

Council Members

District 2: Charlene McGriff, Chair

District 6: Allen Blackmon

District 5: Steve Harper

**County Attorney**

John K. DuBose III

Clerk to Council

Sherrie Simpson

July 21, 2020**10:00 AM****101 North Main Street
Lancaster, SC 29720**

**LANCASTER COUNTY
Administration Committee
County Council Chambers, County Administration Building, 101 North Main Street,
Lancaster, SC 29720**

AGENDA

1. Call to Order - Committee Chair Charlene McGriff**2. Approval of the Agenda***[deletions and additions of non-substantive matters]***3. Citizens Comments**

[While in-person Citizens Comments are not currently suspended, due to public health and safety considerations and the need for continued social distancing, the County is strongly encouraging citizen input and comments be submitted in writing prior to the meeting. Comments may be submitted via mail to ATTN: Sherrie Simpson, Post Office Box 1809, Lancaster, SC, 29721, email at ssimpson@lancastersc.net or by using the following link on our website where you can submit Citizens Comments online (look for the link on the right hand side of the page) - <https://www.mylancastersc.org/index.asp?SEC=DF11C6C4-BC53-4CD5-8A07-0847EAA1F478> Comments must be no longer than approximately 3 minutes when read aloud. Comments received will be acknowledged during the Citizens Comments portion of the meeting. Comments will need to be received prior to 4:00 p.m. on the day before the meeting. Please use the same link above in order to submit input/comments for Public Hearings.]

4. Approval of Minutes

- a. Approval of Minutes from the June 2, 2020 Administration Committee Regular Meeting

5. Discussion/Action Items

- a. Capital Improvement Plan Schedule/Update - Kim Belk
- b. Revised Organizational Chart - Alison Alexander
- c. Bailey Bill Revisions - Ashley Davis
- d. Inducement Resolution for CrossRidge Center Class A Office Spec Building

Resolution Title: A Resolution To State The Commitment Of Lancaster County To Enter Into A Fee Agreement With Crossridge Center, LLC, And/Or Its Designee Or Nominee; To Provide The General Terms Of The Fee Agreement Including The Provision Of Special Source Revenue Credits; To Provide That This Resolution Is An Inducement Resolution For Purposes Of The Fee In Lieu Of Tax Simplification Act; And To State The Commitment Of Lancaster County To Place Project Property In

A Multi-County Park. - ***Jamie Gilbert***

e. Ordinance for CrossRidge Center Class A Office Spec Building

Ordinance Title: An Ordinance To Authorize The Execution And Delivery Of A Fee Agreement By And Between Lancaster County And Crossridge Center, LLC, Providing For The Payment Of A Fee-In-Lieu Of Taxes And The Provision Of Special Source Revenue Credits; And To Express The Intention Of Council To Provide Monies To The Economic Development Fund. - ***Jamie Gilbert***

f. Ordinance 2020-1677 regarding an Update to the Procurement Code

Ordinance Title: An Ordinance To Amend The Lancaster County Procurement Code, So As To Include Additional Legal Construction Project Delivery Methods, Add Cooperative Purchasing As An Allowed Procurement Method, And Provide Clarity On Existing Procurement Procedures - ***Cathy McDaniel***

g. Discussion of UV Light HVAC Disinfecting System - Steve Willis

6. **Adjournment**

Anyone requiring special services to attend this meeting should contact 285-1565 at least 24 hours in advance of this meeting. Lancaster County Administration Committee agendas are posted at the Lancaster County Administration Building and are available on the Website: www.mylancastersc.org

Agenda Item Summary

Ordinance # / Resolution #: N/A

Contact Person / Sponsor: Chelsea Gardner/Deputy Clerk to Council

Department: County Clerk

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

Approve or amend the minutes from the June 2, 2020 Administration Committee regular meeting.

Points to Consider:

The minutes from the June 2, 2020 Administration Committee meeting are attached for the Committee's review and approval.

Funding and Liability Factors:

N/A

Options:

The Committee can approve or amend the minutes.

Recommendation:

Approve the minutes as written.

ATTACHMENTS:

Description

Upload Date

Type

Draft Minutes from the 6-2-2020 Administration Committee Regular Meeting

7/16/2020

Backup Material

Council Members

District 2: Charlene McGriff, Chair
District 6: Allen Blackmon
District 5: Steve Harper

**County Attorney**

John K. DuBose III

Clerk to Council

Sherrie Simpson

June 2, 2020

10:00 AM

101 North Main Street
Lancaster, SC 29720

**LANCASTER COUNTY
Administration Committee
County Council Chambers, County Administration Building, 101 North Main Street,
Lancaster, SC 29720**

MINUTES

DRAFT

Committee members present at the Administration Committee regular meeting were Allen Blackmon, Charlene McGriff and Steve Harper. Also present at the Committee meeting were Council member Larry Honeycutt, County Administrator Steve Willis, Deputy County Administrator Alison Alexander, Clerk to Council Sherrie Simpson, Chief Financial Officer Veronica Thompson, Budget Director Kim Belk, EMS Director Clay Catoe, Information Technology Director Devin Allman, various Department Heads, various staff, various Elected Officials and the press. A quorum of the Lancaster County Administration Committee was present for the meeting.

The following press were notified of the meeting by e-mail in accordance with the Freedom of Information Act: *The Lancaster News*, *Kershaw News Era*, *The Rock Hill Herald*, Cable News 2, Channel 9 and the local Government Channel. The agenda was posted in the lobby of the County Administration building and also on the County website for the required length of time.

Call to Order - Committee Chair Charlene McGriff

Committee Chair Charlene McGriff called the Administration Committee meeting to order at approximately 10:00 a.m.

Approval of the agenda

Charlene McGriff asked for a motion to approve the agenda and Steve Harper so moved. The motion was seconded by Allen Blackmon. The Committee approved the agenda by unanimous vote of 3-0.

Citizens Comments

There were not any citizens who submitted written comments for Citizens Comments and no one signed up to speak during Citizens Comments.

Approval of Minutes

Steve Harper moved to approve the minutes from the May 1, 2020 Administration Committee regular meeting. The motion was seconded by Allen Blackmon. There was no further discussion. The Administration Committee approved the May 1, 2020 Administration Committee regular meeting minutes by unanimous vote of 3-0.

Discussion/Action Items

a. Monthly Budget Report - Kim Belk

Budget Director, Kim Belk, reviewed the Budget Report for the Month of May 2020 and that Report is on file with the written minutes in the Clerk to Council's office and is attached to those minutes as Schedule A.

b. Award Contract for External Auditing Services - Veronica Thompson

Chief Financial Officer, Veronica Thompson, stated that fiscal year 2019 was the final audit for a three year contract with Mauldin & Jenkins, LLC. Finance issued a Request for Proposal (RFP) for auditing services in April and received two responses. The proposals were based upon independence and they also had to be licensed to practice in South Carolina. They also could not have any conflict of interest with any of the work performed for the County. They had to adhere to the instructions of the RFP and also had to submit a copy of their last external quality peer review.

An evaluation Committee met on May 15, 2020 and went over each proposal. The scores were based upon technical quality and price. The proposals that were received were from Faulkner and Thompson, PA, out of Rock Hill and Mauldin & Jenkins, LLC, out of Columbia. Mauldin & Jenkins, LLC is the former auditor and they submitted another proposal. Based on the evaluations of both firms, the committee would advise Council to recommend awarding the contract to Mauldin & Jenkins, LLC. Veronica Thompson noted that they had the highest score and that they are a large firm specializing in governmental agencies.

Steve Harper recommended that Council approve entering into an auditing service contract with Mauldin & Jenkins, LLC. The motion was seconded by Allen Blackmon. Committee Chair Charlene McGriff asked if all were in favor and all members raised their hands. Charlene McGriff stated that the motion carried to send to full Council with a favorable recommendation.

c. Kershaw Library Construction Update regarding the Sewer Line - Steve Willis

County Administrator, Steve Willis, stated that the reason that the meeting was not being streamed today was because the two employees responsible for streaming were already committed to videoing Lancaster County graduations.

Steve Willis explained that there was an issue at the Kershaw branch Library where there was a sewer line that was not on any plat or map. The town of Kershaw didn't know it was there and it was under where the meeting room addition was going to be built. Steve Willis explained the three options that Council had to choose from. The details of the three options can be found on the agenda summary in the June 2, 2020 Administration Committee Meeting packet.

Allen Blackmon made the motion that they fund the thirty-seven thousand dollars (\$37,000.00) for the Town of Kershaw, with that being the max and if it is more than that they will have to come up with the difference, to move the sewer line. The motion was seconded by Steve Harper. The motion passed by a vote of 3-0. Committee Chair Charlene McGriff stated that the motion carried with a positive recommendation to full Council.

d. Remote Work Policy - Alison Alexander

Deputy Administrator, Alison Alexander, briefly explained the remote work policy to the Committee members and how it was an outgrowth of the COVID-19 emergency. In March, the Information Technology (IT) Department was able to do a quick roll out of about fifty laptops to various departments to supplement the existing laptops in the fleet. At any given week, there were between 75-100 employees who were able to work remotely from home.

The policy provides a clear expectation to both the employee and the supervisor. She explained that they received very good feedback from the departments working remotely during the pandemic of COVID-19.

The Committee discussed the pros and cons of the policy.

Allen Blackmon stated that he would personally like to make the motion to take to full Council with a positive recommendation.

The Committee discussed the reasons why it should or should not be sent to full council with a positive recommendation.

Allen Blackmon withdrew his motion due to no second.

Steve Harper made a recommendation to send to full Council with no recommendation. The motion was seconded by Allen Blackmon. The motion passed by a vote of 3-0.

e. Removal of Cap on Annual Leave - Steve Willis/Alison Alexander

Deputy Administrator, Alison Alexander, stated that this was, again, a request from the outgrowth of the COVID-19 emergency. There were a lot of employees who were not able to take vacation as they normally would or use their leave for other activities and they are expecting to have another impact from COVID-19 as the year goes on. They are requesting that the cap of annual leave accumulation be removed for the year of 2020.

Allen Blackmon made the motion to send to full Council with a favorable recommendation. The motion was seconded by Steve Harper. The motion to send to full Council with a favorable recommendation passed by a vote of 3-0.

f. EMS IT Support Update - Alison Alexander/Clay Catoe/Devin Allman

The Committee and staff discussed the IT Department's support of the EMS Department and the need for a data manager position at EMS.

Steve Harper recommended that they send a favorable recommendation to full Council for the data manager position. The motion was seconded by Allen Blackmon. The motion passed by a vote of 3-0.

Executive Session

a. One Item:

1. Discussion of compensation of personnel. SC Code 30-4-70(a)(1).

At 11:49 a.m., Allen Blackmon made the motion to go into Executive Session. The motion was seconded by Steve Harper. The motion to go into Executive Session passed by a vote of 3-0.

At 12:30 p.m., Allen Blackmon made the motion to come out of Executive Session. The motion was seconded by Steve Harper. The motion to come out of Executive Session passed by a vote of 3-0.

Steve Willis noted, for the record, that during Executive Session, a personnel matter was discussed. He noted that no votes were taken and no action was taken.

Adjournment

Allen Blackmon moved to adjourn the Administration Committee meeting. The motion to adjourn passed by unanimous vote of 3-0. There being no further business, the Administration Committee meeting adjourned at approximately 12:30 p.m.

DRAFT

Agenda Item Summary

Ordinance # / Resolution #: N/A

Contact Person / Sponsor: Kimberly Belk/Finance

Department: Finance

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

Planned update for the Capital Improvement Plan (CIP).

Points to Consider:

Per discussions at previous Council meetings, we are working on an updated CIP. Staff has come up with procedures and a schedule that should yield a plan which will hopefully be more strategic than in the past. By considering all capital needs as a whole, assessing fiscal capacity, planning for debt issuance, and understanding impact on reserves and operating budgets prior to adoption, we can propose a capital plan that is achievable within expected available resources.

Now that budget staff has wound down the FY2021 Budget process, we will be devoting the majority of our time over the next several months to this project. Attached is a summary of the process and estimated timeframe for completion. We have already begun by hiring a consultant over the last 6 months to help us prioritize and estimate facility needs. COVID-19 had slightly delayed those results, but we are anticipating that study will be coming to Council in the next month. The use of a consultant in this capacity should assist in both our estimations to be used in the CIP as well as our prioritization of projects. That being said, facilities are only one type of capital expense that can be included in CIPs. We will also be incorporating infrastructure/transportation, technology, and large equipment into our plan by utilizing department heads. They will be expected to submit internally requests for inclusion in the CIP. This is similar to how we run our budget request process. Our threshold for CIP projects are those over \$100,000. We will expect department heads to verify cost estimates they provide on project submissions with a third party. Once we have their project proposals, we will combine them with the results of the study and come up with a more comprehensive document for internal evaluation/ranking.

In our previous process, we left room for improvement on the project evaluation. We intend to address this by having an objective staff committee established to rank the importance of these projects based on criteria such as impact on public health/safety, asset preservation - Capital assets that require renewal or replacement based on capital asset life cycle, and service/asset expansion/infrastructure improvements needed to support government's policies. Steve and Alison along with other executive staff will make up the Committee on Capital Projects to help rank both the facilities' needs and other capital submissions. Finance can then determine, based on funding sources available, the feasible time frames to assign to the projects. This will allow financing strategies to align with expected project requirements while sustaining the financial health of the government.

Funding and Liability Factors:

This process will be a pivotal part of our long-term financial strategy.

Options:

This is for discussion only to provide Administration Committee with the process and schedule for the update presentation to full Council.

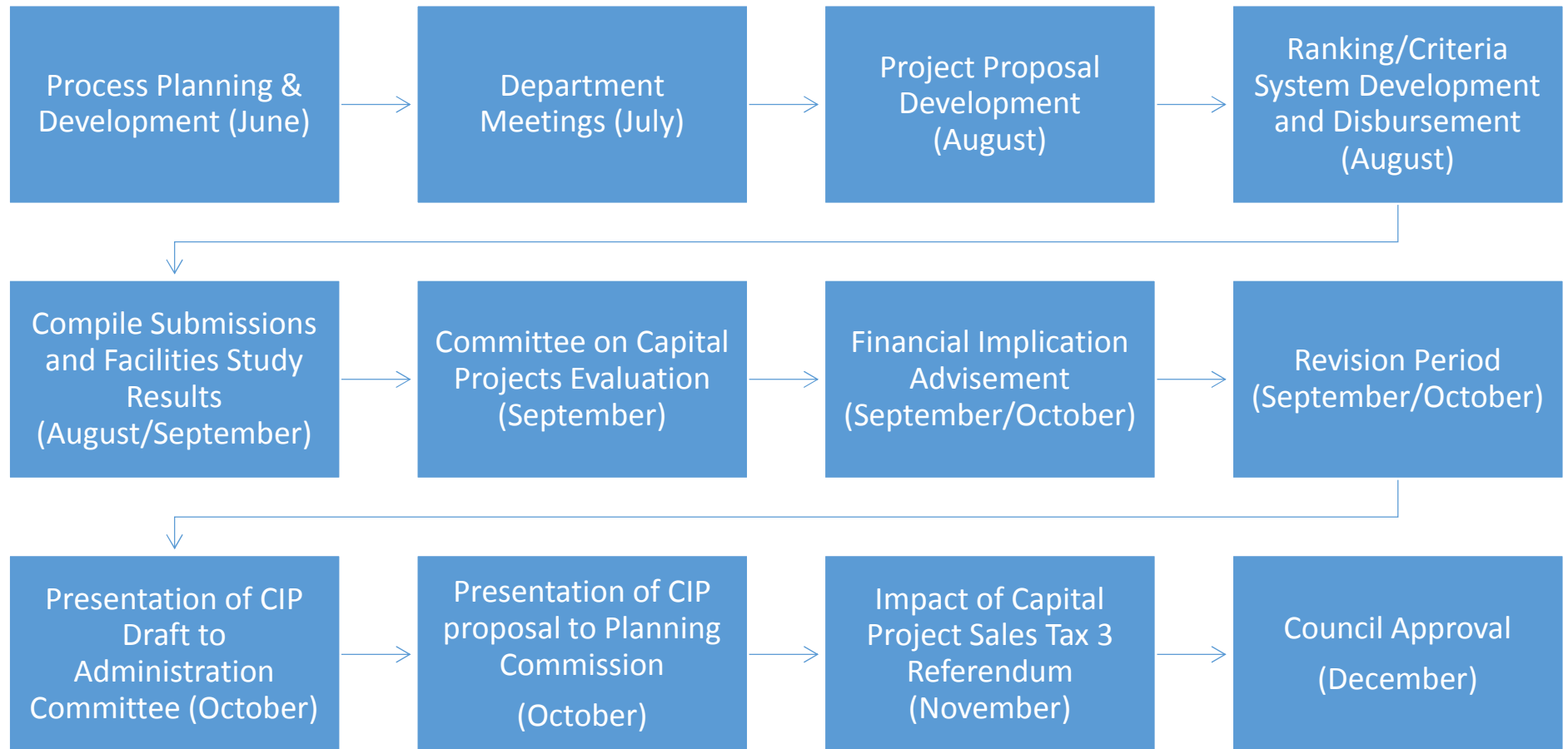
Recommendation:

N/A

ATTACHMENTS:

Description	Upload Date	Type
CIP Process Flow	7/13/2020	Backup Material

Capital Improvement Plan Update Process Model



Agenda Item Summary

Ordinance # / Resolution #: N/A

Contact Person / Sponsor: Alison Alexander/Deputy County Administrator

Department: Administration

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

In August 2019 Council approved an update to the Organization Chart. Another update is required to reflect the following changes:

1. Change the Airport Commission to an Advisory Board
2. Add the Keep Lancaster Beautiful Advisory Board
3. Remove the UDO Advisory Board
4. Add the Trails Advisory Board
5. Combine the Planning and Zoning Departments into one department within the Development Services Division
6. Move GIS from a function of Public Safety Communications to a department the General Services Division.
7. Move Records as a function of the Register of Deeds to a function of Delinquent Tax

Points to Consider:

The update organizational chart provides clarification of existing functions and board and commission changes made by Council.

Funding and Liability Factors:

There are no costs associated with the changes.

Options:

n/a

Recommendation:

To recommend approval, as presented.

ATTACHMENTS:

Description	Upload Date	Type
Revised Org Chart 07.2020	7/13/2020	Backup Material

Citizens of Lancaster County, South Carolina

Lancaster County Council

**Elected
Officials**

**S.C. Legislative
Delegation
Appointments**

**Boards &
Commissions**

- Accommodations Tax
- Airport Advisory
- Assessment Appeals
- Community Relations
- Construction Appeals
- Economic Dev. Advisory Bd.
- Fire Appeals
- Fire Commission *
- Forfeited Land Commission
- Health & Wellness
- Historical Commission
- Library Board *
- Parks & Rec. Advisory Comm.
- Planning Commission
- Stormwater Advisory
- Trails Advisory
- Zoning Appeals

Administrator / Deputy Administrator

Development Services Division (Director)	General Services Division	Financial Services Division (CFO)	Public Services Division (Director)	Public Safety Division	Judicial Services Division (Clerk of Court)
<ul style="list-style-type: none"> • Building Inspections • Planning & Zoning • Stormwater/Engineering 	<ul style="list-style-type: none"> • GIS • Human Resources • Information Technology • Parks & Recreation • Procurement • Risk Management 	<ul style="list-style-type: none"> • Assessor • Delinquent Tax Collector/Records • Finance Department • Register of Deeds • Liaison with: <ul style="list-style-type: none"> ○ Auditor ○ Treasurer 	<ul style="list-style-type: none"> • Airport • Animal Shelter • Building Maintenance • Fleet Maintenance • Project/ Facilities Mgmt. • Roads & Bridges • Solid Waste • Liaison with: <ul style="list-style-type: none"> ○ Transportation 	<ul style="list-style-type: none"> • EMD / Fire • Emergency Medical Services • Public Safety Communications 	<ul style="list-style-type: none"> • Liaison with: <ul style="list-style-type: none"> ○ Circuit Court ○ Family Court ○ Probate Court ○ Magistrate's Court ○ Public Defender ○ Solicitor ○ Juvenile Justice ○ Probation, Parole & Pardon
Liaison with: Clemson Extension, Coroner, Election/ Voter Registration, Health Department, Library, Sheriff, Social Services, Soil & Water, Veterans Affairs					

SC State Agencies:

Clemson Extension, Health Department, Probation, Parole & Pardon, Public Defender, Social Services, Soil & Water Conservation

Auditor *

Clerk of Court *

Coroner *

Probate Judge *

Sheriff *

Solicitor *

Treasurer *

- Election Commission *
- Voter Registration *
- Magistrate's Court *
- Transportation Committee
- Veteran's Officer *

** Council has partial budgetary and/or policy authority*

Agenda Item Summary

Ordinance # / Resolution #: Ordinance 2020-TBD
Contact Person / Sponsor: Ashley Davis / Planning
Department: Planning
Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

Revisions to the Lancaster County Bailey Bill:

The purpose of this ordinance is primarily to promote the availability of affordable low and moderate income housing, and to encourage the rehabilitation of historic properties by providing tax incentives to properties which meet all requirements laid out in the ordinance.

Points to Consider:

Ordinance No. 2019-1580 was previously approved by County Council on April 29th, 2019. These revisions correct a few minor errors from the previous ordinance and attempt to clarify the process necessary to receive the tax incentive.

Funding and Liability Factors:

This ordinance, as written, would hold the assessment value of any property deemed eligible at the pre-rehabilitation value for a period of 20 years.

Options:

Recommendation:

ATTACHMENTS:

Description	Upload Date	Type
Memo: Bailey Bill	7/13/2020	Exhibit
Proposed Updated Ordinance with changes noted	7/13/2020	Ordinance
Proposed Updated Ordinance 2020-TBD without changes noted	7/14/2020	Ordinance



DATE: 7/13/2020

TO: COUNTY COUNCIL

FROM: ASHLEY DAVIS, PLANNER

RE: BAILEY BILL ORDINANCE

Enacted in 1992, the Bailey Bill allows local governments in South Carolina to offer a property tax abatement to encourage the rehabilitation of historic and low income properties. For a period of no more than 20 years, the local government can lock in a special property tax assessment based on the property's fair market value prior to rehabilitation.

This allows the property owner to avoid local property tax payments on the increased value resulting from eligible renovations. The abated value is the difference between the fair market value of the building at the start of renovation and the fair market value of the building after renovation.

