

AGENDA
LEXINGTON COUNTY COUNCIL
Committee Meetings
February 14, 2012
Second Floor - County Administration Building
212 South Lake Drive, Lexington, SC 29072
Telephone - 803-785-8103 -- FAX 803-785-8101

***Times are tentatively scheduled committee meetings that may run behind or ahead of schedule; therefore, the times could change by as much as 30 minutes. Also, if time permits, Council may elect to enter into Executive Session to discuss contractual, legal, personnel matters, etc.**

1:15 p.m. - 1:30 p.m. - Economic Committee

- (1) Ordinance 12-03 - Project Maple - 1st Reading by Title Only - Economic Development - Chuck Whipple, Director
- (2) Ordinance 11-19 - Ordinance Authorizing (1) Fee-in-Lieu Between Lex Cty & Nephron Pharm, (2) Negotiated Fees in Lieu of Ad Valorem Taxes, (3) SSC, (4) Multi-Cty Park, (5) Transfer & Conveyance of Property, & (6) Other Matters - 2nd Reading - Economic Development - Chuck Whipple, Director..... A
- (3) Old Business/New Business
- (4) Adjournment

1:30 p.m. - 1:55 p.m. - Planning and Administration

- (1) Community Development Demolition and Clearance Program Update (Goal 1) - Community Development - Ron Scott, Community Development Director
- (2) FY 2012-13 CDBG Program and HOME Program (Goal 1) - Community Development - Ron Scott, Community Development Director..... B
- (3) Old Business/New Business
- (4) Adjournment

1:55 p.m. - 2:00 p.m. - Justice

- (1) Highway Safety Enhanced DUI Enforcement Grant Application (Goal 1) - Sheriff's Department - Allan Paavel, Colonel C
- (2) Old Business/New Business
- (3) Adjournment

2:00 p.m. - 2:30 p.m. - Health and Human Services

- (1) Communications Narrowbanding - Public Safety/Admin - David Kerr, Director of Public Safety..... D
- (2) Old Business/New Business
- (3) Adjournment

2:30 p.m. - 3:05 p.m. - Public Works & Solid Waste Management

- (1) Chapter 7 - Agreements, Bonds, and Warranties Review - Public Works - John Fechtel - Director of Public Works/Asst. County Administrator and Sheri Armstrong - Stormwater Manager E
- (2) SC DOT "C" Fund Review - FY 10/11 - Public Works - John Fechtel - Director of Public Works/Asst. County Administrator..... F
- (3) Old Business/New Business - Traffic Congestion, Alternate Material for Road Swells, New Road/Corley Mill/Riverchase Monthly Update, Flooding Issues/Kinley Creek Criteria, Stormwater Utility Fee Update, Pine Glen Alternate Exit, Chaney Road Closing, Nursery Road Project, List of Outstanding Bonds, etc.
- (4) Adjournment

3:05 p.m. - 4:15 p.m. - Committee of the Whole

- (1) EdVenture's National Honor and Plans for the Future and Its Impact for Lexington County - Catherine Horne, President/CEO, Edventure Children's Museum G
- (2) Possible Executive Session if Time Permits
- (3) Old Business/New Business - Local Contractor Procurement
- (4) Adjournment

GOALS

1. Provide for public services to citizens of Lexington County.
2. Manage growth to meet the needs of Lexington County.
3. Provide innovative Financial Management.

Economic Development

J. Jeffcoat, Chairman
S. Davis, V Chairman
J. Kinard
D. Summers
B. Keisler

Planning & Administration

D. Summers, Chairman
S. Davis, V Chairman
J. Kinard
B. Matthews
T. Cullum

Justice

S. Davis, Chairman
B. Keisler, V Chairman
F. Townsend, III
J. Jeffcoat
B. Matthews

Health & Human Services

B. Matthews, Chairman
D. Summers, V Chairman
F. Townsend, III
B. Keisler
J. Kinard

Public Works & Solid Waste Management

T. Cullum, Chairman
J. Kinard, V Chairman
B. Keisler
J. Jeffcoat
B. Matthews

Committee of the Whole

B. Banning, Sr., Chairman
J. Jeffcoat, V Chairman
J. Kinard
F. Townsend, III
S. Davis
D. Summers
B. Keisler
B. Matthews
T. Cullum

**AGENDA
LEXINGTON COUNTY COUNCIL**

February 14, 2012

**Second Floor - Dorothy K. Black Council Chambers - County Administration Building
212 South Lake Drive, Lexington, South Carolina 29072
Telephone - 803-785-8103 FAX - 803-785-8101**

