



DUE TO THE COVID-19 STATE OF EMERGENCY, IN-PERSON COUNCIL MEETINGS ARE REPLACED WITH ELECTRONIC MEETINGS.

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To Participate in Public Comment, please email to comments@jaspercountysc.gov or mail to Attn: Clerk to Council P.O. Box 1149 Ridgeland, SC 29936. To be called for public Comment, please email at the mentioned email address. ***Public Comments must be submitted by Monday, October 4, 2021, at 3:00pm.***

Instructions may also be found at the Jasper County website www.jaspercountysc.gov

FOR MORE INFORMATION, PLEASE CALL (843) 717-3696



JASPER COUNTY COUNCIL

VIRTUAL MEETING

Jasper County Clementa C. Pinckney Government Bldg
358 3rd Avenue Ridgeland, SC 29936

October 4, 2021

AGENDA

5:00 P.M.

I. Call to Order by Chairwoman Barbara B. Clark

Clerk's Report of Compliance with the Freedom of Information Act.

II. Executive Session

SECTION 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body – *Application of the Salary Study to specific employees / positions; Premium Pay*

(2) Discussion of negotiations incident to proposed contract arrangements and proposed purchase or sale of property, the receipt of legal advice where the legal advice related to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim – *Exit 3; Waste Management; Carolina Metal Castings; Update on Opioid Litigation*

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by a public body – *Jasper Ocean Terminal (JOT); Prospect Update; Project Mandolin; Project Dolphin*

ANY EXECUTIVE SESSION MATTER ON WHICH DISCUSSION HAS NOT BEEN COMPLETED MAY HAVE DISCUSSION SUSPENDED FOR PURPOSES OF BEGINNING THE OPEN SESSION AT ITS SCHEDULED TIME, AND COUNCIL MAY RETURN TO EXECUTIVE SESSION DISCUSSION AFTER THE CONCLUSION OF THE OPEN SESSION AGENDA ITEMS

6:30 P.M.

- III. Return to Open Session
- IV. Pledge of Allegiance
- V. Invocation
- VI. Approval of Agenda
- VII. Approval of the Minutes of September 7, 2021.
- VIII. Presentation:

A: Andrew Fulghum – Jasper County Transportation Sales Tax Program Update

- IX. Open Floor to the Public per Ordinance 08-17 any citizen of the County may sign to speak before the Council on matters pertaining to County Services and Operations. Presentations will be limited to three (3) minutes and total public input will be limited to 30 minutes.
**Please submit Public Comments via email at comments@jaspercountysc.gov or via US Mail at Attention: Clerk to Council P.O. Box 1149 Ridgeland, SC 29936. If you would like to be contacted by phone during Open Floor, please email your name, address and phone number to the email address listed above.*
- X. Resolutions:

A. David Tedder – Resolution # 2021-22 confirming the continued viability and existence of an Intergovernmental Agreement (IGA) between the County of Jasper and the South Carolina Department of Transportation regarding completion of certain transportation projects under Jasper County’s local option sales tax program, and amending the IGA by adding an additional project identified as Project no. 3, being the Highway 278 widening project, and authorizing the County Administrator and County Attorney to perform certain tasks related thereto.

- XI. Ordinances:

A: David Tedder – 2nd reading of Ordinance # 2021-27 authorizing the execution and delivery of a fee in lieu of tax agreement by and between Jasper County, South Carolina and a Project known at this time as Project Ocean with respect to certain economic development property in the County, whereby such property will be subject to certain payments in lieu of taxes, including the provision of certain special source credits; and other matters related thereto.

B: Andrew Fulghum – 1st reading by TITLE ONLY of an Ordinance to Amend Ordinance No. 2016-05 to Revise the Transportation Projects to be Financed by the Sales and Use Tax Authorized by such Ordinance and the Favorable Results of a Referendum held on November 8, 2016; and other matter related thereto.

C: David Tedder - 1st reading by **TITLE ONLY** of an Ordinance authorizing the execution and delivery of a fee-in-lieu of tax agreement by and between a company known for the time being as "Project Mandolin" (the "Company") 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 Company 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 Beaufort County (the "Park") such Park to be geographically located in Jasper County; (2) the execution and delivery of a written Park Agreement with Beaufort 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 other matters relating thereto.

D: David Tedder - 1st reading by **TITLE ONLY** of an Ordinance authorizing the execution and delivery of a fee-in-lieu of tax agreement by and between a company known for the time being as "Project Dolphin" (the "Company") 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 Company 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 Beaufort County (the "Park") such Park to be geographically located in Jasper County; (2) the execution and delivery of a written Park agreement with Beaufort 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 other matters relating thereto.

XII. New Business: None

XIII. Old Business:

A: Chief Russell Wells - COVID update

XIV. Council Members Comments

XV. Administrator's Report

XVI. Possible Return to Executive Session to Continue Discussion on Matters Regarding Agenda Item II.

XVII. Adjourn

***Council may act on any item appearing on the agenda including items discussed in executive session.**

In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, notification of the meeting was posted on the County Council Building at a publicly accessible place and on the county website at least 24 hours prior to the meeting. A copy of the agenda was given to the local news media and posted at the meeting location twenty-four hours prior to the meeting.

Special Accommodations Available Upon Request to Individuals with Disabilities
(843) 717-3696

AGENDA ITEM:

VII

Approval of the Minutes



JASPER COUNTY COUNCIL
VIRTUAL MEETING

Jasper County Clementa C. Pinckney Government Bldg
358 3rd Avenue Ridgeland, SC 29936

Tuesday, September 7, 2021
MINUTES

Officials Present: Chairwoman Barbara B. Clark, Councilman L. Martin Sauls, Councilman Pastor Alvin Adkins and Councilman John Kemp, Vice Chairman Dr. Curtis Brantley

Staff Present: County Administrator Andrew Fulghum, Clerk to Council Wanda H. Simmons, County Attorney David Tedder, Kimberly Burgess, Lisa Wagner, Danny Lucas, Russell Wells and Jonathan Dunham.

Chairwoman Clark called the meeting to order at 5PM.

Chairwoman Clark asked the Clerk to Council to read the Report of Compliance to the Freedom of Information Act. Wanda Simmons, Clerk to Council read the Clerk's Report of Compliance with the Freedom of Information Act.

Chairwoman Clark read the information below for the executive session.

Motion to approve: Councilman Kemp

Second: Councilman Sauls

Vote: Unanimous

The motion passed.

Executive Session

SECTION 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(2) Discussion of negotiations incident to proposed contract arrangements and proposed purchase or sale of property, the receipt of legal advice where the legal advice related to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim - Jasper Ocean Terminal (JOT); Carolina Metal Castings; Sgt. Jasper Park; Peninsula Tract Levy VFD

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by a public body - Jasper Ocean Terminal (JOT); Prospect Update; Project Ocean

ANY EXECUTIVE SESSION MATTER ON WHICH DISCUSSION HAS NOT BEEN COMPLETED MAY HAVE DISCUSSION SUSPENDED FOR PURPOSES OF BEGINNING THE OPEN SESSION AT ITS SCHEDULED TIME, AND COUNCIL MAY RETURN TO EXECUTIVE SESSION DISCUSSION AFTER THE CONCLUSION OF THE OPEN SESSION AGENDA ITEMS

Return to Open Session:

Motion to approve: Councilman Kemp

Second: Councilman Adkins

Vote: Unanimous

The motion passed.

Chairwoman Clark asked if there was any motion from Executive Session.

Business from Executive Session:

Motion to authorize the Administrator to reimburse the Southern Carolina Alliance from the Commercial Development Fund for professional services costs it incurred with the Haynesworth Sinkler Law Firm in examining certain incentive agreements involving Jasper County as discussed in Executive Session: Councilman Kemp

Second: Councilman Sauls

Vote: Unanimous

The motion passed.

The Pledge of Allegiance was led by Councilman Kemp and the invocation was given by Vice Chairman Dr. Brantley.

Approval of Agenda:

Motion to approve: Councilman Kemp

Second: Vice Chairman Dr. Brantley

Vote: Unanimous

The motion passed.

Approval of the Minutes of June 21, 2021; July 19, 2021; July 28, 2021, and August 9, 2021:

Motion to approve: Councilman Sauls

Second: Councilman Kemp

Vote: Unanimous

The motion passed.

Presentation:

A. Danny Lucas – U.S Census 2020 Final Report

Mr. Lucas was present to address this request and review the U.S. Census 2020 Final Report. He noted that there had been a 7% increase between the 2010 U.S. Apportionment Population and the 2020 U.S. Apportionment Population. He also mentioned that with the 2020 Apportionment Population that South Carolina would still have 7 Representatives in the U.S. House of Representatives. He also noted this would not be a change from 2010. He reviewed the South Carolina & Georgia Total Resident Population as well as the change from 2010 to 2020. Another item he reviewed was the South Carolina Municipality Population. This review showed a -6.89% change from 2010 to 2020 in the Town of Ridgeland. Also, the resident population for South Carolina showed a 10.7 increase from 2010 to 2020. Jasper County showed an increase of 10.8% over the 2010 Census. He also reviewed the racial and ethnic diversity index for 2020. Mr. Lucas thanked the Jasper County Count Committee and noted we are growing slower than the 2010 census, but we are growing.

Open Floor to the Public per Ordinance 08-17 any citizen of the County may sign to speak before the Council on matters pertaining to County Services and Operations. Presentations will be limited to three (3) minutes and total public input will be limited to 30 minutes.

There were no public comments.

Resolutions:

A. Chief Wells - Resolution # 2021-19 to declare certain property to be surplus and authorize its sale or disposition – Surplus Ambulance.

