

acquisition, construction and installation of the Project; (e) the expenses of the Company for tests, borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefore, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction and installation of the Project; (f) other costs that the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction and installation of the Project; (g) costs incurred by the Company for the acquisition and insuring of any interest in the land upon which the Project is located; (h) costs incurred for the Project by third parties on behalf of the Company; and (i) any sums required to reimburse the Company for advances made by it for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project, all whether or not reimbursed by the County or by third parties.

"County" means Fairfield County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"County Council" means the governing body of the County and its successors.

"Default" means an event or condition, the occurrence of which would, after the passage of any time permitted for cure or the giving of notice or both, become an Event of Default as defined in Section 7.1 hereof.

"Department of Revenue" means the South Carolina Department of Revenue or its successor agency.

"Equipment" means all equipment, machinery, furnishings, and other personal property of Company that are made part of the Project by placing it in service in the County during the Project Period, and any other property described in *Exhibit B* attached hereto and made a part hereof, including all Replacement Property that is personal property of the Company.

"Event of Default" means any of those events set forth in Article 7 of this Fee Agreement.

"Fair Market Value" shall have the meaning set forth in Section 5.1(B) of this Fee Agreement.

"Fee Agreement" means this Fee Agreement as originally executed and from time to time supplemented or amended as permitted herein.

"FILOT Payments" shall have the meaning set forth in Section 5.1 of this Fee Agreement.

"Independent Counsel" means an attorney duly admitted to practice law in the State of South Carolina who does not represent either party to this Agreement.

"Inducement Resolution" means the inducement resolution passed by County Council in which County committed to the economic development incentives provided for in this Fee Agreement.

"Ordinance" means the ordinance of the County Council that authorizes execution and delivery of this Fee Agreement and other applicable Related Documents by the County.

"Park" shall have the meaning set forth in Section 2.1(E) of this Fee Agreement.

"Person" means any individual, association, corporation, partnership, limited liability company, unincorporated organization, joint venture, trust, or government or agency or political subdivision thereof.

"Prime Rate" means the prime rate of interest as stated from time to time in *The Wall Street Journal*.

"Project" shall have the meaning set forth in the recitals hereof, as further defined herein, and shall specifically mean the Real Property and the Equipment.

"Project Period" means the five (5) year period beginning with the Commencement Date, together with any extension thereof pursuant to Section 12-14-30 (13) of the Act.

"Real Property" means the real property, if any, made part of the Project during the Project Period, including any leasehold improvements or other capital expenditures of the Company that qualify as Economic Development Property under the Act, as more fully described in *Exhibit A* attached hereto, as from time to time supplemented by the Company, and all Replacement Property that is real property.

"Related Documents" means this Fee Agreement, the Ordinance, and any documents to which the County and/or the Company are parties that are reasonably required for the consummation of the transactions contemplated hereby or thereby.

"Replacement Property" means all property that is placed in service as a replacement for a portion of the Project, to the maximum extent permitted by the Act.

"Special Source Revenue Credits" or **"SSRC"** shall have the meaning set forth in Section 5.1(C) of this Fee Agreement.

"State" means the State of South Carolina.

"Term" means the duration of this Fee Agreement.

1.2. References to Fee Agreement

The words "hereof," "herein," "hereunder" and other words of similar import refer to this Fee Agreement.

2. REPRESENTATIONS AND WARRANTIES

2.1. *Representations and Warranties by the County*

The County warrants that:

(A) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Fee Agreement and to carry out the County's obligations hereunder. The Project constitutes or will constitute a "project" within the meaning of the Act. By proper action by County Council, the County has been duly authorized to execute and deliver this Fee Agreement and the other Related Documents.

(B) Prior to the delivery of this Fee Agreement, the County has enacted the Ordinance.

(C) The execution and delivery of the Related Documents and compliance by the County with the terms and conditions thereof, will not constitute a material breach of, or a material default under any existing law, regulation, decree, or order, or any material agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound.

(D) To the best of its knowledge, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, that would materially, adversely affect the validity or enforceability of the Related Documents.

(E) The County and Richland County have heretofore established a multi-county industrial park in accordance with the provisions of Title 4, Chapter 1, Section 170 of the Code (the "Park") and the Project will be located in such Park.

2.2. *Representations and Warranties by Company*

The Company represents and warrants that:

(A) The Company is a limited liability company organized and in good standing under the laws of the State of South Carolina, is qualified to do business in the State of South Carolina, has power to enter into this Fee Agreement, and, by proper action, has been duly authorized to execute and deliver the Related Documents.

(B) The execution and delivery of the Related Documents and compliance by Company with the terms and conditions thereof, will not constitute a material breach of, or a material default under (i) any existing law, regulation, decree, or order, or (ii) any material term,

condition, or provision of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound; and will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company that would materially restrict the Company's ability to make any payments hereunder, other than as may be permitted by the Related Documents;

(C) No event has occurred and no condition exists with respect to the Company that would constitute an "Event of Default" as described in Section 7.1 hereof;

(D) The Company intends to operate the Project for the purposes permitted by this Fee Agreement or the Act or other purposes expressly agreed upon in writing by the parties;

(E) The execution of this Fee Agreement by the County and the Company has been instrumental in inducing the Company to expand its facility in the County and in the State;

(F) To the best of its knowledge, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal that would materially and adversely affect the validity or enforceability of the Related Documents.