4:30 P.M. - COUNCIL CHAMBERS

Call to Order/Invocation

Pledge of Allegiance

Chairman's Report

Presentation of Resolutions

- (1) Presentation of Resolution to Arjun Aggarwal by Councilman Davis
- (2) Presentation of Resolution to the Chapin High School Varsity Cheerleaders by Vice-Chairman Jeffcoat

Administrator's Report

Employee Recognition - Joe Mergo, Interim County Administrator

- (1) Employee of the 4th Quarter 2011

Appointments

- (1) Boards and Commissions H

Bids/Purchases/RFPs

- (1) Fourteen (14) Motorola Portable Radios and Ten (10) Pagers - Public Safety/Fire Service I
- (2) Electronics Recycling Building at Edmund Landfill-Solid Waste Management J

Approval of Minutes

- (1) Meeting of December 13 and December 20, 2011 K

Zoning Amendment

- (1) Zoning Text Amendment #11-04 - Amendments to Buffering Restrictions - 2nd Reading L

Committee Reports

Economic Development, J. Jeffcoat, Chairman

- (1) Ordinance 12-03 - Project Maple - 1st Reading by Title Only
- (2) Ordinance 11-19 - Ordinance Authorizing (1) Fee-in-Lieu Between Lex Cty & Nephron Pharm, (2) Negotiated Fees in Lieu of Ad Valorem Taxes, (3) SSC, (4) Multi-Cty Park, (5) Transfer & Conveyance of Property, & (6) Other Matters - 2nd Reading M

Justice, S. Davis, Chairman

(1) Replacement Vehicle for Sheriff's Department N

Budget Amendment Resolutions

6:00 P.M. - Public Hearings

(1) Ordinance 12-1 - Amendments to the Lexington County Landscape and Open Space O

(2) Ordinance 11-19 - Ordinance Authorizing (1) Fee-in-Lieu Between Lex Cty and Nephron Pharm., (2) Negotiated Fees in Lieu of Ad Valorem Taxes, (3) SSC, (4) Multi-County Park, (5) Transfer & Conveyance of Property, and (6) Other Matters P

OLD BUSINESS/NEW BUSINESS

EXECUTIVE SESSION/LEGAL BRIEFING

MATTERS REQUIRING A VOTE AS A RESULT OF EXECUTIVE SESSION

ADJOURNMENT

ORDINANCE

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE “FILOT AGREEMENT”) BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND NEPHRON SC, INC., ACTING FOR ITSELF, ANY AFFILIATES AND OTHER PROJECT SPONSORS, (THE “COMPANY”), IN CONNECTION WITH THE ESTABLISHMENT OF FACILITIES IN THE COUNTY (THE “PROJECT”); (2) THE COUNTY TO COVENANT IN SUCH FILOT AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE PROJECT; (3) SPECIAL SOURCE CREDITS IN CONNECTION WITH THE PROJECT; (4) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (5) TRANSFER AND CONVEYANCE BY THE COUNTY TO THE COMPANY OF CERTAIN PROPERTY; AND (6) OTHER MATTERS RELATING THERETO.

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, Lexington County, South Carolina (the “County”) is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into fee agreements with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011, and in order to induce Nephron SC, Inc., acting for itself, any affiliates and any other project sponsors (the “Company”), to make, or cause to be made, new or additional investment through the establishment of facilities located in the County (the “Project”), the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and further agreed to provide the Company and the Project with the benefits of certain special source revenue credits and to the inclusion and maintenance of the Project in a Multi-County Park;

WHEREAS, the Project is expected to provide significant economic benefits to the County, and in order to further induce the Company to locate, or cause location of, the Project in the County, the County desires to enter into a Fee in Lieu of Tax and Incentive Agreement (the “FILOT Agreement”) with the Company in connection with the Project, which, amongst other things, (i) establishes a negotiated payment-in-lieu-of-taxes (“Negotiated Payments-in-Lieu-of-Taxes”) arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions of the FILOT Agreement and the provisions of the Fee Act, (ii) provides for certain special source revenue credits (“Special Source Credits”) to pay, or to reimburse the Company for payment of, the costs of certain Special Source Improvements related to the Project, and (iii) agrees to the conveyance by the County to the Company of certain real property and the execution and delivery by the County of certain documentation in connection therewith, including, without limitation, a limited warranty deed, all as set forth in greater detail in the FILOT Agreement;

