of the County.

The Parties hereto have therefore determined that Levy VFD System shall be sold and transferred to the County.

(b) Withdrawal; Cessation. Upon the Effective Date and Time, Levy VFD shall (i) withdraw from the business of providing fire service and protection and (ii) cease all active fire-service related activities; however, the cessation provided above shall not affect any efforts to financially support and raise resources for the benefit of the Fire District by Levy VFD, which may be continued as a support organization or foundation for the benefit of the Fire District.

(c) Term. This Agreement shall terminate upon the earlier of (i) two years from the Effective Date and Time, or (ii) all funds in the Account (as defined herein) having been expended.

SECTION 2.2. *Conditions to Closing*: The following shall be conditions precedent to the obligation of the Parties to proceed with the transfer of Levy VFD System:

(a) The enactment by the County of the Fire District Ordinance, an executed version of which shall be included herewith as **EXHIBIT A**.

(b) The approval by Levy VFD of the Levy VFD Resolution, an executed version of which shall be included herewith as **EXHIBIT B**.

If the closing shall fail to occur as the result of the failure of any condition precedent, each Party shall be responsible for its own costs.

SECTION 2.3. *Assets Transferred to the County*. The Parties understand and agree that all real and personal property of Levy VFD used or useful for firefighting purposes would become uniquely useful to the Consolidated System and uniquely useless to Levy VFD as it has determined to discontinue the direct provision of fire service within Levy VFD. As a result, Levy VFD shall transfer and the County shall acquire certain assets of Levy VFD System as provided in this Section. All real property, personal property, and other assets of Levy VFD, excluding certain remaining cash and investments, shall be transferred and conveyed to the County prior to the Effective Date and Time as deemed necessary to effect and implement the provisions of the Agreement; any such transfer may occur on or after the Transfer Date. The following provisions enumerate the assets constituting Levy VFD System, which shall be transferred to the County:

(a) Fixed Assets, Real Property, Easements and Rights-of-Way. Levy VFD hereby transfers to the County:

(i) Fixed Assets. All personal property, including but not limited to any vehicles, turnout gear, computers, radios, or other equipment used only in Levy VFD's firefighting operation. A bill of sale of all the fixed assets transferred to the County, and a list of all property specifically included with an agreed upon valuation in excess of \$1,000.00, is attached as **EXHIBIT C-1**. Property excluded from this transfer shall be segregated and disposed of by Levy VFD prior to the Transfer Date. To the extent any of the fixed assets are subject to liens or serve as secured property for any obligations of Levy VFD, such

obligations shall be assigned or transferred to the County in accordance with the provisions of Section 2.3 hereof.

(ii) Real Property. Certain real property used in the provision of fire service or in operating Levy VFD System, including: 3677 Bellinger Hill Road, TMP 072-00-01-045 and 2721 Levy Road, TMP 038-00-05-006. Deeds for the aforementioned parcels of real property transferred to the County are attached as **EXHIBIT D**.

(b) Non-Enumerated Real Property Interests. The Parties recognize and acknowledge that the real property interests listed above not be exhaustive and that certain interests in real property associated with Levy VFD System, including rights of way, easements, other fee simple interests, and other interests in real property associated with Levy VFD System, may not be specifically enumerated therein. It is the express intention of the Parties to transfer to the County all rights-of-way, easements, other fee simple interests, and other interests in real property, including prescriptive rights, that are associated with the provision of fire service or in operating Levy VFD System whether they are listed in the exhibits to this Agreement or not. Levy VFD agrees to use its best efforts to maintain those records and documents in its possession that are related to rights-of-way, easements, other fee simple interests, and other interests in real property associated with Levy VFD System and will locate such documents and provide them to the County upon reasonable request. After the Transfer Date and during the pendency of this Agreement, Levy VFD agrees to execute any documents necessary or convenient to perfect the transfer or recording of the transfer of any such non-enumerated interests in real property to the County.

(c) Contracts, Permits, Records, Reports. Levy VFD hereby transfers and assigns to the County all outstanding contracts, permits, permit files, drawings, engineering reports and other documents related to Levy VFD System as well as any warranty rights or claims against third parties related to Levy VFD System. The documents transferred include without limitation all documents concerning regulatory and compliance reports, studies, response-time records, maintenance records, reports and evaluations, engineering studies, and information related to capital improvement projects, insurance claims and other liabilities.

(d) Other Claims and Payments. Levy VFD hereby transfers to the County all other claims, refunds, payments, awards or revenues related to Levy VFD System that both accrue and become payable to Levy VFD after the Transfer Date, except as otherwise provided herein.

(e) Levy VFD conveys all monies in the 1% Fund that is currently held with South State Bank to the County. Such monies shall be transferred in accordance with instructions provided to Levy VFD from the County on or prior to the Effective Date and Time. All monies in the 1% Fund shall only be used in accordance with the laws and regulations applicable to such funds. For the benefit of the Parties, such accounts, including necessary transfer information, may be included in the list of contractual obligations attached hereto as **EXHIBIT E** (see Section 2.5 below).

SECTION 2.4. Operation of Levy VFD System Prior to the Effective Date and Time. Pending the occurrence of the Effective Date and Time, Levy VFD shall continue to operate

Levy VFD System. To the extent any personal or real property assets of Levy VFD are transferred to the County prior to the Effective Date and Time, Levy VFD shall be authorized to continue using any and all such assets, which, in its sole discretion, are necessary to sustain fire-service and protection within Levy VFD until the Effective Date and Time.

SECTION 2.5. *Assumption of Obligations by the County.* (a) Debt Obligations. The County will redeem, in full, all debt obligations as so noted on **EXHIBIT E** prior to the Effective Date and Time.

(b) Contractual Obligations. To the extent there are any contractual obligations, other than indebtedness, such obligations may be redeemed, assigned or conveyed to the County, in its discretion; however, as a result of the transfer herein, no portion of any obligations shall remain with Levy VFD.

(c) Listing of Obligations. Attached hereto as **EXHIBIT E** is a list of all debt, contractual, permit or other payment obligations related to Levy VFD System, the responsibility for which is hereby transferred to the County for amounts due and payable after the Effective Date and Time. As may be applicable by the respective terms of such agreements, all items listed in **EXHIBIT E** shall be subject to assignment and transfer to the County. The County shall have no responsibility relating to debt, contractual, permit or other payment obligations Levy VFD may have incurred related to Levy VFD System arising before the Effective Date and Time if such obligations are not listed on **EXHIBIT E**. Except as controlled by this Agreement, any and all prior agreements between Levy VFD and County regarding fire-service within or by Levy VFD are deemed void by the Parties and no longer enforceable against either Party. All payment or other obligations that the County assumes as a result of this transfer are specifically itemized and disclosed in this Agreement. Except as set forth herein, no other funds, accounts, notes, loans, deposits, obligations, payment responsibilities or liabilities of any kind are assumed by the County or transferred to it. The County shall have no responsibility relating to the payment and/or performance of any responsibilities, contractual or otherwise, that Levy VFD may have entered into except as listed herein. Levy VFD shall continue to meet all such requirements and obligations related to Levy VFD System after Effective Date and Time that are not itemized herein.

SECTION 2.6. *Pre-existing Environmental Liability or Other Liability.* Levy VFD will not bear any responsibility to pay any response and clean-up costs, claims and damages for any environmental liability or other liability related to Levy VFD System that may arise out of conditions that were caused or existed prior to the Effective Date and Time. The County is purchasing Levy VFD System “as-is”, with no such warranties or representations of any kind being made by Levy VFD, except as may be otherwise expressly stated herein.

SECTION 2.7. *Payment of Purchase Price; Closing; Retention of Funds.* (a) Purchase Price. On or prior to the Effective Date and Time, the County shall establish a restricted account for the benefit of the Fire District (the “*Account*”) into which the Purchase Price shall be paid. Thereafter, the funds in the Account may be spent only on capital items related to the provision of fire service within the Fire District (i.e. facility improvements, equipment, etc.). The Board (as such term is defined in the Fire District Ordinance) shall make recommendations to County

Council as to suggested uses for funds in the Account. Initial recommendations are included as **Exhibit F**. Upon the proper expenditure of all proceeds of the Purchase Price within the Account, the Account may be collapsed and terminated by the County, acting on behalf of the Fire District.

(b) Title. Levy VFD shall transfer to the County title to all Levy VFD System assets free and clear of all liens. Each Party shall pay its own costs of the transaction.

(c) Accounts. Levy VFD will retain all monies contained in its donation and call-run account, which is current held with South State Bank.

SECTION 2.8. *Fire & Emergency Services.*

(a) It is the overriding goal of the Parties that the Consolidated System shall provide substantially improved fire service (over existing operations). The Parties intend that the Consolidated System will result in the implementation of 24/7 (24 hours per day, 7 days per week) fire and emergency/rescue service coverage within its service area. Commensurate with the implementation of 24/7 coverage, each permanent substation within the Service Area will provide 4 total personnel, consisting of 2 EMS/Ambulance personnel and 2 fire suppression personnel. At least one emergency service vehicle will be housed at a permanent substation located within the Service Area. Initially, that permanent substation will be Station 20, which is located at 2721 Levy Road, Hardeeville, SC 29927.

(b) Subject to conformance with County employment requirements and training requirements, all existing volunteer fire personnel of Levy VFD shall be considered for available positions with the Fire District.

(c) Subject to unforeseen economic circumstances affecting the entire County, failure to reach or maintain the staffing thresholds provided in this Section 2.8 shall not be considered a default under this Agreement and do not constitute grounds to terminate this Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES

SECTION 3.1. *Representations and Warranties of Levy VFD.* Levy VFD hereby represents and warrants to the County as follows:

(a) Authorization. Levy VFD has taken action necessary by its governing body to (i) enter into this Agreement, (ii) transfer Levy VFD System to the County, (iii) grant to fire service rights to the County all as set forth in Fire District Resolution, a copy of which is attached hereto as **EXHIBIT B**.

(b) No Conflict, Breach, or Default. The execution and delivery of this Agreement and the performance by Levy VFD of its obligations hereunder will not conflict with or constitute a breach of or default under (i) any contract or agreement to which Levy VFD is a party or by which Levy VFD is bound or to which the assets of Levy VFD System are subject, (ii) any law,

regulation, administrative or judicial order, or any judgment or decree to which Levy VFD or Levy VFD System is subject, or (iii) the charter or any resolutions of Levy VFD.

(c) Title to Levy VFD System. Levy VFD has insurable legal title to all the assets (as set forth in Section 2.3 of this Agreement) of Levy VFD System to be transferred hereunder, subject to no lien or claim.

(d) Contracts. Levy VFD represents and warrants that it is not a party to any contracts related to Levy VFD System except for the contracts listed on **EXHIBIT E** attached hereto.

(e) Environmental Matters. Levy VFD is not aware of any actual or potential liabilities in connection with Levy VFD System or any other property now or previously constituting a part of Levy VFD System arising under or relating to Environmental Laws, and is not aware of any facts, events, conditions, situations, or sets of circumstances that could reasonably be expected to result in or be the basis for any such liability. Levy VFD believes Levy VFD System to be in material compliance with all Environmental Laws. Levy VFD has not engaged in, and is not aware of, any studies or reports or activities or conditions pertaining to the environmental condition of Levy VFD System other than as have been specifically disclosed in writing to the County. The County acknowledges, however, that it is accepting and purchasing Levy VFD System in its "as-is" condition and subject to Section 2.3.

(f) Continued Operation. Until the Effective Date and Time, Levy VFD will operate and maintain Levy VFD System pending transfer to the County according to its ordinary standards and practices, using sound engineering and operating practices, and take all actions necessary to prevent any undue degradation or damage to the assets comprising Levy VFD System.

SECTION 3.2. Representations and Warranties of the County. The County hereby represents and warrants to Levy VFD as follows:

(a) Due Authorization, Execution, and Delivery. The County has taken action necessary by its governing body to (i) enter into this Agreement, (ii) accept Levy VFD System and (iii) provide fire service to Levy VFD all as set forth in the Fire District Ordinance, a copy of which is attached hereto as **EXHIBIT A**. The County has full right, power, and authority (i) to enter into this Agreement, (ii) to acquire and thereafter operate Levy VFD System, and (iii) to perform all its obligations hereunder. The County has taken all actions necessary to authorize the execution and delivery of this Agreement and all other documents, instruments, or agreements necessary to effectuate the intent hereof. No further action, consent, or approval is required by the County, Fire District or by any governmental body to approve, consent to, or permit the performance by the County of its obligations hereunder or to acquire and operate Levy VFD System as contemplated hereunder.

(b) No Conflict, Breach, or Default. The execution and delivery of this Agreement and the performance by the County of its obligations hereunder will not conflict with or constitute a breach of or default under (i) any contract or agreement to which the County is a party or by which the County is bound or to which the assets of the Fire District System are subject, (ii) any law, regulation, administrative or judicial order, or any judgment or decree to which the County

or the Fire District System is subject, or (iii) the County act or any resolutions or bylaws of the County.

SECTION 3.3. *Default.* In the event either Party discovers that any representation is untrue in any material respect or any warranty is breached in any material respect, the cost of correcting any problem resulting therefrom or of paying or responding to any resulting claims, including reasonable attorney's fees, shall be borne by the Party whose representation is untrue or whose warranty is breached. In the event either Party fails to timely perform its obligations hereunder, the other Party may initiate action to compel compliance in any court of competent jurisdiction. The costs of such action shall be recoverable from the defaulting Party.

ARTICLE IV MISCELLANEOUS

SECTION 4.1. *Counterparts.* This Agreement may be executed in counterparts, which when assembled shall constitute but one original Agreement.

SECTION 4.2. *Severability.* The provisions hereof are severable and in the event any one or more of such provisions is void or unenforceable, the remainder of this Agreement shall constitute the agreement between the Parties as to the subject matter hereof.

SECTION 4.3. *Effect of Dissolution of a Party.* In the event either the County (including Fire District) or Levy VFD for any reason shall be dissolved, consolidated or its legal existence shall otherwise be terminated, all of the covenants, stipulations, obligations, and agreements contained in this Agreement by or on behalf of or for the benefit of such Party shall bind or inure to the benefit of the successor or successors thereof.

SECTION 4.4. *Manner of Giving Notice.* All notices, demands, and requests to be given to or made hereunder by the County or Levy VFD shall be given or made as indicated below or in writing and shall be deemed to be properly given or made if sent by United States certified mail, return receipt requested, postage prepaid, addressed as follows:

As to the County:

Jasper County
Attn: County Administrator
358 Third Avenue, Suite 303
Ridgeland, SC 29936

As to Levy VFD:

Levy Volunteer Fire Department
c/o Aaron Saxon
2721 Levy Road
Hardeeville, SC 29927

Any such notice, demand, or request may also be transmitted to the appropriate above-mentioned Party by email or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above. Any of such addresses may be changed at any time upon written notice of such change sent by United States certified mail, return receipt requested, postage prepaid, to the other Parties by the Party effecting the change.

SECTION 4.5. *Parties Alone Have Rights under Agreement.* Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation, other than the County, the Fire District and Levy VFD any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof. This Agreement and each provision herein are intended to be and are for the sole and exclusive benefit of the County and Levy VFD.

SECTION 4.6. *Headings.* Any heading preceding the text of the several articles hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

SECTION 4.7. *Further Authority.* The officers of the County and Levy VFD, their attorneys, engineers, and other agents or employees are hereby authorized to do all acts and things required of them by this Agreement for the full, punctual, and complete performance of all of the terms, covenants, and agreements contained herein.

SECTION 4.8. *Choice of Forum.* The Parties hereto agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement of the transactions described herein may be brought only in the Court of Common Pleas for Jasper County, South Carolina, or in the original jurisdiction of the South Carolina Supreme Court.

SECTION 4.9. *Survival.* Notwithstanding the termination of this Agreement under Section 2.1(c) hereof, Sections 2.7, 2.8 and 2.9 of this Agreement shall expressly survive the termination of this Agreement.

SECTION 4.10. *Rules of Construction.* Words of masculine gender shall be deemed and construed to include correlative words of feminine and neuter genders and, unless the context shall otherwise indicate, words in singular shall also be plural and vice versa. The intent of this Agreement is to provide for the consolidation of Levy VFD System and the Fire District System. To that end, in the event any one or more provisions hereof are determined to be void,

invalid, or unenforceable, so long as the remainder of this Agreement is sufficient to accomplish its primary purpose, such void, invalid, or unenforceable provision shall be severed herefrom and the balance hereof shall constitute the agreement of the Parties hereto. Certain representations, warranties, franchises, and covenants are not verifiable or to be performed until after the Transfer Date; therefore, the provisions hereof shall survive the Transfer Date and the transfers contemplated.

