

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR FAIRFIELD COUNTY  
ORDINANCE NO. 622

**AUTHORIZING AN AMENDMENT TO THE FEE AGREEMENT BY  
AND AMONG FAIRFIELD COUNTY, SOUTH CAROLINA, LANG  
MEKRA NORTH AMERICA, LLC AND LANG MEKRA NORTH  
AMERICA PROPERTIES, LLC TO PROVIDE FOR AN  
INFRASTRUCTURE CREDIT; AND OTHER RELATED MATTERS**

WHEREAS, as authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“Act”), Fairfield County, South Carolina (“County”), acting by and through its County Council (“County Council”), entered into a Fee Agreement by and among the County and Lang Mekra North America, LLC, as sponsor, and Lang Mekra North America Properties, LLC as sponsor affiliate (together with Lang Mekra North America, LLC, “Company”) dated as of February 27, 2012 (“Fee Agreement”);

WHEREAS, the Company has committed to make investments in qualified infrastructure, as described in Section 4-29-68, Code of Laws of South Carolina, 1976, as amended (“Infrastructure”);

WHEREAS, as authorized by Section 12-44-70 of the Act, the County, at the request of the Company, desires to offer the Company a one-time credit of \$35,000 (“Infrastructure Credit”) against the Company’s fee-in-lieu of tax payments made pursuant to the Fee Agreement to assist the Company in paying for the costs of the Infrastructure;

WHEREAS, pursuant to Section 12-44-40(K) of the Act and Section 12.09 of the Agreement, the County and the Company desire to amend the Fee Agreement to provide for the terms of the Infrastructure Credit;

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

**Section 1. *Approval of Infrastructure Credit.*** The Infrastructure Credit is hereby approved subject to the terms and conditions of the Infrastructure Credit as set forth in the Amendment to the Fee Agreement, which is in substantially final form as attached as Exhibit A (“Amendment”).

**Section 2. *Authorization to Execute and Deliver Amendment.*** The Chair of County Council (“Chair”), or the Vice-Chair in the Chair’s absence, is authorized and directed to execute the Amendment with any minor modifications and revisions which do not materially affect the obligations and rights of the County under the Amendment and are approved by the Chair 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 the Chair is further authorized and directed to deliver the executed Amendment to the Company.

**Section 3. *Further Assurances.*** The County Council confirms the authority of the Chair, or the Vice-Chair in the absence of the Chair, the County Administrator and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, County Administrator or Clerk to Council, as appropriate, to take whatever further action and to draft, execute, deliver and post whatever further documents as may be appropriate to effect the intent of this Ordinance.

**Section 4. *Savings Clause.*** If any portion of this Ordinance is deemed unlawful, unconstitutional or otherwise invalid, the validity and binding effect of the remaining portions are not affected thereby.

**Section 5. *General Repealer.*** All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

This Ordinance takes effect and is in full force only after the County Council has approved it following three readings and a public hearing.

**FAIRFIELD COUNTY, SOUTH CAROLINA**



(SEAL)  
ATTEST:

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

By: Sheryl M. Brown  
Clerk to County Council  
Fairfield County, South Carolina

READINGS:

First Reading:	October 14, 2013
Second Reading:	October 28, 2013
Public Hearing:	October 28, 2013
Third Reading:	November 11, 2013

**EXHIBIT A**

**FORM OF AMENDMENT TO THE FEE AGREEMENT**

**AMENDMENT  
TO THE  
FEE AGREEMENT**

This Amendment to the Fee Agreement (“Amendment”), is made and entered into as of November 11, 2013, by and among Fairfield County, South Carolina (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), and Lang Mekra North America, LLC, a limited liability company organized under the laws of the State, as sponsor, and Lang Merka North America Properties, LLC, a limited liability company organized under the laws of the State, as sponsor affiliate (collectively “Company”). All capitalized terms not specifically defined in this Amendment have the meaning as defined in the Fee Agreement between the County and the Company dated as of February 27, 2012 (“Agreement”);

WITNESSETH

WHEREAS, pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“Act”), the County and the Company entered into the Agreement;

WHEREAS, the Company has committed to make investments in qualified infrastructure, as described in Section 4-29-68, Code of Laws of South Carolina, 1976, as amended (“Infrastructure”);

WHEREAS, as authorized by Section 12-44-70 of the Act, the County, at the request of the County, desires to offer the Company a one-time credit (“Infrastructure Credit”) against the Company’s fee-in-lieu of tax payments made pursuant to the Fee Agreement to assist the Company in paying for the costs of the Infrastructure;

WHEREAS, pursuant to Section 12-44-40(K) of the Act and Section 12.09 of the Agreement, the County and the Company desire to amend the Fee Agreement to provide for the terms of the Infrastructure Credit;

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:

Section 1. Amendment to Agreement.

The Agreement is amended by adding the following as Section 5.01(c)(iii):

For the Negotiated FILOT Payment due on or before January [ ], 2014, the Company is entitled to a one-time Infrastructure Credit of \$35,000 against the Company’s Negotiated FILOT Payment calculated in accordance with Section 5.01(c)(ii). On receipt of an executed Indemnity Covenant from the Company in favor of the County, the substantially final form of which is attached as Exhibit A, the County shall prepare a bill for the Negotiated FILOT Payment due on or before January [ ], 2014 less the Infrastructure Credit.