WHEREAS, the County Council of the County (the “County Council”) has caused to be prepared and presented to the County Council the form of the FILOT Agreement between the County and the Company, which the County proposes to execute and deliver;

WHEREAS, as further inducement to the Company, the County will include the Project, including the Project site within an existing Multi-County Park, if not already so included, and will maintain such designation with respect to the Project, including the Project site, as set forth in greater detail in the FILOT Agreement;

WHEREAS, it appears that the FILOT Agreement and the additional documents referred to therein, and attached thereto, which are before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

Section 1. Pursuant to the Fee Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings:

- (a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;
- (b) 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;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) The benefits of the Project to the public are greater than the costs;
- (e) Neither the Project nor any documents or agreements entered into by the County in connection therewith gives, or will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(f) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk to County Council, including, without limitation, the provisions regarding the Negotiated Payments-in-Lieu-of-Taxes arrangement, the Special Source Credits, and the property conveyance set forth therein, are hereby approved and all of the terms, provisions and conditions of the FILOT Agreement are hereby incorporated herein by reference as if the FILOT Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement and the other documents referred to therein, or attached thereto, to the Company.

Section 3. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be not be materially adverse to the County or the Company and as shall be approved by the officials of the County executing the same, upon advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of FILOT Agreement now before this meeting.

Section 4. The Chair of County Council and the County Administrator, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the FILOT Agreement and the other documents referred to therein, or attached thereto, and the performance of all obligations of the County under and pursuant to the FILOT Agreement and the other documents referred to therein, or attached thereto, and to carry out the transactions contemplated thereby and by this Ordinance.

Section 5. The consummation of all transactions contemplated by the FILOT Agreement is hereby approved.

Section 6. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 8. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ENACTED this _____ day of February, 2012.

LEXINGTON COUNTY, SOUTH CAROLINA

William B. "Bill" Banning, Sr., Chairman
Lexington County Council

ATTEST:

By: _____
Diana W. Burnett
Clerk to Lexington County Council

First Reading: October 25, 2011
Second Reading: February 14, 2012
Public Hearing: February 14, 2012
Third Reading: _____

DRAFT 2/9/12

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

BETWEEN

LEXINGTON COUNTY, SOUTH CAROLINA

AND

NEPHRON SC, INC.

DATED AS OF

FEBRUARY 28, 2012

NPCOL1:2647208.3-AGR-(SIN) 049472-00001

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (the “Agreement”) is made and entered into as of February 28, 2012 by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **NEPHRON SC, INC.**, a corporation organized and existing under the laws of the State of South Carolina, acting for itself, any affiliates or other project sponsors (the “Company”).

WITNESSETH:

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to make investments and thus make use of and employ workers and other resources of the State, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (the Multi-County Park and the Special Source Act, together with the Fee Act, hereinafter collectively referred to as the “Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to the Fee Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011 (the “Inducement Resolution”), and in order to induce the Company to make,

or cause to be made, new investment in the County, the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and agreed to provide the Company and the Project with the benefits of certain Special Source Credits (as defined herein), to include and maintain and maintenance of the Project in a Multi-County Park, and to convey certain real property to the Company, all as set forth greater detail herein; and

WHEREAS, pursuant to an Ordinance adopted on February 28, 2012 (the “Ordinance”), the County Council, authorized the County to enter into this Agreement with the Company, which, establishes, amongst other things, a negotiated payment-in-lieu-of-taxes arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions hereof and the provisions of the Fee Act, and which provides for Special Source Credits to pay, or to reimburse for payment of, the costs of certain Special Source Improvements related to the Project, all as set forth in greater detail herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained and other value, the parties hereto agree as follows:

ARTICLE I

RECAPITULATION AND DEFINITIONS

SECTION 1.1. Statutorily Required Recapitulation. Pursuant to Section 12-44-55(B) of the Fee Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Fee Act, then the County agrees to waive any and all penalties and fees of the County for the Company’s noncompliance.

SECTION 1.2. Rules of Construction; Use of Defined Terms. Unless the context clearly indicates otherwise, in this Agreement words and terms defined in **Section 1.3** hereof are used with the meanings ascribed thereto. The definition of any document or agreement shall include any amendments, supplements, addenda, and modifications to that document, unless the context clearly indicates otherwise.

SECTION 1.3. Definitions.

“**Act**” means, collectively, Title 12 Chapter 44 of the Code (the “Fee Act”), Title 4, Chapter 1 of the Code (the “Multi-County Park Act”) including, without limitation, Section 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, (the “Special Source Act”).

“Affiliate” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or which now or hereafter is owned in whole or in part by the Company or by any partner, shareholder or owner of the Company, as well as any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

“Agreement” means this Agreement dated as of February 28, 2012 between the County and the Company.

“Applicable Governmental Body” means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

“Chair” means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

“Clerk” means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

“Code” means Code of Laws of South Carolina 1976, as in effect on the date hereof, as the same may be amended from time to time.

“Commencement Date” means the last day of the Property Tax Year during which Project property consisting of economic development property (as defined under the Fee Act) is first placed in service; except that this date must not be later than the last day of the Property Tax Year which is three (3) years from the year in which the County and the Company have entered into this Agreement.

“Company” means Nephron SC, Inc., a South Carolina Corporation, and its successors and assigns.

“County” means **Lexington County, South Carolina**, and its successors and assigns.

“County Administrator” means the County Administrator for the County (or the person or persons authorized to perform the duties thereof in the absence of the County Administrator).

“County Council” means the County Council of the County.

“Documents” means the Inducement Resolution, the Ordinance, this Agreement, the Multi-County Park Agreement, and the Ordinances enacted by the County Council to create the Multi-County Park and to add the Site and the Project to the Multi-County Park.

“DOR” means the South Carolina Department of Revenue and any successor thereto.

“Enhanced Investment FILOT Minimum Requirements” shall mean (i) investment in the Project of at least \$150,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) creation of at least 125 new full-time jobs at the Project, all in accordance with Section 12-44-30(7) of the Fee Act.

“Event of Default” shall mean any Event of Default specified in **Section 9.1** of this Agreement.

“Fee Term” shall mean the duration of the Negotiated Payments-in-Lieu-of-Taxes arrangement with respect to each Stage of the Project as specified in **Section 5.3** hereof.

“Full-Time Jobs” shall mean a job requiring a minimum of 35 hours of an employee’s time per week for the entire normal year of the Company’s operation or a job requiring a minimum of 35 hours of an employee’s time per week for a year in which the employee was hired initially for or transferred to the Project.

“Inducement Resolution” shall mean the Inducement Resolution for Project Cauliflower of the County Council adopted on October 25, 2011.

“Investment Period” shall initially mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the tenth Property Tax Year following the Commencement Date; provided, that the Company may request an extension of such period as set forth in **Section 3.2(b)** hereof.

“Multi-County Park” means the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which includes the Project and which is designated by the County as such pursuant to the any agreement that supersedes or replaces the initial Multi-County Park Agreement set forth herein.

“Multi-County Park Agreement” shall mean the Agreement for Development of Joint County Industrial Park dated December 11, 1995 between the County and Calhoun County as amended to include the Project and as further amended, supplemented, or replaced from time to time.

“Negotiated Payments-in-Lieu-of-Taxes” means the payments to be made pursuant to **Section 5.1** of this Agreement with respect to that portion of the Project consisting of economic development property (as defined under the Fee Act).

“Ordinance” means the Ordinance adopted by the County on February 28, 2012, authorizing the County’s execution, delivery, performance, and entering into of this Agreement.

“Payments-in-Lieu-of-Taxes” means any and all payments-in-lieu-of-taxes to be made with respect to the Project whether made as Negotiated Payments-in-Lieu-of-Taxes pursuant to the Fee Act or made as payments-in-lieu-of-taxes pursuant to the Multi-County Park Act.

“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.

“Phase 1 Contractual Minimum Requirements” shall mean (i) investment in the Project of at least \$313,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation of at least 700 Full-Time Jobs, all within the Phase 1 Contractual Minimum Requirements Compliance Period.

“Phase 1 Contractual Minimum Requirements Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the seventh Property Tax Year following the Commencement Date.

“Phase 2 Special Source Credits Requirements” shall mean (i) additional investment in the Project (without regard to depreciation, reassessment or other diminution in value) of at least \$205,000,000 and (ii) the creation of at least 250 Full-Time Jobs at the Project, all in excess of the investment and job requirements set forth in the Phase 1 Contractual Minimum Requirements, and within the Investment Period.

“Phase 3 Special Source Credits Requirements” shall mean (i) additional investment in the Project (without regard to depreciation, reassessment or other diminution in value) of at least \$244,000,000 and (ii) the creation of at least 285 Full-Time Jobs at the Project, all in excess of the aggregate investment and job requirements set forth in the Phase 1 Contractual Minimum Requirements and the Phase 2 Special Source Credits Requirements and within the Investment Period.

“Project” shall mean (i) the Site and all buildings structures, fixtures, and other improvements now or hereafter located at the Site including, without limitation, rail, water, sewage treatment and disposal facilities, and air and other pollution control facilities; (ii) all machinery, apparatus, equipment, fixtures, office facilities, furnishings, pollution control equipment and other personal property now or hereafter located at the Site; and (iii) any Replacement Property; provided, however, except as to Replacement Property and any other property placed in service in the County in resatisfaction of the investment maintenance levels as set forth in **Section 5.5(b)(ii)** hereof, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

“Property Tax Year” shall mean the annual period which is equal to the fiscal year of the Company, i.e., the annual period ending on December 31 of each year.

“Replacement Property” means any property placed in service after the Investment Period as a replacement for any economic development property (as defined under the Fee Act) theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in **Section 5.2** hereof.

“Site” means the land at which Project property will be located in the County which land is further described in **Exhibit A** hereto.

“Special Source Credits” mean the special source revenue credits described in **Section 5.7** hereof.

“Special Source Improvements” means, to the extent paid for, or caused to be paid for, by the Company, or used by the Company pursuant to any financing, lease, license or other access arrangement, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all in accordance with the Special Source Act. For purposes of this Agreement, Special Source Improvements shall be deemed to include, without limitation, all roadwork, rail, water, sewer, drainage, power and utility facilities serving the Project, as well as any land comprising the Site, the buildings, fixtures and other real property improvements at the Site, and the personal property, including machinery and equipment, located at the Site, and any additions or improvements to any of the foregoing, whether paid for by the Company directly or pursuant to any lease, license or other access arrangement.

“Stage” with respect to the Project shall mean each individual annual increment of Project property, if any, placed in service during the Investment Period.

“Standard FILOT Minimum Requirement Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the fifth Property Tax Year following the Commencement Date.

“Standard FILOT Minimum Requirement” shall mean investment in the Project of at least \$5,000,000 (without regard to depreciation, reassessment, or other diminution in value) within the Standard FILOT Minimum Requirement Compliance Period, in accordance with Section 12-44-30(14) of the Fee Act.

“State” means the State of South Carolina.

SECTION 1.4. Internal References. Any reference to any agreement or document in this Article I or otherwise in this Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document. References herein to Title, Chapters or Sections, except the references to Sections of this Agreement or where the

intent clearly requires otherwise, refer to Sections of the Code. The words “hereof”, “herein”, “hereunder”, and other words of similar impact refer to this Agreement as a whole.

ARTICLE II

LIMITATION OF LIABILITY; EXEMPTION FROM *AD VALOREM* TAXES

SECTION 2.1. Limitation of Liability. Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

SECTION 2.2. Exemption from Ad Valorem Taxes. The County and the Company acknowledge that pursuant to the Act, upon execution of this Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, is the basis upon which the Company has entered into this Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1. Representations and Warranties of the County. The County makes the following representations and warranties to the Company, and covenants with the Company, as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially adversely affect the validity or enforceability of the Documents, the

County's obligations hereunder, or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable provisions of the Fee Act, each item of real and personal property comprising the Project shall be considered economic development property (as defined under the Fee Act).

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

SECTION 3.2. Covenants by the County. The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations under the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) To the extent permitted by law, the Company may request of the County, and the County may approve in its sole discretion, an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Fee Act. The grant of any such extension by the County may be approved by a resolution of County Council. Upon the granting of any such extension the County agrees to, at the Company's expense, cooperate with the Company in assisting the Company to file with the DOR a copy of documentation evidencing such extension within thirty (30) days of the date of execution thereof by the County.

SECTION 3.3. Representations and Warranties of the Company. The Company makes the following representations and warranties to the County:

(a) The Company is a corporation authorized to transact business in the State. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in such Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in such Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Company is a party.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the execution, delivery, and performance by the Company of Documents to which the Company is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The Company will pay all reasonable and necessary costs of the County, including attorney's fees, incurred in connection with the negotiation, authorization, execution and delivery of this Agreement. Legal counsel to the County has estimated its attorney's fees in connection with such matters to be \$_____ or less.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF THE PROJECT AND THE SPECIAL SOURCE IMPROVEMENTS

SECTION 4.1. The Project. The Company has acquired, constructed and/or installed or has made or will make plans for the acquisition, construction and/or installation of certain real property improvements and machinery, equipment, and other personal property comprising the Project. The parties agree that Project property shall consist of the Site, such property and any additional real and personal property as may be identified by the Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement

with the Company or any of its Affiliates with respect to Project property, on, or in connection with, annual filings with the DOR of a SCDOR PT-300, or comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time), with respect to each Property Tax Year within the Investment Period and, as to Replacement Property, with respect to each Property Tax Year thereafter during the term of this Agreement. The Project will consist of facilities utilized primarily in connection with the manufacturing of pharmaceutical products and related activities.

Pursuant to the Fee Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property (as defined under the Fee Act), so long as such property meets the requirements of the Fee Act.

Notwithstanding any other provision of this Agreement, the Company may place property into service at any time under this Agreement, but such property may only qualify as economic development property (as defined under the Fee Act) if it is placed in service during the Investment Period, including any additional extension period thereto, or is Replacement Property.

All investment in, and job creation at, the Project by the Company, by any of its Affiliates, including, without limitation, Nephron Pharmaceutical Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus LLC, and by any third party to the extent that the Company or any of its Affiliates utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement, shall, to the extent permitted by law, count toward each investment and job requirement or threshold specified in this Agreement including, without limitation, the Phase 1 Contractual Minimum Requirements, the Enhanced Investment FILOT Minimum Requirements, the Standard FILOT Minimum Requirement, the Phase 2 Special Source Credits Requirements, and the Phase 3 Special Source Credits Requirements. Notwithstanding anything in this Agreement or the other Documents to the contrary, each such Affiliate or third party, upon written notice by the Company to the County of the identity of such Affiliate or third party, which notice is hereby provided to the County with respect to Nephron Pharmaceutical Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus LLC, shall hereby also be entitled, to the extent permitted by the Act, to all rights, interests, and benefits to which the Company is entitled under this Agreement including, without limitation, the Negotiated Payments-in-Lieu-of-Taxes and Special Source Credits arrangements and shall also be bound by all of the duties, restrictions, and obligations to which the Company has agreed upon under this Agreement (but excluding the benefits and obligations specified in **Section 5.5** hereof), all only with respect to each such entity's portion of the Project. The Company shall notify DOR in writing of all such entities to benefit from the Negotiated Payments-in-Lieu-of-Taxes arrangement in accordance with Section 12-44-130(B) of the Fee Act. Any other entity to whom the Company intends to extend the benefits of this Agreement may, at the request of the Company, be approved by a resolution passed by the County Council, in its sole discretion.

SECTION 4.2. Diligent Completion. The Company agrees to use reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Agreement or the other Documents to the contrary, the Company shall not be obligated to complete, acquire, construct, and install, or cause the completion, acquisition, construction, and installation of, all or any portion of the Project, and may terminate this Agreement with respect to all or any portion of the Project as set forth in **Article X** herein.

SECTION 4.3. Modifications to Project. The Company may make, or cause to be made, from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes, in its sole discretion.

SECTION 4.4. Special Source Improvements. The Company agrees to provide, or cause to be provided, the funding for the designing, acquiring, constructing, improving, or expanding of Special Source Improvements related to the establishment of the Project.

SECTION 4.5. Reports; Filings. In accordance with Section 12-44-90 of the Fee Act, the Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 of DOR, to be filed with the County Auditor, the County Assessor, the County Treasurer and DOR within thirty (30) days after the date of execution and delivery hereof and shall also cause a copy of this Agreement to be filed with the County Auditor and the County Assessor of Calhoun County. In addition, the Company shall provide the County Auditor, the County Assessor, and the County Treasurer with a copy of all annual filings made by the Company to DOR pursuant to this Agreement and the Fee Act.

ARTICLE V

NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE CREDITS

SECTION 5.1. Negotiated Payments-in-Lieu-of-Taxes. The parties acknowledge that under Section 12-44-40 of the Fee Act, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes with respect to the Project as provided in this **Section 5.1**. In accordance with the Fee Act, and unless this Agreement is sooner terminated, the Company shall make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Fee Act. Such amounts shall be calculated and payable as follows:

(a) Subject to the provisions of **Section 5.4** hereof, the County has agreed to accept, and the Company has agreed to make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using (i) an assessment ratio of 4%; (ii) a millage rate which is fixed at **284.190** mills for each 30-year payment period applicable to each

Stage of the Project as set forth in **Section 5.3** hereof; and (iii) the fair market value of such property which shall be determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act as follows:

- (i) for real property if such real property is constructed for the fee or is purchased in an arm's length transaction, by utilizing the original income tax basis for South Carolina income tax purposes without regard to depreciation, reassessment, or other diminution in value; provided, however, that the Company and the County may agree to hereafter amend this Agreement as to Project real property so as to determine the fair market value of any such real property in accordance with any other method permitted by the Fee Act; and
- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation, reassessment, or other diminution in value, allowable for property tax purposes, except that the Project is not entitled to extraordinary obsolescence.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code.

(c) The Company shall make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the Property Tax Year for which the Project property consisting of economic development property (as defined under the Fee Act) is first placed in service. The Negotiated Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Agreement when, but for this Agreement, such taxes would have been paid with respect to the Project.

(d) Any economic development property (as defined under the Fee Act) placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding thirty (30) years following the Property Tax Year in which such property was placed in service. Pursuant to and subject to the Fee Act: (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same Property Tax Year; (ii) Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same Property Tax Year that the Replacement Property is placed in service; (iii) more than one piece of property can replace a single piece of property; (iv) Replacement Property does not have to serve the same function as the Project property it is

replacing; (v) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Project property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property (as defined under the Fee Act) were not allowed; and (vi) Replacement Property is entitled to Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof for the remaining portion of the thirty-year payment period referred to in this **Section 5.1(d)** applicable to the property which it is replacing.

SECTION 5.2. Disposal of Property; Replacement Property.

(a) In any instance where the Company, in its sole discretion, determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to **Section 5.2** hereof. Subject to the provisions of **Section 5.4** hereof with regard to the maintenance of certain investment levels, and **Section 5.2** hereof with respect to Replacement Property, the Negotiated Payments-in-Lieu-of-Taxes required by **Section 5.1** hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to **Section 5.2** hereof.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to **Section 5.2(a)** hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced.

SECTION 5.3. Fee Term. The applicable term of the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in this Agreement shall be measured separately for each Stage beginning from the last day of the Property Tax Year in which such Stage of the Project is placed in service through the last day of the Property Tax Year which is the twenty-ninth year following such year. This Agreement shall terminate, as to the Negotiated Payments-in-Lieu-of-Taxes arrangement, with respect to the Project or any Stage or part thereof, upon the earlier to occur of (a) payment of the final installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof with respect to the Project or such Stage or part thereof, as the case may be, or (b) exercise by the Company of its option to terminate pursuant to **Section 10.1** hereof with respect to the Project or such Stage or part thereof, as the case may be,.

SECTION 5.4. Failure to Achieve or Maintain FILOT Investment Requirements.

(a) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance

Period, but the Standard FILOT Minimum Requirement is nevertheless satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, retroactively and prospectively. In such event, within one hundred eighty (180) days following the end of the Phase 1 Contractual Minimum Requirements Compliance Period, the Company shall make, or cause to be made, payment to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of Negotiated Payments-in-Lieu-of-Taxes which would have otherwise been due in the case of an applicable assessment ratio equal to 6%.

(b) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, and the Standard FILOT Minimum Requirement is not satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, then the Negotiated Payments-in-Lieu-of-Taxes shall revert to *ad valorem* property taxation, retroactively and prospectively, and the County shall terminate this Agreement. In the event that the County terminates this Agreement pursuant to this **Section 5.4(b)**, within one hundred eighty (180) days following the end of the Phase 1 Contractual Minimum Requirements Compliance Period, the Company shall, if deemed due by the County, make, or cause to be made, payments to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of *ad valorem* property taxes which would otherwise have been due, subject to **Section 5.4(d)** hereof, plus any interest required to be paid under Section 12-44-140(B) of the Fee Act.

(c)

(i) In the event that the Phase 1 Contractual Minimum Requirements are satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but following the Phase 1 Contractual Minimum Requirements Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 1 Contractual Minimum Requirements, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains at least the investment level set forth in the Enhanced Investment FILOT Minimum Requirement, then the Project shall nevertheless continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof including, without limitation, with an applicable assessment ratio of 4%, retroactively and prospectively.

(ii) In the event that the Phase 1 Contractual Minimum Requirements are satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but following the Phase 1 Contractual Minimum Requirements Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the

investment level set forth in the Enhanced Investment FILOT Minimum Requirement, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains at least the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated Payments-in-Lieu-of-Taxes due as to the Project with respect to the Property Tax Year during which such investment shortfall occurs.