SECTION 4.11. *Amendments.* This Agreement may be amended only by written agreement executed by both Parties and delivered as set forth in Section 4.4 herein.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the County has caused this Agreement to be signed in its name by its duly authorized officer as of the date first hereinabove written.

JASPER COUNTY,
SOUTH CAROLINA

[SEAL]

ATTEST:

County Administrator

Clerk to County Council

IN WITNESS WHEREOF, Levy VFD has caused this Agreement to be signed in its name by its duly authorized officers as of the date first hereinabove written.

LEVY VOLUNTEER FIRE DEPARTMENT

WITNESS:

LIST OF EXHIBITS

EXHIBIT A An ordinance of the County Council of Jasper County entitled “AN ORDINANCE AUTHORIZING CERTAIN AMENDMENTS, MODIFICATIONS AND CHANGES TO THE COUNTY’S CODE OF ORDINANCES; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSOLIDATED FIRE SERVICE AGREEMENT BETWEEN JASPER COUNTY, SOUTH CAROLINA AND LEVY VOLUNTEER FIRE DEPARTMENT; AUTHORIZING THE APPROPRIATION OF COUNTY FUNDS UNDER THE TERMS OF SUCH AGREEMENT; AND OTHER MATTERS RELATING THERETO” dated February 6, 2023.

EXHIBIT B A resolution of Levy VFD Council of Levy VFD entitled, “_____” dated.

EXHIBIT C Bill of Sale for Levy VFD System, including all fixed assets

EXHIBIT C-1 List of Items Excluded from Bill of Sale

EXHIBIT D Deeds: Real Property Associated with Levy VFD System

EXHIBIT E Obligations

EXHIBIT F Initial Recommendations

EXHIBIT A

COPY OF COUNTY'S ORDINANCE

EXHIBIT B

RESOLUTION OF LEVY VOLUNTEER FIRE DEPARTMENT

determine the condition of the equipment and the suitability of the said equipment for County's uses and purposes, without reliance on any representations made by Levy VFD, or its employees or agents.

To have and to hold the same to the County its successors and assigns, to its or their use forever.

And Levy VFD hereby covenants with the County that it has had lawful ownership or possession of said equipment, that said equipment is free from all encumbrances, except as mentioned. That Levy VFD, through its duly authorized representative subscribed and attested below, has good right and authority to convey the same as aforesaid and to execute this Bill of Sale to the County.

In Witness Whereof, the Levy Volunteer Fire Department has set the hands and seals of its authorized officers to this Bill of Sale this __ day of February 2023.

LEVY VOLUNTEER FIRE DEPARTMENT

WITNESSES

Witness #1

By: _____
Name: _____

Witness #2

By: _____
Name: _____

SCHEDULE OF INVENTORY

A. Vehicle and Apparatus Inventory



28-Jul-22

Levy FD Apparatus List

<u>ID</u>	<u>Make/Model</u>	<u>Year</u>	<u>Apparatus Value (Retail)</u>	<u># SCBA</u>	<u>SCBA (MSA 2007)</u>	<u>SCBA Value</u>	<u>Homatro Tools</u>			<u>Total</u>
							<u>(Spreader, Cutter, Ram and Pump)</u>	<u>Misc Tools, Nozzles, Hose, Equip</u>	<u>Equip</u>	
Rescue 25	Ford F-150	1986	\$ 5,000							\$ 5,000
Engine 220	Pierce	1986	\$ 1,500							\$ 1,500
Squad 25	Ford E-350	2006	\$ 20,000							\$ 20,000
Engine 20	GMC 7500	1987	\$ 1,500							\$ 1,500
Tanker 25	Freightliner	2007	\$ 150,000							\$ 150,000
Engine 225	KME Renegade	1991	\$ 1,500							\$ 1,500
Engine 25	Freightliner FL80	2001	\$ 50,000							\$ 50,000
			\$ 229,500			\$ 4,000	\$ 17,500	\$ 2,500		\$ 254,500

B. Facility Inventory

EXHIBIT C-1

SCHEDULE OF EXCLUDED ITEMS

EXHIBIT D

DEEDS: REAL PROPERTY ASSOCIATED WITH LEVY VFD SYSTEM

EXHIBIT E

OBLIGATIONS

The following is a list of all obligations being assumed by the County:

DEBT

None

CONTRACTUAL

None

EXHIBIT F

INITIAL RECOMMENDATIONS

Exhibit of Excluded Items from Sale

STATION 25

Wood stove in day room. -Aaron Saxon
Bay Blower for leaves- Volunteers
Washer and Dryer-Volunteers
Freezer in bay-Doug Graham
Homemade cabinet in bay
20 Ft container w/ content- Shannon Saxon
Two 40 ft containers- Aaron Saxon
White wooden folding chairs- Gary Bush
Three homemade wooden tables-Volunteers
Ryobi pressure washer- Volunteers
Blue air compressor- Volunteers
Stainless Oyster steamer- Doug Graham
Pool table in bay- Volunteers
Plywood behind tanker-Aaron Saxon
Curl Bar- Aaron Saxon
Bench 340-Aaron Saxon
Olympic Bar- Aaron Saxon
Small Weights- Aaron Saxon
Accessories- Aaron Saxon
Pro Form- Doug Graham
Bicycle- Doug Graham

Rescue 25- Volunteers

Tool Building in back of station.
Motor Hoist
Kirby vacuum
52' Husky lawn mower- zero turn
Small electric pressure washer
File cabinet
Green telescoping lights

Squad 25

STATION 20

Engine 220
14 ft Double axle trailer
52" Husky zero turn mower
Ice machine
Washer and Dryer
Air compressor
Grill
Personal clothes items in back bedroom.

AGENDA ITEM:

X-B

Ordinance item B

**STATE OF SOUTH CAROLINA
COUNTY OF JASPER**

ORDINANCE: O-2023 - _____

AN ORDINANCE

To amend the Official Zoning Map of Jasper County so as to transfer a property located at 11421 Gillison Branch Road, bearing Jasper County Tax Map Number 050-00-04-011, consisting of 31.504 acres, from the Rural Preservation Zone to the Resource Extraction Zone on the Jasper County Official Zoning Map.

WHEREAS, the owner of the parcels bearing Jasper County Tax Map Number 050-00-04-011 consisting of approximately 31.504 acres, located at 11421 Gillison Branch Road, has requested rezoning of the parcel on the Official Zoning Map of Jasper County from the Rural Preservation Zone to the Resource Extraction Zone and the property owner submitted that request to the Jasper County Planning Commission and County Council; and

WHEREAS, the Jasper County Planning Commission does not concur with the recommendations of the staff report as reflected in this Ordinance and recommends approval by Council; and

WHEREAS, this matter is now before the Jasper County Council for determination;

NOW THEREFORE BE IT ORDAINED, by the Jasper County Council in council duly convened and by the authority of the same:

1. Jasper County Council finds that in accordance with the staff report and the recommendation of the Planning Commission, the proposed zoning is consistent with the continued pattern of growth in the vicinity and is in harmony with the Jasper County Comprehensive Plan. Good cause having

been shown, approximately 31.504 acres bearing Jasper County Tax Map Number 050-00-04-011, located at 11421 Gillison Branch Road, depicted on the Jasper County Official Zoning Map in the Rural Preservation Zone shall be transferred to the Resource Extraction Zone.

2. This ordinance shall take effect upon approval by Council.

L. Martin Sauls IV
Chairwoman

ATTEST:

Wanda Simmons
Clerk to Council

ORDINANCE: # O-2023-__

First Reading: January 17, 2023

Second Reading: _____

Public Hearing: _____

Adopted: _____

Considered by the Jasper County Planning Commission at it's meeting on

December 13, 2022 and recommended for approval.

Reviewed for form and draftsmanship by the Jasper County Attorney.

David Tedder

Date



Jasper County Planning and Building Services

358 Third Avenue - Post Office Box 1659
Ridgeland, South Carolina 29936
Phone (843) 717-3650 Fax (843) 726-7707

Lisa Wagner, CFM
Director of Planning and Building Services
lwagner@jaspercountysc.gov

Jasper County Council Staff Report

Meeting Date:	January 17, 2022
Project:	Zoning Map Amendment – Resource Extraction
Applicant:	Robert Patterson Farmer
Tax Map Number:	A 31.504 acre portion of 050-00-04-011
Submitted For:	1 st Reading
Recommendation:	Planning Commission recommends approval

Description: The subject property consists of 31.504 acres and is located at 11421 Gillison Branch Road. The Applicant has requested a Zoning Map Amendment to have the property designated as Resource Extraction. The property is currently zoned Rural Preservation. The property is utilized as the applicant's primary residence. The applicant intends to apply for a SCDHEC mining permit in order to create a 5-acre recreational pond and remove the dirt from the site. In accordance with the Jasper County Zoning Ordinance, any mining or excavation activity is only allowed within the Resource Extraction Zone.

Analysis: The Zoning Map Amendment application and request is reviewed by considering the following factors:

- **Comprehensive Plan:** According to the 2018 Jasper County Comprehensive Plan, the Future Land Use Map identifies this area as "Rural Conservation," which are areas that seeks to protect and promote the character of Jasper County that largely exists today outside of the municipalities. Non-residential development may be appropriate if it is buffered correctly.
- **Adjacent Zoning:** The properties immediately adjacent to the site are zoned Rural Preservation and Residential. Within ½ mile radius there are 12-14 properties that are zoned Rural Preservation and approximately 40-43 properties that are zoned Residential.

- **Adjacent Land Use:** The adjacent land uses are single family residential and undeveloped properties. Within ½ mile radius of the property, there are approximately 20 properties that are developed with single family homes.
- **Traffic and Access:** The subject property is accessed by Gillison Branch Road, which is a two-lane state maintained road classified as a collector road.

The intent of the Resource Extraction (RE) Zone is:

[T]o protect, preserve, sustain, and protect activities which specifically extract or harvest natural resources for commercial or industrial purposes, such as mining, excavations, excavation operations and activities, while concurrently ensuring protection of the health, safety, welfare of nearby residents and the value of nearby property. The Resource Extraction District will protect economically important mineral resources of the County for current and future use and will protect existing land uses adjacent to potential lands from undue harm that may result from mineral extraction activity.

Businesses extracting resources are essential activities that may present unique challenges when considering adjacent properties and protection of public health, safety and welfare. However, it is intended that this zoning classification only apply to those portions of the County where the potential for conflict between adjacent current and future land uses and the mineral extraction activities are minimal. Any zoning map amendment to designate a property as RE should be carefully considered by assessing the following factors, including but not limited to: impact on environmentally sensitive areas and critical natural resources; impact on health, safety and welfare of the Jasper County residents; impact on the character of existing communities; impact on adjacent land value; traffic generation and potential mitigation; and any other factors considered essential to address.

In accordance with the Jasper County Zoning Ordinance, the Resource Extraction Zone allows mining and excavation as a conditional use.

ARTICLE 6:1, USE REGULATIONS:

Sector 21: Mining and Mine Operation	NAICS	R	RP	RC	CC	GC	ID	RE	MB
Mining (Article 11:7.4)	212	N	N	N	N	N	N	C	N

In addition to the provisions of Article 14 of the Jasper County Zoning Ordinance, *Excavation Regulations*, other important conditions include the following:

ARTICLE 11:7, CONDITIONS FOR SPECIFIC USES

11:7.4, Sector 21: Mining and Mine Operation:

1. Mining and Mine Operation must have all required state and federal permits and meet the requirements of all State and Federal Statutes and regulations.
2. Mining and Mine Operation must meet the following setbacks.

Setback Requirements for Mining and Mine Operation							
Required Setbacks where permitted	Adjacent Zoning						
	RE	RC	RP	R	CC	GC	ID
From Property Line	50'	1,000'	300'	1,000'	1,000'	300'	100'
From Existing Residential Structures*	N/A	N/A	1,000'	N/A	N/A	1,000'	N/A

*Residential structures existing when submittal deemed complete.

All excavation activities will be adequately buffered from nearby properties, because the subject property is surrounded on all sides by a larger parcel of land, which is zoned Rural Preservation, and owned by the applicant on all sides except for the property adjacent to the western boundary line.

Recommendation: The Planning Commission reviewed this application at their December 13, 2022 Planning Commission Meeting and recommends re-zoning the property to the Resource Extraction Zoning District.

Attachments:

1. Application by the applicant
2. Request/Narrative
3. Plat of Subdivision Survey
4. Site Plan
5. Aerial map of property and surrounding area
6. Aerial map with zoning layer



Jasper County Planning and Building Services

358 Third Avenue - Post Office Box 1659
Ridgeland, South Carolina 29936
Phone (843) 717-3650 Fax (843) 726-7707

Zoning Map Amendment Application

Owner or Owner-Authorized Applicant:	ROBERT PATTERSON FARMER & ALLISON LANE FARMER
Address:	11421 GILLISON BRANCH ROAD RIDGELAND, SC 29936
Telephone/Fax:	(843) 457-5819
Email:	RPFARME@GMAIL.COM
Property Address or Physical Location:	11421 GILLISON BRANCH ROAD RIDGELAND, SC 29936
Tax Map Number(s):	PARCEL A - PORTION OF 050-00-04-011 PLAT BOOK 38 PAGE 477 RECORDED ON 11-04-22
Gross Acreage:	31.504 ACRES
Current Zoning:	RURAL PRESERVATION
Proposed Zoning:	RESOURCE EXTRACTION
Administrative Fee: (\$250 per lot) except for PDD applications	
Date Mailed or Hand Delivered:	NOVEMBER 22, 2022
Reason for Request: (attach narrative if necessary)	SEE ATTACHED NARRATIVE.

11-22-22

Signature of Owner or Owner-Authorized Applicant
(Proof of owner-authorization required)

Date

Internal Use Only

Date Received:	
Amount Received:	
Staff Member:	

November 22, 2022

Jasper County Planning Commission
358 Third Avenue
Ridgeland, SC 29936

Zoning Map Amendment – Resource Extraction Request
11421 Gillison Branch Road
Parcel A – Portion of 050-00-04-011

The purpose of this letter is to express our intent to excavate a 5-acre borrow pit that will be repurposed as a recreational pond once complete. My wife and I reside at the subject property, 11421 Gillison Branch Road, and are requesting a Zoning Map Amendment to Parcel A – Portion of 050-00-04-011, which totals 31.504-acres, from Rural Preservation (RP) to Resource Extraction (RE). The property is located between Gillison Branch Road (SC 462) and Langfordville Road, approximately 1.3 miles west of the intersection of Gillison Branch Road (SC 462) and Grays Hwy (US 278).

The subject property is located in an area which is low-density residential and rural in nature. Majority of the parcels located in the vicinity are over 20-acres with the exception of several smaller parcels that are approximately 10-acres. The properties immediately adjacent to the subject property are zoned Rural Preservation. Most all properties within the immediate vicinity (1/2 mile radius) are undeveloped and appear to be utilized for silviculture.

We plan to excavate a 5-acre sand/dirt borrow pit that will be reclaimed as a recreational pond upon completion of the excavation operations. The residual property will continue to be managed for wildlife and agricultural use. The objective of the resource extraction is to enhance and beautify the property.

We plan to work with a local site contractor to manage and control all operations pertaining to this resource extraction project. The removal of the resources will only be used for projects contracted by the selected operator. This will help to minimize truck traffic to and from the excavation site. Truck traffic is expected to be between 5 to 10 trucks per day, and the proposed duration of the project is 2-5 years. The site will be accessed via a private access road leading from Gillison Branch Road (SC 462), which is maintained by SCDOT. Truck traffic is not expected to cause abnormal vehicular congestion along Gillison Branch Road and is expected to be similar to other past and current timber and resource extraction operations in the area.

An encroachment permit will be filed with SCDOT in regards to the entrance off of Gillison Branch Road. "Trucks Entering Highway" signs will be posted notifying traffic in either direction of the encroachment and access point. A stop sign will be installed at the encroachment for all exiting traffic. Gillison Branch Road will be swept as needed to keep dust and dirt off of the road, and a water truck will be utilized onsite for dust control. Should any impairment of the roadway occur as a result of the applicant's encroachment, SCDOT's will require our operator to maintain and repair the road as needed.