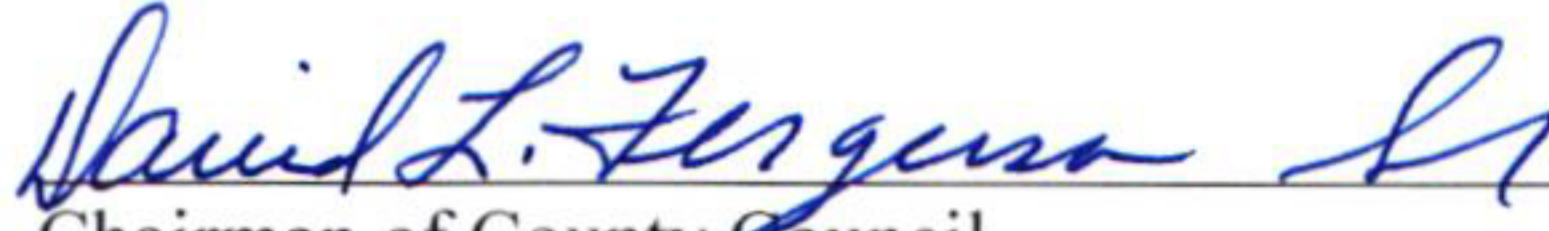
Section 2. Remainder of Agreement. Except as described in Section 1 of this Amendment, the Agreement remains unchanged and in full force. If a conflict exists between the Amendment and the Agreement, then this Amendment controls.

Section 3. Severability. This Amendment is not severable. 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 entire Amendment is invalid or unenforceable.

Section 4. 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.

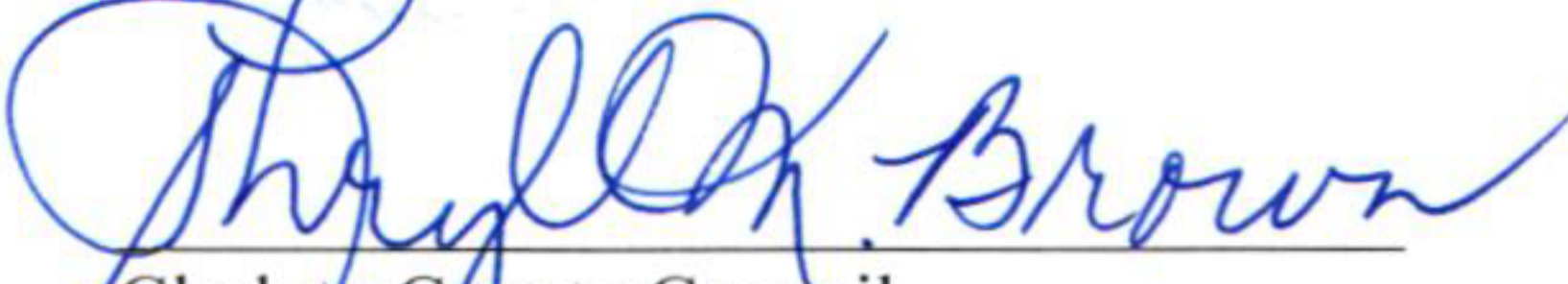
IN WITNESS WHEREOF, Fairfield County, South Carolina, has executed this Amendment by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council, and the Company has executed this Amendment by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

FAIRFIELD COUNTY, SOUTH CAROLINA

  
\_\_\_\_\_  
Chairman of County Council  
Fairfield County, South Carolina

(SEAL)

ATTEST:

  
\_\_\_\_\_  
Clerk to County Council  
Fairfield County, South Carolina

LANG MEKRA NORTH AMERICA, LLC

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

Its: \_\_\_\_\_

LANG MEKRA NORTH AMERICA PROPERTIES, LLC

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

Its: \_\_\_\_\_

## INDEMNITY COVENANT

**THIS INDEMNITY COVENANT**, effective, November 11, 2013, by Lang Mekra North America, LLC, a South Carolina limited liability company, and Lang-Mekra North America Properties, LLC, a South Carolina limited liability company (collectively, "Company") in favor of Fairfield County, South Carolina ("County"). All capitalized terms not specifically defined in this Indemnity Covenant have the meaning as defined in the Amendment to the Fee Agreement between the County and the Company dated of even date with this Indemnity Covenant ("Amendment").

### WITNESSETH

- A.** The Company requested the County to provide a one-time Infrastructure Credit to the Company to assist in paying the costs of certain Infrastructure;
- B.** The County and the Company entered into the Amendment to effect the grant of the Infrastructure Credit from the County to the Company, contingent on the following conditions:
  - i. The Company execute and deliver this Indemnity Covenant to the County and comply with the terms of this Indemnity Covenant; and
  - ii. The Company pay the County's costs and fees, including its Special Counsel's costs and fees, associated with the execution and delivery of the Amendment and grant of the Infrastructure Credit ("Transaction"), of not to exceed \$2500.

NOW, THEREFORE, in consideration of the County's execution and delivery of the Amendment:

(a) the Company, 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 Transaction. If such a claim is made against any Indemnified Party, then subject to the provisions of (b) below, the Company shall defend the Indemnified Party in any action or proceeding.

(b) Notwithstanding anything herein to the contrary, the Company is 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 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 notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(d) Following this notice, the Company shall resist or defend against any claim or demand, action or proceeding, at its expense, using counsel of its choice. The Company is 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 is 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.

[ONE SIGNATURE PAGE FOLLOWS]  
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IN WITNESS WHEREOF, Lang Mekra North America, LLC and Lang Mekra North America Properties, 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

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BY:  
ITS:

LANG-MEKRA NORTH AMERICA PROPERTIES, LLC

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BY:  
ITS: