

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR FAIRFIELD COUNTY  
ORDINANCE NO. 543

Ord. number: misnumbered  
and used over.

**AUTHORIZING FAIRFIELD COUNTY, SOUTH CAROLINA, TO SELL  
APPROXIMATELY 6.47 ACRES REAL PROPERTY TO PRIMESOUTH,  
INC., OR A RELATED ENTITY, AS PART OF AN ECONOMIC  
INCENTIVE PACKAGE; AND OTHER RELATED MATTERS.**

WHEREAS, Fairfield County, South Carolina ("County") owns real property, as more fully described on the attached Exhibit A ("Property"); and

WHEREAS, in accordance with the Incentive Agreement, effective October 13, 2008, between the County and Primesouth, Inc. ("Company"), the County agreed to sell, and the Company agreed to purchase, the Property as part of an economic incentive package; and

WHEREAS, to create approximately 400 new, full-time jobs and promote economic development in the County, the Fairfield County Council ("County Council") desires to transfer the Property to the Company, subject to: (i) the conditions established in the Incentive Agreement, (ii) a right of first refusal to be recorded simultaneously with the transfer, and (iii) other conditions the Parties may establish; and

WHEREAS, the County and Richland County, South Carolina ("Richland") (collectively, "Counties"), as authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended ("Act"), have jointly developed the I-77 Corridor Regional Industrial Park ("Park"); and

WHEREAS, in response to requests from companies seeking to invest in either the County or Richland, the Counties have previously expanded the Park's boundaries to include additional property, which has afforded the requesting companies additional tax benefits under South Carolina law; and

WHEREAS, the Counties have entered into separate agreements to reflect each new phase of the Park's expansion ("Phase Agreements"); and

WHEREAS, on April 15, 2003, the Counties entered into an agreement entitled "Master Agreement Governing the I-77 Corridor Regional Industrial Park" ("Master Agreement"), the provisions of which replaced all existing Phase Agreements and now govern the Park's operation; and

WHEREAS, the Company, as part of the economic incentive package, has requested that the Counties expand the Park's boundaries to include the Property; and

WHEREAS, the Counties now desire to expand the Park's boundaries to include the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL:

**Section 1. Approval of Transfer.** The County Council: (a) approves the purchase-sale arrangement set forth in the Incentive Agreement; (b) authorizes the County Administrator, the County Council Chair, and in the Chair's absence, the Vice-Chair, and the Clerk to County Council, as appropriate, to execute and deliver those documents that may be reasonably necessary to consummate the Property's transfer; (c) authorizes the County Administrator to prepare, or have prepared, the form of the transfer documents that are customarily used for similar transactions in this State, with the advice of the County's legal counsel, (the execution of those documents by the County's representatives is conclusive evidence that the transfer

documents are approved by the County); (d) authorizes the County Administrator and other members of the County staff to provide information to the Company as is reasonably necessary to consummate the Property's transfer.

**Section 2. Expansion of Park Boundaries.** The County Council authorizes an expansion of the Park's boundaries to include the Property. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are authorized to execute documents and take further actions as may be reasonably necessary to complete the expansion of the Park's boundaries. Pursuant to the terms of the Master Agreement, the expansion is complete upon the adoption of this Ordinance by the County Council and a companion ordinance by the Richland County Council.

**Section 3. Removal of Property from Park.** The Company may request that a portion of the Property be removed from the Park. In that case, the Counties authorize removal of all, or a portion of, the Property, upon receipt of a written request from the Company. No further action by either the County Council or the Richland County Council is required. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are authorized to execute documents and take further actions as may be reasonably necessary to complete removal of all, or a portion of, the Property from the Park. The public hearing requirement set forth in Section 1.03 of the Master Agreement is waived.

**Section 4. General Repealer.** 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 5. Effectiveness.** This Ordinance is effective after third reading and a public hearing.