The sand material will be excavated with a hydraulic excavator and loaded directly into dump trucks for delivery or stockpiled adjacent to the pit to allow it to dry. There is no further processing of the material. Hours of operation will be 7:00 AM to 6:00 PM Monday – Friday and 9:00 AM to 5:00 PM occasionally on Saturdays when needed.

A wetland delineation was completed by Sabine & Waters, Inc. on September 20, 2022 in preparation for the proposed resource extraction. A copy of their delineation letter is included in the submittal package for reference. There will be no impacts to any of either of these onsite wetlands and a significant buffer of 133' and 179' will be maintained between the existing wetlands and the excavation operations.

The project will be in compliance with all State and Local regulations throughout the life of the project. The excavation site will have the required 300' buffer on all sides in compliance with the County's Zoning Ordinance. There will be no adverse impact on adjacent property owners. The site will be posted with NO TRESPASSING signs, and the entrance will be gated. Any conditions created during the excavation process such as but not limited to dust, noise, and traffic will be property maintained and kept to a minimum to decrease the impact on the adjacent property owners. Before any excavation activities can take place, SCDHEC and Jasper County Excavation Permits will be required and obtained.

Should you need anything additional, please let us know.

A handwritten signature in blue ink, appearing to read 'R. Patterson Farmer', with a long horizontal flourish extending to the right.

R. Patterson Farmer, PE
(843) 457-5819
rpfarme@gmail.com



SABINE & WATERS

ENVIRONMENTAL LAND MANAGEMENT CONSULTANTS

September 20, 2022

Mr. Patterson Farmer
11421 Gillison Branch Road
Ridgeland, SC 29936

SUBJECT: Results of a wetland assessment conducted on approximately 68 acres of property, identified by Parcel ID# 050-00-04-011 and located adjacent to Gillison Branch Road, in Jasper County, South Carolina.

Dear Mr. Farmer,

The enclosed map depicts the results of a wetland assessment performed on the above referenced property on September 2, 2022. Freshwater wetlands were defined using the November 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). This technique uses a multi-parameter approach, which under normal circumstances requires positive evidence of three criteria:

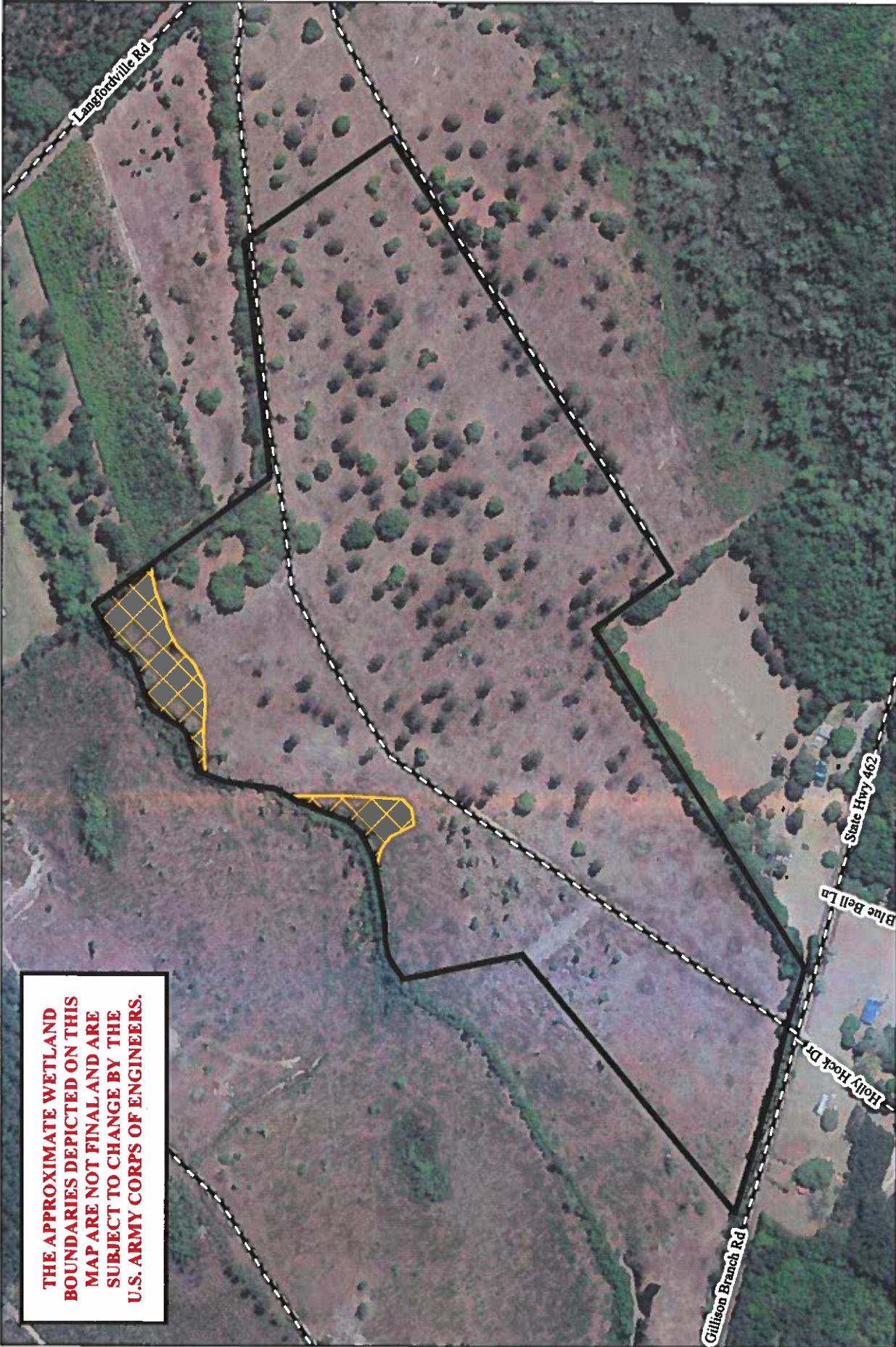
- o Hydrophytic vegetation
- o Hydric soils
- o Wetland hydrology

As a result of a 2015-2016 timber harvest, the majority of the site is dominated by early to mid-successional vegetation complexes. The wetland areas identified during the site investigation were dominated by facultative wetland and obligate wetland vegetation such as sweetbay magnolia (*Magnolia virginiana*) and netted chain fern (*Woodwardia aereolata*), while the adjacent uplands consisted of upland species such as longleaf pine (*Pinus palustris*) and bracken fern (*Pteridium aquillinum*). As indicated by NRCS soil maps, Blanton fine sand and Pickney loamy fine sand are the primary soils series found onsite. Soil profiles examined during the field investigation exhibited considerable redoxomorphic depletions and concentrations within the wetland areas, and no hydric soil indicators within adjacent uplands. Despite minimal precipitation recorded within the previous week, hydrology indicators such as saturation, water stained leaves, and high water table were all observed within the areas denoted as wetland. The lack of wetland hydrology indicators observed within adjacent upland areas further supports the "somewhat excessively well drained" drainage class of the Blanton soil series. Therefore, based on field investigations and resource material review, it is our opinion that the enclosed map is an accurate representation of the boundaries and locations of the approximately 2.5 acres of freshwater wetland found within the subject property. If you have any questions or would like to discuss further, please do not hesitate to contact me anytime.

Thank You

William E. Wilson Jr.

William E. Wilson Jr., PWS #3223
Enclosure



THE APPROXIMATE WETLAND BOUNDARIES DEPICTED ON THIS MAP ARE NOT FINAL AND ARE SUBJECT TO CHANGE BY THE U.S. ARMY CORPS OF ENGINEERS.

LEGEND

- PROPERTY BOUNDARY: +/- 68 AC
- APPROXIMATE WETLANDS: +/- 2.5 AC
- ROADS

Long: -81.017917 W
Lat: 32.612012 N

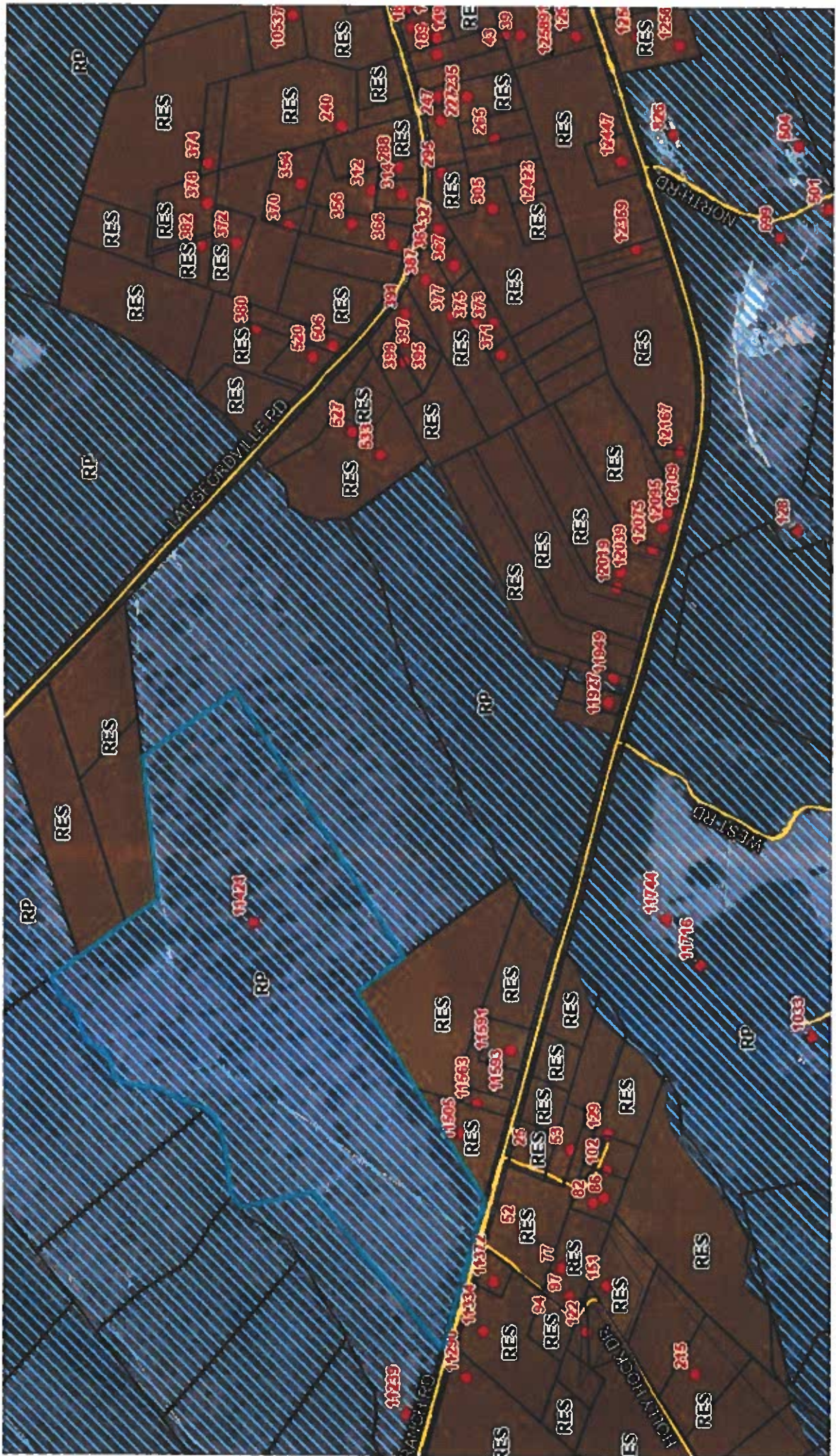
**APPROXIMATE WETLANDS
FARMER - GILLISON BRANCH
JASPER COUNTY, SC**

0 400 800
Feet

EXTERNAL SOURCES: NAD 2011 TRUE COLOR AERIAL, U.S. CENSUS ROADS, JASPER COUNTY GIS FACILITY

Drawn By: 3 August 2022
Checked By: 3 August 2022
Copyright © 2022, S. Shaw & Walters, Inc.
2, Longleaf Avenue, P.O. Box 1072, Summerville, SC 29486
843.871.5383 (phone) 843.871.5050 (fax)
http://www.shawandwalters.com
This map is a computer-generated graphic and does not constitute a warranty of accuracy. All efforts have been made to warrant the accuracy of this map. However, S. Shaw & Walters, Inc. disclaims all responsibility and liability for the use of this map.

REVISED: 9/14/2022



AGENDA ITEM:

X-C

Ordinance item C

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

ORDINANCE NO. O-2022-38

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN GOPHER HILL HOLDINGS, LLC OR ITS ASSIGNS (THE "SPONSOR") AND JASPER COUNTY, WHEREBY JASPER COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH THE COMPANY AND PROVIDING FOR PAYMENT BY THE SPONSORS OF CERTAIN FEES-IN-LIEU OF *AD VALOREM* TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH SUCH AGREEMENT; AUTHORIZING AND APPROVING (1) DEVELOPMENT OF A NEW JOINT COUNTY INDUSTRIAL AND BUSINESS PARK PURSUANT TO SECTION 4-1-170 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, IN CONJUNCTION WITH HAMPTON COUNTY (THE "PARK") SUCH PARK TO BE GEOGRAPHICALLY LOCATED IN JASPER COUNTY; (2) THE EXECUTION AND DELIVERY OF A WRITTEN PARK AGREEMENT WITH HAMPTON COUNTY AS TO THE REQUIREMENT OF PAYMENTS OF FEE-IN-LIEU OF *AD VALOREM* TAXES WITH RESPECT TO PARK PROPERTY AND THE SHARING OF THE REVENUES AND EXPENSES OF THE PARK; AND (3) THE DISTRIBUTION OF REVENUES FROM THE PARK WITHIN JASPER COUNTY; AND TO AUTHORIZE THE JASPER COUNTY COUNCIL CHAIRMAN OR COUNTY ADMINISTRATOR, AS APPROPRIATE, TO EXECUTE SUCH AGREEMENTS AND OTHER DOCUMENTS AS MAY BE NECESSARY AND APPROPRIATE TO EFFECT THE FEE-IN-LIEU OF TAX TRANSACTION AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

WHEREAS, Jasper County, South Carolina ("County"), acting by and through its County Council ("County Council") is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("FILOT Act"), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina ("South Carolina" or "State") or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax ("FILOT Payments"), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, "MCIP Act"), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County's discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County and Hampton County, South Carolina ("Hampton County") (collectively, the Member Counties") proposes to establish jointly a multi-county industrial/business park within the geographical boundaries of one or more of the Member Counties; and

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits ("Infrastructure Credits") against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or

the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, the Sponsors propose to develop the property described in Exhibit B attached hereto (the “Property”) to establish commercial, logistic, distribution and/or manufacturing facilities; and

WHEREAS, it is anticipated the Project will result in an investment of at least nine million dollars (\$9,000,000) in the County; and

WHEREAS, at the request of the Sponsors and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsors, the final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Company with respect to the Project, including (i) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; and (ii) providing Infrastructure Credits, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure; and

WHEREAS, in order to promote the economic development of Jasper County and Hampton County, the Counties have initially agreed to include in the Park the Property pursuant to an agreement to be negotiated between and entered into by the Member Counties as of such date as may be agreed to by the Member Counties (the “MCIP Agreement”); and

WHEREAS, the Counties have agreed to the specific terms and conditions of the arrangement set forth in the MCIP Agreement; and

WHEREAS, the Counties now desire to establish the Park to include the Property; and

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

Section 1. *Statutory Findings.* Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power;

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Company.

Section 3. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsors under this Ordinance and the Fee Agreement.

Section 4. *Establishment of Multi-County Park; Approval of MCIP Agreement; Location of Park; Change of Park Boundaries.*

(a) There is hereby authorized to be established, initially in conjunction with Hampton County, a multi-county industrial/business park to include therein the Initial Property. The form, provisions, terms, and conditions of the MCIP Agreement in substantially the form before Jasper County Council (the "County Council") at the meeting at which this Ordinance receives third reading, and filed with the Clerk to County Council, be and they are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the MCIP Agreement were set out in this Ordinance in its entirety.

(b) The MCIP Agreement is to be in the form as negotiated by the County Administrator with the advice of legal counsel, with such changes therein as shall not materially adversely affect the rights of Jasper County thereunder and as shall be approved by the officials of Jasper County executing the same. The Chairman of County Council, for and on behalf of Jasper County, is hereby authorized, empowered, and directed to do any and all things necessary or proper to effect the establishment of the Park and the execution and delivery of the MCIP Agreement and the performance of all obligations of Jasper County under and pursuant to the MCIP Agreement and to carry out the transactions contemplated thereby and by this Ordinance.

(c) As of the date of enactment of this Ordinance, the Park shall consist of the Property located in Jasper County. It is recognized that the Park may from time to time consist of non-contiguous properties within each Member County. The boundaries of the Park may be enlarged or diminished from time to time as authorized by (a) an ordinance of the Member County in which the property to be added or removed from the Park is actually located, and (b) a resolution (or comparable action) of the governing bodies of all other Member Counties.

Section 5. *Payment of Fee-in-lieu of Taxes.*

(a) In accordance with Article VIII, Section 13(D) of the South Carolina Constitution, the area comprising the Park and all property having a situs therein is exempt from all *ad valorem* taxation. All owners and lessees of property situated in the Park will pay a fee in lieu of *ad valorem* taxes as provided for in the MCIP Agreement. The fee paid in lieu of *ad valorem* taxes shall be paid to the county treasurer of the county in which such property is located. That portion of the fee from the Park property located in a Member County and allocated pursuant to the MCIP Agreement to the other Member Counties shall be paid to the respective county treasurer (or other designated official) of the other Member Counties in accordance with the terms of the MCIP Agreement. Payments of fees in lieu of *ad valorem* taxes for each year will be due on the due date for property taxes for such year. Penalties for late payment will be at the same rate as late tax payments. Any late payment beyond the due date will accrue interest at the same rate as late tax payments. The Member Counties, acting by and through the appropriate official, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

(b) Nothing herein shall be construed to prohibit any Member County from negotiating and collecting reduced fees in lieu of taxes pursuant to Title 4, Chapter 29 or Chapter 12, or Title 12, Chapter

44 of the Code of Laws of South Carolina 1976, as amended, or any similar provision of South Carolina law.

Section 6. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 7. *General Repealer.* Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 8. *Effectiveness.* This Ordinance is effective after its third reading and public hearing.

JASPER COUNTY, SOUTH CAROLINA

L. Martin Sauls IV
Chair, Jasper County Council

(SEAL)
ATTEST:

Wanda Simmons
Clerk of Council, Jasper County Council

First Reading: 11.21.2022
Second Reading: 12.05.2022
Public Hearing: 12.05.2022
Third Reading: 01.17.2023

EXHIBIT A
FORM OF FEE AGREEMENT

EXHIBIT B

EXHIBIT A
Legal Description
(Preliminary)

10.62 acres of land, more or less, with a steel commercial building located thereon, more specifically identified as tax map number 048-00-01-029, having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, as more particularly described on a plat recorded in Plat Book 36 at Page 127 in the office of the Register of Deeds for Jasper County, SC

AND ALSO, 12.89 acres of land, more or less, without improvements more specifically identified as tax map number 048-00-01-012 having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, being more particularly described as follows: Beginning at a point shown on a plat recorded in Plat Book 36 at Page 127 in the Office of the Register of Deeds shown as USGS Marker Found, Haystack 1997, Elev. 83.2 (NAVD88) N 254699.65 E 1995968.12, thence S 47°49'06"E for a distance of 191.98 feet, being the Point of Beginning (POB); thence N 74 ° 57'.40"E for a distance of 265.79 feet to a point; thence N60 °18'30" for a distance of 242.53 feet to a 5/8" Rebar, being the Northeastern corner of adjacent Tax Parcel 048-00-01-029 as shown on Plat Book 36 at Page 127; thence S30 °31'58"E for a distance of 634.81 feet to a 3/4 " Rebar, being the Northeastern corner of adjacent Tax Parcel 048-00-01-032 as shown on Plat Book 36 at Page 127 and as Parcel 3 on Plat Book 30 at Page 276; thence S30 °31'58"E for a distance of 290.40 feet to a rebar; thence S30 °31'58" along the eastern boundary of Tax Parcel 048-00-01-033 to its intersection with the northern boundary line of Tax Parcel 048-00-01-009; thence eastward along the boundary line of Tax Parcel 048-00-01-009 to its intersection with the right of way boundary line of U.S. Highway 278; thence northward along the boundary line of US Highway 278 and the sewer lift station boundary lines as shown on those certain plats recorded in Plat Book 32 at Page 467 and Plat Book to the Point of Beginning.

AND ALSO, 2.00 acres of land, more or less, without improvements more specifically identified as tax map number 048-00-01-032 having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, as more particularly described as Parcel 3 on a plat recorded in Plat Book 30 at Page 276 in the office of the Register of Deeds for Jasper County, SC.

All such properties being subject to easements, rights of way, and other matters of public record.

STATE OF SOUTH CAROLINA)	
)	AGREEMENT FOR THE ESTABLISHMENT
COUNTY OF JASPER)	OF MULTI-COUNTY INDUSTRIAL/
)	BUSINESS PARK (CYPRESS RIDGE GOPHER
)	HILL INDUSTRIAL PARK)
COUNTY OF HAMPTON)	

THIS AGREEMENT FOR THE ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK (CYPRESS RIDGE GOPHER HILL INDUSTRIAL PARK) for the establishment of a multi-county industrial/business park to be located within Jasper County and Hampton County is made and entered into as of _____, 2022, by and between Jasper County, South Carolina ("Jasper County") and Hampton County, South Carolina ("Hampton County").

RECITALS

WHEREAS, Jasper County and Hampton County are contiguous counties which, pursuant to Ordinance No. _____, enacted by Jasper County Council on November 21, 2022, and Ordinance No. _____ enacted by Hampton County Council on _____, 2022, have each determined that, in order to promote economic development and thus encourage investment and provide additional employment opportunities within both of said counties, there should be established in Jasper County a multi-county industrial/business park (the "Park"), to be located upon property more particularly described in Exhibit A (Jasper); and

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

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

- 1. Binding Agreement.** This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on Jasper County and Hampton County, their successors and assigns.
- 2. Authorization.** Article VIII, Section 13(D) of the South Carolina Constitution provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a manner in which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability pursuant to any provision of law which measures the relative fiscal capacity of a school district to support its schools based on the assessed valuation of taxable property in the district as compared to the assessed valuation of taxable property in all school districts in South Carolina. The Code of Laws of South Carolina, 1976, as amended (the "Code") and particularly, Section 4-1-170 thereof, satisfies the conditions imposed by Article VIII, Section 13(D) of the South Carolina Constitution and provides the statutory vehicle whereby a multi-county industrial or business park may be created.

3. Location of the Park.

(A) The Park consists of property that is located in Jasper County and which now or will be owned by project sponsors for the purpose of establishing industrial, distribution and/or commercial facilities, the property being more particularly described in Exhibit A hereto. It is specifically recognized that the Park may from time to time consist of non-contiguous properties within Jasper County. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinance of the county council of Jasper County and resolution of the county council of Hampton County. If any property proposed for inclusion in the Park is located, at the time such inclusion is proposed, within the boundaries of a municipality, then the municipality must give its consent prior to the inclusion of the property in the Park.

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

(C) Prior to the enactment by Jasper County Council of its ordinance authorizing the diminution of the boundaries of the Park, a public hearing shall first be held by Jasper County Council. Notice of such public hearing shall be published in a newspaper of general circulation in Jasper County, at least once and not less than fifteen (15) days prior to such hearing. Notice of such public hearing shall also be given by certified mail that is deposited with the U.S. Postal Service at least fifteen (15) days prior to such public hearing upon the owner and, if applicable, the lessee of any property which would be excluded from the Park by virtue of the diminution.

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

5. Allocation of Expenses. Jasper County and Hampton County shall bear expenses incurred in connection with the Park, including, but not limited to, those incurred in the administration, development, operation, maintenance and promotion of the Park, in the following proportions:

- A. Jasper County – 100%
- B. Hampton County – 0%

6. Allocation of Revenues. Jasper County and Hampton County shall receive an allocation of all revenues generated by the Park through payment of fees in lieu of *ad valorem* taxes in the following proportions:

- A. Jasper County – 99%
- B. Hampton County – 1%

Any payment from Jasper County to Hampton County of Hampton County's allocable share of Park revenues: (1) shall be made and accompanied by a statement showing the manner in which total payment and each County's share were calculated. If any Park revenues are received by Jasper County through payment by any owner, or any lessee/tenant, or any other taxpayer is made under protest, or otherwise as part of a dispute, then Jasper County is not obligated to pay Hampton County more than Hampton County's share of the undisputed portion of the Park revenues until thirty (30) days after the final resolution of the protest or dispute.

7. Revenue Allocation within Each County. Park revenues generated shall be distributed to and within the County as follows:

(A) Revenues generated by the Park through the payment of fees in lieu of *ad valorem* taxes shall be distributed to Jasper County and to Hampton County, as the case may be, according to the proportions established by this Agreement. With respect to revenues allocable to Jasper County by way of fees in lieu of *ad valorem* taxes generated from properties within the Park, such revenue shall be distributed in accordance with the attached Exhibit B.:

(B) Revenues allocable to Hampton County by way of fees in lieu of *ad valorem* taxes generated from properties located in the Jasper County portion of the Park shall be distributed solely to Hampton County.

8. Fees in Lieu of Ad Valorem Taxes Pursuant to Title 4 or Title 12 of the Code. It is hereby agreed that the entry by Jasper County into any one or more fee in lieu of *ad valorem* tax agreements pursuant to Title 4 or Title 12 of the Code or any successor or comparable statutes ("Negotiated Fee in Lieu of Tax Agreements"), with respect to property located within the Park and the terms of such agreements shall be at the sole discretion of Jasper County.

9. Consent by the County and Other Municipalities. Intentionally deleted.

10. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to Jasper County and Hampton County and to each of the taxing entities within the participating counties shall be in accordance with the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Sections 6 and 7 herein.

11. Governing Laws and Regulations. Any applicable ordinances and regulations of Jasper County including those concerning zoning, health and safety, and building code requirements shall apply to the Park properties located in the Jasper County portion of the Park unless any such property is within the boundaries of a municipality in which case, the municipality's applicable ordinances and regulations shall apply.

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

12. Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision of this Agreement.

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

14. Additional Parties. This Agreement may be amended from time to time to add additional counties located in South Carolina, subject to Article VIII, Section 13(D) of the Constitution of South Carolina and Title 4, Chapter 1 of the Code, by ordinance of the county council of Jasper County, and by resolution of the county council of Hampton County; provided, however, that to the extent permitted by law, additional counties may be added as parties hereto with only the enactment of an ordinance of the county council of Jasper County only in the event that such additional county's allocation of Park Revenues hereunder shall be allocated solely out of Jasper County's residual net share of the Park Revenues provided for its use and distribution pursuant to Section 7 hereof.

15. Term; Termination. Except as specifically provided in this Section 15, Jasper County and Hampton County agree that this Agreement may not be terminated in its entirety by any party and shall remain in effect for a period equal to the longer of (i) twenty-one (21) years commencing with the effective date of this Agreement or (ii) a period of time of sufficient length to facilitate any special source revenue credits due with respect to Park property. Notwithstanding anything in this Agreement to the contrary, this

Agreement may not be terminated to the extent that Jasper County has outstanding contractual commitments to any owner or in the event the County is the owner pursuant to a negotiated fee-in-lieu-of-tax agreement under Title 4, Chapter 29 or Chapter 12 of the Code, lessee/tenant, or other taxpayer of or with respect to Park property requiring designation of such property as part of a multi-county industrial/business park pursuant to Article VIII, Section 13(D) of the Constitution of South Carolina and/or Title 4, Chapter 1 of the Code (the "Act"), unless Jasper County shall first (i) obtain the written the consent of such owner, lessee/tenant, or other taxpayer or (ii) designate such parcel as part of another multi-county industrial/business park pursuant to the Act effective immediately upon termination of this Agreement. Additionally, in the event that Jasper County complies with the preceding sentence, Jasper County may unilaterally terminate this Agreement upon providing thirty (30) days' notice to Hampton County and any owner or in the event the County is the owner pursuant to a negotiated fee-in-lieu-of-tax agreement under Title 4, Chapter 29 or Chapter 12 of the Code, lessee/tenant, or other taxpayer of or with respect to Park property.

16. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties is vested with the Sheriff's Office of Jasper County, for matters within their jurisdiction. If any of the Park properties are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is also vested with the law enforcement officials of the municipality for matters within their jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and the year first above written.

JASPER COUNTY, SOUTH CAROLINA

By: _____
Chairman, County Council
Jasper County, South Carolina

[SEAL]

Attest:

By: _____
County Council Clerk
Jasper County, South Carolina

HAMPTON COUNTY, SOUTH CAROLINA

By: _____
Chairman, County Council
Hampton County, South Carolina

[SEAL]

Attest:

By: _____
County Council Clerk
Hampton County, South Carolina

Exhibit A (Jasper)
PARK PROPERTY
Legal Description
(Preliminary)

10.62 acres of land, more or less, with a steel commercial building located thereon, more specifically identified as tax map number 048-00-01-029, having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, as more particularly described on a plat recorded in Plat Book 36 at Page 127 in the office of the Register of Deeds for Jasper County, SC

AND ALSO, 12.89 acres of land, more or less, without improvements more specifically identified as tax map number 048-00-01-012 having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, being more particularly described as follows: Beginning at a point shown on a plat recorded in Plat Book 36 at Page 127 in the Office of the Register of Deeds shown as USGS Marker Found, Haystack 1997, Elev. 83.2 (NAVD88) N 254699.65 E 1995968.12, thence S 47°49'06"E for a distance of 191.98 feet, being the Point of Beginning (POB); thence N 74 ° 57' .40"E for a distance of 265.79 feet to a point; thence N60 °18'30" for a distance of 242.53 feet to a 5/8" Rebar, being the Northeastern corner of adjacent Tax Parcel 048-00-01-029 as shown on Plat Book 36 at Page 127; thence S30 °31'58"E for a distance of 634.81 feet to a 3/4 " Rebar, being the Northeastern corner of adjacent Tax Parcel 048-00-01-032 as shown on Plat Book 36 at Page 127 and as Parcel 3 on Plat Book 30 at Page 276; thence S30 °31'58"E for a distance of 290.40 feet to a rebar; thence S30 °31'58" along the eastern boundary of Tax Parcel 048-00-01-033 to its intersection with the northern boundary line of Tax Parcel 048-00-01-009; thence eastward along the boundary line of Tax Parcel 048-00-01-009 to its intersection with the right of way boundary line of U.S. Highway 278; thence northward along the boundary line of US Highway 278 and the sewer lift station boundary lines as shown on those certain plats recorded in Plat Book 32 at Page 467 and Plat Book to the Point of Beginning.

AND ALSO, 2.00 acres of land, more or less, without improvements more specifically identified as tax map number 048-00-01-032 having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, as more particularly described as Parcel 3 on a plat recorded in Plat Book 30 at Page 276 in the office of the Register of Deeds for Jasper County, SC.

All such properties being subject to easements, rights of way, and other matters of public record.

Exhibit B Revenue Distribution

For fee in lieu of tax revenues Jasper County ("County") receives as the host county in a joint county industrial and business park there shall first be deducted any special source revenue credits.

After making the deduction of special source revenue credits, the County shall distribute 1% to any companion County.

The amount of revenues the County receives after making the deduction of special source revenue credits and the distribution of 1% to any companion county ("Retained Revenues") shall be distributed as follows:

- FIRST: 10% of the Retained Revenues shall be distributed to the County's Commercial Development Fund;
- SECOND: For reimbursement of the County for any expenditures made to attract to and locate any particular property in the joint county industrial and business park;
- THIRD: To the Taxing Entities, where "Taxing Entities" are those entities within the County which, as of the date of the agreement establishing the joint county industrial and business park, have taxing jurisdiction over the property to be located in such joint county industrial and business park, and no others, in the same ratio as each Taxing Entity's millage bears to the aggregate millage of all Taxing Entities in any given year.

For Example:

Assuming a special source revenue credit of 15%, fee in lieu of tax revenues of \$1000 and expenditures by the County of \$100, the revenues shall be distributed as follows:

First, \$150 is deducted leaving \$850.

Next, 1% of the \$850 is distributed to the companion county. 1% of \$850 is \$8.50 leaving \$841.50 in Retained Revenues.

Next, 10% of the Retained Revenues is distributed to the County's Commercial Development Fund. 10% of \$841.50 is \$84.15 leaving \$757.35

Next, \$100 is distributed to the County to reimburse the County for expenditures leaving \$657.35.

Finally, \$657.35 is distributed to the Taxing Entities, as defined above, pro rata according to millage.

FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT

BETWEEN

GOPHER HILL HOLDINGS, LLC

AND

JASPER COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF NOVEMBER 21, 2022

**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name	Freedom Industrial Partners, LLC and Freedom Industrial Partners 2, LLC	
Project Location		
Tax Map Nos.	048-00-01-029, 048-00-01-012, and 048-00-01-032	
FILOT		
• Phase Exemption Period	20 Years	Section 1.1
• Contract Minimum Investment Requirement	\$9,000,000	Section 1.1
• Investment Period	5 Years	Section 1.1
• Assessment Ratio	6%	Section 4.1
• Millage Rate	.345	Section 4.1
• Fixed or Five-Year Adjustable Millage	Fixed	Section 4.1
• Minimum Investment Requirement	Act Minimum Investment	Section 1.1
Multicounty Park	Jasper and Hampton County – Freedom Industrial Park	
Infrastructure Credit		
• Brief Description	20%	Section 5.1
• Credit Term	20 Years	Section 5.1
• Claw Back Information	Infrastructure Credit to be reduced if Company fails to meet Contract Minimum Investment Requirement during the Investment Period. Prorata reduction of Infrastructure Credit based upon formula set forth on Section 6.1.	Section 6.1
Other Information		

TABLE OF CONTENTS

	Page
Recitals.....	1
 ARTICLE I DEFINITIONS 	
Section 1.1 Terms.....	3
 ARTICLE II REPRESENTATIONS AND WARRANTIES 	
Section 2.1 Representations, Warranties, and Agreements of the County.....	6
Section 2.2 Representations, Warranties, and Agreements of the Sponsor.....	7
 ARTICLE III THE PROJECT 	
Section 3.1 The Project	8
Section 3.2 Leased Property.....	8
Section 3.3 Filings and Reports.....	8
 ARTICLE IV FILOT PAYMENTS 	
Section 4.1 FILOT Payments.....	8
Section 4.2 FILOT Payments on Replacement Property.....	9
Section 4.3 Removal of Components of the Project	10
Section 4.4 Damage or Destruction of Economic Development Property.....	10
Section 4.5 Condemnation	10
Section 4.6 Calculating FILOT Payments on Diminution in Value.....	11
Section 4.7 Payment of <i>Ad Valorem</i> Taxes.....	11
Section 4.8 Place of FILOT Payments.....	11
 ARTICLE V ADDITIONAL INCENTIVES 	
Section 5.1 Infrastructure Credits.....	11
 ARTICLE VI CLAW BACK 	
Section 6.1 Claw Back	11

**ARTICLE VII
DEFAULT**

Section 7.1	Events of Default.....	12
Section 7.2	Remedies on Default.....	12
Section 7.3	Reimbursement of Legal Fees and Other Expenses.....	12
Section 7.4	Remedies Not Exclusive.....	13

**ARTICLE VIII
PARTICULAR COVENANTS AND AGREEMENTS**

Section 8.1	Confidentiality.....	13
Section 8.2	Indemnification Covenants.....	13
Section 8.3	No Liability of County Personnel.....	15
Section 8.4	Limitation of Liability.....	15
Section 8.5	Assignment.....	15
Section 8.6	No Double Payment, Future Changes in Legislation.....	15
Section 8.7	Administration Expenses.....	15

**ARTICLE IX
SPONSOR AFFILIATES**

Section 9.1	Sponsor and Sponsor Affiliates.....	15
Section 9.2	Subdivision and Transfer.....	16

**ARTICLE X
MISCELLANEOUS**

Section 10.1	Notices.....	16
Section 10.2	Provision of Agreement for Sole Benefit of County and Sponsor.....	17
Section 10.3	Counterparts.....	17
Section 10.4	Governing Law.....	17
Section 10.5	Headings.....	17
Section 10.6	Amendments.....	17
Section 10.7	Agreement to Sign Other Documents.....	17
Section 10.8	Interpretation; Invalidity; Change in Laws.....	17
Section 10.9	Force Majeure.....	18
Section 10.10	Termination; Termination by Sponsor.....	18
Section 10.11	Entire Agreement.....	18
Section 10.12	Waiver.....	18
Section 10.13	Business Day.....	18
Section 10.14	Agreement's Construction.....	18

Exhibit A – Description of Property
Exhibit B – Form of Joinder Agreement

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT ("*Fee Agreement*") is entered into, effective, as of _____, 2022, between Jasper County, South Carolina ("*County*"), a body politic and corporate and a political subdivision of the State of South Carolina ("*State*"), acting through the Jasper County Council ("*County Council*") as the governing body of the County, and Gopher Hill Holdings, LLC, a limited liability company organized and existing under the laws of the State of South Carolina (individually, the "*Company*" and collectively, the "Companies"), the Companies also being referred to herein as the ("Sponsors").

WITNESSETH:

WHEREAS, Title 12, Chapter 44, ("*Act*") of the Code of Laws of South Carolina, 1976, as amended ("*Code*"), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax ("*FILOT*") with respect to Economic Development Property, as defined below; and

WHEREAS, Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits ("*Infrastructure Credit*") against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, "*Infrastructure*"); and

WHEREAS, the Sponsors propose to purchase and develop the Project (as defined herein) within the County; and

WHEREAS, the Sponsors anticipate that the Project will result in an investment of at least nine million dollars (\$9,000,000) in the County; and

WHEREAS, by an ordinance enacted on _____ 2022, County Council authorized the County to enter into this Fee Agreement with the Sponsors to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsors to develop the Project in the County.

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

ARTICLE I DEFINITIONS

Section 1.1. Terms. The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

"*Act*" means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

“Act Minimum Investment Requirement” means an investment of at least \$5,000,000 in the Project within five years of the Commencement Date.

“Administration Expenses” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments[, Infrastructure Credits or other incentives] provided by this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

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

“Commencement Date” means the last day of the property tax year during which Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2023.

“Contract Minimum Investment Requirement” means a taxable investment in real and personal property at the Project of not less than \$9,000,000.

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

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

“Credit Term” means the years during the Fee Term in which the Infrastructure Credit is applicable, as described in Section 5.1.

“Department” means the South Carolina Department of Revenue.

“Developer” or “Developers” mean the Company or the Companies.

“Developer Assets” means that Equipment and/or Real Property owned by the Developers and not conveyed or leased to another Sponsor or Sponsor Affiliate.

“Diminution in Value” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“Economic Development Property” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by a Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“Equipment” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“Event of Default” means any event of default specified in Section 7.1 of this Fee Agreement.

“Fee Agreement” means this Fee-In-Lieu of *Ad Valorem* Taxes and Incentive Agreement.

“Fee Term” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“FILOT Payments” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1.

“Final Phase” means the Economic Development Property placed in service during the last year of the Investment Period.

“Final Termination Date” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2028, the Final Termination Date is expected to be January 15, 2044, which is the due date of the last FILOT Payment with respect to the Final Phase.

“Improvements” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“Infrastructure” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“Infrastructure Credit” means the credit provided to the Sponsors pursuant to Section 12-44-70 of the Act or Section 4-1-175 of the MCIP Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“Investment Period” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending six (6) years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period represents a five (5) year investment period plus an additional one (1) year that the County has hereby granted pursuant to the provisions of the Act.

“MCIP Act” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“Multicounty Park” means the multicounty industrial or business park governed by the Freedom Industrial Park Multi-County Park Agreement, dated as of _____, 2022, between the County and Hampton County, South Carolina, as may be amended.

“Net FILOT Payment” means the FILOT Payment net of the Infrastructure Credit.

“Phase” means the Economic Development Property placed in service during a particular year of the Investment Period.

“Phase Exemption Period” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

“Phase Termination Date” means, with respect to each Phase, the last day of the property tax year which is the 14th year following the first property tax year in which the Phase is placed in service.

“Project” means all the Equipment, Improvements, and Real Property in the County that the Sponsors or any other Sponsor or Sponsor Affiliate determine to be necessary, suitable, or useful by the Company or such other Sponsor or Sponsor Affiliate in connection with its investment in the County.

“Real Property” means real property that the Sponsors use or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“Removed Components” means Economic Development Property which the Company or Sponsor, as the case may be, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“Sponsor” or “Sponsors”) mean the Company or Companies and any entity that joins with the Companies and participates in the investment in, or financing of, the Project and which meet the requirements under the Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project. An additional Sponsor must join in the Fee Agreement by that Joinder Agreement, the form of which is attached hereto as Exhibit B. The Sponsor may also be a Sponsor Affiliate.

“Sponsor Affiliate” means an entity that joins with or is an affiliate of a Sponsor and participates in the investment at the Project and joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

“State” means the State of South Carolina.

“Subdivided Parcel” shall have the meaning set forth in Section 9.2.

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

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsors, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsors, any other Sponsors or Sponsor Affiliates in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsors or Sponsor Affiliates, as the case may be.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

Section 2.1. *Representations and Warranties of the County.* The County represents and warrants as follows:

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

(b) Based on representations by the Company, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on November 21, 2022 by adopting an Inducement Resolution, as defined in the Act on November 21, 2022.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

Section 2.2. *Representations and Warranties of the Sponsors.* Each Company represents and warrants as follows:

(a) The Company is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to develop the Project for the purpose of constructing and operating manufacturing and/or distribution facilities and other commercial enterprises and for such other purposes that the Act permits as the Company may deem appropriate.

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

(d) The Company will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Company to develop the Project in the County.

(f) The Company has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee 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 FILOT and other incentives granted by this Fee Agreement.

ARTICLE III THE PROJECT

Section 3.1. *The Project.* The Sponsors intend and expect to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement within the Investment Period. The Sponsors anticipate that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2023. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsors are not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsors are, a Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

Section 3.2 *Leased Property.* To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by a Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

Section 3.3. *Filings and Reports.*

(a) The Company shall file a copy of this Fee Agreement and a completed PT-443 with the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(b) On request by the County Administrator, a Sponsor shall remit to the County Administrator records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

ARTICLE IV FILOT PAYMENTS

Section 4.1. *FILOT Payments.*

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation; provided however, at the election of a Sponsor, the fair market value will be determined by appraisal by the Department, in which case the Real Property and Improvements will be subject to reappraisal no more than once every 5 years; and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company or a Sponsor if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 14 years thereafter or such longer period of years in which the Act permits the Company or a Sponsor to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2021, which is .345, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company or a Sponsor to make annual fee payments.

Upon election by a Company or any Sponsor to have any Real Property valued by appraisal of the Department, the Company or Sponsor, as the case may be, shall notify the County and such election shall be evidenced by an amendment to the Fee Agreement.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsors with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7.

Section 4.2. *FILOT Payments on Replacement Property.* If a Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Section 4.3. *Removal of Components of the Project.* Subject to the other terms and provisions of this Fee Agreement, a Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.4. *Damage or Destruction of Economic Development Property.*

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then a Sponsor may terminate this Fee Agreement as to such Sponsor's interest. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

Section 4.5. *Condemnation.*

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

judgment of a Sponsor, the Sponsor shall have the option to terminate such Sponsor's interest in this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

Section 4.6. Calculating FILOT Payments on Diminution in Value. If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a) of this Fee Agreement.

Section 4.7. Payment of Ad Valorem Taxes. If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

Section 4.8. Place of FILOT Payments. All FILOT Payments shall be made directly to the County in accordance with applicable law.

ARTICLE V ADDITIONAL INCENTIVES

Section 5.1. Infrastructure Credits. To assist in paying for costs of Infrastructure, the Companies and any qualifying Sponsor are entitled to claim an Infrastructure Credit to reduce certain FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. All qualifying expenses of the Sponsors during the Investment Period shall qualify for a 20-year, 20% Infrastructure Credit. Beginning with the first annual FILOT Payment and continuing for the next fourteen annual FILOT Payments, the Sponsor will receive an annual credit in an amount equal to 20% of the annual FILOT Payment with respect to the Project; provided however, a Company or any Sponsor or Sponsor Affiliate may elect to begin application of the Infrastructure Credit in a year other than the year in which the first annual FILOT Payment is made. Such election may be made for each Subdivided Parcel (as defined in Section 9.2), unless already elected by the Company or Sponsor. In such event, the Company, Sponsor or Sponsor Affiliate, as the case may be, shall provide notice to the County Administrator of the County. Upon selection by a Company of the year in which the Infrastructure Credit shall first apply, the Infrastructure Credit will continue to be applied to the next fourteen annual FILOT Payments. In no event may a Sponsor's aggregate Infrastructure Credit claimed pursuant to this Section exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Infrastructure Credit is applicable ("*Credit Term*"), the County shall prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment. Following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

**ARTICLE VI
CLAW BACK**

Section 6.1. *Claw Back.*

(i) If following the end of the seventh (7th) property tax year after the Commencement Date, the County reasonably determines (based on the Sponsors' admissions or other actual data consistent with such finding) that the Sponsors have not achieved 75% of the Minimum Contract Investment Requirement during the Investment Period as of the end of the Investment Period, the County may, in its discretion, reduce the Infrastructure Credits on that portion of the Property that continues to be owned by the Companies or one of their affiliates ("Developer Assets") on a prospective basis.

For example (and by way of example only) if the Sponsors invested or cause to be invested \$4,500,000 in real property and real property improvements at the Project by the end of such property tax year (i.e., 50% of \$9,000,000), the County may, at its discretion, reduce the Infrastructure Credits from 20% to 10% (i.e., 50% of 20%), so the Infrastructure Credit is 10% of FILOT Payments made with respect to the Project

(ii) Notwithstanding the foregoing, and for the avoidance of doubt:

- a. The County may, in its discretion, elect to forego any reductions in Infrastructure Credits pursuant to this Section 6.1 hereof or extend the Investment Period pursuant to the provisions of the Act;
- b. Under no circumstances shall the County modify the terms of the Fee Agreement in a manner detrimental to the portion of the property that has been assigned to a Sponsor or Sponsor Affiliate who becomes a Sponsor or Sponsor Affiliate after the date of this Fee Agreement ("Sponsor Assets"). Instead, the claw back provided for by Section 6.1(i) will apply only to the Infrastructure Credits on Developer Assets on a prospective basis and not to Sponsor Assets; and
- c. In the event that Infrastructure Credits are reduced pursuant to Section 6.1 hereof, but following such reduction, the Company proves to the reasonable satisfaction of the County that it is on pace to achieve or has achieved the Minimum Contract Investment Requirement, any prior reductions in Infrastructure Credits may be rescinded in the County's sole discretion.

**ARTICLE VII
DEFAULT**

Section 7.1. *Events of Default.* The following are "Events of Default" under this Fee Agreement:

(a) Failure to make FILOT Payments, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;

(b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement;

(c) A representation or warranty made by a Sponsor which is deemed materially incorrect when deemed made;

(d) Failure by a Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

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

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 7.2. Remedies on Default.

(a) If an Event of Default by a Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement as to the defaulting Sponsor's interest; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages;

(iii) Notwithstanding anything set forth herein to the contrary, in the event the Sponsors, together with any other Sponsor or Sponsor Affiliate, fail to meet the Contract Minimum Investment Requirement, the County's sole remedy will be the clawback as provided in Article VI.

(b) If an Event of Default by the County has occurred and is continuing, a Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 7.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.4. Remedies Not Exclusive. No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

**ARTICLE VIII
PARTICULAR RIGHTS AND COVENANTS**

Section 8.1. *Right to Inspect.* The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

Section 8.2. *Confidentiality.* The County acknowledges that a Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“*Confidential Information*”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “*Confidential Information.*” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

Section 8.3. *Indemnification Covenants.*

(a) Except as provided in paragraph (d) below, each Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “*Indemnified Party*”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsors shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsors shall pay the County within 30 days of receipt of the statement. The Sponsors may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsors to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsors shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsors’ expense. The Sponsors are entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsors are not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsors are 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 Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having

entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsors 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 Sponsors notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

Section 8.4. *No Liability of County Personnel.* All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County 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 Fee Agreement may be had against any member of County 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 Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 8.5. *Limitation of Liability.* The County is not liable to the Sponsors for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsors under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

Section 8.6. *Assignment.* A Sponsor may assign its interest in this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not be unreasonably withheld. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

Section 8.7. *No Double Payment; Future Changes in Legislation.* Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. A Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

Section 8.8. *Administration Expenses.* The Sponsors will reimburse, or cause reimbursement to, the County for Administration Expenses in an amount not to exceed \$13,000. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

ARTICLE IX

SPONSOR AND SPONSOR AFFILIATES

Section 9.1. Sponsor and Sponsor Affiliates. The *Sponsors* 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 Act, which Sponsors or Sponsor Affiliates shall be persons who join with the Company and other Sponsors and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement. All other Sponsor or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Act are subject to the consent of the County, which consent shall not be unreasonably withhold. To the extent that the aggregate investment in the Project by the end of the Investment Period by all Sponsors and Sponsor Affiliates exceeds \$5,000,000, to the extent permitted by Section 12-44-30(19) of the Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the FILOT pursuant to Section 4.1 of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Contract Minimum Investment Requirement by the end of the Investment Period. A Sponsor or Sponsor Affiliate shall provide the County and the Department of Revenue with written notice of any other Sponsor or Sponsor Affiliate designated pursuant to this Section 9.01 in accordance with Section 12-44-130(B) of the Act. The parties agree that, if any Sponsor or Sponsor Affiliate ceases to become a party to this Agreement, the Agreement shall continue to remain in effect with respect to any remaining Sponsors or Sponsor Affiliates. The Sponsor or Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor or Sponsor Affiliate, as the case may be, to the County.