On April 29, 2019, Lancaster County Council approved our own adaptation of the Bailey Bill. After careful review, a few revisions have been made to our local ordinance. These revisions correct a few minor errors from the previous ordinance and attempt to clarify the process required to receive the tax incentive. At this time, South Carolina Department of Archives and History will act as the primary reviewer on all properties applying for the tax abatement through the historic process. Lancaster County will be the primary reviewer with assistance from the Lancaster Housing Authority for low and moderate income properties.

It is ideal for the county and municipalities within the county to adopt identical ordinances, allowing property owners to maximize benefits by abating a portion of both city and county taxes. Following our revisions the City of Lancaster intends to adopt this ordinance as well.

Please feel free to contact me at 416-9433 should you have any questions.

STATE OF SOUTH CAROLINA

)

ORDINANCE NO. 2019-1580

)

COUNTY OF LANCASTER

)

~~Indicates Matter Stricken~~

Indicates New Matter

AN ORDINANCE

TO ADOPT ARTICLE 2 OF CHAPTER 28 OF THE LANCASTER COUNTY CODE OF ORDINANCES RELATED TO REHABILITATED HISTORIC/ LOW AND MODERATE INCOME PROPERTIES AND TO PROVIDE FOR MATTERS RELATED THERETO.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Amendment of County Code.

Article 2 of Chapter 28 of the Lancaster County Code of Ordinances is amended as follows:

Article II. Rehabilitated Historic/ Low And Moderate Income Properties

Sec. 28-21. Special Tax Assessment Created.

Pursuant to the authority granted to Lancaster County by S.C. Code §4-9-195, a special tax assessment is created for eligible rehabilitated historic properties or low and moderate income rental property for a period of twenty (20) years equal to the assessed value of the property at the time of preliminary certification.

Sec. 28-22. Purpose.

It is the purpose of this Article to:

- (1) Encourage the rehabilitation of historic properties;
- (2) Promote community development and redevelopment;
- (3) Promote the availability of affordable low and moderate income housing;
- (4) Encourage sound community planning; and
- (5) Promote the general health, safety, and welfare of the community.

Sec. 28-23. Eligible Historic Properties.

(a) Certification as Historic Property. In order to be eligible for the special tax assessment, historic properties must receive preliminary and final certification.

(1) Preliminary certification. To receive preliminary certification a property must meet the following conditions:

- a. The property meets the requirements for historic designation as established in this section.
- b. The proposed rehabilitation work receives a recommendation of approval from the appropriate architectural reviewing authority (hereinafter "reviewing authority") and is consistent with the rehabilitation standards as set forth in this article. The reviewing authority shall review all proposed improvements associated with the rehabilitation and make a recommendation to the county regarding the project's eligibility. The approval will be issued to the property owner by the reviewing authority, and a copy will be sent to the county if

requested. For the purpose of this article, the reviewing authority shall be defined as follows:

1. In any municipality that has an architectural review board, the municipal board shall serve as the reviewing authority.
2. In the unincorporated areas of the county, and within any municipality that does not have an architectural review board, the South Carolina Department of Archives and History shall serve as the reviewing authority for historic properties.

c. Be a project that commenced by or after January 1, 2018 through the date of the adoption of this ordinance and work was permitted to have begun prior to receiving preliminary certification, or

d. Be a project that commences on or after the date of the adoption of this ordinance.

(2) Final certification. To be eligible for final certification, a property must have met the following conditions:

a. The property has received preliminary certification.

b. The minimum expenditures for rehabilitation as set forth in this article have been incurred and paid.

c. The completed rehabilitation receives a recommendation for approval from the reviewing authority as being consistent with the plans approved by the reviewing authority during preliminary certification.

d. All application fees have been paid in full by the applicant. The application fee is \$150 for single family residences or duplexes and \$300 for all other properties. The fee is due at the time of the application and checks should be made payable to the reviewing authority.

e. The property has met all other requirements of this article.

~~(b) Historic designation. In order to be eligible for the special tax assessment, the property must meet one of the following criteria:~~

~~(1) The property must be listed on the National Register of Historic Places either individually or as a contributing property in a district; or~~

~~(2) The property is designated as a historic property by the County Council based upon criteria established by the County Council and the property is at least fifty (50) years old.~~

~~(c) Historic Property Criteria. In order to be eligible for the special tax assessment, the property must meet one of the following criteria:~~

~~(1) Any property included in one of the categories below is considered a Historic Property:~~

~~a. Listed on the National Register of Historic Places;~~

~~b. Determined eligible for the National Register by the South Carolina Department of Archives and History;~~

~~c. A contributing property in a National Register Historic District;~~

~~d. Qualifying for and having a South Carolina Historic Marker; or~~

~~e. Is designated as a Historic by Lancaster County Council or their designee. Location in an area designated by the local government as a Historic District Rehabilitation Area and the property is at least fifty (50) years old.~~

~~(2) All other properties must demonstrate:~~

~~a. Association with events that have made a significant contribution to the broad patterns of our history; or~~

~~b. Association with the lives of significant persons in our past; or~~

~~c. Embodiment of distinctive characteristics of a type, period, or method of construction; or representation of the work of a master; or possession of high artistic values; and~~

d. the property is at least fifty (50) years old.

Property owners seeking eligibility as historic property under subsection (2) must receive a historic property determination by filing an application with the Lancaster County Council.

Sec. 28-24. Eligible Low and Moderate Income Rental Properties.

(a) Certification as Low and Moderate Income Rental Property. In order to be eligible for the special tax assessment, Low and Moderate Income Rental properties must receive preliminary and final certification.

(1) Preliminary certification. To receive preliminary certification a property must meet the following conditions:

- a. The property meets the requirements for low and moderate income rental property as established in this section.
- b. The proposed rehabilitation work receives a recommendation of approval from the appropriate architectural reviewing authority (hereinafter "reviewing authority") and is consistent with the rehabilitation standards as set forth in this article. The reviewing authority shall review all improvements associated with the rehabilitation and make a recommendation to the county regarding the project's eligibility. For the purpose of this article, the reviewing authority shall be defined as follows:

1. In any municipality that has an architectural review board, the municipal board shall serve as the reviewing authority.
2. In the unincorporated areas of the county, and within any municipality that does not have an architectural review board, the Lancaster Housing Authority shall serve as the reviewing authority for low and moderate income rental properties.

- c. Be a project that commenced by or after January 1, 2018 through the date of the adoption of this ordinance and work was permitted to have begun prior to receiving preliminary certification, or
- d. Be a project that commences on or after the date of the adoption of this ordinance.

(2) Final certification. To be eligible for final certification, a property must have met the following conditions:

- a. The property has received preliminary certification.
- b. The minimum expenditures for rehabilitation as set forth in this article have been incurred and paid.
- c. The completed rehabilitation receives a recommendation for approval from the reviewing authority as being consistent with the plans approved by the reviewing authority during preliminary certification.
- d. All application fees have been paid in full by the applicant. ~~The application fee is \$150 for single family residences or duplexes and \$300 for all other properties. The fee is due at the time of the application and checks should be made payable to the reviewing authority.~~

e. The property has met all other requirements of this article.

(b) Low and Moderate Income Rental designation. In order to be eligible for the special tax assessment, the property must meet one of the following criteria:

- (1) The property provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937 and amended by the Housing and Community Act of 1974 for low and moderate income families and persons as defined by Section 31-13-170(p); or
- (2) In the case of income-producing real property, the expenditures for rehabilitation exceed the appraised value of the property; and

- (3) The low and moderate income housing rehabilitation is located in an area designated by the local government as a Low and Moderate Housing Rehabilitation District; and
- (4) The owner or estate of any property certified as "low and moderate income rental property" takes no actions which cause the property to be unsuitable for such a designation. The county governing body granting the initial certification has the authority to decertify property in these cases, and the property becomes immediately ineligible for the special tax assessments provided for this type of property; and
- (5) If the property qualifies as "historic" as defined in Section 28-23, then the rehabilitation work must be approved by the appropriate reviewing authority as provided in Section 28-23.

Sec. 28-25. Eligible rehabilitation for historic properties.

(a) Standards for rehabilitation. To be eligible for the special tax assessment, historic rehabilitations must be conducted according to the following standards:

- (1) The historic character of a property shall be retained and preserved. The removal of historic materials or alterations or of features and spaces that characterize each property shall be avoided.
- (2) Each property shall be recognized as a physical record of its time, place, ~~and use,~~ and period of significance. Changes that create a false sense of historical development shall not be undertaken.
- (3) Most properties change over time. Those changes that have acquired historic significance in their own right shall be retained and preserved.
- (4) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property should be preserved.
- (5) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- (6) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (7) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the historic property and its environment.
- (8) New additions and adjacent new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(b) Work to be reviewed. The following work will be reviewed according to the standards set forth above:

- (1) Repairs to the exterior of the designated building.
- (2) Alterations to the exterior of the designated building.
- (3) New construction on the property on which the building is located, including site work.
- (4) Alterations to interior primary public spaces, as defined by the reviewing authority.
- (5) Any remaining work where the expenditures for such work are being used to satisfy the minimum expenditures for rehabilitation, including, but not limited to, alterations made to mechanical, plumbing and electrical systems.

(c) Minimum expenditures for rehabilitation. To be eligible for the special property tax assessment, the owner or the owner's estate must meet the minimum expenditures for rehabilitation:

- (1) The minimum investment shall be twenty percent (20%) of the fair market value of the building which is to be rehabilitated.
- (2) Fair market value means the appraised value as certified to the county by a real estate appraiser licensed by the State of South Carolina, the sales price as delineated in a bona fide contract of sale within twelve months of the time it is submitted, or the most recent appraised value published by the ~~Lancaster~~ Richland County Tax Assessor.
- (d) Expenditures for rehabilitation means the actual cost of rehabilitation relating to one or more of the following:
 - (1) Improvements located on or within the historic building as designated.
 - (2) Improvements outside of but directly attached to the historic building which are necessary to make the building fully useable (such as vertical circulation) but shall not include rentable/habitable floor space attributable to new construction.
 - (3) Architectural and engineering services attributable to the design of the improvements.
 - (4) Costs necessary to maintain the historic character or integrity of the building.
- (e) Scope. The special tax assessment may apply to the following:
 - (1) Structure(s) rehabilitated;
 - (2) Real property on which the building is located.
- (f) Time limits. If the project is not complete after two (2) years, but the minimum expenditures for rehabilitation have been incurred, the property continues to receive the special assessment until the project is completed.

Sec. 28-26. Eligible rehabilitation for low and moderate income rental properties.

(a) Standards for rehabilitation. To be eligible for the special tax assessment, low and moderate income rental rehabilitations must be conducted according to the following standards:

- (1) All applicable code requirements, such as the International Building Code, the International Property Maintenance Code, et.al., must be met at the time of initial certification and compliance must be maintained throughout the special tax period.

(b) Work to be reviewed. The following work will be reviewed according to the standards set forth above:

- (1) Repairs to the exterior of the designated building.
- (2) Alterations to the exterior of the designated building.
- (3) New construction on the property on which the building is located, including site work.
- (4) Any remaining work where the expenditures for such work are being used to satisfy the minimum expenditures for rehabilitation, including, but not limited to, alterations made to mechanical, plumbing and electrical systems.

(c) Minimum expenditures for rehabilitation. To be eligible for the special property tax assessment, the owner or the owner's estate must meet the minimum expenditures for rehabilitation:

- (1) The minimum investment shall exceed the fair market value of the building which is to be rehabilitated.
- (2) Fair market value means the appraised value as certified to the county by a real estate appraiser licensed by the State of South Carolina, the sales price as delineated in a bona fide contract of sale within twelve months of the time it is submitted, or the most recent appraised value published by the Lancaster County Tax Assessor.
- (d) Expenditures for rehabilitation means the actual cost of rehabilitation relating to one or more of the following:

- (1) Improvements located on or within the rental property as designated.
- (2) Architectural and engineering services attributable to the design of the improvements.
- (e) Scope. The special tax assessment may apply to the following:
 - (1) Structure(s) rehabilitated;
 - (2) Real property on which the building is located.
- (f) Time limits. If the project is not complete after two (2) years, but the minimum expenditures for rehabilitation have been incurred, the property continues to receive the special assessment until the project is completed.

Sec. 28-27. Process for Historic Properties.

- (a) Fee required. ~~There is a fee required for the preliminary certification. of \$150 for single family residences or duplexes and \$300 for all other properties~~ review of rehabilitation work during the final certification process. Final certification of the property will not be given until the fee has been paid in full by the applicant. Fees shall be established in the Lancaster County Annual Budget document.
- (b) Plan required. Owners of property seeking approval of rehabilitation work must submit a completed rehabilitation of property application with supporting documentation to ~~the Building Official or his designee~~ the reviewing authority prior to beginning work. Rehabilitation work conducted prior to approval of the application is done so at the risk of the property owner and may disqualify the property from eligibility for the special tax assessment.
- (c) Preliminary certification. Upon receipt of the completed application, ~~the Building Official or his designee shall submit the plan to~~ the reviewing authority shall issue for a recommendation as to whether the project is consistent with the standards for rehabilitation. Upon receipt of the reviewing authority's recommendation, the county administrator or designee shall notify the owner in writing. Upon receipt of this determination, the property owner may:
 - (1) If the application is approved, begin rehabilitation;
 - (2) If the application is not approved, he/she may revise such application in accordance with comments provided by reviewing authority.
- (d) Substantive changes. Once preliminary certification is granted to an application, substantive changes must be approved in writing by the county administrator or designee. Any substantive changes made to the property during rehabilitation that are not approved by county administrator or designee, upon review and recommendation of the reviewing authority, are conducted at the risk of the property owner and may disqualify the project from eligibility during the final certification process.
- (e) Final certification. Upon completion of the project, the property must receive final certification in order to be eligible for the special assessment. The reviewing authority shall inspect completed project photographs to determine if the work is consistent with the approval recommended by the reviewing authority and granted by the county during preliminary certification. The review process for final certification shall be established by the reviewing authority and may include a physical inspection of the property. The reviewing authority shall notify the applicant in writing of its recommendation. If the applicant wishes to appeal the reviewing authority's recommendation, the appeal must follow the reviewing authority's appeals process. The county administrator or designee may grant final certification only if the following conditions have been met:
 - (1) The completed work meets the standards for rehabilitation as established in this article;
 - (2) Verification is made that the minimum expenditures have been incurred in accordance with the provisions of this article; and
 - (3) Any fee(s) shall be paid in full.

Upon receiving final certification, the property will be assessed for the remainder of the special assessment period on the fair market value of the property at the time the preliminary certification was made or the final certification was made, whichever occurred earlier.

(f) Additional work. For the remainder of the special assessment period after final certification, the property owner shall notify the county administrator or designee of any additional work, other than ordinary maintenance, prior to the work beginning. The reviewing authority shall review the work and make a recommendation to the county administrator or designee whether the overall project is consistent with the standards for rehabilitation. The county administrator or designee shall notify the property owner in writing if the overall project is consistent with the standards for rehabilitation. If the additional work is found to be inconsistent by the reviewing authority, the county administrator or designee shall notify the owner in writing within thirty (30) days of its decision to rescind approval. The property owner may withdraw his/her request and cancel or revise the proposed additional work to the satisfaction of the county administrator or designee.

(g) Notification. Upon final certification of a rehabilitated historic property ~~or low and moderate income rental property~~, the Lancaster County Assessor, Auditor, and Treasurer shall be notified by the county administrator or designee that such property has been duly certified and is eligible for the special tax assessment.

(h) Application. Once the final certification has been granted, the owner of the property shall make application to the Lancaster County Auditor for the special assessment provided for herein. The special assessment shall remain in effect for the length of the special assessment period, unless the property shall become decertified under the provisions of this section.

(i) Date effective. If an application for preliminary or final certification is filed on or before May 1st or the preliminary or final certification is approved on or before August 1st, the special assessment authorized herein is effective for that year. Otherwise, it is effective beginning with the following year. The special assessment only begins in the current or future tax years as provided for in this section. The special assessment period shall not exceed twenty (20) years in length, and in no instance may the special assessment be applied retroactively.

~~(j) Previously certified properties. A property certified to receive the special property tax assessment under the existing law continues to receive the special assessment in effect at the time certification was made.~~

(k) Decertification. Once the property has received final certification and assessed as rehabilitated historic property, it remains so certified and must be granted the special assessment until the property becomes disqualified by any one of the following:

- (1) Written notice from the owner to the Lancaster County Auditor requesting removal of the special assessment;
- (2) Removal of the historic designation by the County Council based upon noncompliance of the criteria established in this Article; or
- (3) Rescission of the approval of rehabilitation by the county, at the recommendation of the reviewing authority, because of alterations or renovation by the owner or the owner's estate which cause the property to no longer possess the qualities and features which made it eligible for final certification. Notification of any change affecting eligibility must be given immediately to the Lancaster County Assessor, Auditor, and Treasurer.

Sec. 28-28. Process for low and moderate income rental properties.

(a) Fee required. Final certification of the property will not be given until the fee has been paid in full by the applicant. Fees shall be established in the Lancaster County Annual Budget document.

(b) Plan required. Owners of property seeking approval of rehabilitation work must submit a completed rehabilitation of property application with supporting documentation to the Building Official or designee prior to beginning work. Rehabilitation work conducted prior to approval of

the application is done so at the risk of the property owner and may disqualify the property from eligibility for the special tax assessment.

(c) Preliminary certification. Upon receipt of the completed application, the Building Official or designee shall issue for a recommendation as to whether the project is consistent with the standards for rehabilitation. Upon receipt of the reviewing authority's recommendation, the county administrator or designee shall notify the owner in writing. Upon receipt of this determination, the property owner may:

- (1) If the application is approved, begin rehabilitation;
- (2) If the application is not approved, he/she may revise such application in accordance with comments provided by reviewing authority.

(d) Substantive changes. Once preliminary certification is granted to an application, substantive changes must be approved in writing by the county administrator or designee. Any substantive changes made to the property during rehabilitation that are not approved by county administrator or designee, upon review and recommendation of the reviewing authority, are conducted at the risk of the property owner and may disqualify the project from eligibility during the final certification process.

(e) Final certification. Upon completion of the project, the property must receive final certification in order to be eligible for the special assessment. The reviewing authority shall inspect completed project to determine if the work is consistent with the approval recommended by the reviewing authority and granted by the county during preliminary certification. The review process for final certification shall be established by the reviewing authority and may include a physical inspection of the property. The reviewing authority shall notify the applicant in writing of its recommendation. If the applicant wishes to appeal the reviewing authority's recommendation, the appeal must follow the reviewing authority's appeals process. The county administrator or designee may grant final certification only if the following conditions have been met:

- (1) The completed work meets the standards for rehabilitation as established in this article;
- (2) Verification is made that the minimum expenditures have been have been incurred in accordance with the provisions of this article; and
- (3) Any fee(s) shall be paid in full.

Upon receiving final certification, the property will be assessed for the remainder of the special assessment period on the fair market value of the property at the time the preliminary certification was made or the final certification was made, whichever occurred earlier.

(f) Additional work. For the remainder of the special assessment period after final certification, the property owner shall notify the county administrator or designee of any additional work, other than ordinary maintenance, prior to the work beginning. The reviewing authority shall review the work and make a recommendation to the county administrator or designee whether the overall project is consistent with the standards for rehabilitation. The county administrator or designee shall notify the property owner in writing if the overall project is consistent with the standards for rehabilitation. If the additional work is found to be inconsistent by the reviewing authority, the county administrator or designee shall notify the owner in writing within thirty (30) days of its decision to rescind approval. The property owner may withdraw his/her request and cancel or revise the proposed additional work to the satisfaction of the county administrator or designee.

(g) Notification. Upon final certification of a low and moderate income rental property, the Lancaster County Assessor, Auditor, and Treasurer shall be notified by the county administrator or designee that such property has been duly certified and is eligible for the special tax assessment.

(h) Application. Once the final certification has been granted, the owner of the property shall make application to the Lancaster County Auditor for the special assessment provided for

herein. The special assessment shall remain in effect for the length of the special assessment period, unless the property shall become decertified under the provisions of this section.

(i) Date effective. If an application for preliminary or final certification is filed on or before May 1st or the preliminary or final certification is approved on or before August 1st, the special assessment authorized herein is effective for that year. Otherwise, it is effective beginning with the following year. The special assessment only begins in the current or future tax years as provided for in this section. The special assessment period shall not exceed twenty (20) years in length, and in no instance may the special assessment be applied retroactively.

(j) Previously certified properties. A property certified to receive the special property tax assessment under the existing law continues to receive the special assessment in effect at the time certification was made.

(k) Decertification. Once the property has received final certification and assessed as rehabilitated historic property, it remains so certified and must be granted the special assessment until the property becomes disqualified by any one of the following:

(1) Written notice from the owner to the Lancaster County Auditor requesting removal of the special assessment;

(2) Removal of the historic designation by the County Council based upon noncompliance of the criteria established in this Article; or

(3) Rescission of the approval of rehabilitation by the county, at the recommendation of the reviewing authority, because of alterations or renovation by the owner or the owner's estate which cause the property to no longer possess the qualities and features which made it eligible for final certification. Notification of any change affecting eligibility must be given immediately to the Lancaster County Assessor, Auditor, and Treasurer.

Secs. 28-29 to 28-40 - Reserved

Section 2. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 3. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 4. Effective Date.

This ordinance is effective upon third reading.

AND IT IS SO ORDAINED, this ____ day of _____, 2019.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

First Reading:	March 25, 2019	Tentative
Second Reading:	April 8, 2019	Tentative
Third Reading:	April 29, 2019	Tentative

Approved as to form:

John DuBose, County Attorney

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

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ORDINANCE NO. 2020-TBD

~~Indicates Matter Stricken~~

Indicates New Matter

AN ORDINANCE

TO ADOPT ARTICLE 2 OF CHAPTER 28 OF THE LANCASTER COUNTY CODE OF ORDINANCES RELATED TO REHABILITATED HISTORIC/ LOW AND MODERATE INCOME PROPERTIES AND TO PROVIDE FOR MATTERS RELATED THERETO.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Amendment of County Code.

Article 2 of Chapter 28 of the Lancaster County Code of Ordinances is amended as follows:

Article II. Rehabilitated Historic/ Low And Moderate Income Properties

Sec. 28-21. Special Tax Assessment Created.

Pursuant to the authority granted to Lancaster County by S.C. Code §4-9-195, a special tax assessment is created for eligible rehabilitated historic properties or low and moderate income rental property for a period of twenty (20) years equal to the assessed value of the property at the time of preliminary certification.

Sec. 28-22. Purpose.

It is the purpose of this Article to:

- (1) Encourage the rehabilitation of historic properties;
- (2) Promote community development and redevelopment;
- (3) Promote the availability of affordable low and moderate income housing;
- (4) Encourage sound community planning; and
- (5) Promote the general health, safety, and welfare of the community.

Sec. 28-23. Eligible Historic Properties.

(a) Certification as Historic Property. In order to be eligible for the special tax assessment, historic properties must receive preliminary and final certification.

(1) Preliminary certification. To receive preliminary certification a property must meet the following conditions:

- a. The property meets the requirements for historic designation as established in this section.
- b. The proposed rehabilitation work receives a recommendation of approval from the appropriate architectural reviewing authority (hereinafter "reviewing authority") and is consistent with the rehabilitation standards as set forth in this article. The reviewing authority shall review all proposed improvements associated with the rehabilitation and make a recommendation to the county regarding the project's eligibility. The approval will be issued to the property owner by the reviewing authority, and a copy will be sent to the county if

requested. For the purpose of this article, the reviewing authority shall be defined as follows:

1. In any municipality that has an architectural review board, the municipal board shall serve as the reviewing authority.
2. In the unincorporated areas of the county, and within any municipality that does not have an architectural review board, the South Carolina Department of Archives and History shall serve as the reviewing authority for historic properties.

c. Be a project that commenced by or after January 1, 2018 through the date of the adoption of this ordinance and work was permitted to have begun prior to receiving preliminary certification, or

d. Be a project that commences on or after the date of the adoption of this ordinance.

(2) Final certification. To be eligible for final certification, a property must have met the following conditions:

a. The property has received preliminary certification.

b. The minimum expenditures for rehabilitation as set forth in this article have been incurred and paid.

c. The completed rehabilitation receives a recommendation for approval from the reviewing authority as being consistent with the plans approved by the reviewing authority during preliminary certification.

d. All application fees have been paid in full by the applicant.

e. The property has met all other requirements of this article.

(b) Historic Property Criteria. In order to be eligible for the special tax assessment, the property must meet one of the following criteria:

(1) Any property included in one of the categories below is considered a Historic Property:

a. Listed on the National Register of Historic Places;

b. Determined eligible for the National Register by the South Carolina Department of Archives and History;

c. A contributing property in a National Register Historic District;

d. Is designated as a Historic by Lancaster County Council or their designee.

(2) All other properties must demonstrate:

a. Association with events that have made a significant contribution to the broad patterns of our history; or

b. Association with the lives of significant persons in our past; or

c. Embodiment of distinctive characteristics of a type, period, or method of construction; or representation of the work of a master; or possession of high artistic values; and

d. the property is at least fifty (50) years old.

Property owners seeking eligibility as historic property under subsection (2) must receive a historic property determination by filing an application with the Lancaster County Council.

Sec. 28-24. Eligible Low and Moderate Income Rental Properties.

(a) Certification as Low and Moderate Income Rental Property. In order to be eligible for the special tax assessment, Low and Moderate Income Rental properties must receive preliminary and final certification.

(1) Preliminary certification. To receive preliminary certification a property must meet the following conditions:

a. The property meets the requirements for low and moderate income rental property as established in this section.

b. The proposed rehabilitation work receives a recommendation of approval from the appropriate architectural reviewing authority (hereinafter “reviewing authority”) and is consistent with the rehabilitation standards as set forth in this article. The reviewing authority shall review all improvements associated with the rehabilitation and make a recommendation to the county regarding the project’s eligibility. For the purpose of this article, the reviewing authority shall be defined as follows:

1. In any municipality that has an architectural review board, the municipal board shall serve as the reviewing authority.
2. In the unincorporated areas of the county, and within any municipality that does not have an architectural review board, the Lancaster Housing Authority shall serve as the reviewing authority for low and moderate income rental properties.

c. Be a project that commenced by or after January 1, 2018 through the date of the adoption of this ordinance and work was permitted to have begun prior to receiving preliminary certification, or

d. Be a project that commences on or after the date of the adoption of this ordinance.

(2) Final certification. To be eligible for final certification, a property must have met the following conditions:

- a. The property has received preliminary certification.
- b. The minimum expenditures for rehabilitation as set forth in this article have been incurred and paid.
- c. The completed rehabilitation receives a recommendation for approval from the reviewing authority as being consistent with the plans approved by the reviewing authority during preliminary certification.
- d. All application fees have been paid in full by the applicant.
- e. The property has met all other requirements of this article.

(b) Low and Moderate Income Rental designation. In order to be eligible for the special tax assessment, the property must meet one of the following criteria:

- (1) The property provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937 and amended by the Housing and Community Act of 1974 for low and moderate income families and persons as defined by Section 31-13-170(p); or
- (2) In the case of income-producing real property, the expenditures for rehabilitation exceed the appraised value of the property; and
- (3) The low and moderate income housing rehabilitation is located in an area designated by the local government as a Low and Moderate Housing Rehabilitation District; and
- (4) The owner or estate of any property certified as “low and moderate income rental property” takes no actions which cause the property to be unsuitable for such a designation. The county governing body granting the initial certification has the authority to decertify property in these cases, and the property becomes immediately ineligible for the special tax assessments provided for this type of property; and
- (5) If the property qualifies as “historic” as defined in Section 28-23, then the rehabilitation work must be approved by the appropriate reviewing authority as provided in Section 28-23.

Sec. 28-25. Eligible rehabilitation for historic properties.

(a) Standards for rehabilitation. To be eligible for the special tax assessment, historic rehabilitations must be conducted according to the following standards:

(1) The historic character of a property shall be retained and preserved. The removal of historic materials or alterations or of features and spaces that characterize each property shall be avoided.

(2) Each property shall be recognized as a physical record of its time, place, and use, and period of significance. Changes that create a false sense of historical development shall not be undertaken.

(3) Most properties change over time. Those changes that have acquired historic significance in their own right shall be retained and preserved.

(4) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property should be preserved.

(5) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

(6) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(7) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the historic property and its environment.

(8) New additions and adjacent new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(b) Work to be reviewed. The following work will be reviewed according to the standards set forth above:

(1) Repairs to the exterior of the designated building.

(2) Alterations to the exterior of the designated building.

(3) New construction on the property on which the building is located, including site work.

(4) Alterations to interior primary public spaces, as defined by the reviewing authority.

(5) Any remaining work where the expenditures for such work are being used to satisfy the minimum expenditures for rehabilitation, including, but not limited to, alterations made to mechanical, plumbing and electrical systems.

(c) Minimum expenditures for rehabilitation. To be eligible for the special property tax assessment, the owner or the owner's estate must meet the minimum expenditures for rehabilitation:

(1) The minimum investment shall be twenty percent (20%) of the fair market value of the building which is to be rehabilitated.

(2) Fair market value means the appraised value as certified to the county by a real estate appraiser licensed by the State of South Carolina, the sales price as delineated in a bona fide contract of sale within twelve months of the time it is submitted, or the most recent appraised value published by the Lancaster ~~Richland~~ County Tax Assessor.

(d) Expenditures for rehabilitation means the actual cost of rehabilitation relating to one or more of the following:

(1) Improvements located on or within the historic building as designated.

(2) Improvements outside of but directly attached to the historic building which are necessary to make the building fully useable (such as vertical circulation) but shall not include rentable/habitable floor space attributable to new construction.

- (3) Architectural and engineering services attributable to the design of the improvements.
- (4) Costs necessary to maintain the historic character or integrity of the building.
- (e) Scope. The special tax assessment may apply to the following:
 - (1) Structure(s) rehabilitated;
 - (2) Real property on which the building is located.
- (f) Time limits. If the project is not complete after two (2) years, but the minimum expenditures for rehabilitation have been incurred, the property continues to receive the special assessment until the project is completed.

Sec. 28-26. Eligible rehabilitation for low and moderate income rental properties.

- (a) Standards for rehabilitation. To be eligible for the special tax assessment, low and moderate income rental rehabilitations must be conducted according to the following standards:
 - (1) All applicable code requirements, such as the International Building Code, the International Property Maintenance Code, et.al., must be met at the time of initial certification and compliance must be maintained throughout the special tax period.
- (b) Work to be reviewed. The following work will be reviewed according to the standards set forth above:
 - (1) Repairs to the exterior of the designated building.
 - (2) Alterations to the exterior of the designated building.
 - (3) New construction on the property on which the building is located, including site work.
 - (4) Any remaining work where the expenditures for such work are being used to satisfy the minimum expenditures for rehabilitation, including, but not limited to, alterations made to mechanical, plumbing and electrical systems.
- (c) Minimum expenditures for rehabilitation. To be eligible for the special property tax assessment, the owner or the owner's estate must meet the minimum expenditures for rehabilitation:
 - (1) The minimum investment shall exceed the fair market value of the building which is to be rehabilitated.
 - (2) Fair market value means the appraised value as certified to the county by a real estate appraiser licensed by the State of South Carolina, the sales price as delineated in a bona fide contract of sale within twelve months of the time it is submitted, or the most recent appraised value published by the Lancaster County Tax Assessor.
 - (d) Expenditures for rehabilitation means the actual cost of rehabilitation relating to one or more of the following:
 - (1) Improvements located on or within the rental property as designated.
 - (2) Architectural and engineering services attributable to the design of the improvements.
- (e) Scope. The special tax assessment may apply to the following:
 - (1) Structure(s) rehabilitated;
 - (2) Real property on which the building is located.
- (f) Time limits. If the project is not complete after two (2) years, but the minimum expenditures for rehabilitation have been incurred, the property continues to receive the special assessment until the project is completed.

Sec. 28-27. Process for Historic Properties.

- (a) Fee required: Final certification of the property will not be given until the fee has been paid in full by the applicant. Fees shall be established in the Lancaster County Annual Budget document.

(b) Plan required. Owners of property seeking approval of rehabilitation work must submit a completed rehabilitation of property application with supporting documentation to the reviewing authority prior to beginning work. Rehabilitation work conducted prior to approval of the application is done so at the risk of the property owner and may disqualify the property from eligibility for the special tax assessment.

(c) Preliminary certification. Upon receipt of the completed application, the reviewing authority shall issue recommendation as to whether the project is consistent with the standards for rehabilitation. Upon receipt of the reviewing authority's recommendation, the county administrator or designee shall notify the owner in writing. Upon receipt of this determination, the property owner may:

- (1) If the application is approved, begin rehabilitation;
- (2) If the application is not approved, he/she may revise such application in accordance with comments provided by reviewing authority.

(d) Substantive changes. Once preliminary certification is granted to an application, substantive changes must be approved in writing by the county administrator or designee. Any substantive changes made to the property during rehabilitation that are not approved by county administrator or designee, upon review and recommendation of the reviewing authority, are conducted at the risk of the property owner and may disqualify the project from eligibility during the final certification process.

(e) Final certification. Upon completion of the project, the property must receive final certification in order to be eligible for the special assessment. The reviewing authority shall inspect completed project photographs to determine if the work is consistent with the approval recommended by the reviewing authority and granted by the county during preliminary certification. The review process for final certification shall be established by the reviewing authority and may include a physical inspection of the property. The reviewing authority shall notify the applicant in writing of its recommendation. If the applicant wishes to appeal the reviewing authority's recommendation, the appeal must follow the reviewing authority's appeals process. The county administrator or designee may grant final certification only if the following conditions have been met:

- (1) The completed work meets the standards for rehabilitation as established in this article;
- (2) Verification is made that the minimum expenditures have been incurred in accordance with the provisions of this article; and
- (3) Any fee(s) shall be paid in full.

Upon receiving final certification, the property will be assessed for the remainder of the special assessment period on the fair market value of the property at the time the preliminary certification was made or the final certification was made, whichever occurred earlier.

(f) Additional work. For the remainder of the special assessment period after final certification, the property owner shall notify the county administrator or designee of any additional work, other than ordinary maintenance, prior to the work beginning. The reviewing authority shall review the work and make a recommendation to the county administrator or designee whether the overall project is consistent with the standards for rehabilitation. The county administrator or designee shall notify the property owner in writing if the overall project is consistent with the standards for rehabilitation. If the additional work is found to be inconsistent by the reviewing authority, the county administrator or designee shall notify the owner in writing within thirty (30) days of its decision to rescind approval. The property owner may withdraw his/her request and cancel or revise the proposed additional work to the satisfaction of the county administrator or designee.

(g) Notification. Upon final certification of a rehabilitated historic property, the Lancaster County Assessor, Auditor, and Treasurer shall be notified by the county administrator or designee that such property has been duly certified and is eligible for the special tax assessment.

(h) Application. Once the final certification has been granted, the owner of the property shall make application to the Lancaster County Auditor for the special assessment provided for herein. The special assessment shall remain in effect for the length of the special assessment period, unless the property shall become decertified under the provisions of this section.

(i) Date effective. If an application for preliminary or final certification is filed on or before May 1st or the preliminary or final certification is approved on or before August 1st, the special assessment authorized herein is effective for that year. Otherwise, it is effective beginning with the following year. The special assessment only begins in the current or future tax years as provided for in this section. The special assessment period shall not exceed twenty (20) years in length, and in no instance may the special assessment be applied retroactively.

(j) Decertification. Once the property has received final certification and assessed as rehabilitated historic property, it remains so certified and must be granted the special assessment until the property becomes disqualified by any one of the following:

- (1) Written notice from the owner to the Lancaster County Auditor requesting removal of the special assessment;
- (2) Removal of the historic designation by the County Council based upon noncompliance of the criteria established in this Article; or
- (3) Rescission of the approval of rehabilitation by the county, at the recommendation of the reviewing authority, because of alterations or renovation by the owner or the owner's estate which cause the property to no longer possess the qualities and features which made it eligible for final certification. Notification of any change affecting eligibility must be given immediately to the Lancaster County Assessor, Auditor, and Treasurer.

Sec. 28-28. Process for low and moderate income rental properties.

(a) Fee required. Final certification of the property will not be given until the fee has been paid in full by the applicant. Fees shall be established in the Lancaster County Annual Budget document.

(b) Plan required. Owners of property seeking approval of rehabilitation work must submit a completed rehabilitation of property application with supporting documentation to the Building Official or designee prior to beginning work. Rehabilitation work conducted prior to approval of the application is done so at the risk of the property owner and may disqualify the property from eligibility for the special tax assessment.

(c) Preliminary certification. Upon receipt of the completed application, the Building Official or designee shall issue for a recommendation as to whether the project is consistent with the standards for rehabilitation. Upon receipt of the reviewing authority's recommendation, the county administrator or designee shall notify the owner in writing. Upon receipt of this determination, the property owner may:

- (1) If the application is approved, begin rehabilitation;
- (2) If the application is not approved, he/she may revise such application in accordance with comments provided by reviewing authority.

(d) Substantive changes. Once preliminary certification is granted to an application, substantive changes must be approved in writing by the county administrator or designee. Any substantive changes made to the property during rehabilitation that are not approved by county administrator or designee, upon review and recommendation of the reviewing authority, are conducted at the risk of the property owner and may disqualify the project from eligibility during the final certification process.

(e) Final certification. Upon completion of the project, the property must receive final certification in order to be eligible for the special assessment. The reviewing authority shall inspect completed project to determine if the work is consistent with the approval recommended by the reviewing authority and granted by the county during preliminary certification. The review process for final certification shall be established by the reviewing authority and may include a

physical inspection of the property. The reviewing authority shall notify the applicant in writing of its recommendation. If the applicant wishes to appeal the reviewing authority's recommendation, the appeal must follow the reviewing authority's appeals process. The county administrator or designee may grant final certification only if the following conditions have been met:

- (1) The completed work meets the standards for rehabilitation as established in this article;
- (2) Verification is made that the minimum expenditures have been have been incurred in accordance with the provisions of this article; and
- (3) Any fee(s) shall be paid in full.

Upon receiving final certification, the property will be assessed for the remainder of the special assessment period on the fair market value of the property at the time the preliminary certification was made or the final certification was made, whichever occurred earlier.

(f) Additional work. For the remainder of the special assessment period after final certification, the property owner shall notify the county administrator or designee of any additional work, other than ordinary maintenance, prior to the work beginning. The reviewing authority shall review the work and make a recommendation to the county administrator or designee whether the overall project is consistent with the standards for rehabilitation. The county administrator or designee shall notify the property owner in writing if the overall project is consistent with the standards for rehabilitation. If the additional work is found to be inconsistent by the reviewing authority, the county administrator or designee shall notify the owner in writing within thirty (30) days of its decision to rescind approval. The property owner may withdraw his/her request and cancel or revise the proposed additional work to the satisfaction of the county administrator or designee.

(g) Notification. Upon final certification of a low and moderate income rental property, the Lancaster County Assessor, Auditor, and Treasurer shall be notified by the county administrator or designee that such property has been duly certified and is eligible for the special tax assessment.

(h) Application. Once the final certification has been granted, the owner of the property shall make application to the Lancaster County Auditor for the special assessment provided for herein. The special assessment shall remain in effect for the length of the special assessment period, unless the property shall become decertified under the provisions of this section.

(i) Date effective. If an application for preliminary or final certification is filed on or before May 1st or the preliminary or final certification is approved on or before August 1st, the special assessment authorized herein is effective for that year. Otherwise, it is effective beginning with the following year. The special assessment only begins in the current or future tax years as provided for in this section. The special assessment period shall not exceed twenty (20) years in length, and in no instance may the special assessment be applied retroactively.

(j) Previously certified properties. A property certified to receive the special property tax assessment under the existing law continues to receive the special assessment in effect at the time certification was made.

(k) Decertification. Once the property has received final certification and assessed as rehabilitated historic property, it remains so certified and must be granted the special assessment until the property becomes disqualified by any one of the following:

- (1) Written notice from the owner to the Lancaster County Auditor requesting removal of the special assessment;
- (2) Removal of the historic designation by the County Council based upon noncompliance of the criteria established in this Article; or
- (3) Rescission of the approval of rehabilitation by the county, at the recommendation of the reviewing authority, because of alterations or renovation by the owner or the owner's estate which cause the property to no longer possess the qualities and features which made it eligible

for final certification. Notification of any change affecting eligibility must be given immediately to the Lancaster County Assessor, Auditor, and Treasurer.

Secs. 28-29 to 28-40 - Reserved

Section 2. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 3. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 4. Effective Date.

This ordinance is effective upon Third Reading.

<Signatures on next page>

AND IT IS SO ORDAINED

Dated this ____ day of _____, 2020.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

First Reading:
Second Reading:
Third Reading:

Approved as to form:

John DuBose, County Attorney

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Agenda Item Summary

Ordinance # / Resolution #: Resolution TBD-R2020

Contact Person / Sponsor: Jamie Gilbert/Economic Development

Department: Economic Development

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

CrossRidge Center is a new 190 acre mixed used development in Indian Land that will include over 400,000 Class A office space. CrossRidge is seeking to construct a new 120,000 Class A spec office building designed for corporate headquarters operations. The \$26 million project will be an anchor project for the development of the business park.

Over the last several years, the Lancaster County Department of Economic Development has identified the lack of available industrial and office buildings for lease or purchase as a top issue that we must be address if we are to have continued success in the recruitment and expansion of businesses to Lancaster County. Economic Development believes that new commercial real estate projects are most successful and economical when done by the private sector, rather than the County.

In an effort to encourage spec building development, Economic Development recommends that Lancaster County assist developers through targeted incentives. The CrossRidge spec office building is an ambitious initiative that carries significant risk to the developer. Economic Development greatly appreciates CrossRidge's willingness to move forward with this project during a challenging business climate. As a result, Economic Development is recommending the following property tax incentives for the project:

- A 20 Year Fee-In-Lieu-of-Tax (FILOT) agreement for the spec office building that will have a 6% assessment and fixed millage rate of 325.4 mills.
- A 10 Year Special Source Revenue Credit (SSRC) applied against the annual FILOT payments. The credit amount would be as follows: 70% in Year 1, 63% in Years 2 and 3, and 50% in Years 4-10.

Points to Consider:

- Lancaster County has a shortage of Class A office space to accommodate large new and expanding corporate projects.
- In 2020, Lancaster County has seen more interest from prospective corporate facility projects than in 2019 or 2018.
- It appears there may be a shift of corporate facilities to the suburban office market, after several years of being primarily urban focused. The CrossRidge spec building better positions Lancaster County to capitalize on this emerging trend.
- Spec buildings are a high risk for developers since there is uncertainty as to when a tenant or tenants will occupy the space.
- Providing incentives for the spec building will assist tremendously in jump-starting the development of CrossRidge Center.

Funding and Liability Factors:

There are no funding or liability factors. The incentives provide a deferral of new property tax dollars that would not otherwise be there if the building was not constructed. After incentives, the spec building will generate more than \$2,600,000 in property taxes over its first ten years.

Options:

The Lancaster County Council can approve, table or decline the resolution.

Recommendation:

Economic Development recommends the County Council approve the resolution.

ATTACHMENTS:

Description	Upload Date	Type
CrossRidge Spec Building Resolution	7/14/2020	Resolution

RESOLUTION NO. _____

A RESOLUTION

TO STATE THE COMMITMENT OF LANCASTER COUNTY TO ENTER INTO A FEE AGREEMENT WITH CROSSRIDGE CENTER, LLC, AND/OR ITS DESIGNEE OR NOMINEE; TO PROVIDE THE GENERAL TERMS OF THE FEE AGREEMENT INCLUDING THE PROVISION OF SPECIAL SOURCE REVENUE CREDITS; TO PROVIDE THAT THIS RESOLUTION IS AN INDUCEMENT RESOLUTION FOR PURPOSES OF THE FEE IN LIEU OF TAX SIMPLIFICATION ACT; AND TO STATE THE COMMITMENT OF LANCASTER COUNTY TO PLACE PROJECT PROPERTY IN A MULTI-COUNTY PARK.

WHEREAS, Lancaster County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of the Fee in Lieu of Tax Simplification Act, codified as Title 12, Chapter 44, Code of Laws of South Carolina 1976, as amended (the “Act”), to enter into a fee in lieu of tax agreement (the “Fee Agreement”) with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the workforce, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, Crossridge Center, LLC, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the “Company”), desires to invest capital in the County in order to construct a corporate office facility in the County (the “Project”), *provided, that*, approvals of various incentives contemplated for the Project are formalized by the County; and

WHEREAS, the Project is anticipated to result in an investment of at least twenty-six million dollars (\$26,000,000) in real and personal property over a period of five (5) years; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for fee-in-lieu of tax (“FILOT”) payments (“FILOT Payments”) and special source revenue credits (“SSRCs”) with respect to the Project; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that the Project would be a “project” and “economic development property” as such terms are defined in the Act and that the Project would serve the purposes of the Act; and

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(D) of the South Carolina Constitution (collectively, the

“MCP Laws”), the County is authorized to create a multi-county park (an “MCP Park”) pursuant to a qualifying agreement with one or more contiguous South Carolina counties (the “Park Agreement”); and

WHEREAS, the County intends by this Resolution to commit itself to (i) enter into a negotiated fee-in-lieu of tax agreement with the Company under the Act, (ii) provide for SSRCs against the FILOT Payments to be made by the Company in connection with the foregoing fee-in-lieu of tax arrangements, and (iii) locate the Project in an MCP Park.

NOW, THEREFORE, BE IT RESOLVED by the Council of Lancaster County, South Carolina:

1. For purposes of the Act, this Resolution is an “Inducement Resolution.” For purposes of Section 12-44-110 of the Act, this Resolution constitutes preliminary approval by the County prior to the execution of a fee agreement.

2. The County commits to enter into a negotiated FILOT arrangement with the Company for the Project, the terms of which shall be set forth in a Fee Agreement in form and manner satisfactory to the County and the Company containing substantially the following terms:

- a. an Investment Period, as defined in the Act, of ten (10) years;
- b. the Company’s commitment to invest at least two million five hundred thousand dollars (\$2,500,000) in economic development property for the Project, not later than the end of the Investment Period (the “Investment Commitment”);
- c. calculation of FILOT Payments using an assessment ratio of six percent (6%) and a millage rate fixed for the life of the FILOT of 325.4 mills, if the Fee Agreement is executed in calendar year 2020, or the lowest then legally allowable millage rate, if the Fee Agreement is executed in calendar year 2021;
- d. a term of twenty (20) years for each phase of the Project;
- e. a special source revenue credit (“SSRC”) equal to seventy percent (70%) of the FILOT Payments for the first year, followed by an SSRC of sixty-three percent (63%) for the second (2nd) and third (3rd) years and fifty percent (50%) for the fourth (4th) through tenth (10th) years in which FILOT Payments are required to be made under the Fee Agreement with respect to the Project; and
- f. the Company’s commitment to reimburse the County for its administrative expenses associated with the review, negotiation and preparation of all documentation and authorizing proceedings, including attorney’s fees, for the Project, but in no event exceeding \$4,000, and for its administrative expenses associated with the annual computation of the special source revenue credits, but in no event exceeding \$500 annually.

3. Council shall use its best efforts to adopt a new Park Agreement or amend an existing Park Agreement to include the land on which the Project is located, to the extent that the land, or any portion

thereof, is not currently subject to a Park Agreement. The period of time for inclusion of the land in an MCP Park shall be for the same period that the Fee Agreement is effective.

4. (A) The County shall use its best efforts to (i) assist the Company in locating potential grants, in-kind, or other economic assistance or non-economic assistance from the state and federal authorities and utilities for costs associated with the Project, including but not limited to public infrastructure costs, (ii) assist the Company in applying for state and federal economic development incentives that flow through the County, and (iii) assist the Company in securing job recruitment and training through the ReadySC program.

(B) As used in this Section 4, “best efforts” include, without limitation, filing all required and necessary documents and applications relating to the grants or assistance, formally recommending approval of the grants or assistance and making the grants or assistance available at the commencement of the construction of the Project if provided by the granting or assisting entity and giving the Company written evidence of the grants or assistance when approved.

5. Council’s commitments and agreements contained in Sections 3 and 4 are subject to the exercise of discretion by granting or approving entities other than the County and the exercise of that discretion is not controlled by the County.

6. Council shall approve the Fee Agreement, and any other agreement or document contemplated by this Resolution in accordance with South Carolina law and the rules and procedures of the Council.

7. County Council finds that (i) 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, (ii) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against the general credit or taxing power of either the County or any incorporated municipality, (iii) the purposes to be accomplished by the Project are proper governmental and public purposes, and (iv) the benefits of the Project to the public are greater than the costs to the public.

8. To the extent this Resolution contains provisions that conflict with other orders, resolutions, and parts thereof, the provisions contained in this Resolution supersede all other orders, resolutions and parts thereof and this Resolution is controlling.

9. This Resolution takes effect upon its adoption.

Adopted this ____ day of _____, 2020.

SIGNATURES FOLLOW ON NEXT PAGE.

LANCASTER COUNTY, SOUTH CAROLINA

[SEAL]

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

Attest:

Sherrie Simpson, Clerk to Council

Agenda Item Summary

Ordinance # / Resolution #: Ordinance 2020-TBD

Contact Person / Sponsor: Jamie Gilbert/Economic Development

Department: Economic Development

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

CrossRidge Center is a new 190 acre mixed used development in Indian Land that will include over 400,000 Class A office space. CrossRidge is seeking to construct a new 120,000 Class A spec office building designed for corporate headquarters operations. The \$26 million project will be an anchor project for the development of the business park.

Over the last several years, the Lancaster County Department of Economic Development has identified the lack of available industrial and office buildings for lease or purchase as a top issue that we must be address if we are to have continued success in the recruitment and expansion of businesses to Lancaster County. Economic Development believes that new commercial real estate projects are most successful and economical when done by the private sector, rather than the County.

In an effort to encourage spec building development, Economic Development recommends that Lancaster County assist developers through targeted incentives. The CrossRidge spec office building is an ambitious initiative that carries significant risk to the developer. Economic Development greatly appreciates CrossRidge's willingness to move forward with this project during a challenging business climate. As a result, Economic Development is recommending the following property tax incentives for the project:

- A 20 Year Fee-In-Lieu-of-Tax (FILOT) agreement for the spec office building that will have a 6% assessment and fixed millage rate of 325.4 mills.
- A 10 Year Special Source Revenue Credit (SSRC) applied against the annual FILOT payments. The credit amount would be as follows: 70% in Year 1, 63% in Years 2 and 3, and 50% in Years 4-10.

Points to Consider:

- Lancaster County has a shortage of Class A office space to accommodate large new and expanding corporate projects.
- In 2020, Lancaster County has seen more interest from prospective corporate facility projects than in 2019 or 2018.
- It appears there may be a shift of corporate facilities to the suburban office market, after several years of being primarily urban focused. The CrossRidge spec building better positions Lancaster County to capitalize on this emerging trend.
- Spec buildings are a high risk for developers since there is uncertainty as to when a tenant or tenants will occupy the space.
- Providing incentives for the spec building will assist tremendously in jump-starting the development of CrossRidge Center.

Funding and Liability Factors:

There are no funding or liability factors. The incentives provide a deferral of new property tax dollars that would not otherwise be there if the building was not constructed. After incentives, the spec building will generate more than \$2,600,000 in property taxes over its first ten years.

Options:

The Lancaster County Council can approve, table or decline the ordinance.

Recommendation:

Economic Development recommends the County Council approve the ordinance.

ATTACHMENTS:

Description	Upload Date	Type
CrossRidge Spec Building Ordinance	7/14/2020	Ordinance
CrossRidge Spec Building Fee Agreement	7/14/2020	Agreement

TO AUTHORIZE THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN LANCASTER COUNTY AND CROSSRIDGE CENTER, LLC, PROVIDING FOR THE PAYMENT OF A FEE-IN-LIEU OF TAXES AND THE PROVISION OF SPECIAL SOURCE REVENUE CREDITS; AND TO EXPRESS THE INTENTION OF COUNCIL TO PROVIDE MONIES TO THE ECONOMIC DEVELOPMENT FUND.

Section 1. Findings.

(a) Lancaster County, South Carolina (the “County”) acting by and through its County Council (the “Council”) is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976 (the “Code”), as amended (the “Act”), to enter into fee-in-lieu of tax (“FILOT”) agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the “State”) and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the workforce, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally;

(b) the County is authorized by Sections 4-1-175 and 4-29-68 of the Code, as amended, and Section 12-44-70 of the Act to provide special source revenue credits (“SSRCs”) for the purpose of defraying 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 machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County;

(c) Crossridge Center, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Sponsor”) is considering investing, through itself and/or one or more existing or to be formed affiliated entities, in personal property and certain real estate improvements located in the County which would constitute a project within the meaning of the Act and which investments are eligible for inclusion as economic development property, the cost of which is estimated to be approximately Twenty-Six Million Dollars (\$26,000,000) (the “Project”);

(d) pursuant to Resolution No. _____, adopted _____, 2020, the Council approved an Inducement Resolution providing for, among other things, the agreement of the County to enter into a FILOT incentive with the Sponsor, and (ii) the provision of SSRCs against the FILOT payments to be made by the Company in connection with the Project;

(e) the Sponsor has caused to be prepared and presented to the Council the form of a Fee Agreement by and between the County and the Sponsor (the “Fee Agreement”), which provides for FILOT payments utilizing (i) a six percent (6%) assessment ratio, (ii) a fixed millage rate of 325.4 mills, (iii) a term of twenty (20) years for the Project or each component thereof placed in service during the Investment Period (as defined in the Fee Agreement), (iv) an Investment Period of ten (10) years, and (v) SSRCs equal to (w) seventy percent (70%) of the FILOT payments for the first year in which FILOT payments are required to be made thereunder, (x) sixty-three (63%) of such payments for years two (2) through three (3), and (y) fifty percent (50%) of such payment for year four (4) through ten (10); and

(f) it appears that the Fee Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

Section 2. Statutory Findings.

Council makes the following additional findings:

(a) The Project will constitute a “project” as the term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.

(b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made.

(c) 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.

(d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power.

(e) The purposes to be accomplished by the Project are proper governmental and public purposes.

(f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.

(g) The benefits of the Project are greater than the costs.

Section 3. Approval of Fee Agreement.

Subject to the provisions of Section 4 of this ordinance, and, in order to promote industry, develop trade, and utilize and employ the workforce, products, and natural resources of the State by assisting the Sponsor to locate a corporate office facility in the State, the Fee Agreement is hereby authorized, ratified, and approved.

Section 4. Approval and Execution of Fee Agreement.

The form, terms, and provisions of the Fee Agreement, attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Sponsor. The Fee Agreement is to be in substantially the form as attached to this ordinance and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the Fee Agreement attached to this ordinance.

Section 5. Economic Development Fund.

(A) Council finds that (i) by passage of Ordinance No. 2014-1260, Council created an Economic Development Fund with the intent to make monies available to the fund from new revenues to the County derived from new and expanded businesses and industry, and (ii) the ability to make monies available to the Economic Development Fund can be difficult because of complexities and legalities applicable to FILOT arrangements and multi-county parks.

(B) It is the intent of Council, in the annual County budget, to appropriate monies to the Economic Development Fund based on the new revenue that the County receives pursuant to the Fee Agreement. Specifically, it is Council's intent to appropriate from the General Fund of the County an amount based on the following formula: Seven percent (7%) times the amount of money received pursuant to the Fee Agreement by the County after distribution to other taxing entities in the most recently completed tax year.

Section 6. Authority to Act.

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are 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 under and pursuant to the Fee Agreement.

Section 7. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 8. Controlling Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 9. Effective Date.

This ordinance is effective upon third reading.

AND IT IS SO ORDAINED

Dated this ____ day of _____, 2020.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

First Reading: _____, 2020
Second Reading: _____, 2020
Public Hearing: _____, 2020
Third Reading: _____, 2020

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Exhibit A to Ordinance No. 2020-_____

Fee Agreement

See attached.

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FEE AGREEMENT

by and between

LANCASTER COUNTY, SOUTH CAROLINA,

and

CROSSRIDGE CENTER, LLC

Dated as of _____, 2020

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FEE AGREEMENT

This FEE AGREEMENT (this “Agreement”) is dated as of _____, 2020, by and between LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the “County”) and CROSSRIDGE CENTER, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Sponsor” and “Company” and, together with any subsequently joined Sponsor Affiliate(s), the “Companies”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council, is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the “Act”) of the Code of Laws of South Carolina 1976, as amended (the “Code”) and Sections 4-1-170, 4-1-172, and 4-1-175 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution (the “Multi-County Park Act”): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain industrial and commercial properties through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the workforce, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain payments in lieu of *ad valorem* taxes with respect to the project (a “FILOT”); and (iii) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Companies propose to construct a corporate office facility in the County; and

WHEREAS, the Companies anticipate that the Project will result in an investment of at least \$26,000,000 in the County; and

WHEREAS, the County Council approved on _____, 2020, Resolution No. _____ (the “Inducement Resolution”) to identify, reflect and induce the Project under the Act and to state the commitment of the County to, among other things, enter into this Agreement; and

WHEREAS, as a result of the Companies locating the Project in the County, the Companies requested that the County complete the FILOT arrangement referred to in the Inducement Resolution by entering into this Agreement with the Companies pursuant to the Act, and the Companies elect to enter into such FILOT arrangement with the County in an effort to implement the terms of the Project and allow the Companies to make FILOT payments pursuant to the Act; and

WHEREAS, it is presently anticipated, but not required, that Sponsor will initially own that portion of the Project comprised of the Land (as defined herein), certain real property improvements, and personal property now or hereafter constructed thereon; and

WHEREAS, for the Project, the parties have also determined that Sponsor is a Project Sponsor, and that the Project constitutes Economic Development Property within the meaning of the Act; and

WHEREAS, for the purposes set forth above, the County has determined that it is in the best interests of the County to enter into this Agreement with the Companies, subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of \$1.00 in hand, duly paid by the Companies to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Companies agree as follows:

ARTICLE I

DEFINITIONS AND RECAPITULATION

Section 1.01. Statutorily Required Recapitulation.

(a) Pursuant to Section 12-44-55(B) of the Act, the County and the Companies agree to waive the recapitulation requirements of Section 12-44-55 of the Act. Subsection (b) of this section is inserted for convenience only and does not constitute a part of this Agreement or a summary compliant with Section 12-44-55 of the Act.

(b) Summary of Agreement.

1. Legal name of each initial party to this Agreement:
Crossridge Center, LLC; Lancaster County, South Carolina.
2. County, street address, parcel number or other location identifier of the Project and property to be subject to this Agreement:

3000 Worldreach Drive
Lancaster County, South Carolina
Portion of Tax Map No. 0010-00-059.00 [MORE SPECIFIC
INFORMATION NEEDED]
3. Minimum investment agreed upon: \$2,500,000.
4. Length and term of this Agreement: 20 years for each annual increment of investment in the Project during the Investment Period.
5. Assessment ratio applicable for each year of this Agreement: 6%, except as otherwise provided in the Agreement.
6. Millage rate applicable for each year of this Agreement: 325.4 mills.

7. Statements

- (a) The Project is to be located in a multi-county park;
- (b) Disposal of property subject to payments-in-lieu-of-taxes is allowed;
- (c) Special Source Revenue Credits shall be given to the Economic Development Property in amounts equal to 70% of Negotiated FILOT Payments for the first year in which Negotiated FILOT Payments are required to be made hereunder; 63% of such payments for years two (2) and three (3); and 50% of such payment for years four (4) through ten (10);
- (d) Payment will not be modified using a net present value calculation; and
- (e) Replacement property provisions will apply.

Section 1.02. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings, unless the context or use indicates another or different meaning or intent.

“Act” or “*Simplified FILOT Act*” shall mean Title 12, Chapter 44 of the Code, as amended.

“*Act Minimum Investment Requirement*” shall have the meaning set forth in Section 5.01(i).

“*Administration Expense*” shall mean the reasonable and necessary out-of-pocket expenses, including attorneys’ fees, incurred by the County with respect to: (i) the preparation, review, approval and execution of this Agreement, (ii) the preparation, review, approval and execution of other documents related to this Agreement and any multi-county park documents; and (iii) the fulfillment of its obligations under this Agreement and any multi-county park documents.

“*Affiliate*” shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with such other person or entity, whether existing on the date of this Agreement or created in the future. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person or entity, whether through the ownership of voting securities, by contract, or otherwise.

“*Agreement*” shall mean this Fee Agreement by and among the County and the Companies, as originally executed and from time to time supplemented or amended as permitted herein, and dated as of _____, 2020.

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

“*Company*” shall mean the Sponsor, as defined in the first sentence of this Agreement.

“*Companies*” shall mean the Sponsor together with any Sponsor Affiliate(s).

“*County*” shall mean Lancaster 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*” shall mean the governing body of the County and its successors.

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Economic Development Property*” shall mean each item of real and tangible personal property comprising the Project, except Non-Qualifying Property, within the meaning of that term as defined and used in Sections 12-44-30(6) and 12-44-40(C) of the Code and in this Agreement.

“*Equipment*” shall mean all machinery, equipment, furnishings, and other personal property acquired by Sponsor and installed as part of the Project during the Investment Period in accordance with this Agreement.

“*Event of Default*” shall mean an Event of Default as defined in Section 12.01 hereof.

“*Existing Property*” shall mean property proscribed from becoming Economic Development Property pursuant to Section 12-44-110 of the Code, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to the execution and delivery of this Agreement and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by Sponsor during the Investment Period which has not been placed in service in this State prior to the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; or (c) modifications which constitute an expansion of Existing Property.

“*FILOT*” shall mean the fee-in-lieu of taxes, which Sponsor is obligated to pay to the County pursuant to Section 5.01 hereof.

“*FILOT Payments*” shall mean the payments to be made by Sponsor pursuant to Section 5.01 hereof.

“*FILOT Revenues*” shall mean the revenues received by the County from the payment of the FILOT.

“*Investment Period*” shall mean the period beginning with the first day that Economic Development Property is purchased or acquired and ending on the date that is ten (10) years from the end of the property tax year in which this Agreement is executed by the Companies and the County.

“*Land*” shall mean the land upon some or all of which the Project will be located, as identified and described in Exhibit A attached hereto. County and Company agree that during the Investment Period, the Company may, in its sole discretion, identify the portions of the land identified and described in Exhibit A for inclusion in the Project. Company shall identify the portions of Land identified and described in Exhibit A for inclusion in the Project as part of the Company’s annual filing with the Department of Revenue on the forms or schedules required by

the Department of Revenue to be filed for projects subject to the Act. The portions of the land included in the Project must be distinctly identified in the records of the County tax officials, including having a unique parcel or tax map number. Any portions of the land that have not been identified by the Company for inclusion in the Project shall not be treated as being in the Project and shall not receive the benefits of this Agreement. Notwithstanding the provisions of Section 4.03(i), land other than the land in Exhibit A may be included in the Project only by amendment to this Agreement as provided in Section 13.12 of this Agreement.

“Multi-County Park” means the multi-county park established pursuant to the Amended and Restated Master Multi-County Park Agreement, Amended and Restated as of November 9, 2015, between the County and Chesterfield County, South Carolina, as authorized by the Multi-County Park Act or such other multi-county park established in accordance with the Multi-County Park Act.

“Multi-County Park Act” shall mean Sections 4-1-170, 4-1-172, and 4-1-175 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution, as amended through the date hereof.

“Negotiated FILOT Payment” shall mean the FILOT due pursuant to Section 5.01(b) hereof with respect to that portion of the Project consisting of Economic Development Property.

“Non-Qualifying Property” shall mean that portion of the Project consisting of: (i) property as to which Sponsor incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) Existing Property; and (iii) any Released Property or other property which fails or ceases to qualify for Negotiated FILOT Payments, including without limitation property as to which the Companies have terminated the Negotiated FILOT pursuant to Section 4.03(iii) hereof.

“Person” shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“Project” shall mean, collectively herein, the Project, and shall include the Land and the buildings and other improvements on the Land to the extent placed thereon by or on behalf of the Companies, including water, sewer treatment and disposal facilities, and other machinery, apparatus, equipment, office facilities, and furnishings which are necessary, suitable, or useful, including the Equipment, and any Replacement Property. **[NEED TO MORE SPECIFICALLY IDENTIFY PROJECT]**

“Released Property” shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation or eminent domain proceedings as described in Article VII hereof, and any infrastructure which any Company dedicates to the public use (within the meaning of that phrase as used in Section 12-6-3420(C) of the Code).

“Replacement Property” shall mean all property installed in or on the Land in substitution of, or as replacement for, any portion of the Project, but only to the extent that such property may

be included in the calculation of the Negotiated FILOT pursuant to Section 5.01(g) hereof and Section 12-44-60 of the Code.

“Special Source Revenue Credits” or “SSRCs” shall mean the Special Source Revenue Credits described in Sections 5.01 and 6.01 hereof.

“Sponsor” shall have the meaning set forth in the first sentence of this Agreement.

“Sponsor Affiliate” shall mean any entity who agrees to be bound by the terms and provisions of this Agreement and is approved by the County pursuant to the provisions of Section 9.04 of this Agreement.

“State” shall mean the State of South Carolina.

“Term” shall mean the term of this Agreement, as set forth in Section 11.01 hereof.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Code.

Section 1.03. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties by County. The County represents and warrants that: (i) it is a body politic and corporate and a political subdivision of the State and acts through its County Council as its governing body; (ii) it is authorized by the Act to enter into this Agreement; (iii) it has approved this Agreement in accordance with the procedural requirements of the Act and any other applicable state law; and (iv) it has authorized its officials to execute and deliver this Agreement.

Section 2.02. Representations and Warranties by Sponsor. The Sponsor makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Sponsor is a limited liability company, validly existing and in good standing under the laws of Delaware and authorized to do business in the State; has all requisite power to enter into this Agreement; and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The agreements with the County with respect to the FILOT have been instrumental in inducing Sponsor to locate its portion of the Project within Lancaster County and the State.

(c) Except as otherwise disclosed to the County, no actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of Sponsor are pending or threatened against or affecting Sponsor in any court or before any governmental authority or

arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(d) The income tax year of Sponsor for federal and state income tax purposes ends December 31.

(e) No event has occurred and no condition currently exists with respect to Sponsor, which would constitute a Default or an “Event of Default” as defined herein.

(f) Sponsor intends to operate the Project for office facilities and any related purposes. The Project constitutes a “project” and “economic development property” as provided under the Act.

ARTICLE III

UNDERTAKINGS OF THE COUNTY

Section 3.01. Agreement to Accept FILOT Payments. The County hereby agrees to accept FILOT Payments made by the Companies in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

Section 3.02. No Warranties by County. Each Company acknowledges that the County has made no warranties or representations, either express or implied, as to the condition or state of the Project or as to the design or capabilities of the Project or that it will be suitable for such Company’s purposes or needs. No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating: (i) the construction or acquisition of the Project; (ii) environmental matters pertaining to the Project; (iii) the offer or sale of any securities; or (iv) the marketability of title to any property.

Section 3.03. Invalidity. The parties acknowledge that the intent of this Agreement is to afford the Companies the benefits of the Negotiated FILOT Payments in consideration of the Companies’ decision to locate the Project within Lancaster County and that this Agreement has been entered into in reliance upon the enactment of the Simplified FILOT Act. In the event that, for any reason, the Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Economic Development Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Companies and the County express their intentions that such payments be reformed so as to afford the Companies benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under the Code, to the extent allowed by law, including but not limited to the provision of additional and/or increased Special Source Revenue Credits. Absent the legal authorization to effect such reformation, the Companies and the County agree that there shall be due hereunder, with respect to the portion of the Economic Development Property affected by such circumstances, *ad valorem* taxes and that, to the extent permitted by law, each Company shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any

other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive other tax credits which would be due if the Company were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are required by law to be subject to retroactive adjustment, then there shall be due and payable by each Company to the County with respect to the portion of the Economic Development Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code. If this Agreement is reformed as provided in this Section or if retroactive adjustments are made, then under no circumstances shall the County be required to refund or pay any monies to any of the Companies. Notwithstanding anything in this Section 3.03 to the contrary, the Companies shall be entitled to the benefits and rights provided or referenced in Section 5.01(h).

In addition to and notwithstanding the foregoing paragraph, the County shall not be obligated to perform any of its obligations or promises under this Section 3.03 unless the Companies have otherwise complied with or provided satisfactory evidence to the County that it intends to comply with its obligations and responsibilities under this Agreement.

Section 3.04. Multi-County Park. The County agrees to take action to place the Land in the Multi-County Park until the date this Agreement is terminated. If it becomes necessary to move the Land from one multi-county park to another prior to the termination of this Agreement, the County agrees to use its best efforts to place the Land in a multi-county park established pursuant to the Multi-County Park Act and to maintain the multi-county park designation until the date this Agreement is terminated. The parties acknowledge and agree that the County's agreement to place and maintain the Land in a multi-county park may be subject to the exercise of discretion by a governmental entity other than the County and the exercise of that discretion is not controlled by the County.

ARTICLE IV

MAINTENANCE AND MODIFICATION OF PROJECT

Section 4.01. [Intentionally omitted.]

Section 4.02. Reporting and Filing.

(a) Each Company agrees to provide a copy of Form PT-443 filed with the Department of Revenue no later than thirty (30) days after execution and delivery of this Agreement to the Auditor, Treasurer and Assessor of the County and any multi-county park partner county and the Economic Development Director of the County. Each year during the term of this Agreement, each Company shall deliver to the Auditor, Treasurer and Assessor of the County and any multi-county park partner county and the Economic Development Director of the County a copy of their most recent annual filings made with the Department of Revenue with respect to the Project, no later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) [Intentionally omitted.]

(c) (1) Each Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment with respect thereto and its computations of all FILOT Payments made hereunder and will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including the reports described in subsection (a) and (b) of this Section (collectively, “Filings”).

(2) Each Company agrees that the County and its authorized agents have the right at all reasonable times and upon prior reasonable written notice to enter upon and examine and inspect the Project and to have access to and examine and inspect all of the Companies’ books and records pertaining to the Project and the Filings. The right of examination and inspection shall be exercised only upon reasonable and necessary terms and conditions prescribed by any Company to protect such Company’s confidentiality and proprietary rights. Any such entrance upon and examination and inspection of the Project and Filings shall be at the County’s expense.

(d) The County acknowledges and understands that the Companies may have and maintain at the Project certain confidential and proprietary information, including, but not limited to, trade secrets, financial, sales or other information concerning the Companies’ operations and processes (“Confidential Information”) and that any disclosure of the Confidential Information could result in substantial harm to the Companies and could have a significant detrimental impact on the Companies’ employees and also upon the County. Except as required by law, including, without limitation, court orders, the County agrees to use its best reasonable efforts to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the Confidential Information which may be obtained from the Companies, their agents or representatives, when the Confidential Information is clearly marked and identified as Confidential Information and known to the County to be Confidential Information. The County shall not knowingly and willfully disclose and shall cause all employees, agents and representatives of the County not to knowingly and willfully disclose the marked and identified Confidential Information to any person or entity other than in accordance with the terms of this Agreement. If a demand is made for the release, under color of law, to a third party of any Confidential Information, the County shall notify the Companies and give the Companies the opportunity to contest the release.

Section 4.03 Modification of Project.

As long as no event of default exists hereunder, the Companies shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) Each Company may, at its own expense, add to the Project any real and personal property as such Company in its discretion deems useful or desirable.

(ii) In any instance where a Company, in its discretion, determines that any items included in the Project have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, such Company may remove such items or portions from

the Project and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County and as such may be permitted under the Simplified FILOT Act.

(iii) Each Company may, at any time in its discretion by written notice to the County, remove any real or personal property from the Negotiated FILOT (as defined in Section 5.01) set forth in this Agreement, and thereafter such property will be considered Non-Qualifying Property and will be subject to FILOT Payments as set forth in Section 5.01(b)(i) hereof.

ARTICLE V

PAYMENTS IN LIEU OF TAXES

Section 5.01. Payments in Lieu of *Ad Valorem* Taxes.

(a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Companies shall pay annually, with respect to the Project, a FILOT in the amount calculated as set forth in this Section, to be collected and enforced in accordance with Section 12-44-90 of the Act. Notwithstanding anything to the contrary in this Agreement, the Company shall be entitled to determine, subject to applicable law, the first year in which the Negotiated FILOT shall apply by means of the Company's annual filing with the Department of Revenue of Schedule T to Department of Revenue Form PT-300, a copy of which shall be provided by each Company to the officials and counties as required by Section 4.02(a) of this Agreement.

(b) The FILOT Payment due with respect to each property tax year shall equal:

(i) With respect to any portion of the Project consisting of undeveloped land, land under development, other property not yet placed in service or Non-Qualifying Property, as long as such property is located in the Multi-County Park, a payment equal to the *ad valorem* taxes that would otherwise be due on such undeveloped land, land under development, other property not yet placed in service or Non-Qualifying Property if it were taxable giving effect to all credits, exemptions, rebates and abatement that would be available if such undeveloped land, land under development, other property not yet placed in service or Non-Qualifying Property were not Economic Development Property; and

(ii) With respect to those portions of the Project consisting of Economic Development Property, for each of the twenty (20) consecutive years beginning with the first year in which the Negotiated FILOT applies as determined in accordance with paragraph (a) of this Section 5.01, a payment calculated each year as set forth in paragraphs (c) and (d) of this Section 5.01 (a "Negotiated FILOT Payment").

(c) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on: (1) the fair market value (determined in accordance with Section 12-44-50(A)(1)(c) of the Code) of the Land, improvements to real property on the Land, and Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes as provided in Section 12-44-50(A)(1)(c) of the Code), (2) a fixed millage rate equal to 325.4 mills, for the Term, and (3) an assessment ratio of six percent (6%). All such calculations shall take into account all deductions for depreciation or diminution

in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemptions allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(d) Special Source Revenue Credits shall be granted with respect to the Economic Development Property in amounts equal to seventy percent (70%) of Negotiated FILOT Payments for the first year in which Negotiated FILOT Payments are required to be made hereunder; sixty-three percent (63%) of such payments for years two (2) and three (3); and fifty percent (50%) of such payment for years four (4) through ten (10). Notwithstanding anything to the contrary in this Agreement, the Company shall be entitled, by providing written notice to the County no later than June 1 of the applicable year, to defer the commencement of the Special Source Revenue Credits to not later than the third year in which a Negotiated FILOT Payment is required to be made hereunder.

(e) The FILOT Payments are to be recalculated:

(i) to reduce such payments in the event a Company disposes of any part of the Project within the meaning of Section 12-44-50(B) of the Code and as provided in Section 4.03 hereof, by the amount applicable to the Released Property;

(ii) to increase such payments, based on the methodology set forth in Section 5.01(c) hereof, in the event a Company adds property (other than Replacement Property) to the Project; or

(iii) to adjust such payments if a Company elects to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b)(i) above, as permitted by Section 4.03(iii).

(f) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Companies to the County in lieu of taxes, it is agreed that said FILOT Payments shall not, as to any year, be in any amount greater than what would otherwise be payable by the Companies to the County in property taxes if the Companies had not entered into a fee-in-lieu of taxes arrangement with the County (except it is not intended that said FILOT Payments would necessarily be less than such property taxes to the extent that the constitutional abatement of property taxes set forth in Section 3(g) of Article X of the Constitution of the State of South Carolina would otherwise apply).

(g) Upon any Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by any Company, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(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 property subject to the FILOT, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service. Replacement Property qualifies

for Negotiated FILOT Payments up to the original income tax basis of the Economic Development Property which it is replacing. More than one piece of property can replace a single piece of 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 payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the FILOT Payment for the period of time remaining on the FILOT period for the property which it is replacing.

(ii) The new Replacement Property which qualifies for the Negotiated FILOT Payment shall be recorded using its income tax basis, and the Negotiated FILOT Payment shall be calculated using the millage rate and assessment ratio provided on the original property subject to FILOT Payment.

(h) In the event that the Act or the FILOT or any portion thereof, are declared, by a court of competent jurisdiction following allowable appeals, invalid or unenforceable, in whole or in part, for any reason, the Companies and the County express their intentions that such payments be reformed so as to afford the Companies the maximum benefit then permitted by law, including, at the Company's election, without limitation, (i) an additional and/or increased Special Source Revenue Credit to approximate the net (after application of Special Source Revenue Credits) FILOT Payments intended under this Agreement, and/or (ii) the benefits afforded under Section 12-44-50 of the Code and, specifically, that the Companies may, at the Companies' expense, exercise the rights granted by Section 12-44-160 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Companies and the County agree that the Companies shall pay an alternate fee-in-lieu of tax calculated in the manner set forth in Section 5.01(b)(i) hereof. In such event, the Companies shall be entitled, to the extent permitted by law: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Section 3(g) of Article X of the Constitution of the State of South Carolina, and any other exemption allowed by law; and (2) to enjoy all allowable depreciation. The Companies agree that if the FILOT Payments or this Agreement is reformed pursuant to this subsection (h), that under no circumstance shall the County be required to refund or pay any monies to the Companies.

(i) For the Project, this Agreement is automatically terminated in the event that the investment in the Project in land, buildings, and personal property, including machinery and equipment, by Sponsor does not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) by the end of the Investment Period ("Act Minimum Investment Requirement"). If terminated pursuant to this subsection (i), the Negotiated FILOT Payments shall revert retroactively to payments equivalent to what the *ad valorem* taxes would have been with respect to the property absent this Agreement. At the time of termination, the Companies shall pay to the County an additional fee equal to the difference between the total amount of property taxes that would have been paid by the Companies had the project been taxable, taking into account exemptions from property taxes that would have been available to the Companies, and the total amount of fee payments actually made by the Companies. This additional amount is subject to interest as provided in Section 12-54-25. The Companies agree, if the Negotiated FILOT Payments revert to payments equivalent to what the *ad valorem* taxes would be pursuant to this

subsection (i), that under no circumstance shall the County be required to refund or pay any monies to any Company.

(j) [Intentionally omitted.]

(k) [Intentionally omitted.]

(l) Unless otherwise provided by the Act, any amounts due to the County under this Section 5.01 by virtue of the application of subsections (h) through (i) shall be paid within 90 days following written notice thereof from the County to the Companies.

ARTICLE VI

OTHER COUNTY SUPPORT OF COMPANY

Section 6.01. Tenants of Project. The Company expects to locate one or more tenants in the Project. The County agrees to consider additional incentives to the Company and such tenant(s) in return for the location of such tenant(s) in the Project, to be decided in the County's sole discretion.

Section 6.02. Grants and Other Incentives. The County shall use its best efforts to (i) assist the Company and/or one or more tenant(s) in the Project in locating potential grants, in-kind, or other economic assistance or non-economic assistance from state and federal authorities and utilities for costs associated with the Project, including but not limited to public infrastructure costs, (ii) assist the Company in applying for state and federal economic development incentives that flow through the County, and (iii) assist in job recruitment and training through the ReadySC program.

As used in this Section 6.02, "best efforts" include, without limitation, filing all required and necessary documents and applications relating to the grants or assistance, formally recommending approval of the grants or assistance, making the grants or assistance available at the commencement of the construction of the Project or any tenant improvements if provided by the granting or assisting entity, and giving the Company written evidence of the grants or assistance when approved.

ARTICLE VII

PAYMENTS BY COMPANIES

Section 7.01. Defaulted Payments. In the event any Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of such Company until the amount in default shall have been fully paid. The Companies agree that the collection and enforcement of the defaulted payment shall be as provided in Section 12-44-90 of the Code.

ARTICLE VIII

CASUALTY AND CONDEMNATION

Section 8.01. Adjustments in the Event of Damage and Destruction or Condemnation. In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, any Company, in its sole discretion, may determine whether or not to repair or replace the same. The parties hereto agree that if the Companies decide not to repair or replace all or any portion of the Project pursuant to this Section, the FILOT required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project.

ARTICLE IX

PARTICULAR COVENANTS AND AGREEMENTS

Section 9.01. Use of Project for Lawful Activities. During the Term of this Agreement, each Company shall use the Project for the purposes identified in Section 2.02(f) of this Agreement and for any lawful purpose that is authorized pursuant to the Act.

Section 9.02. Assignment. The County agrees that, to the maximum extent allowable under the Act, each Company may assign (including, without limitation, absolute, collateral, and other assignments) all or a part of its rights or obligations under this Agreement, and any lease agreement, lease purchase agreement, or fee agreement, as the case may be, or any other agreement related hereto or thereto, or transfer any and all assets of such Company, to one or more Related Entities (as defined in Section 10.01 below) without adversely affecting the benefits of such Company or its assignees pursuant to any such agreement or the Act, and, to the extent required by the Act, the County hereby provides its consent with respect to any and all such assignments and transfers. Such Company shall provide the County and the Department of Revenue with notice of any such assignment, transfer, or investment in accordance with the Act, and the County agrees, upon the request of such Company, to take all further action necessary to implement such assignment, transfer, or investment in accordance with the provisions of the Act. With respect to any assignments not consented to pursuant to this Section 9.02 and which require consent, approval or ratification under the Act, the County agrees to not unreasonably withhold its consent, approval or ratification, as applicable; and the County shall provide any such consent, approval or ratification by a resolution of County Council.

Section 9.03. Indemnification. Sponsor releases the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County (herein collectively referred to as the “Indemnified Parties”) from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project or the use thereof, except for that occasioned by negligent or intentional acts of an Indemnified Party. Sponsor further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims arising from any breach or default on the part of the Companies

in the performance of any covenant or agreement on the part of the Companies to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or negligent failure to act where there is a duty to do so by any Company, or any of their agents, attorneys, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

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 not of any member of the County Council or any officer, agent, attorney, servant, or employee of the County in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, attorney, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County by any Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Sponsor shall indemnify and hold them harmless against all claims by or on behalf of any Person, firm, or corporation or other legal entity 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, provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnified Parties to indemnification from, any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to place and maintain the Land within a multi-county park and to provide the benefits set forth in this Agreement). If any action, suit, or proceeding is brought against any Indemnified Party to which such Indemnified Party is entitled to indemnification, such Indemnified Party shall promptly notify the Companies, and the Companies shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Companies shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Companies have the ability to, and do, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Companies reasonably determines that a conflict of interest exists between the County and the Companies, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Companies shall be liable for the reasonable cost of such counsel.

The indemnity specified in this Section shall be in addition to any heretofore extended by the Companies to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

Section 9.04. Sponsors and Sponsor Affiliates.

(a) Sponsor may designate from time to time, without the need for any additional County consent, Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Simplified FILOT Act, which Sponsor Affiliates shall be Persons who join with the Companies and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Related Entities (as defined in Section 10.01 below). The County consents to any and all designations made pursuant to this subsection (a).

(b) All Sponsor Affiliates, other than those designated pursuant to subsection (a) of this Section 9.04, who otherwise meet the requirements of Section 12-44-30(19) or (20) and Section 12-44-130 of the Simplified FILOT Act, must be approved by the County Council by passage of a resolution to that effect.

(c) The designation of an additional Sponsor Affiliate pursuant to this Section 9.04 shall be evidenced by the additional Sponsor Affiliate executing and delivering a joinder agreement, the form of which is attached to this Agreement as Exhibit B. County execution of the joinder agreement is required only for the additional Sponsor Affiliates with respect to which the County is required by the Act to give its consent.

(d) To the extent that the aggregate investment in the Project by the end of the Investment Period by the Sponsor exceeds \$5,000,000, to the extent permitted by Section 12-44-30(19) of the Simplified FILOT Act, all investment by the Sponsor and such Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to Section 5.01 of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Act Minimum Investment Requirement by the end of the Investment Period.

(e) Sponsor shall provide the County and the Department of Revenue with written notice of any Sponsor Affiliate designated pursuant to this Section 9.04 within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate has placed in service property to be used in connection with the Project and subject to the Negotiated FILOT Payment, all in accordance with Section 12-44-130(B) of the Simplified FILOT Act.

ARTICLE X

FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

Section 10.01. Conveyance of Liens and Interests; Assignment. Each Company may at any time: (a) transfer all or any of its rights and interests hereunder or with respect to the Project to any Person; or (b) enter into any lending, financing, security, or similar arrangement or succession of such arrangements with any financing entity with respect to the Agreement or the Project, including without limitation any sale, leaseback, or other financing lease arrangement; provided that, in connection with any of the foregoing transfers: (i) except in connection with any transfer to Sponsor or Sponsor Affiliate or Affiliate of the Sponsor or Sponsor Affiliate (collectively, the “Related Entities”) (as to which such transfers the County hereby consents), or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents),

such Company shall obtain the prior written consent or subsequent ratification of the County; (ii) where 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 transferee or financing entity assumes in writing the obligations of such Company hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of such Company hereunder, but all obligations of such Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) such Company, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (iv) such Company and the transferee shall comply with any additional requirements (i.e., requirements not addressed in this paragraph) of the Transfer Provisions.

Each Company acknowledges that such a transfer of an interest under this Agreement or in the Project may cause the Project to become ineligible for a Negotiated FILOT Payment or result in penalties under the Act absent compliance by the Companies with, as applicable, this Section 10.01 or the Transfer Provisions.

Section 10.02. Relative Rights of County and Financing Entities as Secured Parties. The parties acknowledge the application of the provisions of Section 12-44-90 of the Act, and that the County's right to receive FILOT Payments hereunder shall be the same as its rights conferred under Title 12, Chapter 49 and 54, among others, of the Code relating to the collection and enforcement of *ad valorem* property taxes. The County's rights under this Agreement, except for its rights to receive FILOT Revenues, shall be subordinate to the rights of any secured party or parties under any financing arrangements undertaken by the Companies with respect to the Project pursuant to Section 10.01 hereof, such subordination to be effective without any additional action on the part of the County; provided, however, that the County hereby agrees, at the Companies' expense, to execute such agreements, documents, and instruments as may be reasonably required by such secured party or parties to effectuate or document such subordination.

ARTICLE XI

TERM; TERMINATION

Section 11.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Companies execute this Agreement, and ending at midnight on the last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder. The Project has a term of 20 years, as calculated pursuant to the respective dates when the relevant portions of the Project are placed in service, and as discussed in greater detail in this Agreement. The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

Section 11.02. Termination. The County and the Companies may agree to terminate this Agreement at any time, or the Sponsor may, at its option, terminate this Agreement at any time upon providing the County 30 days' notice of such termination, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. The County's rights to

receive payment for such *ad valorem* taxes and its rights to enforce the terms of this Agreement shall survive termination of this Agreement.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

Section 12.01. Events of Default by Companies.

Subject in all events to Section 13.14 hereof, any one or more of the following events (herein called an “Event of Default”, or collectively “Events of Default”) shall constitute an Event of Default by the Companies:

(1) if default shall be made in the due and punctual payment of any FILOT Payments, indemnification payments, or Administration Expenses, which default shall not have been cured within 60 days following receipt of written notice thereof from the County; or

(2) if default shall be made by any Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (1), and such default shall continue for 90 days after the County shall have given the Companies written notice of such default, provided, such Company shall have such longer period of time as necessary to cure such default if such Company proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence; and provided further, that no Event of Default shall exist under this paragraph (2) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which such Company has contested the occurrence of such default.

Section 12.02. Remedies on Event of Default by Company. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(a) terminate this Agreement by delivery of written notice to the Companies not less than 30 days prior to the termination date specified therein;

(b) have access to and inspect and examine the books, records, and accounts of the Companies pursuant to Section 4.02(c); or

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Companies under this Agreement.

Section 12.03. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, any Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation, a suit for mandamus or specific performance; provided, however, that 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.

ARTICLE XIII

MISCELLANEOUS

Section 13.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Companies provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced; and the exercise by the County or by the Companies of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Companies of any or all such other rights, powers or remedies.

Section 13.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

Section 13.03. Intentionally Omitted.

Section 13.04. Administration Expenses.

(a) The Companies agree to reimburse the County from time to time for its Administration Expenses promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County; provided, however, that in no event shall the Companies be responsible for reimbursing the County in excess of \$4,000 for any Administration Expenses incurred in the form of attorneys' fees or otherwise with respect to any matter relating to (i) the preparation, review, approval and execution of this Agreement, or (ii) the preparation, review, approval and execution of any other documents related to this Agreement and any multi-county park documents. The written request shall include a description of the nature of the Administration Expenses.

(b) The Companies agree to reimburse the County for expenses incurred by the County for accountants and similar experts used by the County in the computation, preparation and verification of the annual FILOT Payments and any special source revenue credits, *provided, however*, the maximum annual reimbursement pursuant to this subsection is capped at One Thousand and No/100 dollars (\$1000.00).

Section 13.05. Rules of Construction. The County and the Companies acknowledge and agree that each has been represented by legal counsel of its choice throughout the negotiation and drafting of this Agreement, that each has participated in the drafting hereof and that this Agreement will not be construed in favor of or against either party solely on the basis of such party's drafting or participation in the drafting of any portion of this Agreement.

Section 13.06. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County or the Companies shall be in writing and shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows or to such other persons and places as may be designated in writing by such party in accordance with this Section 13.06.

(a) As to the County:

County of Lancaster, South Carolina
ATTN: Steve Willis, County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721-1809)
Lancaster, South Carolina
Phone: (803) 416-9300
Email: swillis@lancastercountysc.net

With a copy to (which shall not constitute notice):

Mr. Jamie Gilbert
Economic Development Director, Lancaster County
P.O. Box 1809
Lancaster, South Carolina 29721
Telephone: (803) 286-3633
Fax: (803) 416-9497
Email: jgilbert@lancastercountysc.net

(b) As to the Sponsor:

Crossridge Center, LLC

With a copy to (which shall not constitute notice):

Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201
Attention: Edward Kluiters, Esq.

Section 13.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 13.08. Entire Understanding. This 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 Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 13.09. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 13.10. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 13.11. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

Section 13.12. Amendments. Subject to the limitations set forth in the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 13.13. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 13.14. Force Majeure. The Companies shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, labor shortages, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Companies' reasonable control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the Council Chair and Council Secretary and to be attested by the Clerk to Council; and the Companies have caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

CROSSRIDGE CENTER, LLC

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT A

Land

Land upon which Project will be partially or wholly located:

Portion of Tax Map No. 0010-00-059.00 [MORE SPECIFIC INFORMATION NEEDED]

EXHIBIT B (see Section 9.4)

FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee Agreement, effective _____, 2020 (“Fee Agreement”), between Lancaster County, South Carolina (“County”) and Crossridge Center, LLC (“Company”).

1. Joinder to Fee Agreement.

[_____] , a [state] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Company [except the following: _____]; (b) shall receive the benefits and be subject to the obligations as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were the Company [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, does not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Company in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 13.06 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

Name of Entity

By:

Its:

County Acknowledgement

[REQUIRED ONLY FOR THOSE ADDITIONAL SPONSOR AFFILIATES FOR WHICH COUNTY CONSENT IS REQUIRED BY THE FEE IN LIEU OF TAX SIMPLIFICATION ACT]

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

LANCASTER COUNTY, SOUTH CAROLINA

By:

Its:

Agenda Item Summary

Ordinance # / Resolution #: Ordinance 2020-1677

Contact Person / Sponsor: Cathy McDaniel/Procurement and John DuBose/County Attorney

Department: Administration

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

The current Procurement Code does not provide the County flexibility in construction project delivery methods. The attached ordinance includes has been updated to include Design-bid-build, Construction Management at-risk, and Design-build (Section 2-273).

In the course of the update, staff reviewed the entire ordinance, and it has been reorganized for clarity and usability, with many sections mirroring the State procurement code. Once adopted, the Procurement Department will provide staff training.

Points to Consider:

With this code, the County will have more flexibility in construction project delivery methods, and access to national purchasing cooperatives. The Code is used by staff and vendors to ensure public funds are spent in a fair and ethical manner.

Funding and Liability Factors:

n/a

Options:

To recommend adoption of the Procurement Code as presented (or amended).

Recommendation:

To recommend adoption of the Procurement Code as presented (or amended).

ATTACHMENTS:

Description	Upload Date	Type
Ordinance 2020-1677	7/14/2020	Ordinance

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

)
)
)

ORDINANCE NO. 2020-1677

AN ORDINANCE

TO AMEND THE LANCASTER COUNTY PROCUREMENT CODE, SO AS TO INCLUDE ADDITIONAL LEGAL CONSTRUCTION PROJECT DELIVERY METHODS, ADD COOPERATIVE PURCHASING AS AN ALLOWED PROCUREMENT METHOD, AND PROVIDE CLARITY ON EXISTING PROCUREMENT PROCEDURES

WHEREAS, the Lancaster County Council wishes to amend the ordinance which organized and set forth the rules and regulations for the ethical expenditure of public funds and disposal of surplus property.

NOW, THEREFORE, BE IT ORDAINED by the Council of Lancaster County, South Carolina:

Section 1. Chapter 2, Article VI, Section 2-251 through Section 2-296 of the Lancaster County Code are hereby deleted and replaced and amended as follows:

Section 2-251. - Citation.

This article may be cited as the "Lancaster County Procurement Code."

Section 2-252. - Purpose.

The purpose of the Lancaster County Procurement Code is to:

- (a) Establish policies and procedures for the Lancaster County government that embody sound principles of competitive procurement as required by Section 11-35-50 of the Code of Laws of South Carolina 1976, as amended (the South Carolina Consolidated Procurement Code);
- (b) Develop an efficient and effective means of delegating roles and responsibilities to departments, elected officials, boards, and component units;
- (c) Ensure fair and equitable treatment of all persons who do business with the county;
- (d) Provide a mechanism of controlling all purchases of supplies, materials, equipment and services required by the county;
- (e) Prescribe the manner in which the county shall dispose of surplus real and personal properties in an effective manner; and
- (f) Provide safeguards to ensure ethical behavior on the part of all persons engaged in the public procurement process.

Section 2-253. - Application of procurement code.

The Lancaster County Procurement Code applies to:

- (a) All procurements solicited after December 31, 2010;
- (b) All expenditure of funds by the county for public procurement irrespective of the source of the funds;
- (c) Procurement involving the expenditure of federal or state funds, except that the county shall comply with federal or state law that is mandatorily applicable to the procurement; and

(d) All county departments, agencies, commissions, boards, or officials appropriated funds by the county.

(e)

Section 2-254. - Ethical conduct.

The county is committed to upholding the highest level of integrity and ethical conduct. It is required that all organization employees and officials participate in the procurement process and follow the associated policies and procedures in regards to conflict of interest, personal purchases, gratuities, and prohibited relationships with vendors. Lancaster County requires those who do business within the County to follow strict ethical guidelines in accordance with Section 8-13-705 of the Code of Laws of SC, which states:

"Offering; giving, soliciting, or receiving anything of value to influence action of public employee, member or official, or to influence testimony of witness; exceptions; penalty for violation; shall be subject to the punishment provided by Section 16-9-210 and Section 16-9-220."

a. Conflict of interest.

Organization employees must not make any attempt to influence any purchase if the employee has a financial stake in the outcome of the purchasing decision. Nor shall transactions be conducted with any fellow employee, relative, or near-relative unless there has been a documented determination by purchasing director or County Administrator that goods or services procured are not available through other sources or that contract was awarded via competitively sealed bid process.

b. Gratuities.

Organization employees must not accept gifts, entertainment, favors, or services from present or potential vendors that could influence, or appear to influence, purchasing decisions.

Section 2-255. - Local vendor preference.

The lowest local responsible and responsive bidder who is within three (3) percent, with a cap of six thousand dollars (\$6,000.00), of the lowest non-local responsible and responsive bidder, may match the bid submitted by the non-local responsible and responsive bidder and thereby be awarded the contract. The local preference as set forth in this section shall only be applied to responses to solicitations of written quotes and invitations to bid in excess of ten thousand dollars (\$10,000.00). The local preference as set forth in this section shall only be given to local responsible and responsive bidders who have a physical business address located and operating within Lancaster County for a minimum of six (6) months prior to the solicitation of quotes and/or bids, and who have met all other requirements of the solicitations of written quotes or the invitation to bid, including, without limitation, payment of all duly assessed state and local taxes. If state or federal guidelines prohibit or otherwise limit local preference, then the county shall not use local preference in awarding the contract. If there are multiple responsible and responsive bidders who meet the local preference guidelines as set forth in the section, the county shall use standard procurement practice and procedure as set forth in the article to determine the priority of selection. The local preference as set forth in this section does not waive or otherwise abrogate the county's unqualified right to reject any and all bids or proposals or accept such bids or proposals, as appears in the county's own best interest. The local preference as set forth in this section does not apply to state or federally funded projects.

Section 2-256. - Right to reject.

In all solicitations made under the Lancaster County Procurement Code, the county shall reserve the right to reject any and all responses to the solicitation. A solicitation may be cancelled, or any or all bids or proposals received may be rejected, in whole or in part as may be specified in the solicitation, when it is in the best interest of the county. The reasons for rejection must be documented and kept on file in accordance with South Carolina Archives and History General Records Retention Schedule for County Records. Each solicitation request by the County shall state this section of the code.

Section 2-257. – Definitions

Acceptance. Indication that all parties to the contract agree to be bound by the terms of the contract. The assumption of a legal obligation by a party to a contract, and to the terms and conditions of that contract.

Acquisition. The acquiring, by contract with appropriated funds, of supplies or services (including construction) by and for the use of the County through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.

Addendum/Addenda. A written change, addition, alteration, correction, or revision to a bid, proposal, or contract document. Commonly, the name given to the document used to revise a solicitation. Addendum/addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the project.

Advertise. To make a public announcement or legal notice of a solicitation with the goal of increasing the response and broadening the field of competition; often required by law or policy.

Agreement. An understanding between two or more parties in which they state a common understanding and intention regarding past or future intentions or facts, sometimes with a view to altering performance, rights, and obligations. When the additional elements of a contract are satisfied, e.g., mutual obligation (consideration), capacity, definiteness, and legal purpose, contracts may be formed. Then the terms agreements and contracts are sometimes used synonymously.

Apparent Low Bidder. The label used for a bidder that has been determined to have provided the lowest price in a bid or quote, prior to determination of whether the bid is responsive and from a responsible bidder.

A/E (Architect or Engineer) Professional Services. Services that require performance by a registered architect or engineer. Professional services of an architectural or engineering nature that are associated with research, planning, development, and design for construction, alteration, or repair.

Award. The acceptance of a bid or proposal.

Award Protest. A written objection made against the selection methods employed or decisions made by a public agency leading to the award of a contract or purchase.

Bid Bond. An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

Bid Opening. The official process in which sealed bids are opened, usually in the presence of one or

more witnesses, at the time and place specified in the proposal. The amount of each bid is recorded and bids are made available for public inspection. The bid opening may be open to the public.

Bid Security. A bond or deposit which guarantees that the bidder, if awarded the contract, will honor their bid as submitted.

Cardholder. An employee of the County of Lancaster ("county") or an elected official of the same, who is approved to use the procurement card ("P-Card") to execute credit transactions on behalf of the county.

Card issuer. Bank of America; whose services include the issuance of Visa P-Cards to organization employees, providing electronic transaction authorizations, and billing for all purchases made on county P-Cards.

Change Order. A written alteration that is issued to modify or amend a contract or purchase order. A request that directs the contractor to make changes to the contracted scope of work or specifications. In reference to construction contracts, it relates primarily to changes caused by unanticipated conditions encountered during construction not covered by the drawings, plans, or specifications of the project.

Collusion. When two or more parties act together secretly to achieve a fraudulent or unlawful act. May manifest itself in the form of bid collusion when bidders secretly agree to unlawful practices regarding competitive bidding. May inhibit free and open competition in violation of antitrust laws.

Competitive Bidding. The process of inviting and obtaining bids from competing suppliers, by which an award is made to the lowest responsive bid from a responsible bidder meeting written specifications. The process provides potential bidders with a reasonable opportunity to win that contract.

Construction Manager Agent Services. Those professional services associated with contract administration, project management and other specified services provided in connection with the administration of a project delivery method. Construction Management Services does not include construction.

Construction Manager at Risk (CMR/CMAR). A construction project delivery method in which the owner enters into separate contracts with the designer and builder, often at or about the same time. During design, the CMAR advises the owner and designer on constructability, value engineering, cost estimating, schedule, sequencing, selection of components and materials, and other matters. When the design is completed, the CMAR becomes the "builder," or general contractor, responsible or "at risk" for completing construction within the guaranteed maximum price

Contract. An obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent; legality of purpose; and definiteness. A legally binding promise, enforceable by law. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations.

Cooperative Procurement (Purchasing). A variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single Invitation for Bids (IFB) or Request for Proposals (RFP).

Department Head. County official who must:

- (1) Set internal controls for their department's usage of P-Cards;
- (2) Approve issuance of an employee's P-Card and submit P-Card applications to Program Administrator;
- (3) If applicable, assign a department proxy; and
- (4) Electronically sign-off on all monthly department purchases made.

Department proxy. An employee within department designated by Department Head to be responsible for transaction review, account allocation, and electronic submittal. Department proxy is to follow all internal controls as dictated by Department Head as well as program policy.

Design-Bid-Build. The traditional project delivery method, which customarily involves three sequential project phases: design, procurement, and construction, and two distinct contracts for the design and construction (build) phases.

Design-Build. A construction project delivery method that combines architectural and engineering design services with construction performance under one contract.

Emergency Purchase. A purchase made due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. Usually formal competitive bidding procedures are waived.

Evaluation. A process used to assess offers in determining the outcome for a solicitation. For bids and quotes, where price is the only factor, it is used to determine the lowest, responsive bid from a responsible bidder. For proposals, multiple criteria are used to determine the successful proposer based on the highest score received.

Evaluation Committee/Team. A committee established to conduct evaluation of proposals, interviews, and negotiations during the solicitation process for a specific product or service. Usually composed of representatives from the functional area identified in the Scope of Work and may include a procurement representation.

General Contractor (GC). A contractor with the entire responsibility for performing a construction contract. A contractor that bids for a construction contract and bears the entire risk if the contract cannot be performed at the contract price.

Gratuity. Something given voluntarily or beyond obligation, usually for some service (e.g., tip).

Informalities/Minor Irregularities. A submission of a bid or proposal that contains minor defects or variations from the exact requirements of the solicitation that do not affect price or other mandatory requirements. A defect that is easily correctable. Generally a matter of form rather than substance. Following legal review may sometimes be corrected within a certain time period.

Invitation for Bids (IFB). A procurement method used to solicit competitive sealed bid responses, sometimes called a formal bid, when price is the basis for award.

Kickback. The payment of something of value to an individual with the goal of persuading or influencing his or her decision or performance in a certain situation. May be in the form of cash or favors and is usually unethical.

Minority-Owned Business Enterprise (MBE). A business which is owned or controlled by a member of a recognized minority group, as defined by requirements set forth by a State or Federal MBE program.

Negotiation. Conferring, discussing, or bargaining to reach agreement in business transactions. A bargaining process between two or more parties, each with its own agenda and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern. A process of planning, reviewing, and analyzing used by a buyer and a seller to reach acceptable agreements or compromises.

Non-Responsible. A contractor, business entity, or individual that responds to a solicitation that does not have the ability or capability to fully perform the requirements of the solicitation. A business entity or individual who does not possess the integrity and reliability to assure contractual performance.

Non-Responsive. A response to a solicitation that does not conform to the mandatory or essential requirements contained in the solicitation.

Notice of Award. A written notification from the public entity to the successful bidder or proposer stating that there is an award of a contract in accordance with a bid or proposal previously submitted.

Notice of Intent to Award. A written notice publicly posted prior to announcing the award of a contract to notify interested parties of the intended award and signals that the procurement file is available for their review and that the time period for protests to be submitted has begun.

Organization. The County of Lancaster, South Carolina; the sole entity that arranges and approves to have P-Cards issued.

Payment Bond. A financial or contractual instrument, issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the contract. Acceptable forms of payment bonds may include cashier's check, certified check, a surety or blanket bond. Also known as Labor and Materials Bond.

Performance Bond. An instrument executed, subsequent to award, by a successful bidder that protects the public entity from loss due to the bidder's inability to complete the contract as agreed. A risk mechanism that secures the fulfillment of all contract requirements. May be referred to as a completion bond.

Procurement. Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, receiving, inspection, salvage, and disposal operations.

Procurement Card (pCard). A payment method whereby internal customers are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider. Generally, a pre-established credit limit is established for each card issued. The cards enable eProcurement and facilitate on-line ordering.

Procurement Code Exemptions. Public sector procurement codes that provide for the direct purchase of specific products or services without following the competitive requirements.

Procurement Methods. Methods by which goods, services, or material may be acquired by public purchasers. The methods may include blanket orders, emergency purchases, purchase orders, transfers,

competitive bidding, competitive negotiation, cooperative agreements, small purchase contracts, purchases via a credit card, etc.

Professional Services. Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance. Those services which involve extended analysis, the exercise of discretion and independent judgement in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field.

Program Administrator. The Procurement Director or designee, located in the Lancaster County Procurement Department, who coordinates the P-Card program for the organization. The Program Administrator will act as the intermediary in all correspondence between organization and card issuer.

Protest. A written objection by an interested party to a solicitation or award of a contract with the intention of receiving a remedial result.

Public Bid Opening. The process of opening and reading bids at the time and place specified in the solicitation and in the presence of anyone who wishes to attend. May take place in person or online.

Purchase Requisition (PR). A document created by a requestor authorizing the commencement of a purchasing transaction. Typically will include a description of the need and other information that is relative to the transaction.

Quotation. A statement of price, terms of sale, and description of goods or services offered by a supplier to a prospective purchaser; may be non-binding if solicited to obtain market information for planning purposes.

Real Property. Land and its permanently affixed buildings or structures. Any property which is not personal property.

Reasonable Cost. A cost that by its nature or amount does not exceed what would normally be incurred by an ordinarily prudent person in the conduct of competitive business. Often used in the context of "fair and reasonable" cost/price.

Request for Proposals (RFP). The document used to solicit proposals from potential providers for goods and services. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price, prior to contract award. May include a provision for the negotiation of best and final offers. May be a single-step or multi-step process.

Request for Qualifications (RFQ). A document, which is issued by a procurement entity to obtain statements of the qualifications of potential responders.

Risk Management. The process of identification and analysis of risk; and the decision to either accept or mitigate the exposure to such risk when compared to the potential impact on the achievement of the entity's objectives.

Scope of Work. A scope of work is developed at the beginning of the procurement cycle and is a written description of the entity's needs and desired outcomes for the procurement and becomes the basis for any resulting solicitation.

Tabulation of Bids/Responses. The recording of responses to solicitations for the purposes of

comparison, analysis, and record keeping.

Woman-Owned Business Enterprise (WBE). Denotes that a woman (or women) has majority ownership and control of a business. May also be entitled to minority classification by certain public entities.

Any definition omissions are unintentional. Any definition not contained in this document can be defined by the Model Procurement Code.

DIVISION 2. - PROCUREMENT OFFICER

Sec. 2-258. - Procurement Director.

- (a) There is created the position of Procurement Director who shall be the county's Chief Procurement Officer for procurement and contract services. The Procurement Director shall report to the General Services division director.
- (b) The Procurement Director shall not incur any obligation on behalf of the county if sufficient funds have not been appropriated by the county council.
- (c) Responsibilities of the Procurement Director include, but are not limited to:
 - (1) Directing the day-to-day operations of the procurement department, including the supervision of staff and the review of their work;
 - (2) Ensuring compliance with applicable policies, laws, and regulations;
 - (3) Administering and maintaining the procurement card program for the county;
 - (4) Establishing standard contract clauses for use in contracts, solicitations, and purchase orders;
 - (5) Conducting contract negotiations and contract administration;
 - (6) Attending staff, committee, and council meetings as needed;
 - (7) Coordinating the disposal of all surplus property and equipment;
 - (8) Assisting grant recipients in ensuring proper procurement procedures are followed;
 - (9) Maintaining a complete record of all purchasing transactions;
 - (10) Conducting pre-bid conferences and bid openings;
 - (11) Handling bid advertisements, logging bids, and posting notice of awards and rejection notices as needed;
 - (12) Properly maintaining records of all bid information;
 - (13) Establishing and updating a bidders list;
 - (14) Assisting county government entities with writing bid specifications;
 - (15) Developing, reviewing, and updating procurement and contract procedures to ensure effective and efficient operations;
 - (16) Receiving and responding to inquiries from county government entities and vendors regarding procurement procedures; and
 - (17) Providing instruction and guidance to county government entities and officials.
- (d) The Procurement Director is authorized to develop, prepare and publish rules, regulations, manuals, guidelines, interpretations and other directives to aid in the implementation and use of the Lancaster County Procurement Code.

Section 2-259. - Legal counsel; contract review.

- (a) The county attorney shall serve as legal counsel to the Procurement Officer.
- (b) The county attorney shall review any proposed contract: (i) with a term that extends beyond June 30 of the fiscal year following the fiscal year in which the contract is proposed to be entered; or (ii) with an automatic renewal clause.

DIVISION 3. - SOURCE SELECTION

Section 2-260. - Methods of source selection.

Unless otherwise provided by law, all Lancaster County contracts shall be awarded by competitive sealed bidding, except as provided in:

- (a) Purchases under \$25,000;
- (b) Sole source procurement;
- (c) Emergency procurement;
- (d) Architect-engineering, construction management, land surveying, and other professional services;
- (e) Use of state contract and cooperative purchasing;
- (f) Authority to contract auditing services;
- (g) Competitive sealed proposals;
- (h) Negotiations after unsuccessful Competitive Sealed Bidding.
- (i) Competitive Fixed Price Bid;
- (j) Competitive Best Value Bid;
- (k) Competitive Online Bidding;
- (l) Special/unusual procurements; and
- (m) Procurement Exemptions

Section 2-261. - Procedures for procurements not exceeding twenty-five thousand dollars (\$25,000.00).

- (a) *Purchases under \$2,500.00.* Small purchases not exceeding two thousand five hundred dollars (\$2,500.00) may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from a supplier other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement director or department head suspects that the price may not be reasonable, there is a significant deviance from the previous price paid, or personal knowledge of the item involved indicates that the price is not reasonable.
- (b) *Purchases from \$2,500.01 to \$25,000.00.* Purchases between two thousand five hundred dollars and one cent (\$2,500.01) to twenty-five thousand dollars (\$25,000.00) may be accomplished by solicitation of quotes from a minimum of three (3) qualified sources and documentation of the quotes submitted with the required purchase requisition.
- (c) *Technology purchases.* All purchases of technology and technology services must be approved by IT director, including, but not limited to: computer hardware, computer software, servers, printers, audio visual equipment, security systems, and networking.
- (d) *Advertised Small Purchase.* Written solicitation of written quotes, bids, or proposals may be made for a small purchase, not in excess of twenty-five thousand dollars. The procurement must be advertised pursuant to this Code. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.
- (e) *Advertising Threshold.* All competitive procurements above twenty-five thousand dollars must be advertised pursuant to the requirements of this Code.
- (f) All documents must be obtained through the online portal on the County's website.

Section 2-262. - Sole source procurement.

- (a) A contract may be awarded for a supply, service, or construction item by the Procurement Officer without competition, subject to the approval of the County Administrator or designee. Procurements made with grant funds must receive written approval from the grantor agency. Written documentation (sole source justification form) must include the determination and basis for the proposed sole source procurement. A sole source purchase must be based upon one or more of the following criteria: (i) there is a lack of competition for a product or service; (ii) it is a unique, one-of-a-kind service offer; or (iii) the product has patented or proprietary rights that provide superior capabilities that are not obtainable from similar products, and the product is not marketed through other wholesalers or distributors whose competition could be encouraged.
- (b) Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the County Administrator or designee with respect to sole source determinations must be submitted in writing to the Procurement Director. In cases of reasonable doubt, competition must be solicited. Any decision that a procurement be restricted to one potential vendor must be accompanied by a thorough, detailed explanation as to why no other will be suitable or acceptable to meet the need.

Section 2-263. - Emergency procurements.

Notwithstanding any other provision of this article, the County Administrator or designee may make or authorize emergency procurements of supplies, services or construction items when an emergency condition arises and the need cannot be met through normal procurement methods. An emergency condition is a situation which creates a threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as may be proclaimed by either the County Administrator or designee. The existence of emergency conditions must create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten: (i) the functioning of county government; (ii) the preservation or protection of property; or (iii) the health or safety of any person. Emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination (Procurement Exemption Form) of the basis for the emergency and for the selection of the particular contractor or vendor shall be made and shall set forth the contractor's or vendor's name, amount, and a listing of the items procured under the contract.

Section 2-264. - Architecture, engineering, construction management, land surveying and other professional services.

- (a) The Procurement Director, with approval of the County Administrator, may negotiate contracts for architect-engineer, construction management, land surveying and other professional services valued at fifty thousand dollars (\$50,000.00) and below. Such negotiations must be accompanied by at least two (2) quotes from qualified vendors.
- (b) It is the policy of Lancaster County to publicly solicit requirements for architect-engineer, construction management, land surveying and other professional services at fifty thousand dollars (\$50,000.00) or more and to negotiate contracts for such services on the basis of demonstrated competence and qualification at fair and reasonable prices. The date for submission from interested persons or firms in response to an invitation shall not be less than twenty-one (21) business days after publication of the invitation. An evaluation panel, the Procurement Officer, and the County Administrator or designee shall conduct interviews with no less than two (2) firms regarding the proposed contract, provided that, if only one firm responds, that one firm may be interviewed. The Procurement Officer and/or the County Administrator shall negotiate a contract with the highest qualified firm or person.

Section 2-265. - Use of state contract and cooperative purchasing.

- (a) When it is advantageous to the county, purchases may be made through the State of South Carolina's Materials Management Office. Sections 2-260 and 2-261 are waived when purchasing from the state contract.
- (b) The Procurement Officer may enter into an agreement, independent of sections 2-260 and 2-261, with any public procurement entity for the cooperative use of supplies or services under the terms agreed upon by the parties.

Section 2-266. - Competitive sealed proposals.

- (a) *Conditions for use.* A contract may be entered into by competitive sealed proposals when the Procurement Officer or County Administrator determines in writing that the use of competitive sealed bidding is either impractical or not advantageous to the county.
- (b) *Request for proposals.* (RFP) Proposals shall be solicited through a request for proposal.
- (c) *Public notice.* Public notice for request for proposals shall be given in the same manner as provided in subsection 2-267(c) for competitive sealed bids.
- (d) *Receipt and safeguarding of proposals.* All proposals (including modifications) received prior to the time of opening shall be kept secure and unopened. It is the responsibility of persons submitting proposals to make sure their proposal is delivered to the proper place and at the proper time. Proposals received after the time set in the request for proposals shall not be considered and shall be noted as "late".
- (e) *Proposal opening.* Proposals shall be publicly opened in person or online. Questions on the contents of the proposals shall not be answered until after evaluations are completed.
- (f) Request for Qualifications.

(1) When soliciting professional services, the Procurement Officer may issue a request for qualifications from prospective offerors. The request must contain at a minimum a description of the scope of the work to be solicited by the request for proposals and must state the deadline for submission of information and how prospective offerors may apply for consideration.

(2) After receipt of the responses to the request for qualifications from prospective offerors, rank of the prospective offerors must be determined in writing through an evaluation panel. The County reserves the right to ask for proposals or hourly costs be placed in a sealed envelope to be opened only after the offerors have been ranked.

- (g) *Evaluation factor.* The request for proposals must state the relative importance of factors to be considered in evaluating the proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.
- (h) *Discussion with responsible offerors.* As provided in the request for proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussions. In conducting discussions, there must be no disclosure of confidential information derived from proposals submitted by competing offerors.
- (i) *Selection and Ranking.* Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the County, considering only the evaluation factors stated in the request for proposals.

- (j) **Negotiations.** After proposals have been ranked pursuant to, the Procurement Officer, in his sole discretion and not subject to review, but in consultation with the affected County Department Head may proceed in any of the manners indicated below, except that in no case will confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:
- (1) Negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the Procurement Officer, with each successively lower ranked offerors down to the level of ranking determined by the Procurement Officer in his sole discretion;
 - (2) during the negotiation process as outlined in item (1) above, if the Procurement Officer is unsuccessful in his first round of negotiations, he may reopen negotiations with any offeror with whom he previously negotiated; or
 - (3) Before or after negotiations, the Procurement Officer may make changes to the request for proposals within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers, which must be reevaluated and ranked pursuant to Section (g) above.
- (h) **Award.** Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration the evaluation factors set forth in the request for proposals, unless the Procurement Officer determines to utilize one of the options provided in Section (i) above. The award of the contract must be made on the basis of evaluation factors that must be stated in the Request for Proposal. The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 2258.

Section 2-267. - Competitive sealed bidding.

- (a) *Conditions for use.* Contracts more than twenty-five thousand dollars (\$25,000.00) shall be awarded by competitive sealed bidding except as otherwise provided in section 2-260.
- (b) *Invitation for bids.* An invitation for bids shall be issued and shall include a description of the purchase and all contractual terms and conditions applicable to the procurement.
- (c) *Notice.* The county shall give notice of the invitation for bids at least twenty-one (21) calendar days before the date set in it for the opening of bids. The notice shall be published on the County's website and in the South Carolina Business Opportunities (SCBO) publication.
- (d) *Pre-bid conference.* A pre- bid conference may be held to clarify information or ask questions concerning the solicitation.
Attendance at the pre-bid conference may or may not be mandatory. When mandatory attendance is required, only bids from those attending the conference will be accepted at final bid time.
- (d) *Receipt and safeguarding of bids.* All bids (including modifications) received prior to the time of bid opening shall be kept secure and unopened. It is the responsibility of bidders to make sure all bids are delivered to the proper place and at the proper time. Bids received after the time set in the Invitation for Bids shall not be considered and shall be noted as "late".
- (e) *Bid opening.* Bids must be opened publicly in person or online in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder,

must be tabulated. The tabulation must be open to public inspection at that time. Questions on the contents of the bids shall not be answered until after evaluations are completed. A bid tabulation must be posted online and shall be open for public inspection.

- (f) *Bid acceptance and bid evaluation.* Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with this code.
- (g) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with this Code. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this Code. Except as otherwise provided by the Code, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the Procurement Director.
- (h) *Tie bids.* If two (2) or more bidders are tied in price while otherwise meeting all of the required conditions, awards shall be determined in the following order of priority:
 - (1) In-state vs. out-of-state firms. If there is a tie with a South Carolina and an out-of-state firm, the award shall be made to the South Carolina firm;
 - (2) Lancaster County firm vs. other South Carolina county firms. If there is a tie with a firm located in Lancaster County and a firm located in another county of South Carolina, the award shall be made to the Lancaster County firm; and
 - (3) In all other situations in which bids are tied, the award must be resolved by the flip of a coin by the Procurement Officer, with a witness.
- (i) *Award.* Unless there is a compelling reason to reject bids as prescribed by this Code, notice of an award or an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at the location prescribed by the Procurement Director. For contracts with a total or potential value in excess of one hundred thousand dollars, notice of an intended award of a contract must be given by posting the notice for ten (10) calendar days before entering into a contract and must be published electronically on the County's website on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. If a change to the posting date is necessary, notice of the revised posting date must be given by posting the notice for three business days at the location identified in the solicitation. The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder's right to protest pursuant to Section 2-294. When only one response is received, the notice of intent to award and the delay of award may be waived.
- (j) *Minor Informalities and Irregularities in Bids.* A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The Procurement Officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing.

Section 2-268. - Competitive fixed price bidding.

- (a) *Conditions for Use.* When the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section

- [competitive sealed bidding], unless otherwise provided for in this section.
- (b) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods and services, or information technology based on a preset maximum price which the County will pay for such goods and services, or information technology.
 - (c) Public Notice. Adequate public notice of the solicitation shall be given in the same manner as provided in Section 2-294.
 - (d) Pricing. The County shall establish, before issuance of the fixed price bid, a maximum amount the County will pay for the goods and services, or information technology desired.
 - (e) Evaluation. Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
 - (f) Award. Award must be made to all responsive and responsible bidders to the County's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
 - (g) Negotiations after unsuccessful competitive sealed bidding. When bids received pursuant to an invitation for bids under Section 2-267 are considered unreasonable by the Procurement Officer, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the Procurement Director or the County Administrator or designee, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:
 - (1) Each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
 - (2) The negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
 - (3) The negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

Section 2-269. - Competitive best value bidding.

- (a) Conditions for Use. When the Procurement Officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by competitive best value bidding subject to the provisions of Section 2-267 and the ensuing regulations, unless otherwise provided for in this section.
- (b) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific supplies, services, or information technology based on pre-determined criteria identified by the County.
- (c) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section 2-267.
- (d) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Price information will be provided after the ranking of bidders and the issuance of award.
- (e) Evaluation Factors. The best value bid must state the factors to be used in determination of award and the numerical weighting for each factor. Price must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following:
 - (1) operational costs the County would incur if the bid is accepted;
 - (2) quality of the product or service or its technical competency;
 - (3) reliability of delivery and implementation schedules;
 - (4) maximum facilitation of data exchange and systems integration;
 - (5) warranties, guarantees, and return policy;
 - (6) vendor financial stability;
 - (7) consistency of the proposed solution with the County's planning documents and

- announced strategic program direction;
 - (8) quality and effectiveness of business solution and approach;
 - (9) industry and program experience;
 - (10) prior record of vendor performance;
 - (11) vendor expertise with engagement of similar scope and complexity;
 - (12) extent and quality of the proposed participation and acceptance by all user groups;
 - (13) proven development methodologies and tools; and
 - (14) innovative use of current technologies and quality results.
- (f) Clarification of Responsive Bid. The Procurement Officer may ask a responsive bidder to clarify an ambiguity in its bid; however, no material modification of the bid is allowed.
 - (g) Selection and Ranking. Bids shall be evaluated by using only the criteria and weightings stated in the invitation for best value bids. All evaluation factors, other than price, will be considered independent of and prior to determining the effect of price on the score for each participating bidder. Once the evaluation is complete, all responsive bidders must be ranked from most advantageous to least advantageous to the County, considering only the evaluation factors stated in the invitation for best value bids.
 - (h) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the County, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

Section 2-270. - Competitive online bidding.

- (a) Conditions for Use. When the Procurement Officer determines that on line bidding is more advantageous than competitive sealed bidding, a contract may be entered into by competitive on line bidding, subject to the provisions of Section 2-267 and the ensuing regulations, unless otherwise provided in this section.
- (b) Public Notice. Adequate public notice of the request for the solicitation must be given in the same manner as provided in Section 2-267.
- (c) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. At the Opening Date and Time, the County must begin accepting real time electronic bids. The solicitation must remain open until the Closing Date and Time. Before the Opening Date and Time, the County shall require bidders to register, shall register only responsible bidders, and, as a part of that registration, require bidders to agree to any terms, conditions, or other requirements of the solicitation. If less than two bidders are registered, the solicitation must be canceled. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 2-267.
- (d) Receipt and Safeguarding of Bids. Other than price, any information provided to the County by a bidder must be safeguarded as required by Section 2-267.
- (e) Provisions Not to Apply. Section 2-255 and paragraph (f) (Bid Opening) of Section 2-267 not apply to solicitations issued pursuant to this section.

Section 2-271. - Special/unusual procurements.

A special/unusual procurement is the acquisition by Lancaster County of personal property, services and improvements to real property without competition, subject to the approval of the County

Administrator or designee in writing. Lancaster County is justified in utilizing a special/unusual procurement when it has a need that has a unique requirement that the use of the procurement methods would not responsibly satisfy or further the interests to Lancaster County.

Section 2-272. - Procurement procedures exemptions.

- (a) *Supply/Service/Real Property Transaction Exemptions.* The following supplies and services are exempt from this article and need not be purchased through the standard procurement process:
 - (1) Published books, periodicals, pamphlets, DVDs and other media;
 - (2) Professional dues, membership fees and seminar registration fees;
 - (3) Utilities including gas, electricity, water, and sewer;
 - (4) Postage stamps and postal fees;
 - (5) Travel;
 - (6) Bank payments;
 - (7) Legal services, subject to the approval of the county administrator;
 - (8) The purchase of real property
- (b) *Other Exemptions.* Procurements obtained under any of the following methods are exempt from Invitation for Bids/Request for Proposals procedures listed in this article. These items are not exempt from the standard procurement process and must be accompanied by an authorized Procurement Exemption form:
 - (a) Cooperative purchases
 - (b) Emergency procurement
 - (c) Sole Source procurement
- (c) *Maintenance or service contracts.* Maintenance Agreements are used to contract with an outside vendor for the maintenance/repair of county-owned equipment are exempt from the standard procurement process. Examples are: software, computers, alarm systems, mechanical and other facility systems. This is not an all-encompassing list. Maintenance agreements require a valid contract/agreement on file with the Procurement Department before the Finance Department will process payment.
- (d) Although the items listed in this section are exempt from the normal procurement procedures of this article, every effort should be made to ensure that the procurement made and/or contract negotiated is cost effective and is in the best interest of the County.

Section 2-273. - Construction Project Delivery Methods Authorized

The following project delivery methods are authorized for procurements relating to design and construction of infrastructure, including but not limited to facilities, roads, and raw land:

- (a) Design-bid-build:
 - (1) Design. Architect-engineer, construction management, and land surveying services. The qualifications contained in a written solicitation shall be used to procure architect-engineer, construction management, and land surveying services, unless those services are acquired in conjunction with construction using one of the project delivery methods provided in this Section.
 - (2) Construction. Competitive sealed bidding, as provided in Section 2-267, must be used to procure construction in design-bid-build procurements.

- (b) Construction Management at-risk. Contracts for construction management at-risk must be procured as provided in either Section 2-266 or Section 2-267.
- (c) Design-build. Contracts for design-build must be procured by competitive sealed proposals, as provided in Section 2-266.

Section 2-274. - Choice of project delivery method.

- (a) Selection of Method. The project delivery method used for a County construction project must be that method which is most advantageous to the County and results in the most timely, economical, and successful completion of the construction project. The County shall select, in accordance with this code, the appropriate project delivery method for a particular project and shall state in writing the facts and considerations leading to the selection of that particular method.

DIVISION 4 – CONTRACT MANAGEMENT

Section 2-275. - Multiterm contracts.

- (a) Specified Period. Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any period of more than one year unless approved in a manner prescribed by the County. The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them.
- (b) Determination Prior to Use. Before the utilization of a multi-term contract, it must be determined in writing by the Procurement Director that:
 - (1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (2) Such a contract serves the interest of the County by encouraging effective competition or otherwise promoting economies in County procurement.
- (c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.
- (d) Maximum Duration. The maximum potential duration for a contract is five years. A maximum potential duration of up to seven years may be approved by the Procurement Director.
- (e) Authority Approval. Every type of contract with a maximum potential duration exceeding seven years must be approved by Council. For competitive procurements, approval of the maximum potential duration must be granted before solicitation.
- (f) Authority to contract auditing services. County Council must approve all contracts for auditing services. Contracts for auditing services must be obtained through normal procurement procedures.
- (g) Procurement Director has authority to approve and sign change orders equal to or less than \$100,000. Any change orders exceeding \$100,000 will be approved and signed by County Administration.

DIVISION 5. - PURCHASING CARD PROGRAM

Section 2-276. - P-Card program overview.

The P-Card is a charge card issued to a cardholder to make small value purchases of items such as approved supplies, materials, equipment, and services for organization use. The objective of the program is to streamline payments by eliminating the administrative burdens and costs associated with other methods of payment. The use of the P-Card is intended to eliminate the need for small dollar purchase orders. The P-Card program offers a simplified purchasing and payment process that allows for an expedited delivery of goods. The P-Card is issued under a contract awarded by the state materials management office which permits county participation in the program. Use of the P-Card is limited to the procurement procedures as established in this document, unless otherwise authorized.

Section 2-277. - Issuance of P-Card.

- (a) The Program Administrator will issue P-Cards to authorized cardholders who have signed the mandatory cardholder responsibilities agreement that covers the program policies and procedures code of conduct outlining the terms and conditions of the program. The issuance of a P-Card to a cardholder is strictly prohibited if cardholder has not signed the agreement. The Program Administrator shall maintain a copy of the signed P-Card agreement. The Program Administrator must maintain the following information:
 - (1) The name of the cardholder issued a P-Card;
 - (2) The date of issue;
 - (3) Card number details; and
 - (4) Spend control limits.
- (b) Access to the P-Card database is restricted to authorized personnel only. Any misuse is strictly prohibited and is subject to immediate termination and possible prosecution. The P-Card is the sole property of Lancaster County and must be maintained in a secure location at all times.

Section 2-278. - Spend control limits.

- (a) The P-Card is to be used only for authorized organization purchases only. Organization spending parameters are set at two thousand five hundred US dollars (\$2,500.00) per single transaction, including all associated fees and taxes. As used in this section, "single transaction" means one (1) or more items purchased from the same vendor at the same time on the same day. Any intentional circumvention of the single transaction limit is strictly prohibited and may result in the immediate termination of employment. Monthly spending limits are designated by Program Administrator based on demonstrated need of cardholder; monthly spending limits may be adjusted at the discretion of Program Administrator based on demonstrated needs of cardholder.
- (b) One-time transactions for purchases above individual transaction limit of two thousand five hundred US dollars (\$2,500.00) may be requested in writing to Program Administrator who may, in sole discretion, adjust temporary spend control limits of cardholder until transaction is complete.

Section 2-279. - First purchasing option/competition.

The P-Card should be used as the first option before other methods to obtain and pay for authorized goods and services costing two thousand five hundred dollars (\$2,500.00) or less, including taxes and fees. If the use of a P-Card is not possible, such as when a vendor will not accept P-Card and no other competitive vendor can be located, then a purchase order/claim for payment shall be issued. Cardholders are encouraged to complete purchases by obtaining more than one (1) quotation whenever possible.

Cardholders will be required to show justification that the price paid for any purchase is fair and reasonable.

Section 2-280. - Bona fide vendors.

- (a) Any purchase made shall be from a vendor who is deemed established, reputable, and reliable, with appropriate licensing, insurance, etc., and not of questionable status. Do not make P-Card purchases from vendor sources including but not limited to:
 - (1) Drop shipping E-commerce sites, e.g., Wish, Ali Express, etc.
 - (2) Personal reseller sites, e.g., Craigslist, Let go, etc.
 - (3) EBay (auctions).
 - (4) Flea markets, estate sales, etc.
 - (5) Relatives, friends, etc.
- (b) The following vendors consistently offer fair and reasonable pricing and are sufficiently competitive with each other for similar types of purchases. These chains include but are not limited to:
 - (1) Amazon Business (with account ID registered through Lancaster County).
 - (2) Office Depot (with account ID registered through Lancaster County).
 - (3) Wal-Mart.
 - (4) Lowes.
 - (5) Home Depot.

Section 2-281. - P-Card purchases.

- (a) *Permitted purchases.*
 - (1) Airline tickets for business travel
 - (2) Hotel accommodations for business travel;
 - (3) Car rental for business travel;
 - (4) Conference and seminar registration fees;
 - (5) Ground transportation for business travel;
 - (6) Facsimile charges when traveling;
 - (7) Non-travel related business meals (e.g., public meetings/hearings, commissions, etc.—must attach participant list and agenda/meeting minutes with receipt);
 - (8) Authorized memberships and/or subscriptions;
 - (9) Advertising;
 - (10) Utilities;
 - (11) Uniforms/authorized work clothing;
 - (12) Books, periodicals, magazines and paper subscriptions with authorized vendors;
 - (13) Registration expenses as pertaining to election days (e.g., supplies, election worker snacks, etc.);
 - (14) Approved office supplies; and
 - (15) Small dollar amount maintenance contracts/repair services on non-capital items may be paid for using P-Card as long as the vendor has a current certificate of insurance ("COI") in the appropriate amounts, including Worker's Compensation, and that the total cost of the transaction does not exceed the individual transaction limit of two thousand five hundred US dollars (\$2,500.00).

In addition to the goods and services listed above, the Program Administrator may, with proper documentation, designate other goods and services that may be authorized for purchase with P-Card.

- (b) *Prohibited purchases:*
 - (1) Personal purchases of any kind;
 - (2) Unauthorized food purchases (including office parties, retirements, holidays, etc.);
 - (3) Employee travel expenses such as meals and personal expenditures;

- (4) Donations of gifts to charity, gifts to Organization employees, political contributions;
- (5) Cash advances;
- (6) Gift cards, calling cards, or any pre-paid cards of similar type;
- (7) Entertainment (including in-room services);
- (8) Alcoholic beverages;
- (9) Tobacco products;
- (10) Weapons, side arms, ammunition, even if for training (does not apply to Sheriff's Office);
- (11) Hazardous materials/chemicals;
- (12) Fuel;
- (13) IT purchases: hardware and installable software (unless approved by IT Director); and
- (14) Professional services conducted on County property (unless permitted qualifications are met).

In addition to the goods and services listed above, the Program Administrator may, with proper documentation, designate other goods and services that may be listed as prohibited purchases with P-Card.

(c) *Additional prohibited uses:*

- (1) a. *Employee travel expenses/meals.* Cardholders are not authorized for P-Card usage with meals or food expenses associated with internal business meetings or travel. Cardholders will be authorized for P-Card usage on any business meal expense, non-travel related, that comes accompanied by an approved meeting agenda and/or meeting minutes. Travel meals and other travel expensed items shall be reimbursed via Lancaster County's Travel Reimbursement Policy (Policy 8.1).

b. *Travel Expenses—overnight stay:*

1. Mileage;
2. Meals;
3. Additional Conference fees—County will pay base registration cost;
4. Accommodations in addition to the dates identified on the accompanying agenda. Dependent upon agenda start times, accommodations may sometimes include the preceding night but not before receiving written approval of the Department Head.

c. *Travel expense(s)—not overnight stay:*

1. Mileage;
2. Meals;
- (2) *Flowers.* Cardholders are not authorized for flower arrangement purchases on P-Cards. The only departments authorized to purchase flower arrangements are as follows: County Council and the County Administrator's office. If a department would like to send flowers out to any group or individual, including funeral services or employees out on medical leave, then all arrangements must be paid for in another manner, i.e., personal funds.
- (3) *Vendor reward/loyalty programs.* Cardholders are not authorized to use their P-card to gain credit towards any vendor reward/loyalty programs for personal gain. Cardholders must not present their reward/loyalty cards in connection with any authorized P-Card purchases. If cardholders are found to be engaging in this type of practice they may be subject to disciplinary actions in accordance with organization program policies and procedures, including termination for cause. In addition, the purchase may constitute fraud and criminal charges could be instituted against the cardholder.
- (4) *Amazon Prime Membership.* Cardholders are not authorized to use their P-card to obtain an Amazon Prime Membership for any individual department's use. Any department interested in Amazon Prime ordering is required to register through the organization's Amazon Business account. No personal Amazon Prime Memberships shall be authorized to ship organization goods ordered with P-Cards, nor shall any organization prime membership be used to ship personal goods of any kind to any address. All purchases must be shipped to an organization address only; no goods shall be shipped to or received at personal domain or private residence

for any reason.

- (5) *Grocery items.* Requests for grocery items made at grocery / retail stores for any items, including those related to special meetings, events, retirements, or training purposes, are subject to review and must be submitted in writing by requesting Department Head and submitted to Program Administrator for documentation purposes; each request may be subject to additional approval by County Administrator.

Section 2-282. - Program documentation.

- (a) The cardholder or department proxy will maintain all vendor receipts/charge slips. These receipts/charge slips are to be uploaded along with appropriated account information for each transaction, further, a brief explanatory description of each transaction should be noted in the "comments" column of Bank of America Works software. All receipts/charge slips are to include verification of sales tax as all credit transactions are subject to South Carolina Use Tax. If an itemized receipt is not provided, cardholder must contact vendor to determine whether or not sales tax was applied and provide verification to organization's finance department.
- (b) In addition, the cardholder or department proxy may be requested to provide additional details of any purchase if deemed necessary for transparency and/or compulsory reasons with P-Card program policies and procedures. These details may include, but are not limited to, the following:
 - (1) Purchase justification;
 - (2) Program details (e.g. special projects);
 - (3) Event/training purposes; and
 - (4) Funding/budget information. This documentation may be requested via email memo for attachment with transaction.
- (c) Lastly, all business meals must have accompanying attendance/meeting minutes and all business conferences/seminars must have associated agenda/itinerary attached. All documentation regarding the program policies and procedures will be maintained by the Program Administrator. The organization's finance department will maintain the monthly master billing statements.

Section 2-283. - Sign-offs.

Any cardholder, Department Head, and/or department proxy must complete all transactional sign-offs, including uploading of appropriate backup documentation, by the first business day of each calendar month at noon (12:00 p.m.) EST; however, with suitable notification to Program Administrator, there may be an allowable three (3) business day grace period for justifiable circumstances of delayed sign-off, e.g., known out-of-office/vacation dates, etc. Repeated lack of timely sign-offs may result in P-Card termination for cardholder.

Section 2-284. - Missing receipt affidavit.

Cardholder is responsible for submitting itemized receipts with P-Card transactions. Notwithstanding, organization recognizes that cardholder may lose or inadvertently not have a receipt for a transaction. Cardholder is responsible for contacting Vendor to request duplicate copy. When a good faith effort to obtain copy is unsuccessful, a missing receipt affidavit may be used in conjunction with transaction reconciliation. All information must be completed on missing receipt affidavit. Cardholder must also contact vendor to determine if appropriate sales tax was charged as all credit transactions are subject to South Carolina Use Tax. Both the cardholder and Program Administrator shall approve the affidavit. The missing receipt affidavit may not be used on a routine basis. Repeated use of missing receipt affidavit may result in P-Card termination for cardholder.

Section 2-285. - Cardholder liability.

The P-Card is a corporate charge card and will not affect personal credit rating levels. It is a cardholder's responsibility to ensure that the card is used within the stated guidelines of program policies and procedures. Failure to comply with program policies and procedures may result in permanent revocation of P-Card, notification of situation to Organization officials, and punitive action in accordance with Lancaster County Policies and Procedures relating to disciplinary action and termination for cause. Misuse of P-Card may constitute fraud and criminal charges may be issued against any cardholder in violation.

Section 2-286. - Fraud; P-Card misuse/abuse.

- (a) *Fraud.* This involves the unauthorized use of P-Card by the cardholder, someone other than the individual whose name is on the card, or individuals outside the organization. This includes stolen cards, counterfeit cards, and/or identity theft. It could also involve non-organization employees or former organization employees working in collusion with current organization employees to commit fraudulent acts.
- (b) *Merchant fraud.* This is an unauthorized activity and involves any cardholder charges for goods and/or services not provided by a vendor.
- (c) *Misuse/abuse.* This is an unauthorized activity that involves the misuse and abuse of the purchasing activity by the cardholder. This includes poor asset management resulting from improper order quantities, regularly not practicing "best value" due diligence when making authorized purchases, or regularly buying from unauthorized Vendor sources.
- (d) Usage of the P-Card for personal gain would represent serious abuse of the P-Card and could result in termination of employment and/or criminal charges filed against the cardholder.

Section 2-287. - Credits.

Under no circumstances should cardholder accept cash in lieu of a credit to their P-Card account. The vendor should always issue a credit to the account for any item/service agreed to process for a return.

Section 2-288. - P-Card termination.

- (a) The Program Administrator may close a cardholder account if:
 - (1) Cardholder transfers to a different department that no longer requires P-Card;
 - (2) Cardholder is no longer employed with organization; or
 - (3) For any reason subjecting cardholder to disciplinary action in accordance with program policies and procedures relating to termination for cause, including the following:
 - a. Cardholder does not adhere to all P-Card program policies and procedures.
 - b. P-Card being used for personal gain or unauthorized purposes;
 - c. Continued or frequent misuse/abuse of P-Card;
 - d. P-Card usage for purchases of any substance(s), material(s), or service(s) that violates policy, law, or regulation relating to organization;
 - e. Cardholder allows card to be used by another individual for any reason;
 - f. Cardholder splits purchase to circumvent the established single transaction limit of two thousand five hundred dollars (\$2,500.00); or
 - g. Cardholder fails to provide required receipts and / or documentation for P-Card purchases;
- (b) In conjunction with P-Card termination, a request for closing a cardholder's account will be processed by Program Administrator. P-Card must also be returned to procurement department for immediate disposal.

Section 2-289. - Lost, misplaced or stolen P-Cards.

Cardholders must report any lost, misplaced, or stolen P-Cards immediately to Bank of America toll- free at 888-449-2273. Representatives are available to assist twenty-four-hours a day, seven-days a week, and three hundred sixty-five-days a year. Lost, misplaced, or stolen cards should also be immediately reported to the cardholder's immediate supervisor and the P-Card administrator.

Section 2-290. - Cardholder responsibilities and Agreement.

- (a) I, the undersigned, as an approved procurement card (P-Card) holder, fully understand and agree to the following terms and conditions regarding the usage and safekeeping of the P-Card entrusted to me.
- (b) I, as cardholder, must use my P-Card for legitimate organization business and travel only. Misuse of my P-Card will be subject to disciplinary action in accordance with program policies and procedures. Any misuse of my P-Card may constitute fraud and, if necessary, criminal charges may be instituted against me.
- (c) I, the cardholder, must:
 - (1) Maintain full knowledge and adherence to P-Card Program Policies and Procedures;
 - (2) Ensure the P-Card is used only for legitimate Organization business expenses;
 - (3) Provide appropriate justification for all P-Card purchases, with documentation by 12:00 PM on the first business day of each month;
 - (4) Maintain the P-Card in a secure location at all times;
 - (5) Not allow for other individuals to use my issued P-Card;
 - (6) Obtain "best value" for all Organization purchases made with P-Card;
 - (7) Adhere to all purchase limits of the P-Card and ensure total charges, including taxes, shipping, and fees for any single transaction does not exceed two-thousand five-hundred (\$2,500) US dollars;
 - (8) Verify all charges on monthly statement and approve all monthly transactions using electronic software (i.e. Works) from Card Issuer;
 - (9) Obtain all sales slips, register receipts for proper transaction documentation, and provide the same to department proxy (if applicable) for proper reconciliation and allocation;
 - (10) Attempt to resolve any disputes or billing errors directly with Vendor;
 - (11) Not accept cash in lieu of a credit for P-Card account reconciliations;
 - (12) Return P-Card to Program Administrator, Department Head, or human resource department upon termination of employment with organization; and
 - (13) Immediately report lost/stolen cards to card issuer [Bank of America @ 888-449-2273, 24/7/365] and notify Program Administrator and direct supervisor at first opportunity during business hours.
- (d) Any violation of P-Card program policies and procedures may result in disciplinary action(s) including termination of employment and, if necessary, criminal charges.
- (e) As a cardholder, I hereby agree to the above terms and conditions and take full administrative responsibility pursuant to the P-Card program policies and procedures for the action(s) of a cardholder.

DIVISION 6. - RISK MANAGEMENT

Section 2-291. -Bid security.

- (a) Bid security is required for all competitive sealed bidding for construction contracts in excess in excess of one hundred thousand dollars and other contracts as may be prescribed by the

Procurement Officer. Bid security shall be a certified cashier's check or a bond provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability," which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Each bond shall be accompanied by a "power of attorney" authorizing the attorney in fact to bind the surety.

- (b) Bid security must be in an amount equal to at least five (5) percent of the amount of the bid at a minimum.
- (c) When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, the bid must be rejected.
- (d) After the bids are opened, they must be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid in accordance with regulations promulgated by the County, action must not be had against the bidder or the bid security.

Section 2-292. - Contract performance payment bonds.

- (a) The following bonds or security must be delivered to the county and become binding on the parties upon the execution of the contract for construction:
 - (1) A performance bond satisfactory to the county, executed by a surety company meeting the criteria established in section 2-291, or otherwise secured in a manner satisfactory to the county, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;
 - (2) A payment bond satisfactory to the county, executed by a surety company meeting the criteria established in section 2-291, or otherwise secured in a manner satisfactory to the county, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and
 - (3) in the case of a construction contract valued at one hundred thousand dollars (\$100,000.00) or less, the county may waive the requirements of (1) and (2) above;
 - (4) in the case of a construction manager at-risk contract, the solicitation may provide that bonds or security are not required during the project's preconstruction or design phase, if construction does not commence until the requirements of sub items (1) and (2) above have been satisfied. Additionally, the solicitation may provide that bonds or security as described in sub items (1) and (2) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the construction of each designated portion, and also may prescribe the time of delivery of the bonds or security. In no event may construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body; (in the case of a design-build) the solicitation may provide that bonds or security as described in sub items (1) and (2) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the design and construction of each designated portion, and also may prescribe the time of delivery of the bonds or security. In no event may design or construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body.
- (b) The county may require other security in addition to the security listed in subsection (a).

Section 2-293. - Insurance requirements.

The county may require a vendor or contractor performing services under contract with the county to file with the Procurement Officer a certificate of insurance evidencing workers compensation coverage, general liability coverage, errors and omissions coverage or other types of insurance coverage as may be appropriate for the type of goods or services being procured by the county. The amount and scope of any insurance coverage for a specific contract shall be determined by the Procurement Officer after consultation with the county's risk management official.

DIVISION 7. - LEGAL AND CONTRACTUAL REMEDIES

Section 2-294. - Right to protest; exclusive remedy.

- (a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Procurement Officer in the manner stated in Section 2-295 within ten (10) calendar days of the date of issuance of the invitation for bids or requests for proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An invitation for bids or request for proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date it is posted on the county's website.
- (b) Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Procurement Director within ten (10) calendar days of the date of award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to sub item (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.
- (c) The rights and remedies granted in this division to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of the bidders, offerors, contractors, or subcontractors against the county.
- (d) The rights and remedies granted by this section are not available for contracts with an actual or potential value less than twenty-five thousand dollars (\$25,000.00).

Section 2-295. - Protest procedure.

- (a) A protest pursuant to section 2-294 must be in writing, filed with the Procurement Officer in person or through certified mail, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the Procurement Officer within the time provided in subsection (b).
- (b) A protest pursuant to subsection 2-294 must be in writing and must be personally received by the Procurement Officer within the time limits established by subsection 2-266 and 2-267. At any time after filing a protest, but no later than ten (10) days after the date of award or notification of intent to award, is posted in accordance with this article, whichever is earlier, a protestant may amend a protest that was first submitted within the time limits established by subsection 2-266 and 2-267. A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

Section 2-296. - Attempt to settle.

Before commencement of an administrative review as provided in section 2-297, the Procurement Officer or designee may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror,

contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The Procurement Officer or designee has the authority to approve any settlement reached by mutual agreement.

Section 2-297. - Administrative review; decision; and finality.

- (a) If in the opinion of the Procurement Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Procurement Officer shall immediately notify the County Administrator who shall conduct promptly an administrative review. The County Administrator or designee shall commence the administrative review no later than fifteen (15) business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten (10) days of completion of the review. The decision must state the reasons for the action taken.
- (b) A copy of the decision under subsection (a) must be mailed or otherwise furnished immediately to the protestant and other party intervening. The Procurement Officer or designee shall post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and the posted decision must indicate the date of posting on its face.
- (c) A decision pursuant to subsection (a) is final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals to the circuit court in accordance with the provisions of this Article.
- (d) If a final order of a Procurement Director or the County Administrator is not appealed in accordance with the provisions of this code, upon request of a party to the proceedings, the Procurement Director or County Administrator may file a certified copy of the final ruling with a clerk of the circuit court, or a court of competent jurisdiction, as requested. After filing, the certified ruling has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.
- (e) This Section does not apply to disputes between the County and a vendor regarding the performance of a contract after a contract is awarded, executed, and there is no protest pending.

Section 2-298. - Automatic stay.

In the event of a timely protest pursuant to section 2-294, the county shall not proceed further with the solicitation or award of the contract until ten (10) days after a decision is posted by the Procurement Officer except that solicitation or award of a protested contract is not stayed if the Procurement Officer, after consultation with the head of the using department or agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the county.

Section 2-299. - Procurement Officer Address.

Notice of the address of the Procurement Officer must be included in every notice of an intended award and in every invitation for bids, request for proposals, or other type solicitation.

Section 2-300. - Frivolous protests.

- (a) Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read the document, to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and it is not interposed for an improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

- (b) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document that is filed with the Procurement Director is signed in violation of this subsection, the [County Administrator], upon motion or upon his/her own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction that may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.
- (c) Filing. A motion for sanctions pursuant to this section must be filed with the [County Administrator] no later than fifteen days after the later of either the filing of a request for review, protest, motion, or other document signed in violation of this section, or the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions.

DIVISION 8. - SMALL AND MINORITY BUSINESS ENTERPRISES

Section 2-301. - Participation in procurements—Minority and women-owned business enterprises.

(a) Non-discrimination.

- (1) It is a continuing public policy of the county to achieve the full and equitable participation of businesses owned by minorities and women in Lancaster County's procurement process as both prime contractors and subcontractors.
- (2) The county is committed to a policy of preventing and reducing discrimination in the award of or participation in county contracts and eliminating arbitrary barriers to full participation in such contracts by all persons regardless of race, ethnicity, or sex.

(b) Classifications.

Certified classification - the business or business owner must be able to show evidence of:

- (1) Existence as a "for profit" business;
- (2) Operations for at least one (1) year;
- (3) U.S. citizenship or legal resident alien status; and either:
 - a. Be determined as an eligible MBE/WBE in accordance with this subchapter, subject to [the provisions of "minority business enterprise (MBE)" and "woman-owned business enterprise (WBE)" as defined in this subsection]; or
 - b. The business holds current registration of MBE/WBE status with a reciprocal agency deemed acceptable to the county.

Minority business enterprise (MBE) classification is a business:

- (1) Which is at least fifty-one (51) percent owned by one (1) or more minority individuals, or in the case of a publicly owned business, at least fifty-one (51) percent of all classes of the stock of which is owned by one (1) or more such minority individuals;
- (2) Whose management, policies, major decisions, and daily business operations are independently managed and controlled by one (1) or more minority individuals;
- (3) Which performs a commercially useful function; and
- (4) Which is a certified firm through a State or Federal program.

Minority individual is classified as a natural person of at least twenty-five (25) percent minimum (documentation may be required) in one (1) of the following groups:

- (1) African-Americans/Black;
- (2) Hispanic-Americans, which includes persons who are Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, regardless of race;
- (3) Native-Americans, which includes persons who are American-Indians, Eskimos, Aleuts, or Native-Hawaiians;
- (4) Asian-Americans, which includes persons who are individuals of Far East Asia, Southeast

- Asia, the islands of the Pacific, or the Indian subcontinent;
- (5) Arab-Americans.

Woman-owned business enterprise (WBE) classification is a business:

- (1) Which is at least fifty-one (51) percent owned by one (1) or more women, or in the case of a publicly owned business, at least fifty-one (51) percent of all classes of the stock of which is owned by one (1) or more such women;
 - (2) Whose management, policies, major decisions, and daily business operations are independently managed and controlled by one (1) or more such women;
 - (3) Which performs a commercially useful function; and
 - (4) Which is a certified firm through a Federal or State program.
- (c) *Non-discriminatory efforts.* In furtherance of the county's non-discrimination process, Lancaster County Procurement shall:
- (1) Compose and maintain a list of minority and women-owned vendors who are eligible to contract with the county;
 - (2) Seek and locate MBE/WBEs to be involved in the procurement process of county goods and services;
 - (3) Ensure no barriers in procurement procedures that will prohibit full participation of MBE/WBEs from doing business within the county;
 - (4) Maintain regular reporting of such activities to be available to all county management.
- (d) *MBE/WBE utilization.* Lancaster County wishes to ensure that all duly certified minority business enterprises (MBE), and woman-owned business enterprises (WBE) are afforded the opportunity to fully participate in the procurement process. In addition to any requirements set forth in state or federal mandates, the County Administrator or Procurement Officer may include qualified MBEs and WBEs on solicitation lists.

DIVISION 9. - SURPLUS PROPERTY

Section 2-302. -Disposal of personal property.

- (a) All items of personal property belonging to the county may be declared surplus property to be sold, transferred, traded, or placed in storage by the county. Each department shall report all surplus property to the Procurement Officer on an annual basis.
- (b) Surplus personal property shall be disposed of in the following manner:
 - (1) County personal property may be sold by public auction or by competitive sealed bidding to the highest bidder. The sale of property not in actual public use shall be conducted by the Procurement Officer. Sales may be held on an as needed basis. The Procurement Officer shall deposit the proceeds from the sales, less the expense of the sales, in the fund from which the item was originally paid from.
 - (2) Surplus supplies, inventory, or capital assets may be transferred between departments, other government agencies, or certain non-profits approved by the County. The Procurement Officer must document all transfers of assets and give proper documentation to the accounting office.
 - (3) Certain personal property may be held in storage until an appropriate time for disposal in accordance with this article.
 - (4) Certain property deemed by the Procurement Officer and the using department to be of no value and not suitable for disposal through the above methods, may be dismantled and disposed of permanently and in an appropriate fashion.

Section 2-303. - Disposal of real property.

- (a) Surplus real property is property owned by the county and declared surplus by the county council.

The County Administrator may make recommendations to the county council. Disposal of property declared surplus by the county council shall be disposed of in accordance with this section.

- (b) All surplus real property must be appraised to determine its fair market value.
- (c) The sale of any surplus real property must be approved by county council by passage of an ordinance and with a public hearing held prior to final approval of the ordinance.
- (d) County council shall determine the method of disposal of the surplus real property in the ordinance authorizing the sale of the property.

DIVISION 10. - REAL PROPERTY ACQUISITION

Section 2-304. - Acquisition of real property.

All transactions involving real property, made for or by the county, must be approved by county council by passage of a resolution or ordinance to that effect. If the transaction is for the purchase of real property the resolution or ordinance must include the purchase price. Prior to acting on the resolution or ordinance, county council shall be provided a phase I environmental assessment and an appraisal completed by an MAI certified appraiser. For right-of-ways and easements, a phase I environmental assessment is not required and a valuation by the county tax assessor's office may be provided to county council in lieu of an MAI appraisal.

Section 2. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 3. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling

Section 4. Effective date.

This ordinance is effective upon Third Reading.

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AND IT IS SO ORDAINED

Dated this _____ day of _____, 2020.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

First Reading:	August 10, 2020
Second Reading:	August 24, 2020
Public Hearing:	August 24, 2020
Third Reading:	September 14, 2020

Approved as to form:

John DuBose, County Attorney

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Agenda Item Summary

Ordinance # / Resolution #: N/A

Contact Person / Sponsor: Steve Willis/Administration

Department: Administration

Date Requested to be on Agenda: 7/21/2020

Issue for Consideration:

Potential acquisition of Ultraviolet (UV) Light disinfecting system for HVAC systems in County owned facilities.

Points to Consider:

We would like to discuss with the Administration Committee the concept of acquiring UV Light disinfecting systems for the HVAC systems at county owned facilities.

We do not have final pricing as we wanted to determine if there is an appetite by Council to consider acquiring such. The systems are expensive with a cost estimate of between \$20,000 and \$25,000 for the County Building. Locations such as the Detention Center would require multiple smaller units due to the composition of their system.

The obvious concerns COVID but such systems are useful against other airborne viruses such as colds, influenza, etc.

Funding and Liability Factors:

Cost to be determined.

Such systems should be eligible for federal reimbursement should subsequent CARES Act packages be issued. That of course is undetermined at this point.

Options:

At this point we are not asking for an acquisition opinion. We are simply seeing if there is any need to pursue additional information on this.

Recommendation:

Obtain additional information for the Committee.