3. CONSTRUCTION AND PURCHASE OF PROJECT

3.1. *Transfer of Project Property and Construction of Project*

The County shall transfer to the Company at no cost approximately 21 acres of land (the "Project Property") in the Park which is adjacent to the existing manufacturing facility and located within the County for the Project. A description of the Project Property is attached as Exhibit A.

Thereafter, the Company shall construct the Project and shall do all other things deemed necessary by the Company in connection with the Project. The Company shall identify in writing, to the extent required by the Department of Revenue, any portion of the Project placed in service that is not then already adequately described in this Fee Agreement or supplements thereto as a portion of the Project. The Company shall maintain such records in connection with the construction or acquisition of the Project as are reasonably necessary to (i) permit ready identification thereof and (ii) confirm the date(s) on which the Project or portions of the Project were placed in service.

3.2. *Completion Date*

Upon request by the County, the Completion Date(s) shall be evidenced to the County by a written statement by an Authorized Company Representative certifying the Completion Date and stating that, to the best of his knowledge and information, the acquisition or construction of the Project, or a phase thereof, has been completed and placed in service as of the stated Completion Date and shall state the total cost and the total number of jobs at the Project as of the Completion Date. The certificate of completion may state that it is given without prejudice to

any rights against third parties that exist at the date of such certificate or which may subsequently come into being.

3.3. *Completion of the Project*

The Company shall cause the Project to be completed and shall pay or cause to be paid all of the Cost of the Project, provided that this shall not be deemed to preclude financing of some or all of the Cost of the Project on such terms as the Company shall determine.

3.4. *Amendments to Exhibits*

The Company may supplement *Exhibit A* and *Exhibit B* from time to time provided that the supplements are consistent with the terms of this Fee Agreement and the Act and notice of such supplement is given to the County in accordance with the notice provisions of this Fee Agreement.

3.5. *Minimum Investment and Job Creation Commitment*

Before the Completion Date, the Company will invest at least Ten Million Five Hundred Thousand Dollars (\$10,500,000) in the Project and employ at least fifty (50) new employees.

3.6. *Licenses, Permits*

To the extent permitted by law, the County will waive all building and construction permit fees and will use its best efforts to assist the Company in securing all other state, county and local construction, environmental and other permits, approvals and consents which may be necessary or desirable in connection with the Project on a timely basis.

4. **TERM, FEES AND ADDITIONAL PAYMENTS**

4.1. *Term*

Subject to the provisions herein, this Fee Agreement shall be and remain in full force and effect for a term (the "Term") commencing on the Commencement Date (as defined in Section 1.1), and, unless earlier terminated in accordance with this Fee Agreement, ending at midnight on December 31 of the twentieth (20th) year after the last year during which any portion of the Project is placed in service.

4.2. *FILOT Payments*

The Company shall pay to the County all amounts due and payable as FILOT Payments pursuant to Section 5.1 hereof. Unless otherwise expressly provided in the Act, returns for the FILOT Payments shall be filed and FILOT Payments shall be payable at the same time that *ad valorem* property tax returns and tax payments for the Project would otherwise be due under applicable State law and regulations in the absence of this Fee Agreement.

4.3. *Additional Payments*

In addition to the Fee Payments and other amounts payable under Section 5.1, the Company shall pay, as "Additional Payments", to or on behalf of the County any Administrative Expenses, as defined in Section 1.1, above, and any other amounts payable by the Company under this Agreement, including without limitation any payments due under Section 6.10 hereof. Such Additional Payments shall be payable by the Company within forty-five (45) calendar days of receipt by the Company from the County of a statement in writing indicating in reasonable detail the amount of such Additional Payments and the reason they have been incurred or will be incurred within the next sixty (60) days.

4.4. *Failure to Pay in a Timely Manner*

If the Company fails to make in a timely manner any of the payments required in this Article 4, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, together with interest thereon (to the extent permitted by law) from the date the payment was due, at the rate per annum which is equal to the Prime Rate or, in the case of the FILOT Payments, an amount equal to any interest and penalties required by law for late payment of comparable *ad valorem* property taxes. In the event of any failure on the part of the Company to pay any such amounts, liabilities or obligations, the County shall have all rights, powers and remedies provided for herein, by law, equity or otherwise, including without limitation with respect to non-payment of fee payments hereunder the imposition and enforcement of a lien against the Project for tax purposes, as provided in Section 12-44-90 of the Act.

5. **FILOT PAYMENTS AND TAX CREDITS**

5.1. *FILOT Payments; Calculation and Timing*

(A) The parties acknowledge that during the Term of this Fee Agreement, the Project is exempt from *ad valorem* property taxes. However, in lieu of *ad valorem* property taxes, the Company shall make twenty (20) annual FILOT Payments for each portion of the Project placed in service each year during the Project Period.

(B) The amount of FILOT Payments due and payable shall be that which would be due in *ad valorem* property taxes if the Project were subject to *ad valorem* property taxes, but using (i) an assessment ratio of six percent (6%), (ii) a millage rate of 283.2 mills (which millage rate shall remain applicable throughout the Term of this Fee Agreement), and (iii) a fair market value of the Project Property to be determined according to the Act (the "Fair Market Value").

(C) The Company shall receive a credit equal to 25% of each of the Company's respective annual FILOT Payments pursuant to Section 12-44-70 of the Act to assist the Company with the costs of clearing, grading, and soil compaction of, and qualifying infrastructure for, the Project Property (the "Special Source Revenue Credit" or "SSRC").