

A G E N D A
SPECIAL MEETING

LEXINGTON COUNTY COUNCIL

Monday, September 20, 2004

Second Floor - Council Chambers - County Administration Building

212 South Lake Drive, Lexington, South Carolina 29072

Telephone - 803-359-8103 FAX - 803-359-8101

6:00 P.M. - COUNCIL CHAMBERS

Call to Order/Invocation

Pledge of Allegiance

Public Hearing

- (1) Ordinance 04-07 - Authorizing the Reduction of the Minimum Investment Commitment Under, and Certain Amendments of, the Lease Agreement Between Pirelli Communications Cables and Systems USA, LLC and Lexington County Dated December 7, 2001 **A**

Ordinances

- (1) Ordinance 04-07 - Authorizing the Reduction of the Minimum Investment Commitment Under, and Certain Amendments of, the Lease Agreement Between Pirelli Communications Cables and Systems USA, LLC and Lexington County Dated December 7, 2001 - 2nd Reading **(SEE TAB A)**

Economic Development Project

- (1) Project Troy - Memorandum of Understanding **B**

Committee Reports

Committee of the Whole, S. Davis, Chairman

- (1) Classification and Compensation Plan **C**

New Business/Old Business

ADJOURNMENT

for which the County is reimbursed through special source revenue credits pursuant to Section 4-12-30(K)(3) of the Act;

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

WHEREAS, due to unforeseeable adverse conditions that impacted the economy soon after the parties had entered into the FILOT Arrangement, Pirelli now plans to divest itself of a portion of the Project defined in the Lease as the 'Airport Site' and does not expect to reach the minimum investment commitment under the FILOT Arrangement (the "Minimum Investment Commitment") with respect to the Project and has requested the County to amend the FILOT Arrangement to reduce such Minimum Investment Commitment (the "Reduction") and to convey the Airport Site back to Pirelli (the "Conveyance") and has exercised its purchase option pursuant to Section 10 02 of such Lease (the "Purchase Option") for the Airport Site that is currently part of the Project thereby effectively removing such property from the Lease, the respective Project description, and the FILOT Arrangement,

WHEREAS, as consideration for the Reduction and the other benefits authorized herein, Pirelli has agreed to an increase of the assessment ratio under the FILOT Arrangement from its present 6% to 7% starting with any FILOT payments due for the 2005 tax year and by making a one-time payment of \$500,000 to the County in satisfaction of all payment liability to the County for the Airport Site;

WHEREAS, a third party known to County Council desires to purchase the Airport Site from Pirelli and is planning an investment of capital and the creation of a substantial number of jobs at such site,

WHEREAS, an Agreement of Purchase and Sale has been or will be executed on behalf Pirelli and a third party known to County Council for the sale by Pirelli of the Airport Site;

WHEREAS, the County has determined that the Reduction, the Conveyance, and any consideration received in exchange would benefit the general public welfare of the County by assisting Pirelli to weather these economically adverse times and by attracting new substantial investment and job creation by the new third party investor, thereby securing and increasing the jobs and employment in the County, the ad valorem tax base of the County, and service, employment or other public benefits not otherwise provided locally; and that the Reduction and the Conveyance does not result in any pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either;

WHEREAS, the purposes to be accomplished by the Reduction and Conveyance, i.e., economic development, creation or retention of jobs, and addition to or maintenance of the tax base of the County, are proper governmental and public purposes and the inducement of the third party project that will be located at the Airport Site is of paramount importance and such benefits of the Reduction and Conveyance will be greater than the costs;

WHEREAS, the County Council has caused to be prepared and presented to the County Council the form of the Amendment of Lease Agreement Dated December 7, 2001, Inducement Agreement and Millage Rate Agreement dated December 15, 2000, and Memorandum of Understanding dated August 25, 2000 (the "Amendment") by and between the County and Pirelli and a limited warranty deed for the Airport Site from the County to Pirelli (the "Deed") incorporating the Reduction and Conveyance; and

WHEREAS, the County desires to authorize the Reduction and Conveyance to be effective upon the closing of the sale by Pirelli of the Airport Site, and it appears that the Amendment and Deed now

before the County Council are appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Lexington County, South Carolina, as follows:

Section 1. Reduction of Minimum Investment Commitment; Consideration. The Minimum Investment Commitment under the Lease Agreement Dated December 7, 2001, Inducement Agreement and Millage Rate Agreement dated December 15, 2000, and Memorandum of Understanding dated August 25, 2000, shall be reduced to \$20,000,000. In consideration for such reduction and other benefits of the amendment to the FILOT Arrangement, the assessment ratio under the FILOT Arrangement beginning with the 2005 tax year shall be increased from 6% to 7% and Pirelli shall make a one time payment of \$500,000.

Section 2. Confirmation of Purchase Option. The Lease, including the Purchase Option contained therein, is hereby confirmed and approved. The exercise of the Purchase Option on the Airport Site does not terminate the Purchase Option and the same shall remain in full force and effect on the remaining property subject thereto

Section 3. Approval of Conveyance. The Conveyance in fee simple of the Airport Site of approximately 62.10 acres in the Columbia Airport Enterprise Park to Pirelli Communications Cables and Systems USA, LLC is hereby authorized and approved. The form, terms, and provisions of the Deed presented to County Council and filed with the Clerk to County Council (the "Clerk") are approved and all of the terms, provisions, and conditions of the Deed are incorporated herein by reference. The Deed shall be executed on behalf of the County by the Chairman of the County Council (the "Chairman"), shall be in substantially the form now before the County Council, and shall include only changes that are approved by the Chairman. The Chairman shall consult with the County Attorney with respect to any changes to the Deed. The execution of the Amendment by the Chairman shall constitute conclusive evidence that all changes to or revisions of the Deed now before this meeting have been approved.

Section 4. Approval of Amendment of FILOT Arrangement. The Amendment is approved as follows: The form, terms, and provisions of the Amendment presented to County Council and filed with the Clerk are approved and all of the terms, provisions, and conditions of the Amendment are incorporated herein by reference. The Amendment shall be executed on behalf of the County by the Chairman, shall be in substantially the form now before the County Council, and shall include only changes that are approved by the Chairman. The Chairman shall consult with the County Attorney with respect to any changes to the Amendment. The execution of the Amendment by the Chairman shall constitute conclusive evidence that all changes to or revisions of the Amendment now before this meeting have been approved.

Section 5. Earmarking of Funds Received, Release of Pirelli from Certain obligations under the MoU. The consideration of \$500,000 paid by Pirelli shall be earmarked for the prepayment or for the payment of any installments, when they become due, under that certain promissory note dated August 8, 2000 made by the County for the benefit of the Richland Lexington Airport District in the original principal amount of \$1,552,500 and Pirelli shall, effective with such payment, be relieved of any further obligations under Sections 5(b) and/or 9(c) of the MoU.

Section 6. Certification that Obligations under the MoU Have Been Satisfied and Approval of the Transfer of the Airport Site to Third Party. The County hereby certifies that the obligations of Pirelli under the MoU have been satisfied and hereby explicitly authorizes the further transfer of the Airport Site from Pirelli to a third party.

Section 7. Waiver of Recapitulation Requirement. Pursuant to Section 4-12-45 (B) of the Act the County agrees to waive the recapitulation requirement of the terms hereof and all the other items described in Section 4-12-45 of the Act.

Section 8. Execution of Documents The Chairman is hereby authorized, empowered and directed to do all things necessary (i) to effect the execution, acknowledgement and delivery of the Amendment and the Deed, (ii) to perform the County's obligations thereunder, and (iii) to further the intent of this Ordinance.

Section 9. Severability The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 10. Effectiveness of Ordinance. All ordinances, resolutions, orders, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This Ordinance shall take effect and be in full force upon the closing of the sale by Pirelli of the Airport Site

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this ___ day of _____ 2004.

LEXINGTON COUNTY, SOUTH CAROLINA

George H. Smokey Davis, Chairman of County Council

ATTEST

Dorothy K. Black, Clerk to County Council

[Seal]

First Reading: _____

Second Reading: _____

Public Hearing: _____

Third Reading: _____

AMENDMENT OF FILOT ARRANGEMENT

This Amendment (the "Amendment") of the Lease Agreement dated December 7, 2001 (the "Lease"), the Inducement Agreement and Millage Rate Agreement dated December 15, 2000 (the "Inducement Agreement"), and the Memorandum of Understanding dated August 25, 2000 (the "MoU", cumulatively referred to hereinafter as the "FILOT Arrangement") between Lexington County, a body politic and corporate and a political subdivision of the State of South Carolina (the "County") and Pirelli Communications Cables and Systems USA, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Company"), is made and entered into as of _____, 2004 by and between the original parties.