Chief Wells reviewed and presented this request. He noted that this property was not in condition for use by the County but that it would be a benefit to the automotive and technology students. He noted this would also allow for clinical simulation experiences for the students.

Motion to approve: Councilman Sauls

Second: Councilman Kemp

Vote: Unanimous

The motion passed.

Ordinances:

A. Lisa Wagner – Public Hearing and **2nd Reading of Ordinance # 2021-25 to amend the Official Zoning Map of Jasper County so as to transfer a property bearing Jasper County Tax Map Number 063-38-01-013 from the Residential Zone to the Community Commercial Zone on the Jasper County Official Zoning Map – 76 Sweet William Road.**

Ms. Wagner was present to address this request. She said that the subject property consisted of .55 acres and is located at 76 Sweet William Road. The Applicant has requested a Zoning Map Amendment to have the property designated as Community Commercial (CC). The property is currently zoned Residential. The applicant would like to establish a restaurant at this location. The property was re-developed in February 2007 as a restaurant. The countywide re-zoning project made this property non-conforming in November 2007. While the property has previously been used as a restaurant, the use has ceased for more than 12 months, losing its legal non-conforming status.

According to the 2018 Jasper County Comprehensive Plan, the Future Land Use Map identifies this area as "Urban Transition," which are pockets of unincorporated Jasper County that are partially or entirely surrounded by the municipality. For these areas that experience new development or redevelopment, consideration should be given to working with the adjacent municipality for annexation. The adjacent parcels are zoned Residential with the Town limits of Ridgeland nearby. Adjacent land uses are residential and commercial.

The subject property is accessed by Sweet William Road, which is a two-lane state-maintained highway, classified as a limited local road. She noted that from a land use perspective, the Planning Commission recommends approval of the request to have the property designated as Community Commercial.

The public hearing was opened. Ms. Wagner said Mr. Robert Clements had sent in a public comment that he would like to see a buffer guard between the residential and commercial. He said he would like to see the buffer maintained and the parking be adhered to. Vice Chairman Dr. Brantley asked who would have to put that in place and Ms. Wagner said the owner would have to adhere to that. There were no more public hearing comments, so the public hearing was closed.

Motion to approve: Vice Chairman Dr. Brantley

Second: Councilman Adkins

Vote: Unanimous

The motion passed.

B: Andrew Fulghum – Public Hearing and 3rd reading of Ordinance # [2021-24](#) to adopt a new organizational chart.

Mr. Fulghum was present to address this request. He noted he would like to hold the public hearing, but the third reading would be on the next agenda. He said he wanted to make the new organizational chart all-inclusive which would include the Elected Officials. The public hearing was held but there were no public comments, so the public hearing was closed. There was no motion made and no action was taken.

C: David Tedder – 1st reading of an Ordinance to amend Chapter 8: Businesses and adopt the 2022 amendments to the business license ordinance.

Mr. Tedder was present to address this request. He reviewed the ordinance which would amend Chapter 8 of the Code of Ordinances under section Businesses and would adopt the 2022 amendments to the business license ordinance. He also noted that this was the first reading and it

is in compliance with Act 176 from last year. He noted that there were a number of changes that had to be made by 01.01.2022 and this reading was to get the process started. He noted that this was being done to ensure that all local governments have the same business license year, and that all local governments must adopt NAICS, which Jasper County has already done. He noted that there are 9 class codes that have had some revisions, and that a scheduled exhibit has been prepared for this ordinance. He said there are other particulars to this ordinance and that since Council has the first reading tonight, they may still have some tweaking to do to some of the classifications. He noted that there would be 2 more readings coming forward for this ordinance.

Motion to approve: Vice Chairman Dr. Brantley

Second: Councilman Kemp

Vote: Unanimous

The motion passed.

New Business:

There was no new business for this agenda.

Old Business:

A: Chief Russell Wells – COVID update

Chief Wells was present to address this request. He noted that in Jasper County since the last report that there had been a 6.1% drop in the positivity rate. He noted that for everyone 12 and older were eligible for the COVID vaccine. He provided and reviewed the statistics and went over a list of the vaccine clinics. Chief Wells noted that booster shots were being allowed for all that met the criteria.

Councilman Kemp said he was at the Latin Festival and spoke with a doctor there and it was relayed to him that the Hispanic population was finding it difficult to get the COVID shots. Chief Wells said he would be happy to reach out to our Community Assistant in the Hispanic area to get this information and would make sure that the Spanish versions of our printed information was available to them. He also noted there was some great information on the South Carolina DHEC website which can be found at this link here as provided below:

[Coronavirus Disease 2019 \(COVID-19\) | SCDHEC](#) and their regular site at [Homepage | SCDHEC](#).

Council Members Comments:

Vice Chairman Dr. Brantley:

Vice Chairman Dr. Brantley noted as information for the general public that it had come to his attention that Council had voted to meet in person, and they were now meeting on ZOOM. He noted he had reached out to the Ethics Commission and the Attorney General but they said it was a local issue. He responded to them by asking when did the local government become in charge of the state government. They said the point was well taken and they would get back to him on that.

Councilman Kemp:

Councilman Kemp said he was at the SOLOCO meeting and that they approved the regional housing trust fund report and that would be coming to the Administrator. He also said he wanted to make a motion to have the Chairperson instruct the Administrator to provide the Council the budget worksheet every month and have a quarterly review as an agenda item. Councilman Sauls said he would second the motion if it needed a second. Mr. Tedder as a matter of parliamentary procedure that if this was an action item this would require a motion to amend the agenda. Councilman Kemp said he disagreed with Mr. Tedder and said that the motion he made was procedural. Mr. Fulghum asked for clarification purposes if he wanted the worksheets monthly and a quarterly review on the agenda of a meeting. Chairwoman Clark said she did not think a motion was needed for this, as he only needed to mention it for us to have monthly reports and a quarterly review of what was spent. Further discussion ensued on this topic and Mr. Fulghum noted that Ms. Burgess usually prepares those and that they would provide the report on a monthly basis and do a quarterly review on a quarterly basis. Ms. Burgess did note in regard to the June report that if she provided this report now it would not be accurate as she was waiting until the journal entries were in. She said however that an interim report could be provided but would again not be accurate.

Councilman Sauls:

Councilman Sauls said he had been working with Councilman Pastor Adkins on the beautification of the County that he has done. He said that Councilman Adkins had done a beautiful job on the projects he was working and wanted to commend him on that. He noted they are looking at the Farmers Market in order to do some beautification things out there because they want to make it beautiful for everyone. He wished everyone a safe week and asked for God's blessings over everyone. Chairwoman Clark agreed with Councilman Sauls on these matters.

Councilman Adkins:

Councilman Adkins thanked God for all he has given us. He said he had gone the other day and got a CDL physical. He encouraged the young people to get the COVID shot and noted that this virus was nothing to play with. He noted if we remain obedient that God will deal with it in good time. He said sometimes God needs to get our attention. He encouraged everyone to keep peace in their heart, especially when in the eye of the public. He asked that everyone keep them in prayer.

Chairwoman Clark:

Chairwoman Clark reminded everyone that even with their COVID shots they still need to wear their masks and take precautions. She noted that when everyone opens their mouth to speak that particles leave their mouth. She said if you are contaminated, then your particles can contaminate others. She mentioned that the new mutation of COVID known as MU was here at Memorial. She encouraged everyone to be safe and careful.

Administrator's Report:

Mr. Fulghum noted that he had prepared a report for their packet and was available to answer any questions. He said the first two items were for information only. He noted that Item # 3 on his

Administrator's Report was regarding the Targeted Rural Initiative. He said that in response to an offer from the Secretary of Commerce Bobby Hitt, Chairwoman Clark notified the South Carolina Department of Commerce on July 7th, 2021, that she desired to have Jasper County included for consideration in a grant program offered by SCDOC known as the "Targeted Rural Initiative". The County he noted, has been included in this initiative and a grant in the amount of \$2.5 million has been offered to the County to be used for a transformational infrastructure project. He noted that the grant has a 100% match requirement, and the County must identify a list of its top 3 projects by December 1, 2021. He said staff was trying to organize a list of projects for Council to consider for their top 3 projects.

He also noted that they been notified by the Town of Ridgeland that the Town is pursuing a Regional Feasibility Planning Grant. He said the Town is experiencing some growth pressure now. He said they were pleased that the Town called on the County to include us in that effort. They are applying for the grant through the SC Rural Infrastructure Authority which will include among other things a Comprehensive Proactive Review of the Water and Sewer services they provide and define where each should be extended and if they should be extended. They have asked the County to be a part of that, and he noted that he had written a letter of support for that application. Mr. Fulghum said that they look forward to working together with the Town on that planning effort.

Adjourn:

Motion to adjourn: Vice Chairman Dr. Brantley

Second: Councilman Sauls

Vote: Unanimous

The motion passed.

The meeting adjourned at 7:36pm.

Respectfully submitted:

Wanda H. Simmons
Clerk to Council

Approved:

Barbara B. Clark
Chairwoman

AGENDA ITEM:

VIII

Presentation Item A

Transportation Sales Tax Program Update

October 4, 2021



Jasper County Transportation Sales Tax

- ▶ Jasper County residents voted to impose a transportation sales tax through referendum in November 2016
- ▶ Collection of tax began in May 2017
- ▶ Anticipated revenue was \$30 Million over a ten-year period with financing and \$27 Million without financing
- ▶ Changes since to 2016



Current Projects

▶ Municipal Road Projects	
◦ Reconstruction of James Taylor Drive	\$335,000
◦ Construction of HCP Road	\$1,650,000
▶ State Road Projects	
◦ Exit 21 Improvements	\$2,200,000
◦ US 278 Widening Project	\$750,000
◦ Exit 8 Improvements	\$1,895,000
Total Current Projects	\$6,830,000



The Numbers

- ▶ **Expenditures to Date**
\$1,189,258
- ▶ **Account Balance**
\$19,401,181



Status Update

Repair of James Taylor Drive:

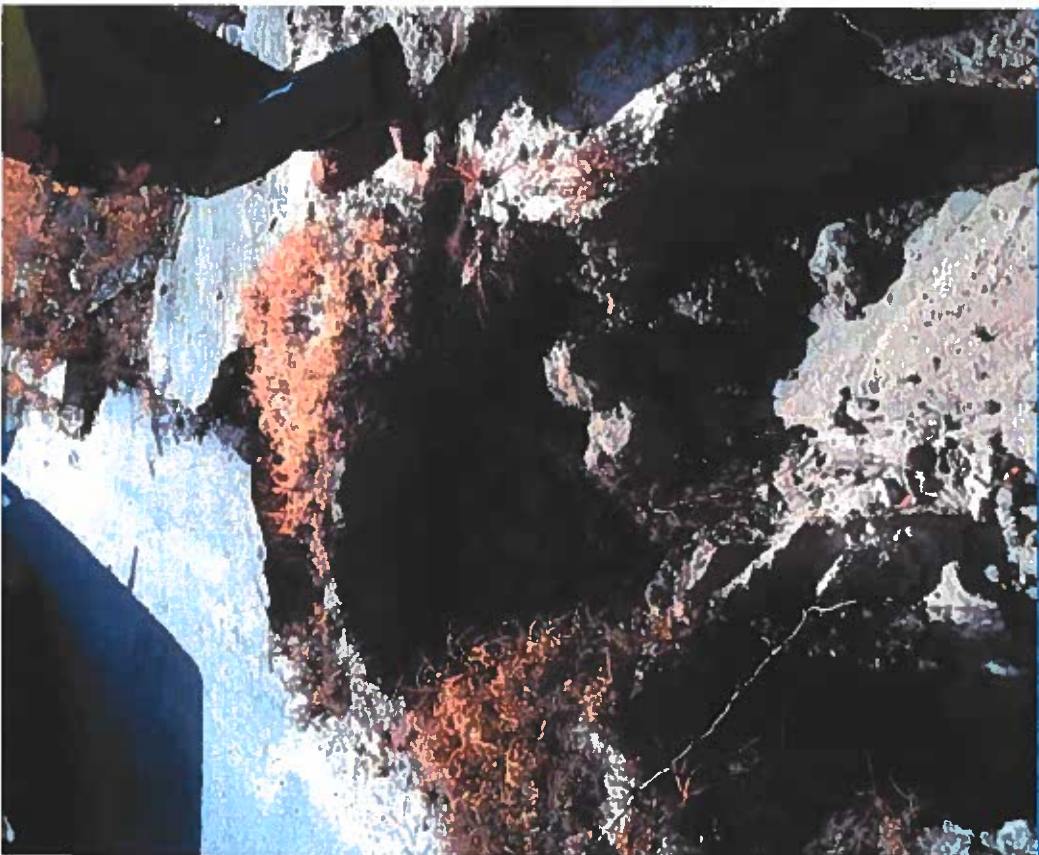
Repair to canal and roadway without diverting the waterway

\$335,000	Transportation Sales Tax
<u>\$50,000</u>	Transportation Committee
\$385,000	Total

Status: Completed







Before



After



Before



After

I-95 Exit 21 Improvements:

I-95 Exit 21 Improvements (SC 336 Underpass)

\$2,200,000 Transportation Sales Tax

Status: SCDOT to let in Q1 next year



US 278 Widening Project in Ridgeland:

Widening and construction of turn lanes to support expansion of Ridgeland–Claude Dean Airport, Cypress Ridge Industrial Park, Emergency Services access, and realignment of intersection of US 278 and Malphrus and Log Haul Roads

\$1,125,000	Federal Grant (EDA)
\$750,000	Transportation Sales Tax
<u>\$302,500</u>	County Transportation Committee
\$2,177,500	Total

Status: SCDOT review and permitting



PRELIMINARY



**RIGHT-OF-WAY ACQUISITION EXHIBIT FOR THE
US HIGHWAY 278 CORRIDOR WIDENING
IN THE TOWN OF RIDGELAND AND
UNINCORPORATED JASPER COUNTY, SOUTH CAROLINA**

Prepared by: 131766-0027
 December 3, 2018

Prepared by Alliance Consulting Engineers, Inc.

Hardeeville Commerce Park Road:
Phase 1 – Construction of Commerce Park main entrance access road and improvements

\$1,860,000	Federal Grant (EDA)
\$1,650,000	Transportation Sales Tax
\$500,000	RIA Grant
\$480,000	BJWSA
<u>\$31,800</u>	Hargray RDA funds
\$4,521,800	Total

Status: Construction





**Conceptual Master Development Plan for the
±162-Acre Hardeeville Commerce Park
Jasper County, South Carolina**



Prepared by: [unreadable]
April 2018

Exit 8 and US 278 Improvement Project

I-95 Exit 8 Improvements:

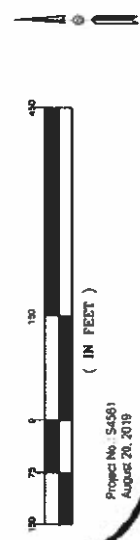
Roadway improvements to the intersection of US 278 and adjacent roads of Medical Center Drive north of US 278 and Brickyard Road, construction of merge lane when turning right onto US 278 from Henry Moss Blvd., turning lane onto Medical Center Drive when heading west on US 278, new mast arm signalization, sidewalks, crosswalks, and widening of Brickyard Road to the hospital entrance

\$1,895,000 **Transportation Sales Tax**





**Priority Roadway Improvements
along US Highway 278 located at the
Exit 8 Interchange of Interstate 95
near the City of Hardeeville
Jasper County, South Carolina**



Project No. S4581
August 20, 2019

PRELIMINARY



Prepared by Alliance Consulting Engineers, Inc.

Projects to add

- ▶ \$13,500,000 for Construction New I-95 Interchange (Exit 3)
- ▶ \$1,000,000 for SC 170 Corridor Access Management Study Near-Term Improvements



Amended Project List

- ▶ **\$13,500,000 for CONSTRUCTION OF NEW I-95 INTERCHANGE (EXIT 3)**

- ▶ **\$1,000,000 for SC 170 CORRIDOR ACCESS MANAGEMENT STUDY NEAR-TERM IMPROVEMENTS**

(The near-term improvements include general improvements at 5 specific locations. Those improvements include installing reduced conflict intersections and U-turns at Okatie Center Boulevard, extend loop turn lane to west bound ramps with separation between US 278 west bound on ramp and US 278 east bound on ramp, remove free flow right-turn lane and replace with dual right-turns on US 278 west bound off ramp, install a nearside signal head north bound SC 170 at Cherry Point Road and Pearlstine Drive, and construct dual east bound left-turn lanes on Argent Boulevard at SC 170)

- ▶ **\$1,895,000 for EXIT 8 AND US 278 IMPROVEMENT PROJECT AREA PHASE I**

- ▶ **\$1,650,000 for HARDEEVILLE COMMERCE PARK MAIN ENTRANCE/ACCESS ROADWAY PROJECT**

- ▶ **\$7,000,000 for I-95 EXIT 21 IMPROVEMENTS (SC 336 UNDERPASS), RECONSTRUCTION OF JAMES TAYLOR DRIVE, BAILEY LANE RECONSTRUCTION, TAYLOR DRIVE RECONSTRUCTION, INDUSTRIAL PARK IMPROVEMENTS, AND ROADWAY WIDENING TO PROVIDE IMPROVED ACCESS FOR EMERGENCY VEHICLES**

- ▶ **\$750,000 for US HIGHWAY 278 CORRIDOR WIDENING, STORMWATER IMPROVEMENTS, AND MALPHRUS ROAD INTERSECTION REALIGNMENT**

- ▶ **\$1,205,000 for U.S. HIGHWAY 17 OVERLAY (SECTIONS TO BE DETERMINED), AND NEW ROAD CONSTRUCTION AND IMPROVEMENTS (SECTIONS TO BE DETERMINED)**

JASPER COUNTY TRANSPORTATION SALES TAX PROGRAM

ACTIVE AND COMPLETED PROJECTS

	PROJECT	AUTHORIZED	SPENT	REMAINING
1	EXIT 8 AND US 278 IMPROVEMENT PROJECT AREA PHASE 1	1,895,000	114,300	1,780,700
2	HARDERVILLE COMMERCE PARK MAIN ENTRANCE/ACCESS ROADWAY PROJECT	1,650,000	625,475	1,024,525
3	I-95 EXIT 21 IMPROVEMENTS (SC 336 UNDERPASS)	2,200,000	-	2,200,000
4	JAMES TAYLOR DRIVE RECONSTRUCTION	335,000	291,148	43,852
5	US HIGHWAY 278 CORRIDOR WIDENING, STORMWATER IMPROVEMENTS, AND WALPHRUS ROAD INTERSECTION REALIGNMENT	750,000	158,335	591,665
6	* SC 170 CORRIDOR ACCESS MANAGEMENT STUDY NEAR TERM IMPROVEMENTS	1,000,000	-	1,000,000
7	* CONSTRUCTION OF NEW I-95 INTERCHANGE (EXIT 3)	13,500,000	-	13,500,000
		21,330,000	1,189,258	20,140,742
	Account Balance as of 8/31/21	\$ 19,401,181		
	* projects pending approval and inclusion in amending ordinance			

AGENDA ITEM:

X

Resolution: Item A

**STATE OF SOUTH CAROLINA
JASPER COUNTY**

RESOLUTION NUMBER 2021-22

RESOLUTION OF JASPER COUNTY COUNCIL

RESOLUTION CONFIRMING THE CONTINUED VIABILITY AND EXISTENCE OF AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE COUNTY OF JASPER AND THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION REGARDING COMPLETION OF CERTAIN TRANSPORTATION PROJECTS UNDER JASPER COUNTY'S LOCAL OPTION SALES TAX PROGRAM, AND AMENDING THE IGA BY ADDING AN ADDITIONAL PROJECT IDENTIFIED AS PROJECT NO. 3, BEING THE HIGHWAY 278 WIDENING PROJECT, AND AUTHORIZING THE COUNTY ADMINISTRATOR AND COUNTY ATTORNEY TO PERFORM CERTAIN TASKS RELATED THERETO

WHEREAS, Jasper County held a referendum during the general election of 2016 in accordance with statutes providing for the imposition of a one percent sales tax to be used for such transportation projects as were identified in the referendum; and

WHEREAS, by Intergovernmental Agreement (IGA) with the South Carolina Department of Transportation (SCDOT) dated February 8, 2018, an agreement was reached whereby, among other things, SCDOT agreed to provide its services in administering certain projects identified in the IGA; and

WHEREAS, subsequent to the execution of the IGA, an additional project (hereinafter referred to a "Project No. 3") involving the widening of a portion of Highway 278 has been identified as suitable for inclusion under the IGA in like manner as the other two projects identified in the original IGA, and SCDOT has agreed to amend the IGA to include Project No. 3 and perform certain services

relating to Project No. 3 pursuant to the terms of that IGA and the Scope of Services attached hereto as Exhibit A; and

WHEREAS, SCDOT, and Jasper County have consulted on Project No. 3, and SCDOT has prepared a scope of work and a budget (Section 4.1, Project Planning, Budget, Schedules), which budget indicates the services to be provided by SCDOT to be at a not to exceed cost of \$50,000.00, which shall be paid from the one-percent sales tax; and

WHEREAS, the County desires to provide assurances, confirm the continued applicability of the IGA, and to approve the items in Section 4.1 requiring County written consent, being the specifically described scope of work and budget for SCDOT services; and

WHEREAS, based on the foregoing, it is appropriate for County Council to provide such approvals by Resolution of the scope and budget as provided in Exhibit A hereto, and to authorize the County Administrator and County Attorney to perform such tasks as will facilitate the completion of Project No. 3;

NOW THEREFORE, BE IT RESOLVED by Jasper County Council, in the council duly assembled and by the authority of the same, that Jasper County Council 1) confirms the continued existence and viability of the IGA with SCDOT; 2) amends the IGA by adding a new bullet point item under Section 2 of the IGA, being "Project No.3: SCDOT administration and review, not to exceed \$50,000.00, Highway 278 widening and related improvements (Ridgeland School to Malphrus Road and Log haul Road Intersection); 3) approves the scope of work and budget as provided in Exhibit A attached hereto, with such budget to be paid from Transportation Sales Tax funds not to exceed \$50,000.00, with the remainder of the Project paid for by funds from other funds and grants; and 4), to further direct the County Administrator and the County Attorney to undertake the steps necessary to complete Project No. 3.

This Resolution No. 2021-22 made this _____th day of September, 2021, and effective immediately.

Barbara Clark
Chair

ATTEST:

Wanda Simmons
Clerk to Council

Reviewed for form by the Jasper County Attorney.

David L. Tedder

Date

EXHIBIT A

SCOPE OF PROJECT AND BUDGET

SCDOT Review of plans and associated oversight for compliance with required applicable SCDOT standards of the Highway 278 Widening Project - At SCDOT cost, not to exceed \$50,000.00

AGENDA ITEM:

XI-A

Ordinance item A

WHEREAS, pursuant to the authority of Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended and Article VIII, Section 13 of the South Carolina Constitution, the County has entered into a qualifying agreement with Hampton County (the “Park Agreement”) for the establishment of a multi-county industrial and business park (the “Park”); and

WHEREAS, the Project is wholly located within the boundaries of the Park; and

WHEREAS, pursuant to the Inducement Resolution, the County has agreed to, among other things, (a) enter into a FILOT Agreement with the Company (the “Fee Agreement”), whereby the County would provide therein for a payment of a fee- in-lieu-of taxes by the Company with respect to the Project, and (b) provide for certain infrastructure credits to be claimed by the Company against its payments of fees-in-lieu-of taxes with respect to the Project pursuant to Section 4-1-175 of the Multi-County Park Act; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the Fee Agreement which the County proposes to execute and deliver; and

WHEREAS, it appears that the documents above referred to, which are now before this meeting, are in appropriate form and are an appropriate instrument to be executed and delivered or approved by the County for the purposes intended;

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

Section 1. Based on information supplied by the Company, it is hereby found, determined and declared by the County Council, as follows:

(a) The Project will constitute a “project” and “economic development property” as said terms are referred to and defined in the FILOT Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;

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

(c) The Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;

(d) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs and addition to the tax base of the County, are proper governmental and public purposes;

(e) The Project will be located entirely within the County; and

(f) The benefits of the Project are anticipated to be greater than the costs.

Section 2. The form, terms and provisions of the Fee Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated

herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The County Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the Fee Agreement to be delivered to the Company and cause a copy of the same to be delivered to the Jasper County Auditor and Assessor. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Administrator, upon advice of counsel, the execution thereof to constitute conclusive evidence of the approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. The County Administrator, for and on behalf of the County, is hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County thereunder.

Section 4. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 5. The recitals above are hereby incorporated into and made part of this ordinance.

Section 6. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This ordinance shall take effect and be in full force from and after its passage by the County Council.

ENACTED in meeting duly assembled this ___ day of _____, 2021.

**JASPER COUNTY, SOUTH
CAROLINA**

(SEAL)

Signature: _____
Name: Barbara Clark
Title: Chair of County Council

ATTEST:

Signature: _____
Name: Wanda Simmons
Title: Clerk to County Council

Reviewed for form and draftsmanship
By the Jasper County Attorney

David L. Tedder Date

First Reading: September 20, 2021
Second Reading: October 4, 2021
Third Reading: October ___, 2021
Public Hearing: October ___, 2021

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

I, the undersigned Clerk to County Council of Jasper County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received unanimous approval, by the County Council at its meetings of September __ 2021, October __, 2021, and October __, 2021, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

Clerk, Jasper County Council

Dated: _____, 2021

103445.000132 4814-5318-6040.1

FEE IN LIEU OF TAX AND
SPECIAL SOURCE CREDIT AGREEMENT

between

JASPER COUNTY, SOUTH CAROLINA

and

PROJECT OCEAN

Dated as of _____, 2021

FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT

THIS FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT (the "*Fee Agreement*") is made and entered into as of November ____, 2021 (the "*Effective Date*") by and between **JASPER COUNTY, SOUTH CAROLINA** (the "*County*"), a body politic and corporate and a political subdivision of the State of South Carolina (the "*State*"), acting by and through the Jasper County Council (the "*County Council*") as the governing body of the County, and Project Ocean, a _____ (the "*Company*" together with the County, the "*Parties*").

RECITALS

1. Title 12, Chapter 44 (the "*FILOT Act*"), Code of Laws of South Carolina, 1976, as amended (the "*Code*"), authorizes the County to (a) induce industries to locate in the State; (b) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property.

2. Sections 4-1-17 and 12-44-70 of the Code authorize the County to provide special source revenue credit ("Special Source Revenue Credit") financing secured by and payable solely from revenues of the County derived from payments in lieu of taxes for the purposes set forth in Section 4-29-68 of the Code, namely: the defraying of the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate, and personal property, including but not limited to machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County (collectively, "*Infrastructure*").

3. The Company (as a Sponsor, within the meaning of the FILOT Act) desires to provide for the acquisition and construction of the Project (as defined herein) to constitute a facility in the County for the manufacture of retail lumber and other building material products.

4. Based on information supplied by the Company, the County Council has evaluated the Project based on relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created or maintained, and the anticipated costs and benefits to the County. Pursuant to Section 12-44-40(I)(1) of the FILOT Act, the County finds that: (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 will give rise to no pecuniary liability of the County or any incorporated municipality therein and to no charge against their general credit or taxing powers; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

5. The Project is located in a joint county industrial or business park created with Hampton County pursuant to agreement entered into on _____ [insert] pursuant to Section 4-1-170 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution.

6. By enactment of an Ordinance on _____, 2021 [insert], the County Council has authorized the County to enter into this Fee Agreement with the Company which classifies the Project as Economic Development Property under the F1LOT Act and provides for the payment of fees in lieu of taxes and the provision of Special Source Revenue Credits to reimburse the Company for payment of the cost of certain Infrastructure in connection with the Project, all as further described herein.

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

ARTICLE I

DEFINITIONS

Section 1.01 Definitions

The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Administration Expenses” shall mean the reasonable and necessary expenses incurred by the County with respect to this Fee Agreement, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred; provided that no expense incurred by the County in defense of an alleged or actual breach of this Fee Agreement shall be deemed part of Administration Expenses.

“Affiliate” shall mean any corporation, limited liability company, partnership or other entity which owns all or part of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or which is owned in whole or in part by the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or by any partner, shareholder or owner of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as well as any subsidiary, affiliate, individual or entity who bears a relationship to the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

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

“Commencement Date” shall mean the last day of the property tax year during which the Project is Placed in Service.

“Company” shall mean _____ [insert] organized and existing under the laws of the State of _____, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

"*Condemnation Event*" shall mean any act of taking by a public or quasi-public authority through condemnation, reverse condemnation or eminent domain.

"*Contract Minimum Investment Requirement*" shall mean, with respect to the Project, investment by the Company and any Sponsor Affiliates of at least \$14,000,000 in Economic Development Property subject (non-exempt) to *ad valorem* taxation (in the absence of this Fee Agreement).

"*County*" shall mean 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 Administrator*" shall mean the Jasper County Administrator, or the person holding any successor office of the County.

"*County Assessor*" shall mean the Jasper County Assessor, or the person holding any successor office of the County.

"*County Auditor*" shall mean the Jasper County Auditor, or the person holding any successor office of the County.

"*County Council*" shall mean Jasper County Council, the governing body of the County.

"*County Treasurer*" shall mean the Jasper County Treasurer, or the person holding any successor office of the County.

"*Defaulting Entity*" shall have the meaning set forth for such term in Section 6.02(a) hereof.

"*Department*" shall mean the South Carolina Department of Revenue.

"*Diminution in Value*" in respect of the Project shall mean any reduction in the value, using the original fair market value (without regard to depreciation) as determined in Step I of Section 4.01 of this Fee Agreement, of the items which constitute a part of the Project and which are subject to FILOT payments which may be caused by the Company's or any Sponsor Affiliate's removal and/or disposal of equipment pursuant to Section 4.04 hereof, or by its election to remove components of the Project as a result of any damage or destruction or any Condemnation Event with respect thereto.

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

"*Equipment*" shall mean machinery, equipment, furniture, office equipment, and other tangible personal property, together with any and all additions, accessions, replacements, and substitutions thereto or therefor.

"*Event of Default*" shall mean any event of default specified in Section 6.01 hereof.

"*Exemption Period*" shall mean the period beginning on the first day of the property tax year after the Commencement Date and ending on the Termination Date.

"*Fee Agreement*" shall mean this Fee in Lieu of Tax and Special Source Credit Agreement.

"*FILOT*" or "*FILOT Payments*" shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

"*FILOT Act*" shall mean Title 12, Chapter 44, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

"*Improvements*" shall mean improvements to the Land, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor.

"*Infrastructure*" shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

"*Investment Period*" shall mean shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five (5) years after the Commencement Date.

"*Land*" means the land upon which the Project will be located, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with Section 3.01(c) hereof.

"*MCIP Act*" shall mean Title 4, Chapter 1, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

"*MCIP Agreement*" shall mean the Agreement for the Development of a Joint Industrial and Business Park _____ [insert], as amended, between the County and Hampton County, South Carolina, as the same may be further amended or supplemented from time to time, or such other agreement as the County may enter with respect to the Project to offer the benefits of the Special Source Revenue Credits to the Company hereunder.

"*MCIP*" shall mean (i) the joint county industrial park established pursuant to the terms of the MCIP Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the MCIP Act, or any successor provision, with respect to the Project.

"*Placed in Service*" means the state or condition of readiness and availability for specifically assigned functions.

"*Project*" shall mean all the Equipment and Improvements on the Land that the Company determines to be necessary, suitable or useful for the purposes described in Section 2.02(b) hereof,

to the extent determined by the Company and any Sponsor Affiliate to be a part of the Project and placed in service during the Investment Period, and any Replacement Property.

"Removed Components" shall mean components of the Project or portions thereof which the Company or any Sponsor Affiliate in its sole discretion, elects to remove from the Project pursuant to Section 4.04 hereof or as a result of any Condemnation Event.

"Replacement Property" shall mean any property which is placed in service as a replacement for any item of Equipment or any Improvement previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement to the fullest extent that the FILOT Act permits.

"Scheduled Special Source Revenue Credit" shall have the meaning set forth for such term in Section 4.02(a) hereof.

"Special Source Revenue Credits" shall mean the annual special source revenue credits provided to the Company pursuant to Section 4.02 hereof.

"Sponsor Affiliate" shall mean an entity that joins with the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the FILOT Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, all as set forth in Section 5.13 hereof.

"State" shall mean the State of South Carolina.

"Termination Date" shall mean the end of the last day of the property tax year which is the 29th year following the first property tax year in which the Project is Placed in Service; provided, that the intention of the parties is that the Company will make at least 30 annual FILOT payments under Article IV hereof with respect to the Project; and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date shall mean the date of such termination.

"Transfer Provisions" shall mean the provisions of Section 12-44-120 of the FILOT Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers.

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

Section 1.02 Project-Related Investments

The term "investment" or "invest" as used herein shall include not only investments made by the Company and any Sponsor Affiliates, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company or any Sponsor Affiliate with respect to the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.01 Representations, Warranties, and Agreements of the County

The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the FILOT Act.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the FILOT Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in the State.

(d) The initial millage rate set forth in Step 3 of Section 4.01(a) hereof is 0.3450 mills, which is the millage rate in effect with respect to the location of the proposed Project as of June 30, 2020 as permitted under Section 12-44-50(A)(1)(d) of the FILOT Act.

(e) The County will use its reasonable best efforts to cause the Project to be located in a MCIP for a term extending at least until the end of the period of FILOT Payments against which a Special Source Revenue Credit is to be provided under this Fee Agreement.

Section 2.02 Representations, Warranties, and Agreements of the Company

The Company hereby represents, warrants, and agrees as follows:

(a) The Company is organized and in good standing under the laws of the State of _____, is duly authorized to transact 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 operate the Project as a “project” within the meaning of the FILOT Act as in effect on the date hereof. The Company intends to operate the Project for the manufacture and distribution of lumber products, and for such other purposes that the FILOT Act permits as the Company may deem appropriate.

(c) The execution and delivery of this Fee Agreement by the County has been instrumental in inducing the Company to locate the Project in the County.

(d) The Company, together with any Sponsor Affiliates, will use commercially reasonable efforts to meet, or cause to be met, the Contract Minimum Investment Requirement within the Investment Period.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.01 The Project

(a) The Company intends and expects, together with any Sponsor Affiliate, to (i) construct and acquire the Project, and (ii) meet the Contract Minimum Investment Requirement within the Investment Period. The Company anticipates that the Project will be Placed in Service during the calendar year ending December 31, 2022. The Company shall notify the County if it anticipates that the Project will be Placed in Service more than 180 days after such date.

(b) Pursuant to the FILOT Act and subject to Section 4.03 hereof, the Company and the County hereby agree that the Company and any Sponsor Affiliates shall identify annually those assets which are eligible for FILOT payments under the FILOT Act and which the Company or any Sponsor Affiliate selects for such treatment by listing such assets in its annual PT-300S form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period.

(c) The Company may add to the Land such real property, located in the same taxing District in the County as the original Land, as the Company, in its discretion, deems useful or desirable. In such event, the Company, at its expense, shall deliver an appropriately revised Exhibit A to this Fee Agreement, in form reasonably acceptable to the County.

Section 3.02 Diligent Completion

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

Section 3.03 Filings and Reports

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

(b) The Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor, and to their counterparts in the partner county to the MCIP Agreement, the County Administrator and the Department within thirty (30) days after the date of execution and delivery of this Fee Agreement by all parties hereto.

(c) Each of the Company and any Sponsor Affiliates agree to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) confirm the dates on the Project was Placed in Service; and (ii) include copies of all filings made by the Company and any such Sponsor Affiliates in accordance with Section 3.03(a) or (b) above with respect to property Placed in Service as part of the Project.

ARTICLE IV

FILOT PAYMENTS

Section 4.01 FILOT Payments

(a) Pursuant to Section 12-44-50 of the FILOT Act, the Company and any Sponsor Affiliates, as applicable, are required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Since the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the FILOT Act, the County and the Company have negotiated the amount of the FILOT Payments, as determined pursuant to the procedure below, in accordance therewith. The Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is Placed in Service, as follows: the Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures required by the FILOT Act):

Step 1: Determine the fair market value of the Economic Development Property Placed in Service during the Exemption Period using original income tax basis for State income tax purposes for any real property and Improvements without regard to depreciation (provided, the fair market value of real property, as the FILOT Act defines such term, that the Company and any Sponsor Affiliates obtains by construction or purchase in an arms-length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the real property for the first year of the Exemption Period remains the fair market value of the real property and Improvements for the life of the Exemption Period. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company and any Sponsor Affiliates if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the FILOT Act specifically disallows.

Step 2: Apply an assessment ratio of six percent (6%) to the fair market value as determined in Step 1 to establish the taxable value of the Economic Development Property in the year it is Placed in Service and in each of the 29 years thereafter or such longer period of years in

which the FILOT Act permits the Company and any Sponsor Affiliates to make annual FILOT payments.

Step 3: Use a millage rate of 0.3450 mills which millage rate shall be adjusted every five (5) years [subject to review of historical millage rates] in accordance with Section 12-44-50(A)(I)(b)(ii) of the FILOT Act, during the Exemption Period against the taxable value to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.

(b) In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Act and/or the herein-described FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof (without increasing the amount of incentives being afforded herein) and so as to afford the Company and any Sponsor Affiliates with the benefits to be derived herefrom, the intention of the County being to offer the Company and such Sponsor Affiliates a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company and any Sponsor Affiliates shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company and such Sponsor Affiliates. Any amount determined to be due and owing to the County from the Company and such Sponsor Affiliates, with respect to a year or years for which the Company or such Sponsor Affiliates previously remitted FILOT Payments to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company or such Sponsor Affiliates would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of FILOT Payments the Company or such Sponsor Affiliates had made with respect to the Project pursuant to the terms hereof.

Section 4.02 Special Source Revenue Credits

(a) In accordance with and pursuant to Section 12-44-70 of the FILOT Act and Section 4-1-175 of the MCIP Act, in order to reimburse the Company for qualifying capital expenditures incurred for costs of the Infrastructure during the Investment Period, the Company shall be entitled to receive, and the County agrees to provide, annual Special Source Revenue Credits against the Company's FILOT Payments in accordance with the schedule set forth on Exhibit C (collectively, the "*Scheduled Special Source Revenue Credits*").

(b) Unless otherwise requested by the Company, the dollar amount of the Special Source Revenue Credit shall be applied in its entirety against FILOT Payments to be made for the year in question on the real property portion of the Project, and not to any personal property, including any machinery or equipment. Pursuant to Section 4-29-68(A)(2)(ii)(a) of the Code, to the extent any Special Source Revenue Credits shall be applied against both real property and personal property, including machinery and equipment, investments by the Company, then for Special Source Revenue Credit purposes, such credits will be presumed to be first used for personal property. Pursuant to Section 4-29-68(a)(2)(ii) of the Code, to the extent any Special Source Revenue Credits are applied against personal property, including machinery and equipment, and the personal property is removed from the Project at any time prior to the Termination Date, then

the amount of FILOT Payments due on such personal property for the year of such removal shall also be due for the two (2) years following the removal; provided, that if such removed personal property is replaced with Replacement Property, then such personal property shall not be considered removed from the Project for these purposes.

(c) In no event shall the aggregate amount of Special Source Revenue Credits provided to the Company exceed, at any point in time, the aggregate amount of expenditures incurred by the Company in respect of the Infrastructure. As a condition to the Special Source Revenue Credit benefit provided herein, the Company agrees to provide the County Administrator, the County Auditor and the County Treasurer with a certification as to compliance with the provisions of the preceding sentence. Such certification shall be in substantially the form attached hereto as Exhibit D, and shall be due no later than the May 1 following the immediately preceding December 31 of each year as to which any Special Source Revenue Credit shall relate.

(d) Each annual Special Source Revenue Credit shall be reflected by the County Auditor or other authorized County official or representative on each bill for FILOT Payments sent to the Company by the County for each applicable property tax year, by reducing such FILOT Payments otherwise due by the amount of the Special Source Revenue Credit to be provided to the Company for such property tax year.

(e) The Special Source Revenue Credits are payable solely from the FILOT Payments, are not secured by, or in any way entitled to, a pledge of the full faith, credit or taxing power of the County, are not an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation, are payable solely from a special source that does not include revenues from any tax or license, and are not a pecuniary liability of the County or a charge against the general credit or taxing power of the County.

Section 4.03 Minimum Investment Reporting

As a condition to the FILOT benefit provided herein, the Company agrees to provide the County Administrator, the County Assessor, the County Auditor and the County Treasurer with an annual certification as to investment in the Project. Such certification shall be in substantially the form attached hereto as Exhibit B, and shall be due no later than the May 1 following the immediately preceding December 31 of each year during the Investment Period.

Section 4.04 Removal of Equipment

Subject, always, to the other terms and provisions of this Fee Agreement, the Company and any Sponsor Affiliates shall be entitled to remove and dispose of components of the Project from the Project in its sole discretion with the result that said components shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement. Economic Development Property is disposed of only when it is scrapped or sold or removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.05 FILOT Payments on Replacement Property

If the Company or any Sponsor Affiliate elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company or any Sponsor Affiliate otherwise utilizes Replacement Property, then, pursuant and subject to the provisions of Section 12-44-60 of the FILOT Act, the Company or such Sponsor Affiliate shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the FILOT shall be recorded using its income tax basis, and the calculation of the FILOT shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the FILOT.

Section 4.06 Reductions in Payment of Taxes Upon Diminution in Value

In the event of a Diminution in Value of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property as determined pursuant to Step 1 of Section 4.01(a) hereof.

ARTICLE V

PARTICULAR COVENANTS AND AGREEMENTS

Section 5.01 Cessation of Operations

Notwithstanding any other provision of this Fee Agreement, each of the Company and any Sponsor Affiliates acknowledges and agrees that County's obligation to provide the FILOT incentive ends, and this Fee Agreement is terminated, if the Company ceases operations at the Project. For purposes of this Section, "ceases operations" means closure of the facility or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months.

Section 5.02 Confidentiality

The County acknowledges and understands that the Company and any Sponsor Affiliates may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein "Confidential Information"). In this regard, the Company and any Sponsor Affiliates may clearly label any Confidential Information delivered to the County "Confidential Information." The County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall disclose or otherwise divulge any such clearly labeled Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law. Each of the Company and any Sponsor Affiliates acknowledge 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. In the event that the County is required to disclose any Confidential Information obtained from the Company or any Sponsor Affiliates to any third party, the County agrees to provide the Company and such Sponsor Affiliates with as much advance notice as is reasonably possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company and such Sponsor Affiliates to obtain judicial or other relief from such disclosure requirement.

Section 5.03 Limitation of County's Liability

Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County (it being intended herein that any obligations of the County with respect to the Special Source Revenue Credits shall be payable only from FILOT payments received from or payable by the Company or any Sponsor Affiliates)]; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 5.04 Mergers, Reorganizations and Equity Transfers

Each of the Company and any Sponsor Affiliates acknowledges that any mergers, reorganizations or consolidations of the Company and such Sponsor Affiliates may cause the Project to become ineligible for negotiated fees in lieu of taxes under the FILOT Act absent

compliance by the Company and such Sponsor Affiliates with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the FILOT Act or any successor provision, any financing arrangements entered into by the Company or any Sponsor Affiliates with respect to the Project and any security interests granted by the Company or any Sponsor Affiliates in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Fee Agreement to the contrary, it is not intended in this Fee Agreement that the County shall impose transfer restrictions with respect to the Company, any Sponsor Affiliates or the Project as are any more restrictive than the Transfer Provisions.

Section 5.05 Indemnification Covenants

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County, the Company agrees to indemnify, defend and save the County, its County Council members, elected officials, officers, employees, servants and agents (collectively, the “Indemnified Parties”) harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project or the Land by the Company or any Sponsor Affiliate, their members, officers, shareholders, employees, servants, contractors, and agents during the Term, and, the Company further, shall indemnify, defend and save the Indemnified Parties harmless against and from all claims (collectively, “*Losses*”) arising during the Term from (i) entering into and performing its obligations under this Fee Agreement, (ii) any condition of the Project, (iii) any breach or default on the part of the Company or any Sponsor Affiliate in the performance of any of its obligations under this Fee Agreement, (iv) any act of negligence of the Company or any Sponsor Affiliate or its agents, contractors, servants, employees or licensees, (v) any act of negligence of any assignee or lessee of the Company or any Sponsor Affiliate, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Company or any Sponsor Affiliate, or (vi) any environmental violation, condition, or effect with respect to the Project which arises or occurs on or after the date that the Company acquires the Property. Notwithstanding the foregoing, the Company shall have no obligations to indemnify any Indemnified Party for Losses that result from the negligence, fraud or willful misconduct of one or more Indemnified Parties. Except as limited herein, the Company shall indemnify, defend and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld).

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the FILOT, by reason of the execution of this Fee Agreement, by the reason of the performance of any act requested of it by the Company or any Sponsor Affiliate, or by reason of the County’s relationship to the Project or by the operation of the Project by the Company or any Sponsor Affiliate, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection

with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the negligence of one or more Indemnified Parties, or (ii) any breach of this Fee Agreement.

Section 5.06 Qualification in State

Each of the Company and any Sponsor Affiliates warrant that it is duly qualified to do business in the State (or will obtain such authority prior to commencing business in the State), and covenants that it will continue to be so qualified so long as it operates any portion of the Project.

Section 5.07 No Liability of County's Personnel

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member 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 shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any elected official, officer, agent, servants or employee of the County and no recourse shall be had against any member of the County Council or any elected official, officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 5.08 Assignment, Leases or Transfers

The County agrees that the Company and any Sponsor Affiliates may at any time (a) transfer all or any of their rights and interests under this Fee Agreement or with respect to all or any part of the Project, or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing or other entity with respect to this Fee Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any Sponsor Affiliate or operates such assets for the Company or any Sponsor Affiliate or is leasing the portion of the Project in question from the Company or any Sponsor Affiliate. In order to preserve the FILOT benefit afforded hereunder with respect to any portion of the Project so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to an Affiliate of the Company or of any Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company and any Sponsor Affiliates, as applicable, shall notify the County of such transaction at least 30 days prior to the consummation of such transaction and, if requested by the Company, the County shall ratify and/or consent such action; (ii) except when a financing entity which is the income tax owner of all or part of the Project is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any Sponsor Affiliate,

as the case may be, hereunder, or when the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company and any Sponsor Affiliates hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make FILOT Payments hereunder, the transferee shall assume the then current basis of, as the case may be, the Company or any Sponsor Affiliates (or prior transferee) in the portion of the Project transferred; (iv) the Company or applicable Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department a summary of any such transfer agreement; and (v) the Company, the Sponsor Affiliates and the transferee shall comply with all other requirements of the Transfer Provisions.

The County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or such Sponsor Affiliate under this Fee Agreement and/or any release of the Company or such Sponsor Affiliate pursuant to this Section.

Each of the Company and any Sponsor Affiliates acknowledges that such a transfer of an interest under this Fee Agreement or in the Project may cause all or part of the Project to become ineligible for the FILOT benefit afforded hereunder or result in penalties under the FILOT Act absent compliance by the Company and any Sponsor Affiliates with the Transfer Provisions.

Section 5.09 Administration Expenses

The Company agrees to pay Administration Expenses, not to exceed \$2,500.00 in any given calendar year, to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Fee Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County's or Indemnified Party's right to receive such payment, specifying the nature of such expense and requesting payment of same.

Section 5.10 Priority Lien Status

The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the FILOT Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code.

Section 5.11 Interest; Penalties

In the event the Company or any Sponsor Affiliate should fail to make any of the payments to the County required under this Fee Agreement, then the item or installment so in default shall continue as an obligation of the Company or such Sponsor Affiliate until the Company or such Sponsor Affiliate shall have fully paid the amount, and the Company and any Sponsor Affiliates agree, as applicable, to pay the same with interest thereon at a rate, unless expressly provided otherwise herein and in the case of FILOT payments, of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, at the rate for non-payment of *ad valorem* taxes under State law and subject to the penalties the law provides until payment.

Section 5.12 Sponsor Affiliates

The Company may designate from time to time any Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the FILOT Act, which Sponsor Affiliates shall join with the Company and make investments with respect to the Project, or participate in the financing of such investments, and shall agree to be bound by the terms and provisions of this Fee Agreement pursuant to the terms of a written joinder agreement with the County and the Company, in form reasonably acceptable to the County. The Company shall provide the County and the Department with written notice of any Sponsor Affiliate designated pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the FILOT Act.

ARTICLE VI

DEFAULT

Section 6.01 Events of Default

The following shall be “Events of Default” under this Fee Agreement, and the term “Event of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company or any Sponsor Affiliate to make the FILOT Payments described in Section 4.01 hereof, or any other amounts payable to the County under this Fee Agreement when due, which failure shall not have been cured within thirty (30) days following receipt of written notice thereof from the County; provided, however, that the Company and any Sponsor Affiliates shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company or any Sponsor Affiliate hereunder which is deemed materially incorrect when deemed made; or

(c) Failure by the Company or any Sponsor Affiliate to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of thirty (30) days after written notice from the County to the Company and such Sponsor Affiliate specifying such failure and requesting that it be remedied, unless the Company or such Sponsor Affiliate shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company or such Sponsor Affiliate is diligently pursuing corrective action; or

(d) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of thirty (30) days after written notice from the Company to the County and any Sponsor Affiliates specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the

30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

Section 6.02 Force Majeure

(a) The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, pandemics, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.03 Remedies Upon Default

(a) Whenever any Event of Default by the Company or any Sponsor Affiliate (the "Defaulting Entity") shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions as to the Defaulting Entity, only:

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

In no event shall the Company or any Sponsor Affiliate be liable to the County or otherwise for monetary damages resulting from the Company's (together with any Sponsor Affiliates) failure to meet the FILOT Act Minimum Investment Requirement or the Contract Minimum Investment Requirement other than as expressly set forth in this Fee Agreement.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as provided in Section 12-44-90 of the FILOT Act. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company and any Sponsor Affiliate may take one or more of the following actions:

- (i) bring an action for specific enforcement;
- (ii) terminate this Fee Agreement as to the acting party; or
- (iii) take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 6.04 No Waiver

No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such

right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notices

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

If to the Company:

With a copy to:

Dykema Gossett, PLLC
10 South Wacker Drive, Suite 2300
Chicago, IL 60606
Attn: Andrew P. Scott

If to the County:

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

With a copy to:

Section 7.02 Binding Effect

This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company and any Sponsor Affiliates, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 7.03 Counterparts

This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 7.04 Governing Law

This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

Section 7.05 Headings

The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 7.06 Amendments

The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 7.07 Further Assurance

From time to time, and at the expense of the Company and any Sponsor Affiliates, the County agrees to execute and deliver to the Company and any such Sponsor Affiliates such additional instruments as the Company or such Sponsor Affiliates may reasonably request and as are authorized by law and reasonably within the purposes and scope of the FILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 7.08 Invalidity: Change in Laws

In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be 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 FILOT Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall

be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company and any Sponsor Affiliates with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company and any Sponsor Affiliates the strongest inducement possible, within the provisions of the FILOT Act, to locate the Project in the County. In case a change in the FILOT Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and any Sponsor Affiliates and the FILOT incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company and any Sponsor Affiliates with the benefits of such change in the FILOT Act or South Carolina laws.

Section 7.09 Termination by Company

The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with thirty (30) days' written notice; *provided, however,* that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto (including without limitation any amounts owed with respect to Section 4.03 hereof); and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to *ad valorem* taxation or such other taxation or fee in lieu of taxation that would apply absent this Agreement. The Company's obligation to make FILOT Payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 7.10 Entire Understanding

This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 7.11 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 7.12 Business Day

In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal federal holiday, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

[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 behalf by the County Administrator 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**

By: _____
Title: _____

ATTEST:

Wanda Simmons
Clerk to Jasper County Council

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying and being in the County of Jasper, State of South Carolina, and being shown and designated as ____ acres on a plat prepared for Builders FirstSource – Southeast Group, LLC by HGBD Surveyors, LLC, dated ____ and recorded on ____ in Book ____ at page ____ [to be verified].

Being a portion of the 181.81 acres conveyed to Point South Ventures, LLC by deed of Stanford W. Boozer, Jr. as shown on plat recorded in Plat Book 28, page 74.

EXHIBIT B

INVESTMENT CERTIFICATION

I _____, the _____ of _____ (the "Company"), do hereby certify in connection with Section 4.03 of the Fee in Lieu of Tax and Special Source Credit Agreement dated as of _____, 20____ between Jasper County, South Carolina and the Company (the "Agreement"), as follows:

(1) The total investment made by the Company and any Sponsor Affiliates in the Project during the calendar year ending December 31, 20____ was \$_____.

(2) The cumulative total investment made by the Company and any Sponsor Affiliates in the Project from the period beginning _____, 20____ (that is, the beginning date of the Investment Period) and ending December 31, 20____, is \$_____.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 20____.

Name: _____
Its: _____

EXHIBIT C

FEE ILLUSTRATION TABLE

[To be inserted from State Summary of Incentives]

EXHIBIT D

INFRASTRUCTURE INVESTMENT CERTIFICATION

I _____, the _____ of _____ (the "Company"), do hereby certify in connection with Section 4.02 of the Fee in Lieu of Tax and Special Source Credit Agreement dated as of _____, 20__ between Jasper County, South Carolina and the Company (the "Agreement"), as follows:

(1) As of the date hereof, the aggregate of the Special Source Revenue Credits previously received by the Company any Sponsor Affiliates is \$ _____.

(2) As of December 31, 20__, the aggregate amount of investment in costs of Infrastructure incurred by the Company and any Sponsor Affiliates during the Investment Period is not less than \$ _____.

(3) Of the total amount set forth in (2) above, \$ _____ pertains to the investment in personal property, including machinery and equipment, at the Project. The applicable personal property, and associated expenditures, are listed below

<u>Personal Property Description</u>	<u>Investment Amount</u>
--------------------------------------	--------------------------

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this ____ day of _____, 20__.

Name: _____
Its: _____

AGENDA ITEM:

XI-B

Ordinance item B

* *This ordinance is a 1st reading by Title Only* *

No documents are enclosed for this ordinance.

AGENDA ITEM:

XI-C

Ordinance item C

This ordinance is a 1st reading by Title Only

No documents are enclosed for this ordinance.

AGENDA ITEM: XI-D

Ordinance item D

This ordinance is a 1st reading by Title Only

No documents are enclosed for this ordinance.

AGENDA ITEM:

XIII- A

Old Business item A

**Note this is a verbal COVID update and
Chief Wells will share his screen with the
information**

AGENDA ITEM:

XIV

Council Members Comments

AGENDA ITEM:

XV

Administrator's Report



OFFICE OF THE JASPER COUNTY ADMINISTRATOR

358 Third Avenue - Courthouse Square - Post Office Box 1149
Ridgeland, South Carolina 29936 - 843-717-3690 - Fax: 843-726-7800

Andrew P. Fulghum
County Administrator
afulghum@jaspercountysc.gov

Administrator's Report October 4, 2021

1. Transportation Sales Tax Program:

A copy of the legal opinion re: the proposed use of transportation sales tax funds follows this report. The legal opinion supports the following:

- Amending the Transportation Sales Tax Ordinance by removing items from the project listing that will not be completed and adding the following items to the project list:

\$13.5 million for CONSTRUCTION OF NEW I-95 INTERCHANGE (EXIT 3)

\$750,000 for US HIGHWAY 278 CORRIDOR WIDENING, STORMWATER IMPROVEMENTS, AND MALPHRUS ROAD INTERSECTION REALIGNMENT

\$1,000,000 for SC 170 CORRIDOR ACCESS MANAGEMENT STUDY NEAR-TERM IMPROVEMENTS

- Amending the current Intergovernmental Agreement (IGA) between SCDOT and Jasper County re: services to be provided for the US Highway 278 Corridor Widening, Stormwater Improvements, and Malphrus Road Intersection Realignment Project
- Allowing the potential use of Jasper County transportation sales tax funds to be spent for near-term improvements to SC 170

2. Customer Service at the Jasper County Clementa C. Pinckney Building:

Ms. Burgess will report on proposed improvements re: parking and curbside service.

The County Administrator's Progress Report and any miscellaneous correspondence, agendas, and minutes follow this report.

HOWELL LINKOUS & NETTLES, LLC
Bond Attorneys & Counsellors at Law

Samuel W. Howell, IV
Writer's Direct No. 843.266.3801
E-mail samhowell@bond-law.com

The Lining House
106 Broad Street
Charleston, South Carolina 29401

Post Office Box 1768
Charleston, South Carolina 29402

Telephone 843.266.3800
Fax 843.266.3805

Concentrating in Municipal Bonds,
Local Government Law, Economic
Development Incentives,
Affordable Housing Development

MEMORANDUM

To: Hon. Andrew Fulghum
David Tedder, Esq.

From: Samuel W. Howell

Date: September 23, 2021

Subject: Transportation Sales Tax Projects

You have asked our legal opinion with respect to the use of revenues derived from the Jasper County transportation sales and use tax to finance a portion of the local governments' share of the costs of proposed Exit 3 on I-95, as well costs of other transportation-related projects not expressly included in the original ordinance calling for the referendum. In 1995, the General Assembly enacted Section 4-37-10, et seq. of the Code of Laws of South Carolina 1976, as amended (the "Act"), to provide counties with an optional method of financing transportation facilities. Section 4-37-10 authorizes county governments to impose a sales and use tax in order raise revenue to finance transportation related projects. Pursuant to the Act, County Council may vote to impose the tax, subject to a referendum, by enacting an ordinance. The ordinance must specify:

“(a) the project or projects and a description of the project or projects for which the proceeds of the tax are to be used, which may include projects located within or without, or both within or without, the boundaries of the county imposing the tax and which may include:

(i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation related projects[.]”

After the County Council has enacted the ordinance, the Act requires that the ordinance be submitted to the county election commission, and the county election commission is required to conduct a referendum for approval of the optional sales and use tax. S.C. Code Ann. § 4-37-30(A)(2).

On May 16, 2016, the Jasper County Council enacted Ordinance No. 2016-05 (the “Ordinance”) to impose a one percent sales and use tax (the “Local Sales Tax”), and submitted it to the Jasper County Board of Elections and Voter Registration (“Jasper BEVR”). There was also submitted to the voters of Jasper County the question of the issuance of not to exceed \$30,000,000 of general obligation bonds payable from the Local Sales Tax. The referenda were conducted by the Jasper BEVR at the general election held on November 8, 2016. Both referenda were approved by a majority of voters voting therein. In compliance with Section 4-15-60 of the Code of Laws of South Carolina 1976, as amended, a certified copy of the resolution declaring the results of both referenda was filed with the office of the Jasper County Clerk of Court, thereby triggering the short statute of limitations provided therein for challenges to the results of the referenda.

In compliance with Section 4-37-30(A)(1)(a) of the Act, the ordinance specifies the projects for which the proceeds of the Local Sales Tax are to be used as follows: “the costs of highways, roads, streets, bridges, and other transportation-related projects and drainage facilities related thereto (the “projects”)...”

Section 4-37-30(A)(3) provides that “a separate question must be included on the referendum ballot for each purpose (*emphasis added*) which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects (*emphasis added*). In this instance, Jasper County Council combined all of the projects into a single purpose and ballot question. The Local Sales Tax referendum question presented to the voters was as follows:

I approve a special sales and use tax in the amount of one percent to be imposed in Jasper County for not more than 10 years to fund the following projects:

Projects: For financing the costs of highways, roads, streets, bridges, and other transportation-related projects, and drainage facilities related thereto: \$27,000,000

YES

NO

The Ordinance also provides initial approval to several projects expected to be funded by proceeds of the Local Sales Tax, as follows:

The proceeds of these bonds shall be used for financing (including use as the local match for other funds to finance) the following projects, in estimated amounts as described: (i) \$10,000,000 for Route 321 repairs/resurfacing (sections to be determined), U.S. Highway 17 overlay (sections to be determined), general

roadway improvements (roadway sections to be determined), and new road construction and improvements (sections to be determined); (ii) \$10,000,000 for I-95 Exit 8 improvements, including roadway improvements, installation of raised median from US 17 to Medical Center Drive, installation of traffic signs at five noted intersections, and widening US 278 from 4 lanes to 6 lanes from I-95 NB ramps to SC 141, I-95/US 278 intersection enhancements, I-95 Exit 5 improvements including road improvements along Hummingbird Lane/Mockingbird Lane to support commercial traffic to Hardeeville Commerce Park, construction of new road into Hardeeville Commerce Park, and Route 46 Improvements/Maintenance (sections to be determined); and (iii) \$7,000,000 for I-95 Exit 21 improvements (SC 336 underpass), reconstruction of James Taylor Drive, Bailey Lane reconstruction, Taylor Drive reconstruction, Industrial Park improvements, and roadway widening to provide improved access for emergency vehicles.

In the Ordinance, Jasper County Council expressly reserved the right to modify the “projects” to be funded with the Local Sales Tax by amending the Ordinance.

Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time....

Even without this express statement of its power to modify the “projects” by amending the Ordinance, South Carolina law provides that a local government’s “governing body possesses broad discretion in terms of expenditures of funds by virtue of the authorizing referendum.” 2004 WL 2052167 (S.C.A.G.), citing Ramsey v. Cameron, 245 S.C. 189, 139 S.E.2d 765 (1965) and Sarrat v. Cash, 103 S.C. 531, 88 S.E. 256 (1916). The effect of a referendum question is to limit the use of funds for the purposes set forth in the referendum question. How those funds are spent and the precise improvements to which the proceeds are applied are decisions within the discretion of the municipal governing body. In the Sarrat case, the Supreme Court addressed the allegation by voters that they had approved a bond referendum based on representations made by school trustees that a school would be built in a certain location; upon approval of the referendum, the school trustees decided to build the school elsewhere. The court denied the plaintiffs’ request to enjoin the trustees from building the school at a different locality, upholding the trustees’ right to exercise discretion in the matter:

[The trustees] could not, therefore, bind themselves by promises or representation, so as to divest themselves of the right to a free and untrammelled exercise of their judgment and discretion for the best interests of their district at the time they were required to act as a body.... It would be contrary to public policy to allow public officers who are charged with the duty of exercising their judgment and discretion ... to bind or fetter themselves by promise or presentation to individuals or to electors of ... the district so that they could not, at all times, act freely and impartially.... The power was conferred upon them for public purposes, and it could not be lawfully bartered away to influence ... votes in the election. The electors are presumed to have known this. Therefore they had no legal right to rely

upon the alleged representations, or to be influenced by them in ... voting in the election.

Id. at 535-36, 88 S.E. at 258.

In the 2004 opinion, the Attorney General found that "... the county must sufficiently identify and describe the projects for which the proceeds of the tax will be used in order for the public to make an informed decision in the referendum, but the county need not so narrowly tailor the enacting ordinance that it leaves no room for the exercise of discretion in the actual expenditure of funds." Accordingly, the Attorney General specifically advised "against identifying the projects only by reference to a pre-existing program list," noting instead that the "identification and description of the project categories should be adequately detailed in the enacting ordinance." In our view, "[a]ny attempts to fund projects that could have been, but were not, included in the referendum and identified to the public could be seen as a violation of the spirit of Section 4-37-30."

In a 2004 Opinion, the Attorney General also addressed the specific question: Does Section 4-37-30 require a separate question for each project on the ballot? The answer was "No. While § 4-37-30(A)(3) is somewhat ambiguous, it is evident that the General Assembly intended that several projects may be enumerated within a single question."

In a later Opinion, the Attorney General also addressed the referendum requirements under Section 4-37-30:

[T]he county must sufficiently identify and describe the projects for which the proceeds of the tax will be used in order for the public to make an informed decision in the referendum, but the county need not so narrowly tailor the enacting ordinance that it leaves no room for the exercise of discretion in the actual expenditure of the funds.

This opinion emphasizes our recognition that County Council has broad discretion with regard to how it expends these funds. Accordingly, it is our opinion that the County has authority to appropriate the revenue generated from the sales and use tax as it sees fit, so long as those expenditures are in line with the projects approved by the electorate. Additionally, we note none of the provisions in chapter 37 of title 4 address disbursements from a county to other entities or political subdivisions. Consequently, we do not find any indication that counties imposing a sales and use tax under these provisions are obligated to make appropriations to other entities. Therefore, we believe a county's decision to appropriate funds to a municipality for purposes of accomplishing a project set forth in the referendum is within the county's discretion.

Based upon our review of the Ordinance and related proceedings, we are of the opinion that County Council has the authority, without other governmental consents, to amend the Ordinance to provide that a portion of the Local Sales Tax revenues may be expended on financing the costs of construction of highway, road, street, bridge, and other transportation related projects,

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and drainage facilities related thereto, in addition to or in lieu of, the projects described in the Ordinance, including the proposed Exit 3 project.



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Progress Report September 21, 2021-October 4, 2021

1. Exit 3:
Reviewed documents in preparation for meeting with STIB, SCDOT, and City of Hardeeville on Sept. 28 in Columbia. Reviewed legal opinion as to proposed use of Jasper County Transportation Sales Tax proceeds. Legal opinion included in the Administrator's Report.
2. Debt Refinancing:
Reviewed draft report on Jasper County 2021 G.O. Refunding Bonds to be published by S&P. Will provide a copy of the report to County Council when final version is received.
3. Various Development Projects:
Participated in conference calls on Sept. 21 with Peninsula Tract developer and County staff re: development agreement (DA) and County staff, SCA, and outside counsel to review active economic development prospects. Met with a prospect on Sept. 24.
4. Development Services Director Position:
Conducted interviews for the position on Sept. 24.
5. Implementation of Salary Study and Premium Pay:
Reviewed requests for application of the benefit from a former employee and current elected officials. Issues to be brought before Council for direction.
6. Other Meetings/Events Attended or Scheduled to Attend:
Order of the Palmetto Ceremony for Mr. Sauls in Columbia on Sept. 28.