Section 9.2. Subdivision and Transfer. The County hereby acknowledges the Company may subdivide the Property into separate parcels (the "**Subdivided Parcels**") and sell or lease such Subdivided Parcels to other Sponsors. Upon execution of the Joinder Agreement, such Sponsors will become subject to the terms of this Fee Agreement. It is intended that each such Sponsor shall be responsible for compliance with the terms and provisions herein as pertains to such Subdivision Parcel. A default by such Sponsor shall not be deemed a default by the other Sponsors hereunder.

ARTICLE X MISCELLANEOUS

Section 10.1. Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANIES:

Gopher Hill Holdings, LLC
POB 73
Savannah, GA 31402
Email: rbooker@ticotracors.com LLC |

WITH A COPY TO (does not constitute notice):

IF TO THE COUNTY:

Jasper County, South Carolina
Attn: County Administrator
PO Box 1149
358 Third Avenue,
Ridgeland, SC 29936

WITH A COPY TO (does not constitute notice):

Jasper County Attorney
PO Box 420
358 Third Ave.
Ridgeland, SC 29936

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein
Attn: Ray Jones
1221 Main Street, Suite 1100
Columbia, SC 29201

Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsors. Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsors any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsors.

Section 10.3. Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 10.4. Governing Law. South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

Section 10.5. Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

Section 10.6. Amendments. This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

Section 10.7. Agreement to Sign Other Documents. From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 10.8. Interpretation; Invalidity; Change in Laws.

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentives described in this Fee Agreement are found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

Section 10.9. *Force Majeure.* The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

Section 10.10. *Termination; Termination by Sponsor.*

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

Section 10.11. *Entire Agreement.* This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

Section 10.12. *Waiver.* Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 10.13. Business Day. If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

Section 10.14. Agreement's Construction. Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

[Signature pages follow]

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

JASPER COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
County Council Chair
Jasper County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Jasper County, South Carolina

[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive] Agreement

GOPHER HILL HOLDINGS, LLC |

By: _____
Its: _____

[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]

EXHIBIT A
PROPERTY DESCRIPTION

Legal Description
(Preliminary)

10.62 acres of land, more or less, with a steel commercial building located thereon, more specifically identified as tax map number 048-00-01-029, having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, as more particularly described on a plat recorded in Plat Book 36 at Page 127 in the office of the Register of Deeds for Jasper County, SC

AND ALSO, 12.89 acres of land, more or less, without improvements more specifically identified as tax map number 048-00-01-012 having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, being more particularly described as follows: Beginning at a point shown on a plat recorded in Plat Book 36 at Page 127 in the Office of the Register of Deeds shown as USGS Marker Found, Haystack 1997, Elev. 83.2 (NAVD88) N 254699.65 E 1995968.12, thence S 47°49'06"E for a distance of 191.98 feet, being the Point of Beginning (POB); thence N 74 ° 57'.40"E for a distance of 265.79 feet to a point; thence N60 °18'30" for a distance of 242.53 feet to a 5/8" Rebar, being the Northeastern corner of adjacent Tax Parcel 048-00-01-029 as shown on Plat Book 36 at Page 127; thence S30 °31'58"E for a distance of 634.81 feet to a 3/4 " Rebar, being the northeastern corner of adjacent Tax Parcel 048-00-01-032 as shown on Plat Book 36 at Page 127 and as the northeastern corner of Parcel 3 on Plat Book 30 at Page 276; thence S30 °31'58"E for a distance of 290.40 feet along the eastern boundary of Parcel 3 to a rebar as shown on Plat Book 30 at Page 276 at its intersection with the northeastern boundary corner of Tax Parcel 048-00-01-033, being described as Parcel 4 on Plat Book 30 at Page 276; thence S30°31'58" for a distance of 290.40 feet along the eastern boundary of Tax Parcel 048-00-01-033 to a 3/4" rebar its intersection with the northern boundary line of Tax Parcel 048-00-01-009; thence S59° 28' 03"E eastward along the boundary line of Tax Parcel 048-00-01-009 522.44 feet to its intersection with the right of way boundary line of U.S. Highway 278; thence northward along the boundary line of US Highway 278 and the sewer lift station boundary lines as shown on those certain plats recorded in Plat Book 32 at Page 467 and Plat Book to the Point of Beginning.

AND ALSO, 2.00 acres of land, more or less, without improvements more specifically identified as tax map number 048-00-01-032 having an address of North Cypress Ridge Drive, located in the Cypress Ridge Industrial Park, Ridgeland, SC, as more particularly described as Parcel 3 on a plat recorded in Plat Book 30 at Page 276 in the office of the Register of Deeds for Jasper County, SC.

All such properties being subject to easements, rights of way, and other matters of public record.

EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective _____m 2021 (“Fee Agreement”), between Jasper County, South Carolina (“County”) and Gopher Hill Holdings, LLC (the “Sponsor”).

1. Joinder to Fee Agreement.

[_____], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: _____]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor/Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor/Sponsor Affiliate under the Fee Agreement and Section 12-44-30(18), Section 12-44-30(20) and Section 12-44-130 of the Act.

[As a Sponsor, _____ hereby further agrees to fully perform all of the obligations of the Sponsor set forth in the Fee Agreement.]

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor/Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor/Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor/Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor/Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor/Sponsor Affiliate to join with the Company in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

GOPHER HILL HOLDINGS, LLC

Name of Entity

By: _____

Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

JASPER COUNTY, SOUTH CAROLINA

By: _____

Its: _____

AGENDA ITEM:

X-D

Ordinance item D

**STATE OF SOUTH CAROLINA
COUNTY OF JASPER
ORDINANCE # O-2023-___**

AN ORDINANCE OF JASPER COUNTY COUNCIL

To amend the Jasper County Code of Ordinances, including Article IV, *Boards and Commissions* of Chapter 2, *Administration*, so as to amend Division 7, *Jasper County Aeronautics Commission*, including provisions regarding the appointment, qualifications, duties, and responsibilities of the Aeronautics Commission; to amend certain provisions of Chapter 29 to the Jasper County Code of Ordinances, *Aviation*, so as to make clarifications and amendments to certain standards, rules and regulations; and providing for corrections and amendments to the Template Leases approved by County Council pursuant to Ordinance 19- and related matters regarding the aeronautical and other activities at the Ridgeland – Claude Dean Airport, and matters related to the foregoing.

WHEREAS, the Jasper County Aeronautics Commission (County Aeronautic Commission) was originally enabled pursuant to South Carolina Acts and Joint Resolutions Act No. 12 (1949); and

WHEREAS, subsequently, in recognition of the Home Rule Act, appointive powers to the County Aeronautics Commission were devolved to Jasper County in accordance with § 4-9-170 of the Code of Laws of South Carolina, (1976 as amended); and

WHEREAS, in 2019, Jasper County made certain additions and amendments to the Jasper County Code of Ordinances to recognize recent improvements to the Ridgeland Claude Dean Airport through the use of federal funds for the improvements, which required necessary and desirable provisions regarding the County Aeronautics Commission, aeronautical operations and airport standards; and

WHEREAS, in implementing these provisions and operating the Ridgeland Claude Dean Airport, County Council has become aware of the need for clarifications and modifications to the Code of Ordinances, including the name of the Commission, appointment of members of the Aeronautics Commission, certain corrections and clarifications to the specimen Template Leases, and other matters as set forth below;

WHEREAS, Jasper County Council desires to adopt various amendments to the Code of Ordinances to accomplish these purposes;

NOW THEREFORE, BE IT ORDAINED, by the Jasper County Council duly assembled and by the authority of same:

1. Chapter 2, *Administration*, of Article IV, *Boards, Commissions and Committees*, Division 7, *Jasper County Aeronautics Commission*, codified as Code Sections 2-216 through 2-400, is amended in the following particulars:
 - a. The Jasper County Aeronautics Commission shall be renamed the Jasper County Airports Commission, and all references to "Aeronautics" throughout the Code and the approved Rules and Regulations for the Ridgeland – Claude Dean Airport shall be changed to "Airport".
 - b. Section 2-212 (a) is amended to read "The Airport Commission shall be composed of five (5) members appointed by the Jasper County Council. "
 - c. Section 2-212 (b) is amended to read "The term of office for Airport Commission members shall be two (2) years, and may serve for a total of three terms. All terms shall end on December 31. Members shall serve until their successors are appointed and qualified."
 - d. Section 2-212(d) is amended to read "Members of the Airport Commission shall meet the qualifications for appointments as set forth in Section 2-78 of the Code of Ordinances, may be removed by County Council for the reasons as set forth in such Section, and except as specifically provided for within this Division, are subject to the other provisions of Section 2-78; provided, however,

notwithstanding the residency requirement of Section 2-78 (a), non-residents owning businesses and/or properties in Jasper County may be appointed to fill no more than two commission seats; and all candidates should bring business and tourism experiences and acumen to the Commission.”

- e. Section 2-212(e) is amended to read “In addition to the five appointed commissioners, the county administrator, the Ridgeland town manager, and the airport manager shall serve as non-voting and ex-officio members of the airport commission.”
2. Chapter 29, *Aviation*, is codified as Sections 29-1 through 29-100, is amended in the following particulars:
- a. All references to the Jasper County Aeronautics Commission shall be changed throughout the Code of Ordinances to “Jasper County Airport Commission.”
 - b. Section 29-1 is amended by adding a new subsection 29-1(e) reading: “Pursuant to the Home Rule Act, control of the Jasper County Aeronautics Commission, now known as the Jasper County Airport Commission, has been brought under County Council control, and ownership of the real property comprising the Ridgeland Claude Dean Airport is vested in Jasper County. In order to avoid confusion, all property previously titled in the name of the Jasper County Aeronautics Commission shall be quit-claimed by deed executed by the Jasper County Aeronautics (now Airports Commission) to Jasper County within a reasonable time after enactment of Ordinance 2023-_____ to be filed in the public records, and all properties, leases structures, improvements and appurtenances of the Ridgeland Claude Dean Airport are confirmed to be owned by Jasper County.”
 - c. Subsection 29-3(f) is amended to read: “Lease terms shall not exceed fifty (50) years for a full service fixed base operator, and thirty (30) years for other limited service fixed base operators. The standard ground lease term for other leases shall be twenty (20) years plus possible option(s) totaling ten (10) years for hangers constructed after 2020, and lease renewal terms for ground leases for properties previously leased and improved by a tenant for more than twenty (20) years, shall not exceed five (5) years, or ten (10) years if substantial structural

improvements were made to a hanger after 2015 totaling more than \$50,000. Improvements, structures or facilities built, to be built, constructed, or placed upon the airport shall revert to the county upon termination of the lease or contract with the county if not removed, if such removal is allowed under the terms of the ground lease in effect.

3. The Template Leases approved for use at the Ridgeland Claude Dean Airport pursuant to Jasper County Ordinance 2019 - 14, as identified in Section 1 (a) through (n) of the Ordinance, are amended to reflect that Section 8, entitled "Ground Lease Term, Rate and Options," and specifically subsection 8(a) of each of the Template Leases, shall have a Term consistent with the provisions of Section 29-3(f) as set forth within this Ordinance, with a copy of the replacement pages of each of the Template Leases being attached hereto as Exhibit "A", such Term reflecting the prior length of previous leases and improvements as identified herein. Additionally, additional Template Leases, copies of which are attached, are hereby adopted and approved which provide specifically for renewal of hanger leases that were executed prior to December 31, 2020.
4. Subsection 8(c) of each of the Template Leases, shall be deleted.
5. In all cases of existing leases seeking renewal, there shall be no option exercisable solely in the discretion of the Lessee included in any extension or renewal lease.
6. Subsection 18 of each of the Leases, entitled "Sale of Leased Premises," shall be modified include a statement clarifying that the sale or assignment of the Leased Premises only includes the right of possession under the ground lease, and the improvements, fixtures and other property installed, erected or placed by the Lessee are subject to the provisions of Section 15 of the Lease, and are the property of the County if not removed as may be allowed at the termination or expiration of the Lease as set forth in Section 15. Further, any renewal of a lease executed prior to 2019 shall be conditioned upon the express acknowledgment of the rights of the County to the improvements placed upon the ground

lease at the expiration or termination of the renewal, if such are not removed as may have been allowed in the lease being renewed.

7. Section 1.5(A) of the approved Rules and Regulations for the Ridgeland – Claude Dean Airport is amended to read “When a violation of the Rules and Regulations may cause revocation of an Operating Agreement, a permit, lease agreement, and/or privileges exercised by a person or entity on the Airport, such person or entity shall receive written notification from the Airport Manager of such alleged violations giving the time and place and such other details as shall adequately apprise such person of the alleged violation and the proposed action by the Airport Manager.
8. Section 1.5(B) of the approved Rules and Regulations for the Ridgeland – Claude Dean Airport is amended to read “A copy of this notification shall be sent to the County Administrator.”
9. Section 1.5(C) of the approved Rules and Regulations for the Ridgeland – Claude Dean Airport is amended to read “Any person or entity aggrieved by a determination, denial, or suspension and/or proposed revocation of an Operating Agreement, a permit, lease agreement, and/or privileges exercised by a person or entity on the Airport by the Airport Manager may appeal the decision to the County Council or its designee by written request stating the reasons for appeal, filed with the Airport Manager and County Administrator within ten (10) days after service of the notice referenced in Section 1.5(B) by certified mail or personal service of the notice.
10. Section 1.5(D) of the approved Rules and Regulations for the Ridgeland – Claude Dean Airport is amended to read “A hearing on an appeal from determination of the Airport Manager as provided above and a hearing on a proposed determination, denial, or suspension or revocation shall be held by the Council or its designee within ten (10) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by

the designee. The hearing may be continued to another date by agreement of all parties. The hearing may be beyond ten days if there is no regularly scheduled Council meeting available within such ten day period. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the Rules and Regulations and applicable Ordinances standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the County.

11. A new Section 1.5(E) is added to the approved Rules and Regulations for the Ridgeland – Claude Dean Airport to read “Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.”
12. Provisions of ordinances previously adopted by County Council which are not consistent with the restrictions and requirements of this Ordinance 2023-____are deemed superseded.
13. If any section, clause, paragraph, sentence or phrase of this ordinance, or the application thereof to any person or circumstances shall, for any reason, be held to be invalid or unconstitutional, such invalid section, clause, paragraph, sentence, phrase or application is hereby declared to be severable; and any such invalid or unconstitutional section, clause, paragraph, sentence, phrase or application shall in no way affect the remainder of this ordinance; and it is hereby declared to be the intention of the County Council that

the remainder of this ordinance would have been passed notwithstanding the invalidity or unconstitutionality of any section, clause, paragraph, sentence or phrase thereof.

14. This ordinance shall take effect upon approval by Council.

L. Martin Sauls, IV., Chairman

ATTEST:

Wanda Simmons, Clerk to Council

ORDINANCE # O-2023-____
First Reading: 01.17.2023
Second Reading: _____
Public hearing: _____
Adopted: _____

Reviewed for form and draftsmanship by the Jasper County Attorney.

David L. Tedder

Date:

Sec. 2-204. Meetings.

The board shall meet at least quarterly.
(Ord. No. 07-46, § 4, 12-3-07)

Secs. 2-205—2-209. Reserved.

DIVISION 7. AERONAUTICS COMMISSION

Sec. 2-210. Purpose.

The purpose of the Jasper County Aeronautics Commission (aeronautics commission) shall be to act in an advisory capacity to the Jasper County Council regarding aviation matters, and exercise such powers and authorities as are committed to the aeronautics commission pursuant to state law.
(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-211. Duties.

(a) To forward to county council for each fiscal year ending on June 30th, by April 30 of the following calendar year, a report of the work of the commission for that fiscal year;

(b) Make recommendations to the airport manager for the airport annual expense and revenue budget for the operation of the Ridgeland - Claude Dean Airport;

(c) Recommend acquisition by grant, purchase, lease, condemnation or otherwise real property and rights-of-way for airport and aeronautical purposes;

(d) Review and make recommendations on updates to the airport master plan and/or airport layout plan;

(e) Recommend matters concerning planning and construction of new airport facilities;

(f) Recommend plans for the maintenance and future uses of the airport;

(g) Review with an opportunity to comment on amendments to the Airport Compatibility Overlay District (ACOD) and permit requests for matters within the ACOD;

(h) Make recommendations on other policy and operational issues.
(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-212. Composition.

(a) The aeronautics commission shall be composed of five members appointed by the Jasper County Council. Each council member shall nominate one person to serve as a commission member to represent the county council. In the event the nominated person is not appointed by the council, the council member shall be entitled to nominate additional persons for consideration.

(b) The term of office for aeronautics commission members shall be three years, and may serve for a total of two consecutive terms. Notwithstanding the foregoing, in order to provide for a staggering of terms and a continuity of knowledge, two of the five appointments in the initial appointments for 2019 shall be for a term of two years. All terms shall end on December 31. Members shall serve until their successors are

appointed and qualified. New appointments and vacancies for an unexpired term must be filled in the same manner as the original appointment for that seat, with the council member who made the initial nomination for that membership seat entitled to nominate the replacement.

(c) No member of the aeronautics commission shall hold an elected public office.

(d) Members of the aeronautics commission shall meet the qualifications for appointments as set forth in section 2-78 of the Code of Ordinances, may be removed by county council for the reasons as set forth in such section, and except as specifically provided for within this division, are subject to the other provisions of section 2-78.

(e) The county administrator, Ridgeland Town administrator and the airport manager shall serve as a non-voting and ex-officio members of the aeronautics commission.

(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-213. Training.

Within three months of the member's appointment and at such other times as may be required by county council, the member shall attend a training session provided by the county on the topics of meeting procedures, fiduciary duties, airport policy, aviation policy and other responsibilities and duties of a commission member.

(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-214. Compensation.

The members of the aeronautics commission shall not receive any compensation for their services. However, members shall be reimbursed or otherwise provided for when attending conferences, training, etc. as may be approved by the county administrator.

(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-215. Meetings.

(a) The aeronautics commission shall meet quarterly, and at other times at the call of the commission chairman or by any two members upon actual notice to each member and posting and notice in accordance with the South Carolina Freedom of Information Act.

(b) During the first meeting in January of each year, the membership shall elect from its membership a chairman, vice chairman and secretary. At that meeting, a schedule of regular quarterly meetings will be adopted, including the date for the first meeting in January of the following year. The names of the officers and a copy of the meeting schedule shall be forwarded to the clerk to council.

(c) The commission may adopt meeting procedures for the conduct of its meetings which meet the requirements of the South Carolina Freedom of Information Act; unless specific modifications are adopted, the procedures provided for by Robert's Rules of Order, latest edition, as adjusted therein for meetings of small boards, shall be used by the commission.

(d) A member of the commission who misses three consecutive meetings of the commission during the calendar year shall be promptly reported to county council.

(e) A majority of voting members must be present in person to constitute a quorum and vote on matters: participation and voting by video or telephone is allowed provided such is in accordance with the South Carolina Freedom of Information Act and an in-person quorum is maintained.

(f) Matters shall be determined by majority vote unless otherwise provided by law.

(g) The meeting place shall be as provided for by the county administrator.
(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-216. Records and reports.

(a) The aeronautics commission shall maintain records of its meetings and shall forward copies of the minutes of each meeting to the county council within 30 calendar days of each meeting. The minutes shall reflect the date of the meeting, the members present and the business considered and decided. The commission secretary shall prepare the minutes of each meeting and forward them to the office of the county clerk to council for distribution to county council.

(b) The commission shall timely provide, in addition to the annual report required by section 2-211(a), such other reports as requested by county council concerning its activities.
(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-217. Freedom of information.

The Jasper County Aeronautics Commission is a public body within the meaning of section 30-4-10, et seq., of the Code of Laws of South Carolina of 1976, as amended, also known as the Freedom of Information Act and, as such, is required to provide public notice of its meetings and agendas and to attempt to notify the press thereof as required by the Act.
(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 2-218. Legal counsel.

In the event the aeronautics commission requires the advice of legal counsel, the commission shall first contact the county administrator to request the legal services of the county attorney. If for any reason, the county attorney is unable to advise or represent the commission, the county attorney shall so advise the commission, county administrator and county council. The county council, upon recommendation by the county administrator, may provide substitute counsel, if deemed necessary by county council.
(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 2-219—2-400. Reserved.

Chapter 29

AVIATION

Article I. In General

- Sec. 29-1. Ownership and authority.
- Sec. 29-2. Applicability.
- Sec. 29-3. Statement of policy.
- Sec. 29-4. Finances.
- Sec. 29-5. Waivers.
- Secs. 29-6—29-15. Reserved.

Article II. Jasper County Aeronautics Commission

- Sec. 29-16. Authority.
- Secs. 29-17—29-20. Reserved.

Article III. Rules and Regulations

- Sec. 29-21. Rules and regulations.
- Secs. 29-22—29-25. Reserved.

Article IV. Minimum Standards for Aeronautical Services

- Sec. 29-26. Minimum standards for aeronautical services.
- Secs. 29-27—29-30. Reserved.

Article V. Minimum Standards for Aircraft Hangar Construction

- Sec. 29-31. Minimum standards for aircraft hangar construction.
- Secs. 29-32—29-35. Reserved.
- Sec. 29-36. Airport compatibility overlay district.
- Secs. 29-37—29-100. Reserved.

ARTICLE I. IN GENERAL**Sec. 29-1. Ownership and authority.**

(a) Jasper County is the owner of the land structures, improvements and appurtenances of the Ridgeland Claude Dean Airport, and has the right to and does hereby regulate all commercial enterprises using the airport, whether such operations are aeronautical or non-aeronautical in nature. No commercial operation of any kind shall be conducted on the airport without specific approval, as delegated by Jasper County Council to the county administrator.

(b) Pursuant to South Carolina Acts and Joint Resolutions Act No. 12 (1949), The General Assembly of South Carolina created the Jasper County Aeronautics Commission ("County Aeronautics Commission"), which, among other things, provides that certain powers and authorities are granted to the commission, and that these powers and authorities extended are cumulative and in addition to all powers and authorities said commission may have by virtue of the provisions of any other Act, Statute or law.

(c) Pursuant to section 4-9-70 of the Code of Laws of South Carolina (1976 as amended), county council has the appointive powers for all boards committees and commissions whose appointment is not provided for by general law or the Constitution; accordingly county council has provided for appointments to the Jasper County Aeronautics Commission in Chapter 2, Article IV, Division 7 (being sections 2-210 et seq. of the codified Jasper County Code of Ordinances), as well as certain other matters related to the Jasper County Aeronautics Commission.

(d) Jasper County has delegated certain powers regarding operation and other matters of the Jasper County Claude Dean Airport to the County Aeronautics Commission or the county administrator, as set forth hereinafter and other sections of the Code of Ordinances, including chapter 29 of the Jasper County Code of Ordinances.

(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 29-2. Applicability.

(a) All ordinances of the county shall be and are hereby made applicable to Ridgeland - Claude Dean Airport and shall be enforceable as if the airport were situated entirely within the unincorporated limits of Jasper County, South Carolina pursuant to the authority of South Carolina Code of Laws 55-9-30, *Establishment of Airports*.

(b) All law enforcement powers of the sheriffs department to enforce the laws of Jasper County, the State of South Carolina and the United States of America are hereby confirmed to apply to airport facilities, pursuant to the authority of South Carolina Code of Laws 55-9-360, *Administration and Enforcement of Airport Regulations*.

(c) This chapter shall apply to all prospective and current users and tenants of the Ridgeland - Claude Dean Airport and all improvements thereon.

(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 29-3. Statement of policy.

(a) Jasper County and the County Aeronautics Commission shall provide at the Ridgeland - Claude Dean Airport a fair and reasonable opportunity, without unlawful discrimination, to applicants to qualify or otherwise compete, for available airport facilities and the furnish selected aeronautical activities subject to the minimum standards established by the county. The county has the right to revise ordinances and resolutions, from time to time, relating to:

- (1) The Jasper County Aeronautics Commission
- (2) Rules and Regulations
- (3) Minimum Standards for Aeronautical Services
- (4) Minimum Standards for Aircraft Hangar Construction
- (5) Airport Compatibility Overlay District

(b) These standards, among other things, set forth the minimum requirements to be met by individuals, groups, or organizations seeking to use or conduct aeronautical activities at the airport.

(c) The county's objectives in adopting these standards are to protect the level and quality of aeronautical activities offered to the public, and to encourage the development of quality aeronautical services and facilities at the airport. All operators, being defined as any person, firm, partnership, corporation, association or group providing any one or a combination of aeronautical services to or for aviation users at the airport, are encouraged to exceed the minimums.

(d) Prior to starting any operation(s), a potential operator must enter into a written contract with the county. The contract will cite the terms and conditions under which the aeronautical activities will be conducted on the airport, including, but not limited to, the term of the agreement, the fees and charges, and the rights and obligations of the respective parties.

(e) The granting of such right or privilege, however shall not be construed to extend to any operator or prospective operator any exclusive or continuing right of use of the premises or facilities of the airport, other than those premises leased exclusively to the operator, for the term of the lease, and then only to the extent in the written lease.

(f) Lease terms shall not exceed 50 years. However, the standard term shall be 20 years plus possible option(s) totaling ten years. Improvements, structures or facilities built, to be built, constructed, or placed upon the airport shall revert to the county upon termination of the lease or contract with the county.
(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 29-4. Finances.

(a) County council may appropriate to the airport such sums of money deemed necessary for acquiring, establishing, developing, operating, maintaining and controlling the airport.

(b) Airport fees shall be set forth in the fee schedule adopted by county council resolution from time to time.

(c) The county administrator shall set the airport fuel and consumable prices, after consultation with the airport manager.

(d) All revenues derived from the airport must be obligated to expenses incurred at or on behalf of the airport.

(Ord. No. 2019-14, § 1, 6-18-19)

Sec. 29-5. Waivers.

(a) The county may waive all or any portion of these standards for the benefit of governmental agencies performing public services for:

- (1) The general public in time of emergency;
- (2) Emergency medical or rescue services to the public;
- (3) Fire prevention or firefighting operations.

(b) Waivers by the county may be made by resolution, or by the exercise of authority delegated to the county administrator by county council.

(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 29-6—29-15. Reserved.

ARTICLE II. JASPER COUNTY AERONAUTICS COMMISSION

Sec. 29-16. Authority.

(a) In accordance with state law and as provided in section 29-1 above, the Jasper County Aeronautics Commission has been created and empowered in regards to the operation, maintenance and control of the Ridgeland Claude Dean Airport. Provisions regarding such are found in Chapter 2, Article IV, Division 7 of the Code of Ordinances.

(b) Pursuant to the powers and authorities provided to Jasper County, and as owner of the Ridgeland Claude Dean Airport, Jasper County hereby adopts the following articles regarding rules and regulations, minimum standards for aeronautical services, and minimum standards for hangar construction. Provisions regarding the Airport Compatibility Overlay District have previously been adopted and are set forth in section 8.3 of appendix A of the Jasper County Code of Ordinances.

(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 29-17—29-20. Reserved.

ARTICLE III. RULES AND REGULATIONS

Sec. 29-21. Rules and regulations.

(a) County council hereby adopts by reference *Rules and Regulations*, May 7, 2019 edition.

(b) A copy of such *Rules and Regulations*, May 7, 2019 edition shall be maintained in the office of the county Clerk to Council and in the office of the airport manager.

(c) County council may amend the *Rules and Regulations* by resolution adopted by county council from time to time.

(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 29-22—29-25. Reserved.

ARTICLE IV. MINIMUM STANDARDS FOR AERONAUTICAL SERVICES

Sec. 29-26. Minimum standards for aeronautical services.

(a) County council hereby adopts by reference *Minimum Standards for Aeronautical Services*, May 8, 2019 edition.

(b) A copy of such *Minimum Standards for Aeronautical Services*, May 8, 2019 edition shall be maintained in the office of the county Clerk to Council and in the office of the airport manager

(c) County council may amend the *Minimum Standards for Aeronautical Services*, by resolution adopted by county council from time to time.

(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 29-27—29-30. Reserved.

ARTICLE V. MINIMUM STANDARDS FOR AIRCRAFT HANGAR CONSTRUCTION

Sec. 29-31. Minimum standards for aircraft hangar construction.

(a) County council hereby adopts by reference *Minimum Standards for Aircraft Hangar Construction*, May 10, 2019 edition.

(b) A copy of such *Minimum Standards for Aircraft Hangar Construction*, May 10, 2019 edition shall be maintained in the office of the county Clerk to Council and in the office of the airport manager.

(c) County council may amend the *Minimum Standards for Aircraft Hangar Construction* by resolution adopted by county council from time to time.

(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 29-32—29-35. Reserved.

ARTICLE VI. AIRPORT COMPATIBILITY OVERLAY DISTRICT

Sec. 29-36. Airport compatibility overlay district.

(a) County council has previously adopted maps, terms and conditions for the Airport Compatibility Overlay District by Ordinance dated April 7, 2014, codified at section 8.3 of appendix A of the County Code of Ordinances.

UTILITIES

§ 29-37--29-100

(b) The provisions of the Airport Compatibility Overlay District standards may be amended from time to time by ordinance adopted by county council pursuant to provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, as amended.
(Ord. No. 2019-14, § 1, 6-18-19)

Secs. 29-37--29-100. Reserved.

RULES & REGULATIONS

RIDGELAND – CLAUDE DEAN AIRPORT

May 7, 2019

Ridgeland, South Carolina



PREAMBLE

THE COUNTY COUNCIL OF JASPER COUNTY, SOUTH CAROLINA

BEING THE OWNER, and in a position of responsibility for the administration of the Ridgeland – Claude Dean Airport,

Therefore, it is desirable and necessary to promulgate uniform Rules and Regulations pertaining to the use of Ridgeland – Claude Dean Airport,

Pursuant to Title 49 United States Code, Public Law 97 – 248, Airport and Airway Improvement Act of 1982; as amended and pursuant to the authority vested in the County of Jasper by the South Carolina Code of Laws, Title 55, Aeronautics, as amended,

Therefore, Jasper County South Carolina has the authority to adopt rules and regulations for the management, regulation, operation and use of said airport property.

Copies of such Rules and Regulations shall be made available to all parties, to whom these Rules and Regulations apply, including fixed base operations, aeronautical service providers, hangar owners, tenants and users. Copies will also be available online and at the office of the Airport Manager and at the office of the County Administrator.

Unmanned Aircraft Systems (UAS) – commonly known as “Drones” defined and operated under Code of Federal Regulations *14 CFR Part 101 or 14 CFR Part 107*.

Vehicle – all motorized and non-motorized conveyances; except aircraft.

SECTION 1.2 ABBREVIATIONS

Code of Federal Regulations	CFR
Federal Aviation Administration	FAA
Fixed Base Operator	FBO
Notice to Airman	NOTAM
National Fire Protection Association	NFPA

SECTION 1.3 JURISDICTION

These Rules & Regulations shall apply to all users and tenants of Ridgeland – Claude Dean Airport and all improvements thereon. Any entry upon or use of the Airport or any part thereof whether with expressed permission or without is conditioned upon compliance with these Rules and Regulations; entry upon the Airport by any person shall be deemed to constitute an agreement by such person to comply with said Rules & Regulations as well as any applicable rules and regulations of the Federal Aviation Administration, the South Carolina Aeronautics Commission and Jasper County South Carolina.

SECTION 1.4 VIOLATIONS

Violations of Airport Rules & Regulations shall be resolved or adjudicated by the appropriate authorities.

Any violation of the Rules & Regulations that result in a misdemeanor or felony charge shall be a jurisdictional matter for law enforcement.