FAIRFIELD COUNTY, SOUTH CAROLINA

*David L. Ferguson Sr.*

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



(SEAL)

ATTEST:

*Shryll M. Brown*

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

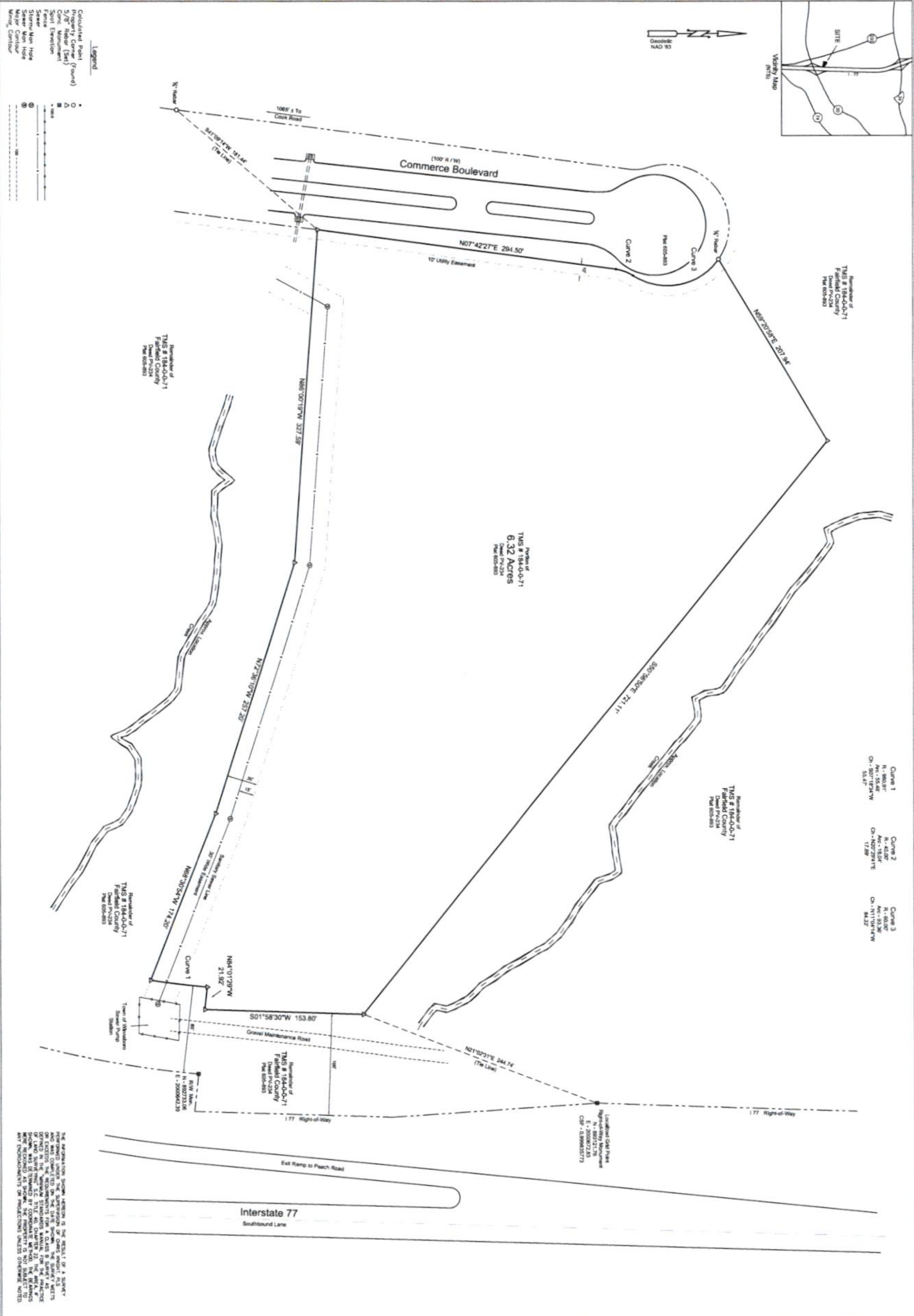
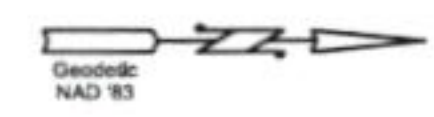
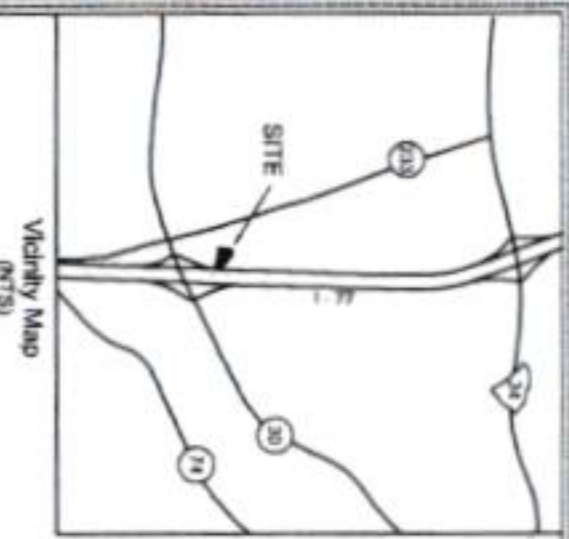
READINGS:

First Reading:      October 13, 2008  
Second Reading:    October 27, 2008  
Public Hearing:      November 10, 2008  
Third Reading:     November 10, 2008

**EXHIBIT A**

**PROPERTY DESCRIPTION**

All that certain piece, parcel or lot of land, with any improvements, situate in Fairfield County, South Carolina, consisting of 6.32 acres, more or less, identified as a "Portion of TMS # 184-0-0-71" on "Plat of Partition Survey for Primesouth, Inc.," prepared by Dennis Corporation, dated November 10, 2008, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ (an unrecorded copy of which is attached).



THE INFORMATION SHOWN HEREON IS THE RESULT OF A SURVEY PERFORMED UNDER THE SUPERVISION OF ONE OF OUR LICENSED SURVEYORS. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSES. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSES. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSES.

Project P0009.01		November 10, 2008		Fairfield County		South Carolina	
Plat of Partition Survey for Primesouth Inc..							
Scale 1" = 40'							
Sheet 1 of 1							
Surveyor	Revision	Date	Description				
C. Knight							
Drawn By							
Checked By							

## INCENTIVE AGREEMENT

This Incentive Agreement (the "Agreement"), effective the 13<sup>th</sup> day of October, 2008, by and among Fairfield County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina (the "Project County") and Project OM, a South Carolina corporation (the "Company").

WHEREAS, this Agreement sets forth the respective commitments of the Project County and the Company; and

WHEREAS, the commitments of the Project County are necessary to the Company to locate a craftsman employment and training facility (the "Project") on a site within the Project County; and

WHEREAS, the commitments of the Company with respect to the Project are necessary to induce the Project County to offer the incentives contained in this Agreement; and

WHEREAS, the Company intends to create 400 or more New Full Time Jobs as defined in the South Carolina Enterprise Zone Act with healthcare benefits at an average pay rate of not less than \$18.00 per hour ("Required Jobs") over a five-year period in the Project County commencing on October 1, 2008; and

WHEREAS, at the election of the Company, the Company may use a related party or parties (whether jointly or singularly hereafter the "Related Party") to accomplish the Company's purposes as such Related Party is defined by the Internal Revenue Code.

NOW, THEREFORE, the Parties hereto enter into the following Agreement:

### SECTION 1. Project Facility Site.

(a) The Project County agrees that it will deed or cause to be deeded approximately 6.47 acres of land, as identified on the attached Exhibit A (the "Site"), to the Company or, at the election of the Company, to the Related Party, for the total sales price of \$1.00, due at closing on the Site, all as more fully set forth in a Purchase and Sale Agreement to be separately negotiated between the Project County and the Company. The closing is intended to occur simultaneously with the funding of a construction loan. The parties acknowledge that the Declaration of Protective Covenants, Conditions, Restrictions and Easements, attached as Exhibit B, related to the Site are the covenants, conditions, restrictions, reservations, easements, liens for assessments, rights of first refusal and options to which the Site is subject.

(b) The Project County agrees to use reasonable efforts to provide, or cause to be provided, an off-site extension of the Project County's water main to a location adjacent to the Site ("Water Extension"), to the extent the Water Extension costs no more than \$39,500, in accordance with the Conceptual Cost Estimate, dated July 3, 2008, attached to this Agreement as Exhibit C.

Provided, if the Company fails to create the Required Jobs, then the Company agrees to reimburse the Project County \$136,550 for the Site and Water Extension (collectively, "Project County Grant"), as set forth in Section 6.

The Project County agrees to cooperate with the Company in securing for the Company a right to rely on due diligence investigations and reports obtained by the Project County as part of the Company's purchase and development of the Site; provided, the Project County makes no representations or warranties concerning the contents of any of the investigations or reports.

SECTION 2. The Project County Multi-County Park. The Project County agrees that it will take all reasonably necessary action and pass such ordinances as are reasonably required to cause the site to be and remain in a Multi-County Industrial/Business Park (the "Park") within the meaning of Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (the "Code") for a period of not less than eleven (11) years from the date hereof.

SECTION 3. Construction of Project General. Subject to the receipt by the Company or, at the Company's election, the Related Party, of the incentives described in this Agreement and the conditions contained herein, a craftsman training and employment facility with parking areas, as specified by the Company, will be constructed by the Company, or the Related Party, on the Site (the "Project Facility"). In this regard, the company shall select, at its option, any contractors or subcontractors and give all approvals for the construction of the Project Facility. The Company shall be responsible for the construction, upfit and equipping of the Project Facility. The Company shall also be responsible for the plans and specifications of the Project Facility and the Site. Other than as provided herein, all costs of the Project Facility will be the responsibility of the Company or the Related Party. It is acknowledged that the location of the Project Facility on the Site must comply with appropriate Project County land use requirements and site specific covenants and restrictions, zoning, requirements and the International Building Code currently in force in the Project County (collectively, the "Construction Requirements") before construction can begin and the Company agrees to construct the Project Facility in accordance with the Construction Requirements.

SECTION 4. Project County Fire Protection and Emergency Services. As part of its normal governmental activities, the Project County provides fire services to the Site and the Project County provides emergency services to the Site.

SECTION 5. Permits. The Project County will assist the Company and, if applicable, the Related Party in working with the South Carolina regulatory agencies to expedite the permitting process for the Site and the Project Facility. The Project County will commit to expedite, to the extent permitted by law, both timing and procedure with respect to the permitting process for permits over which it has sole control. Further, the Project County represents and warrants that the land use plan currently in effect for the Site permits the construction and operation of the Project as the Project has been represented by the Company to the Project County. Further, the Project County agrees to cooperate, to the extent permitted by law, with necessary building and construction variances or changes necessary to complete and operate the Project Facility.

SECTION 6. Company Reimbursement Obligation.

The Company understands and agrees that the Project County's commitment to provide the Site and Water Extension, essentially free of charge, under the terms and conditions of this Agreement is based and dependent upon the Company's (and, if applicable, the Related Party's) commitment to create the Required Jobs. The Company shall, on or before December 31, 2013 ("Completion Date"), create, and for the following 1-year period, ending December 31, 2014 ("Job Maintenance Period"), maintain, the Required Jobs or shall repay the Project County as set forth below ("Repayment Obligation").

- (i) If the Company fails to create at least 180 of the Required Jobs by the Completion Date, then the Company shall reimburse the Project County \$136,550 for the Site and Water Extension and have no further Repayment Obligation for the Project County Grant;
- (ii) If the Company fails to create the Required Jobs by the Completion Date, but has hired at least 180 of the Required Jobs, then the Company shall reimburse the Project County a pro rata

amount, based on the Jobs Achievement Percentage (defined below), of the Project County Grant and have no further Repayment Obligation; or

(iii) If the Company creates 360 of the Required Jobs by the Completion Date:

(a) and maintains 360 of the Required Jobs for the entire Job Maintenance Period, then the amount of the Company's Repayment Obligation with respect to the Project County Grant is completely forgiven;

(b) and fails to maintain 360 of the Required Jobs for the entire Job Maintenance Period, but has maintained at least 180 of the Required Jobs, the Company shall reimburse the Project County a pro-rata amount, based on the Jobs Achievement Percentage, of the Project County Grant;

(c) and maintains less than 180 of the Required Jobs during the Job Maintenance Period in which the Company, the Company shall reimburse the Project County the entire Project County Grant.

The Company's Repayment Obligation shall be determined by the Company within 90 days of the Completion Date and the Job Maintenance Period, respectively, and reported to the Project County. Any required payments from the Company shall be made within 30 days after the end of the 90-day period. For purposes of calculating the Company's Repayment Obligation, the number of jobs existing in a calendar year is the average, daily, full-time employment, i.e. the daily number of full-time employees divided by the number of working days (Monday – Friday) during that year.

For purposes of this Section, "Jobs Achievement Percentage" is equal to the actual number of jobs created, or maintained (as the context dictates), in a particular calendar year, divided by 90% of the Required Jobs.

SECTION 7. Confidentiality. Except as otherwise required by the laws and regulations of the State of South Carolina, the Parties agree to keep confidential all plans, drawings, documents, studies and information relating to the design, construction, training, training procedure and operation of the Project. The Parties' obligations hereunder shall not extend or apply to any information or data (i) which is already in, or comes hereafter into, the public domain other than through a violation of this agreement, (ii) which is already in the party's possession other than from the Company or through violation of this agreement, (iii) which is at any time disclosed by a third party who has the right to make such a disclosure, or (iv) which is developed independently by any party to this Agreement. The Company and the Project County agree to coordinate the public announcement of the Project. The Company and the Project County agree to cooperate with continuing public announcements during the construction of the Project Facility.

SECTION 8. Miscellaneous.

A. Binding Agreement: Termination. Except as herein below provided, this Agreement shall be binding upon the parties hereto; provided, however, it is understood that the Project County may be bound to its obligations hereunder only after the Project County Council has approved such actions, pursuant to adoption of an ordinance or ordinances in accordance with state law. In that regard, the Project County intends to commence such readings and procedures as soon as it receives from the Company, or its legal counsel, mutually agreeable ordinances containing all necessary attachments, including an Indemnity Covenant, Purchase-Sale Agreement, and other necessary documents, all in final form (the "Necessary Documents"). In connection with timely receipt, the Company acknowledges that the deadline for receipt of the Necessary Documents is noon p.m. on the Tuesday immediately preceding



the Project County Council's regularly scheduled Monday meeting ("Agenda Ready Deadline") and that there is a comparable period for the Agenda Ready Deadline as to any special called Project County Council meetings.

All commitments of the Parties are collectively dependent, each on the other, and are subject to the condition that the Parties continue to agree on collectively acceptable terms and conditions of all documents, the execution and delivery of which are contemplated by the provisions of this Agreement.

B. Satisfaction of Requirements. The Company understands and agrees that the grants to be made to and by the Project County under the terms and conditions of this Agreement are based and conditioned solely upon and made expressly contingent upon and subject to the Company's and the Related Party, if applicable, commitment to the creation of not less than the Required Jobs with healthcare benefits.

C. Merger. This Agreement contains the entire understanding between the Company and the Project County and may be amended only in a writing duly executed by the Company and the Project County.

D. Choice of Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of South Carolina without giving effect to any choice of conflict of law provision or rule (whether of the State of South Carolina or any other jurisdiction).

E. Company Election. The parties hereto agree that this Agreement shall not be considered a final agreement until (i) the Project County has approved all incentives contained herein, (ii) the Company receives acceptable financing for the construction and equipping of the Project Facility and the Project (the "Construction Loan"). The parties understand that the Company must commit to locate the Project Facility in the Project County by October 1, 2008.

F. Project County Grant and Loan Management. Notwithstanding any other provisions in this Agreement, no Project County commitment hereunder shall be construed as requiring the Project County to accept, receive, distribute or account for any funds or moneys from any source other than the Project County, in any form or manner whatsoever.

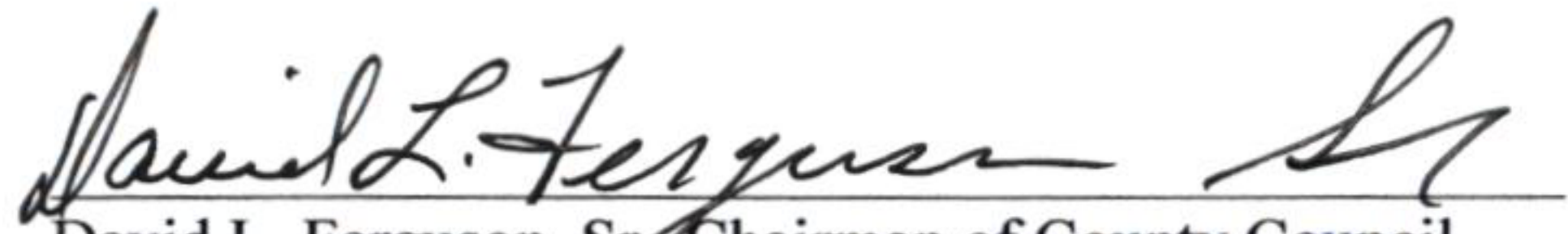
G. Assignability. It is specifically agreed by the parties that the Company shall have the right to assign this Agreement, in whole or in part, to any wholly owned subsidiary.

H. No Joint Venture. Nothing in this MOU is intended to create nor should it be construed or interpreted as to create any third party beneficiary rights in any form whatsoever, nor any form of partnership, joint venture, or any other legal entity relationship among the Parties.

I. Project County's Expenses. The Company agrees to pay the Project County's expenses, including attorneys fees and costs, relating to the Project, promptly after the Project County provides to the Company a request therefor, but in no event more than 30 days after the Project County's request for payment of such expenses.

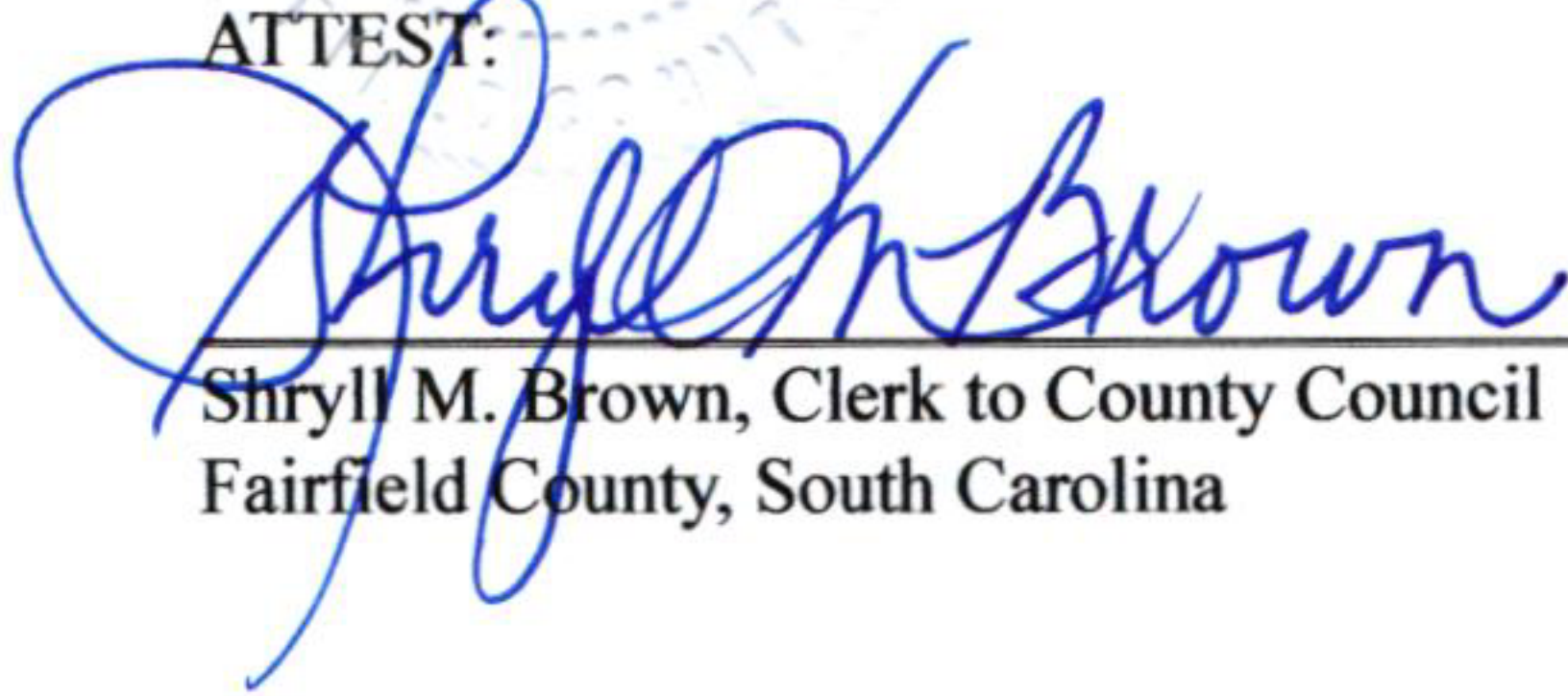
J. Counterpart Execution. The Parties may execute this Agreement in multiple counterparts, each of which is an original and all of which together is one and the same instrument.

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

PROJECT OM

  
By: M. Dean Bain  
Its: PRESIDENT