WHEREAS, all capitalized terms not specifically defined herein, shall have the meaning as defined in the Lease, and if not defined therein shall have the meaning as defined in Title 4, Chapter 12, of the Code of Laws of South Carolina 1976 (the "Act");

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

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of the Act, to reduce the disparity between manufacturing and other property and the resulting property tax burden for manufacturing businesses through a fee in lieu of tax arrangement that allows for a reduced fee to be paid by the manufacturer making new investments in the County in excess of the provided levels in lieu of the property tax through which powers the industrial 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 manpower, agricultural products and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

WHEREAS, the County is also authorized by the Act to authorize and execute lease agreements, inducement agreements, and millage rate agreements and memoranda of understanding with respect to such projects;

WHEREAS, in the exercise of the foregoing powers, the County and the Company have heretofore entered into the FILOT Arrangement providing for certain incentives with respect to the Project, including, without limitation, payment of a fee in lieu of taxes and a land grant to the Company for which the County is reimbursed through special source revenue credits pursuant to Section 4-12-30(K)(3) of the Act;

WHEREAS, due to unforeseeable adverse conditions that impacted the economy soon after the parties had entered into the FILOT Arrangement, the Company now

plans to divest itself of a portion of the Project defined in the Lease as the 'Airport Site' and consequently does not expect to reach the minimum investment commitment under the FILOT Arrangement (the "Minimum Investment Commitment") with respect to the Project and has requested the County to amend the FILOT Arrangement to reduce such Minimum Investment Commitment (the "Reduction") and to convey the Airport Site back to the Company (the "Conveyance") and has exercised its purchase option pursuant to Section 10.02 of such Lease (the "Purchase Option") for the "Airport Site that is currently part of the Project thereby effectively removing such property from the Lease, the respective Project description, and the FILOT Arrangement;

WHEREAS, as consideration for the Reduction and other benefits provided for herein, the Company has agreed to an increase of the assessment ratio under the FILOT Arrangement from currently 6% to 7% starting with any FILOT payments due for the 2005 tax year and by making a one time payment of \$500,000 to the County in satisfaction of all payment liability to the County for the Airport Site;

WHEREAS, a third party known to the County desires to purchase the Airport Site from the Company and is planning the investment of substantial amounts of capital and the creation of a substantial amount of jobs at such site.

WHEREAS, the County has determined that the Amendment would benefit the general public welfare of the County by assisting the Company to weather these economically adverse times and by attracting new substantial investment and job creation by the new third party investor, thereby securing and increasing the jobs and employment in the County, the ad valorem tax base of the County, and service, employment or other public benefits not otherwise provided locally; and that the Amendment does not result in any pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either;

WHEREAS, the purposes to be accomplished by the Reduction and Conveyance, i.e., economic development, creation or retention of jobs, and addition to or maintenance of the tax base of the County, are proper governmental and public purposes and the inducement of the third party project to be located at the Airport Site is of paramount importance and the benefits of the Amendment will be greater than the costs;

WHEREAS, the County as a consequence desires to accommodate the Company's requests.

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

1. Reduction of Minimum Investment Commitment. The Minimum Investment Commitment under the Lease Agreement dated December 7, 2001, Inducement Agreement and Millage Rate Agreement dated December 15, 2000, and Memorandum of Understanding dated August 25, 2000, (cumulatively the

“Agreements”) shall be reduced from \$83,500,000 to \$20,000,000 in new investments. Throughout the Agreements, the sum of \$83,500,000 shall be replaced by the sum of \$20,000,000 wherever it appears.

2. Increase of Millage Rate. As consideration for the reduction of the Minimum Investment Commitment, the assessment ratio under the FILOT Arrangement, beginning with the 2005 tax year and going forward, shall be increased from 6% to 7%. Effective for the 2005 tax year and later periods throughout the agreements part of the FILOT Arrangement any reference to an assessment ration of 6%, shall be replaced by an reference to an assessment ratio of 7%.
3. MoU Satisfied. The parties agree that with the reduction of the Minimum Investment Commitment the Company has satisfied all its obligations under the MoU and shall not have any further obligations thereunder. Specifically, the County waives any right under Sections 5(b) and/or 9(c) of the MoU, and agrees that it shall not receive any further payments from the Company under such sections.
4. One time Payment. As further consideration for the foregoing waiver, the Company agrees to pay to the County the amount of \$500,000 on or before ten (10) days following the date of the closing of the transactions contemplated in that certain Agreement of Purchase and Sale concerning the Airport Site by and the Company and a third party known to the County. Such consideration of \$500,000 paid by the Company shall be earmarked by the County for the payment of any installments when they become due under that certain promissory note dated August 8, 2000 made by the County for the benefit of the Richland Lexington Airport District in the original principal amount of \$1,552,500 to substitute any payments the County would otherwise have received from the Company under Sections 5(b) and/or 9(c) of the MoU.
5. Waiver of Recapitulation Requirement. Pursuant to Section 4-12-45 (B) of the Act the Parties agree to waive the recapitulation requirement of the terms hereof and all the other items described in Section 4-12-45 of the Act.
6. Other Terms and Provisions of FILOT Arrangement. All other terms and provisions of the Lease Agreement Dated December 7, 2001, Inducement Agreement and Millage Rate Agreement dated December 15, 2000, and Memorandum of Understanding dated August 25, 2000 shall remain in full force and effect.
7. Severability. If any material provision of this Lease Agreement dated December 7, 2001, Inducement Agreement and Millage Rate Agreement dated December 15, 2000, and Memorandum of Understanding dated August 25, 2000 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 unless the effect thereof would render enforcement of the remaining provisions unconscionable.

8. Headings; References. The headings of this Amendment are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof.
9. Multiple Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Lexington County, South Carolina, has executed this Amendment by causing its name to be hereunto subscribed by the Chairman of its County Council and Pirelli Communications Cables and Systems USA, LLC has executed this Amendment by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

LEXINGTON COUNTY, SOUTH CAROLINA

WITNESSES

By: _____
George H. Smokey Davis, Chairman,
County Council of Lexington County

ATTEST:

Dorothy K. Black, Clerk to Council
of Lexington County, South Carolina
[Seal]

WITNESSES:

PIRELLI COMMUNICATIONS CABLES
AND SYSTEMS USA, LLC

By: _____

Print: _____

Its: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who on oath says that (s)he saw the within Lexington County, by the Chairman of the County Council of Lexington County, George H. Smokey Davis, attested to by the Clerk to County Council, Dorothy K. Black, sign the within Amendment of FILOT Arrangement; and the said County, by said officers, seal said Amendment of FILOT Arrangement and as its act and deed deliver the within Amendment of FILOT Arrangement; and that (s)hc with the other witness subscribed above witnessed the execution thereof.

Witness

Sworn to before me this
_____day of _____, 2004.

_____ (L.S.)
Notary Public for South Carolina
My commission expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who on oath says that (s)he saw the within Pirelli Communications Cables and Systems USA, LLC by its _____ [title], _____ [name], and the said Pirelli Communications Cables and Systems USA, LLC by said officer as its act and deed deliver the within Amendment of FILOT Arrangement; and that (s)he with the other witness subscribed above witnessed the execution thereof.

Witness

Sworn to before me this
_____ day of _____, 2004.

Notary Public for South Carolina (L.S.)
My commission expires: _____

At the advice of legal counsel, this section has been omitted.

COMMITTEE REPORT

RE: Classification and Compensation Plan

DATE: September 7, 2004

COMMITTEE: Committee of the Whole

MAJORITY REPORT: Yes

The Committee of the Whole met on Tuesday, August 24 to discuss implementation of the classification and compensation study that was completed by the Archer Company during fiscal year 2003-2004.

The committee voted to recommend that Council approve a 2.3 percent COLA beginning October 1, 2004 in accordance to the parameters proposed by staff. Also included is a 2.3 percent COLA for elected officials.

The classification and compensation implementation is as follows:

- (1) The date of the implementation: Pay date of October 1, 2004.
- (2) Those current salaries which fall at mid-point or below of the old grade, would be adjusted to the equivalent pay point, limited to a maximum of \$3,500, but not less than the minimum of the new range, or less than 2.3 percent.
- (3) Those current salaries which exceed mid-point of the old grade would be adjusted 2.3 percent of current salary and not less than the mid-point of the new grade. .
- (4) A "below expectation" rating (below 3.0 on a scale of 1.0 to 5.0) will disqualify the employee from this adjustment.
- (5) Salaries of elected officials to be increased 2.3 percent, representing a COLA adjustment. (Does not include those officials whose pay is established and adjusted pursuant to State law.)
- (6) Unevaluated, ungraded positions (typically part-time or temporary) will be adjusted by 2.3 percent, a COLA adjustment. However, any graded, but unevaluated positions would be adjusted by the COLA but not less than the equivalent hourly rate of the minimum of the pay grade.