SECTION 1.5 VIOLATIONS NOT INVOLVING LAW ENFORCEMENT

- A. When a violation of these Rules & Regulations may cause revocation of an Operating Agreement, a permit and/or privileges exercised by a person on the Airport, such person shall receive written notification from the Airport Manager of such alleged violations giving the time and place and such other details as shall adequately apprise such person of the alleged violation and the proposed action by the Aeronautics Commission and/or Airport Manager.
- B. A copy of this notification shall be sent to the Chairman and the Secretary of the Aeronautics Commission.

- C. In the event the person receiving such notification desires to contest the alleged violation, or the proposed action, they shall submit a written appeal within ten (10) calendar days of receipt, or constructive delivery, of such notification to the Airport Manager, the Chairman, and the Secretary of the Aeronautics Commission. A hearing on the alleged violation will be allowed to address and hold a discussion with the Aeronautics Commission for a reasonable amount of time.
- D. The Aeronautics Commission shall furnish a written determination to the alleged violator within thirty (30) calendar days after the hearing and such determination shall be final. Any determination of the Aeronautics Commission adverse to the violator requesting the hearing shall be subject to appeal in accordance with applicable laws of the State of South Carolina.

SECTION 1.6 ACCIDENT/INCIDENT REPORTS

Any person involved in a reportable incident or accident, as defined in Federal Aviation Regulations 49 CFR 830 NTSB, shall report such incident or accident within the appropriate timelines as stipulated in the appropriate regulations and shall also report any incident or accident to the Airport Manager.

To encourage the filing of accurate and timely reports, in the interest of public safety and for the benefit of aviation, no accident report, or any part of an accident report will be released to any person unless required by law. The Airport Manager may make accident reports available to appropriate federal, state or local government agencies if so requested in writing or as otherwise required by law.

STATE OF SOUTH CAROLINA) **AIRCRAFT STORAGE HANGAR LEASE**
) Terminal South
COUNTY OF JASPER) October 3, 2019 edition

This LEASE is made effective as of the ____ day of _____, 20____, by and between Jasper County, South Carolina herein referred to as "Lessor", and _____, herein referred to as "Lessee".

RECITALS

WHEREAS, Lessor is the owner and operator of an airport known as Ridgeland - Claude Dean Airport, hereinafter called "Airport"; and,

WHEREAS, Lessor desires to accommodate, promote, and enhance general aviation at the Airport pursuant to Title 49 United States Code, Public Law 97 - 248, Airport and Airway Improvement Act of 1982; as amended and pursuant to the authority vested in the County of Jasper by the South Carolina Code of Laws, Title 55 Aeronautics; as amended; and,

WHEREAS, Lessee desires to use the facilities of the airport and to maintain a base of operations at the airport; and,

WHEREAS, Lessor is willing to lease a portion of the airport premises together with such rights and privileges as are set forth in this Lease; and,

WHEREAS, the Lessor and Lessee have agreed that Lessee will construct an aircraft storage hangar for the commercial storage of aircraft premises and without cost to the Lessor.

NOW THEREFORE, for and in consideration of the above recitals, the terms and covenants of this Lease, and other valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. **USE OF AIRPORT.** Lessee is granted the use, in common with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the airport from time to time including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, water & sewer facilities, landing lights, beacons, radio navigation aids, radio communication aids, and all other conveniences for flying, landings, and takeoffs.

2. **EXCLUSIVE PROPRIETARY RIGHTS.** The Lessor (Airport Owner) shall, at its sole discretion, exercise exclusive proprietary rights to provide any or all aeronautical services.

3. **EXCLUSIVE RIGHTS.** Notwithstanding, anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Lease are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport.
4. **ECONOMIC NON-DISCRIMINATION.** Lessee shall furnish said services on a reasonable, and not unjustly discriminatory basis, to all users thereof and charge reasonable, and not unjustly, discriminatory prices for each unit or service provided and Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
5. **SUBORDINATION (Property Rights Reserved).**
This Lease is subject to and subordinate to the following:
 - a. The Lessor reserves the right to develop and improve the Airport as it sees fit, regardless of the desires or views of Lessee, and without interference or hindrance by or on behalf of Lessee, provided Lessee is not deprived of the use or access to the leased premises or any of Lessee's rights under this Lease and unless said activities by the Lessor shall result in the loss of convenient access to the leased premises by Lessee assigns, subtenants, renters, agents, employees or guests.
 - b. The Lessor reserves the right to take any action it considers necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting any building or other structure on the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.
 - c. During national emergency, the Lessor shall have the right to lease all or any part of the landing area or airport to the United States or South Carolina National Guard for military use, and if any such Lease is executed, the provisions of this Lease insofar as they may be inconsistent with the provisions of such lease to the government, shall be suspended, but such suspension shall not extend the terms of this Lease. Abatement of Lease payments shall be reasonably determined by the Lessor and Lessee in proportion to the degree of interference with the Lessee's use of the leased premises.
6. **LEASED PREMISES.** Lessor grants to Lessee the exclusive use of that portion of the airport premises shown in Appendix "A" and further described as follows: Lot _____ tax map and parcel _____ together with the existing hangars and other constructed improvements currently located on such

premises which must be maintained on the premises throughout the term of the Lease.

Lessee agrees that such building(s) will be constructed within twelve (12) months from the commencement of this Lease, and further agrees to maintain such for the remainder of the Lease. Jasper County Government shall review and approve the plans prior to construction.

The leased premises shall be used only for commercial storage of aircraft. The premises may not be used for any other purpose without advance, written permission of the Lessor.

7. **RIGHT OF INGRESS AND EGRESS.** Lessee shall have at all times the full and free right of ingress and egress from the premises and facilities referred to in Appendix "A" of this Lease for Lessee, its employees, customers, passengers and guests. Such right shall also extend to persons or organizations supplying materials or furnishing services to Lessee, to include vehicles, machinery and equipment reasonably required by such persons or organizations.

8. **GROUND LEASE**

TERM, RATE AND OPTIONS. The Initial Term of this Lease is _____ () years.

a. The Initial Lease Rate shall be fifteen cents (\$0.15) per square foot of the leased premises including the building(s) footprint and other required area set forth in Exhibit "A" existing and commencing on the ____ day of _____, _____ and ending on the ____ day of _____ unless terminated at an earlier date for any reason set forth in this lease. The lease shall be paid yearly in advance or monthly with the first increment due immediately upon lease execution.

b. Lessor has the right to adjust the lease rate at the end of the first five (5) year anniversary of this Lease, and each five years thereafter, to reflect increases in the consumer price index (CPI) as reported annually to Jasper County by the S.C. Department of Revenue for use by local governments in adjusting allowable tax rates during the previous five (5) year increment of the lease. Lessor will provide notice of the new lease rate a minimum of ninety (90) calendar days prior to each calendar or federal fiscal anniversary.

delete c. At the expiration of the initial lease term, Lessee shall have the option, subject to the conditions within, to extend the term of this Lease for two (2) additional periods of five (5) years each hereinafter the "Extended Term", provided that at the time of such exercise and at all times before

the Extended Term, Lessee is not in default in the payment of any rent or in default in any other provisions of this Lease.

Lessee may exercise the option by giving written notice of such extension to the Lessor not more than eighteen (18) months nor less than nine (9) months, prior to the expiration of the Initial Term. The terms of this Lease shall remain applicable during the Extended Term, and shall include any Lease rate escalation throughout the Initial Term and during the Extended Term.

9. **HOLD-OVER.** If for any reason, the Lessee cannot vacate the premises expeditiously at Lease expiration or termination, the Monthly Holdover rent shall be due at the rate of 200%.
10. **LATE CHARGES.** Lease payments, and other costs and charges authorized herein, not received by Lessor by the tenth (10th) of each month when due, if Lessee chooses to pay appropriate charges monthly, are subject to a late penalty, without notice to the Lessee, of one and one-quarter percent (0.0125) per month.
11. **RULES & REGULATIONS.**
 - a. Lessee agrees to observe and obey all laws, regulations and ordinances of the jurisdictions (federal, state and local) having authority over the premises.
 - b. Lessee agrees to observe and obey the Ridgeland – Claude Dean Airport “Rules & Regulations”, “Minimum Standards for Aeronautical Services” and “Minimum Standards for Aircraft Hangar Construction” with respect to construction, operation and maintenance of the premises and provided further that such regulations shall not be inconsistent with procedures prescribed or approved from time to time by the Federal Aviation Administration.
 - c. Lessee agrees to be responsible for the proper tie down, securing or storage of aircraft under its custody.
 - d. Lessee agrees to be responsible for proper securing of facilities and gates after each use including use by Lessee’s employees, guests and customers.
 - e. Lessee agrees not to handle, store or utilize any toxic or hazardous materials without Lessor’s prior written consent and approval.
 - f. Lessee agrees to be responsible for the mitigation and clean-up of spills of toxic or hazardous materials within the premises or emanating from the premises; including fines that may be levied.

- g. Lessee acknowledges responsibility for permit fees, licenses, taxes and encumbrances associated with the structure and contents.**
- 12. INSURANCE. At all times during the Lease term, Lessee shall maintain, at its sole cost, comprehensive public liability and comprehensive property damage and other appropriate insurance required of commercial aeronautical operators in "Minimum Standards for Aeronautical Services".**

Such insurance, at a minimum, must insure against claims and liability for personal injury, death, and property damage arising from the use, occupancy, disuse or condition of the leased premises. The insurance shall be carried by a company or companies authorized to transact business in the State of South Carolina.

- 13. INDEMNIFICATION OF LESSOR. Lessee agrees to indemnify Lessor against any and all liability for injuries to persons or damage to property caused by Lessee's use or occupancy of the leased premises, provided, however, that Lessee shall not be liable for any injury, damage, or loss occasioned by the negligence of Lessor or its employees, vendors, guests or agents; and provided further that Lessor shall give to Lessee prompt and timely notice of any claim made or suit instituted directly or indirectly, contingent or otherwise, affects or might affect Lessee, and Lessee shall have the right to compromise and defend the suit to the extent of its own interest.**

14. TERMINATION.

- a. If Lessee fails to make payment due under this Lease within thirty (30) days of the date on which such payment is due or shall violate any other term or covenant of this Lease, Lessor at its option, may terminate this Lease, after giving notice of the violation to Lessee and Lessee having thirty (30) days to cure the violation, and take possession of the hangar and Lessee's personal property as is reasonably necessary to secure payments of the amounts due and unpaid.**
 - b. This Lease shall terminate, at the option of the Lessor, with prompt written notice to Lessee and holder of a Leasehold Mortgage upon the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a court of competent jurisdiction.**
 - c. Failure by the Lessor or Lessee to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not constitute a waiver of said default nor of any subsequent breach or default of any of the terms, covenants and conditions of this Agreement.**

15. SURRENDER OF POSSESSION.

- a. Upon the expiration or other termination of this Lease, Lessee's rights to use of the premises, facilities and services described in this Lease shall cease, and Lessee shall vacate the premises without unreasonable delay.
- b. At the termination or expiration of this Lease, Lessee shall surrender the leased premises to Lessor in as good condition as when received by Lessee from Lessor or as thereafter improved, reasonable use and wear excepted. Lessee shall repair any damage to the premises occasioned by its use, or by the removal of Lessee's trade fixtures, furnishings, and equipment which repair shall include the patching and filing of holes and repair of structural damage.
- c. Except as otherwise provided in this Lease, all buildings, hangars, structures, improvements, and other property bought, installed, erected, or placed by Lessee in, on, or about the airport and premises leased shall become a part of the land on which it is located and title to such property shall vest in Lessor. Mobile machinery, fixtures and signs shall be deemed to be personal and shall remain the property of the Lessee. Lessee shall have right at any time during the term of this Lease or any extension, and for additional period of sixty (60) calendar days after the expiration or otherwise termination of this Lease, to remove any and all such personal property from the airport, subject, however, to Lessee's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by Lessee prior to the expiration of the above-stated sixty (60) calendar day period shall become a part of the land on which it is located and title to such property shall vest in Lessor.
- d. At the Lessor's option, any and all improvements constructed on leased premises may be removed and the premises restored to pre-lease condition at the sole expense of the Lessee.

16. INSPECTION BY LESSOR. Lessor, by its officers, employees, agents, and contractors, may enter the leased premises at any reasonable time for inspection and environmental testing or for any purpose necessary or incidental to the performance of its obligations under this Lease. Such inspection shall not interfere with Lessee's use, occupancy or security requirements, except when necessary for reasons of public safety and/or law enforcement, or for the protection of property. The Lessor shall endeavor to provide seventy-two (72) hours written notice of its intent to inspect.

17. ASSIGNMENT AND SUBLETTING. Lessee shall not at any time assign its rights or sublet under this Lease or any part thereof without the Lessor's prior written consent and approval. Lessee shall not subdivide either its ownership of the improvements or leasehold interest in the Leased Premises.

18. **SALE OF LEASED PREMISES.** Lessee shall not sell structures built on leased premises without prior notification of the Lessor.
- a. In the event Lessee offers the leasehold for sale, Lessor shall have the right (but not the obligation) to purchase the leasehold.
 - b. If Lessor declines or fails to purchase the leasehold at the asking price, Lessee shall be free to offer the leasehold for sale to others. However, if a bona fide offer is received from a 3rd party prospective buyer, then Lessee shall again notify Lessor, in writing, and offer the Leasehold to Lessor at the price and upon same or better terms named by the prospective buyer.
 - c. Lessee acknowledges their responsibility to provide a copy of this Lease document to prospective buyers prior to sale. Lessee further acknowledges that sale of such leasehold shall be documented with the execution of the approval bill of sale document included herein as Appendix "A".
19. **SURETY FOR PERFORMANCE & PAYMENT.** Before any major construction, alteration or repair is commenced on the Premises, Lessee shall furnish to Lessor adequate surety for performance and payment in a form acceptable to the Jasper County finance director, in an amount not less than the cost of the improvements to be constructed, and which will remain in effect until the entire cost of the work has been paid in full and the new improvements have been insured as provided in this Lease. The surety will state the following:
- 1) It is conditioned to secure the completion of the proposed construction free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen following the commencement of construction;
 - 2) The construction work shall be completed by Lessee, the general contractor, or, on their default, the surety;
 - 3) In default of such completion and payment, such part of the amount of the surety as shall be required to complete the work shall be paid to Lessor as liquidated and agreed damages for the non-performance of Lessee's agreements, it being agreed the exact amount of Lessor's damages is difficult and impractical to ascertain; and
 - 4) The surety will defend, hold harmless and indemnify Lessor against all loss, cost, damage, expense and liability arising out of or connected with the work of improvement.

20. **NOTICES.** Notices provided for in this Lease shall be sufficient, if in writing, and sent by registered mail, postage prepaid, to:

Lessor:

**County Administrator
C/O Airport Manager
Ridgeland – Claude Dean Airport
P.O. Box 653
Ridgeland, SC 29936**

Lessee:

21. **GOVERNING LAW.** This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.
22. **SEVERABILITY.** If any section, sentence or clause of this Lease is for any reason held void or inoperative, the remaining provisions shall not be affected.
23. **EFFECT OF LEASE.** All covenants, conditions, and provision of this Lease shall extend to and bind the legal representatives, successors, and assigns of the respective parties.
24. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.
25. **MODIFICATION OF LEASE.** Any modification of this Lease or additional obligation assumed by either party in connection with the Lease shall be binding only if in writing and signed by each party or authorized representative of each party.

[Signature page follows.]

WHEREFORE, the parties, acting through their duly authorized and empowered representatives have caused to be executed this lease under their hands and seals, the day and year first above written.

LESSOR:

JASPER COUNTY, SOUTH CAROLINA

(Witness)

By: _____

Name:

Title:

[Seal]

Notary

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGEMENT

COUNTY OF JASPER)

I, the undersigned notary public, do hereby certify that the above named officer of the Lessor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____ 20____.

[SEAL]

(Notary signs and affixes seal)

Notary Public for South Carolina

Print Name: _____

My Commission Expires:

LESSEE:

(Witness)

By: _____

Name:

Title:

[Seal]

Notary

STATE OF SOUTH CAROLINA)

) ACKNOWLEDGEMENT

COUNTY OF JASPER)

I, the undersigned notary public, do hereby certify that the above named officer of the Lessor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____ 20____.

[SEAL]

(Notary signs and affixes seal)

Notary Public for South Carolina

Print Name: _____

My Commission Expires: