

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR FAIRFIELD COUNTY
ORDINANCE NO. 639

AN ORDINANCE AUTHORIZING THE ADDITION OF MEKRA TOOL & MOLD, LLC AS A SPONSOR AFFILIATE TO THE EXISTING FEE IN LIEU OF PROPERTY TAX ARRANGEMENT BETWEEN LANG-MEKRA NORTH AMERICA, LLC (“COMPANY”), AS SPONSOR, LANG MEKRA NORTH AMERICA PROPERTIES, LLC, AS SPONSOR AFFILIATE, AND FAIRFIELD COUNTY, SOUTH CAROLINA (“COUNTY”); AUTHORIZING AND PROVIDING THE CONSENT AND APPROVAL OF THE COUNTY TO THE TRANSFER OF ECONOMIC DEVELOPMENT PROPERTY FROM THE COMPANY TO MEKRA TOOL & MOLD, LLC; AND OTHER RELATED MATTERS.

WHEREAS, Fairfield County, South Carolina ("County"), acting by and through its County Council ("County Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution ("Constitution"), the Code of Laws of South Carolina, 1976, as amended ("Code"), and the case law of the courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County;

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code ("Act") to enter into certain agreements with industry that constructs, operates, maintains, and improves certain properties which constitute "projects" as defined in the Act;

WHEREAS, Lang Mekra North America, LLC, a limited liability company organized under the laws of the State of South Carolina, together with Lang Mekra North America Properties, LLC, a limited liability company organized under the laws of the State of South Carolina (collectively, "Company"), operates a commercial vehicle rear-view mirror system manufacturing facility located in the County (as defined in the Fee Agreement, as that term is defined below, "Project");

WHEREAS, the County and the Company, entered into that certain Fee Agreement, dated as of February 27, 2012 ("Fee Agreement") by which there was created a fee-in-lieu-of-tax arrangement with respect to certain real and personal property owned by Company and located at the Project; and

WHEREAS, in connection with the reorganization of the Company, the Company desires to add Mekra Tool & Mold, LLC, a South Carolina limited liability company and an affiliate of the Company ("LLC"), as an additional "sponsor affiliate" under the Fee Agreement and to transfer all or a portion of the Project, and the related economic development property, from the Company to the LLC;

WHEREAS, based on information the Company provided to the County, the County finds that the Company has made sufficient investment in economic development property, as defined in the Act, subject to the Fee Agreement at the Project for the LLC to qualify as a sponsor affiliate under the Act and the Fee Agreement;

WHEREAS, as authorized by Section 12-44-40(K), the County and the Company now desire to amend the Fee Agreement to add the LLC as an additional “sponsor affiliate” under the Fee Agreement (“Addition”) and to authorize and consent to, and ratify, the transfer of all or a portion of the Project, and the related economic development property, from the Company to the LLC (“Consent”);

WHEREAS, all capitalized terms not specifically defined herein, shall have the meaning as defined in the Fee Agreement, and if not defined therein shall have the meaning as defined in the Act;

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the First Amendment of Fee Agreement (“Amendment”), by and between the County and the Company memorializing the Addition and the Consent; and

WHEREAS, the County desires to authorize the Addition and the Consent, and it appears that the Amendment now before this meeting is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Fairfield County, South Carolina as follows:

Section 1. Contingent on the Company executing an Indemnity Covenant and paying the County’s expenses associated with the transactions described in this Ordinance, the County hereby approves the Addition of the LLC as an additional “sponsor affiliate” under the Fee Agreement as set forth in the Amendment. Further, the County approves and consents to, and ratifies, the transfer of all or a portion of the Project, and the related economic development property, from the Company to the LLC.

Section 2. The Amendment is approved as follows: The form, terms, and provisions of the Amendment, which is attached in its substantially final form as Exhibit A, are approved and all of the terms, provisions, and conditions of the Amendment are incorporated by reference. The Amendment to be executed on behalf of the County shall be in substantially the form now before the County Council, and shall include only changes that do not materially alter the rights and obligations of the County under the form of the Amendment now before County Council and as are approved by the Chairman or the County Administrator following receipt of advice from counsel to the County. The execution of the Amendment by the Chairman and the Clerk shall constitute conclusive evidence that all changes to or revisions of the Amendment now before this meeting have been approved.

Section 3. The Chairman and the Clerk are each hereby authorized, empowered and directed to do all things necessary to effect the execution, acknowledgement and delivery of the Amendment and the County's performance of its obligations thereunder.

Section 4. It is the intention of the County Council that this Ordinance shall constitute an official action on the part of the County within the meaning of any statute or other legislative enactment relating to the provision of incentives including, without limitation, the approval of the Addition and the Consent, for the inducement of economic development projects.

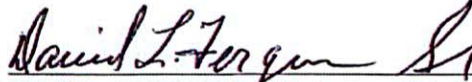
Section 5. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 6. Any ordinance, resolution, or other order of County Council, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 7. This Ordinance is effective after third reading and a public hearing.


Ordained this 8th day of September, 2014 by Fairfield County Council, in a meeting duly assembled.

FAIRFIELD COUNTY, SOUTH CAROLINA



David L. Ferguson Sr., Chairman of County Council
Fairfield County, South Carolina

(SEAL)
ATTEST:



Shryll M. Brown, Clerk to County Council
Fairfield County, South Carolina

READINGS:

First Reading: July 28, 2014
Second Reading: August 25, 2014
Public Hearing: August 25, 2014
Third Reading: September 8, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

CERTIFIED COPY OF ORDINANCE

I, the undersigned, hereby certify that I am the duly appointed and acting Clerk to County Council of Fairfield County, South Carolina (the "County"), and as such official I further certify that attached hereto is a true and correct copy of Ordinance No. 639 authorizing the amendment of the Fee Agreement by and among the County, Lang Mekra North America, LLC, and Lang Mekra North American Properties, LLC, which Ordinance has been compared by me with the original thereof, and that such copy is a true, correct and complete copy thereof, and that such Ordinance has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof in the form attached hereto.

Witness my official signature and seal this 8th day of September, 2014.

[Seal]

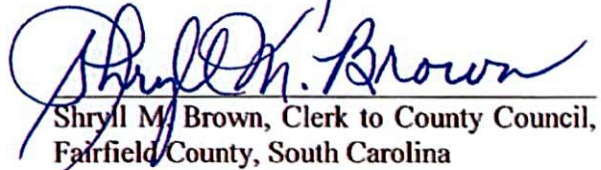

Shryll M. Brown, Clerk to County Council,
Fairfield County, South Carolina

EXHIBIT A

Fee Agreement

FIRST AMENDMENT OF FEE AGREEMENT

This First Amendment of Fee Agreement (“Amendment”), effective September 8, 2014, is made and entered by and among Fairfield County, South Carolina (“County”), a body politic and corporate and a political subdivision of the State of South Carolina; Lang Mekra North America, LLC, a limited liability company organized and existing under the laws of the State of South Carolina (“Company”); Lang-Mekra North America Properties, LLC (“LMNAP”), a limited liability company organized and existing under the laws of the State of South Carolina, as sponsor affiliate; and Mekra Tool & Mold, LLC, a limited liability company organized and existing under the laws of the State of South Carolina and an affiliate of the Company (“LLC”).

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined in the Fee Agreement (as that term is defined below), and if not defined therein shall have the meaning as defined in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (“Act”);

WHEREAS, the Company operates a commercial vehicle rear-view mirror system manufacturing facility located in the County (as defined in the Fee Agreement, “Project”);

WHEREAS, the County, the Company, and LMNAP, as sponsor affiliate, entered into that certain Fee Agreement, dated as of February 27, 2012 (“Fee Agreement”) and attached as Exhibit A, by which there was created a fee-in-lieu-of-tax arrangement with respect to certain real and personal property owned by Company and located at the Project;

WHEREAS, in connection with the reorganization of the Company, the Company desires to add the LLC as an additional “sponsor affiliate” under the Fee Agreement and to transfer all or a portion of the Project, and the related economic development property, from the Company to the LLC;

WHEREAS, based on information the Company provided to the County, the County finds that the Company has made sufficient investment at the Project for the LLC to qualify as Sponsor Affiliate under the Act and the Agreement; and

WHEREAS, as authorized by Section 12-44-40(K) of the Act and Section 12.09 of the Fee Agreement, the County, the Company and LMNAP now desire to amend the Fee Agreement to add the LLC as an additional “sponsor affiliate” under the Fee Agreement and to authorize and consent to, and ratify, the transfer of all or a portion of the Project, and the related economic development property, from the Company to the LLC (“Addition”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

1. Addition. Subject to the Company’s payment of the Administration Expenses (as that term is defined in the Fee Agreement) of the County associated with the transactions

described herein and the execution by the Company, LMNAP, and the LLC of the Indemnity Covenant attached hereto as Exhibit B, the County hereby approves the Addition.

2. Joinder. The LLC acknowledges that it has been designated as a Sponsor Affiliate for purposes of the Act and the Fee Agreement. The LLC is bound by and subject to all of the terms and conditions of the Fee Agreement.

3. Remainder of Fee Agreement. Except as described in Section 1 of this Amendment, the Operating Agreement remains unchanged and in full force. If a conflict exists between the Amendment and the Operating Agreement, then this Amendment controls.

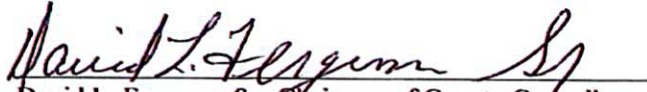
4. Severability. If any term, provision, or any portion of this Amendment shall to any extent and for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this Amendment shall be valid and enforceable to the fullest extent permitted by the law.

5. Counterparts. The parties may execute this Amendment in counterparts, each of which is an original and all of which, together, constitutes one and the same Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, Fairfield County, South Carolina, has executed this First Amendment of Fee Agreement by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council. and the Company and the LLC have executed this First Amendment of Fee Agreement by causing their corporate names to be hereunto subscribed by their authorized representatives.

FAIRFIELD COUNTY, SOUTH CAROLINA



David L. Ferguson Sr., Chairman of County Council
Fairfield County, South Carolina

Dated: 9-8-2014

(SEAL)
ATTEST:



Shryll M. Brown, Clerk to County Council
Fairfield County, South Carolina

IN WITNESS WHEREOF, the Company, LMNAP and the LLC have executed this First Amendment of Fee Agreement by causing their corporate names to be hereunto subscribed by their authorized representatives, all being done as of the day and year written below.

Lang Mekra North America, LLC, as sponsor

By: _____

Its: _____

Date: _____

Lang Mekra North America Properties, LLC, as sponsor affiliate

By: _____

Its: _____

Date: _____

Mekra Tool & Mold, LLC, as sponsor affiliate

By: _____

Its: _____

Date: _____

EXHIBIT B

Indemnity Covenant

THIS INDEMNITY COVENANT is entered into among Lang Mekra North America, LLC, a South Carolina limited liability company (the “Company”); Lang-Mekra North America Properties, LLC (“LMNAP”), a South Carolina limited liability company, as sponsor affiliate; and Mekra Tool & Mold, LLC, a South Carolina limited liability company and an affiliate of the Company (the “LLC”), as sponsor affiliate, in favor of Fairfield County, South Carolina (“County”).

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- A. Pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (“Act”), the County, the Company, and LMNAP, as sponsor affiliate, entered into that certain Fee Agreement, dated as of February 27, 2012 (the “Fee Agreement”) pursuant to which the County granted certain fee in lieu of tax benefits to the Company for certain economic development property relating to the Project, as identified in the Fee Agreement;
- B. As a part of the reorganization of the Company, the Company and LMNAP desire to add the LLC as a “sponsor affiliate” under the Agreement and to transfer all or a portion of the Project, and the related economic development property, from the Company and/or LMNAP to the LLC (the “Transaction”) pursuant to a First Amendment to Fee Agreement (the “First Amendment”);
- C. The Act and the Fee Agreement authorize the addition of a sponsor affiliate and the transfer of all or a portion of the Project to another entity;
- D. The Company requested the County to consent to the Transaction and by Ordinance, the County consents to the Transaction and authorized the execution of the First Amendment, contingent on the following conditions:
 - i. The Company and the LLC execute and deliver this Indemnity Covenant to the County and comply with the terms of this Indemnity Covenant; and
 - ii. The Company and LLC pay the County’s Administration Expenses (as that term is defined in the Fee Agreement) associated with the Transaction, not to exceed \$2500.

NOW, THEREFORE, in consideration of the County’s adoption of the Ordinance consenting Transaction:

(a) the Company, LMNAP, and LLC, except as provided in paragraph (b) below, shall indemnify and save the County, its past, present, and future employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all claims by or on behalf of any person arising from the County’s consent to the Transaction. If such a claim is made against any Indemnified Party, then subject to the provisions of (b) below, the Company,

LMNAP, and LLC shall defend the Indemnified Party in any action or proceeding.

(b) Notwithstanding anything herein to the contrary, the Company, LMNAP, and LLC are not required to indemnify any Indemnified Party against any claim or liability (1) occasioned by the acts of that Indemnified Party, which are unrelated to the Transaction or (2) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(c) An Indemnified Party may not avail itself of the indemnification provided in this Indemnity Covenant unless it provides the Company, LMNAP, or LLC with notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company, LMNAP, or LLC notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(d) Following this notice, the Company, LMNAP, and LLC shall resist or defend against any claim or demand, action or proceeding, at its expense, using counsel of its choice. The Company, LMNAP, and LLC are entitled to manage and control the defense of or response to any claim, charge, lawsuit, regulatory proceeding or other action, for itself and the Indemnified Party; provided the Company, LMNAP, and LLC are not entitled to settle any matter at the separate expense or liability of any Indemnified Party without the consent of that Indemnified Party. To the extent any Indemnified Party desires to use separate counsel for any reason, other than a conflict of interest, that Indemnified Party is responsible for its independent legal fees.

[SIGNATURES BEGINNING ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Company, LMNAP, and the LLC have each caused this Indemnity Covenant to be executed by its duly authorized officer, effective as of the day and year first above written.

Lang Mekra North America, LLC, as sponsor

By: _____

Its: _____

Date: _____

Lang Mekra North America Properties, LLC, as sponsor
affiliate

By: _____

Its: _____

Date: _____

Mekra Tool & Mold, LLC, as sponsor affiliate

By: _____

Its: _____

Date: _____