(iii) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but the Project nevertheless continues to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement pursuant to this **Section 5.4**, if following the Standard FILOT Minimum Requirement Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall prospectively, commencing with any Payments-in-Lieu-of-Taxes due as to the Project with respect to the Property Tax Year during which such investment level shortfall occurs, be subject to *ad valorem* property taxation or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act, as the case may be, subject to **Section 5.4(d)** hereof.

(d) In the event that the Company is required to make, or to cause to be made, any differential payment to the County or is no longer eligible for Negotiated Payments-in-Lieu-of-Taxes, pursuant to **paragraphs (b) or (c) of Section 5.4** hereof, in calculating any such differential payment or prospective *ad valorem* property tax or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act due from the Company, as the case may be, the Company shall be entitled: (1) to enjoy the five-year exemptions from *ad valorem* property taxes (or fees in lieu of property taxes) provided by Article X, Section 3 of the Constitution of the State, and any other property tax exemption that would have been available to the Company; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* property taxes hereunder or under the Fee Act.

SECTION 5.5. Property Conveyance. The real property located and shown at the Site attached hereto as **Exhibit A** and made a part hereof, together with and including all improvements, rights, members, easements, riparian rights, timber, minerals, appurtenances and hereditaments belonging or in anywise incident or appertaining to the Site, shall be conveyed by limited warranty deed, in substantially the form attached hereto as **Exhibit B** and made a part hereof, by the County to the Company within the later to occur of either (i) thirty (30) days after approval and execution of this Agreement, or (ii) thirty (30) days of the satisfaction, in the sole discretion of the Company, of all conditions to closing and any title and/or due diligence

objections raised by the Company. The County has no obligation to correct any defect in title. If the Company is not satisfied with the results of the title examination, the Company's sole right is to terminate this Agreement. The closing shall be held at the offices of the Company's South Carolina counsel, Nexsen Pruet, LLC in Columbia, South Carolina, unless an alternative location is mutually agreed upon by the County and the Company; provided, however, all parties hereto agree that the closing may be conducted in escrow without any applicable parties having to be physically present at the closing. The County shall deliver possession of the Site at closing. The conveyance shall be subject only to the easements and restrictions of public record at the Office of the Register of Deeds for Lexington County, South Carolina, provided that they are not objected to by the Company, and provided further that they do not interfere with the use, operation, and development of the Site or the Project for the Company's intended purpose (the same being primarily the development, construction, and operation of a pharmaceutical manufacturing facility), and to all applicable governmental ordinances and statutes, and subject to the following conditions which shall be included in the conveyance deed or other appropriate documents, as applicable and necessary, which will be recorded in the Lexington County, South Carolina Register of Deeds Office and all which shall survive the closing for only so long as these terms may expressly provide in this Agreement, if at all:

(a) The Company shall commence construction on the Site within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company. If the Company fails to commence construction on the Site within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company, the County may elect by providing written notice to the Company that the County would like the Site to be conveyed back to the County. Notwithstanding anything to the contrary contained herein, conclusive evidence of the commencement of construction shall be by the recordation of an affidavit of construction commencement (the "Commencement Affidavit") by the Company in the Office of the Register of Deeds for Lexington County, South Carolina providing that the Company has commenced physical work on the Site and that such work commenced within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company. The recordation of the Commencement Affidavit by the Company in the Office of the Register of Deeds for Lexington County, South Carolina, shall be conclusive evidence of the commencement of construction on the Site by the Company, and after recordation of the Commencement Affidavit any and all rights of the County to request a reconveyance of the Site and any requirement of commencement of construction shall thereafter be automatically void and of no further force or effect. The provisions of this paragraph shall be included in the limited warranty deed from the County to the Company.

(b)

(i) Should either or both the Phase 1 Contractual Minimum Requirements not be satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, upon written request by the County accompanied by verification that such requirements have not been satisfied, the Company shall have until the end of the Property Tax Year following the Property Tax Year in which such written notice from the County is received by the Company to either show compliance or come into compliance with any such requirement. If, within such cure period, the Company shall not achieve compliance with such requirements, upon written request of the County, the Company shall pay the County for the value of the Site conveyance at the value of \$60,000 per acre within ninety (90) days after written notice from the County to the Company of the failure to satisfy such requirements.

(ii) Should the Phase 1 Contractual Minimum Requirements be satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, or by the end of the cure period described in **Section 5.5(b)(i)** hereof, as the case may be, but within seven (7) Property Tax Years following the Property Tax Year in which such requirements are initially satisfied, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 1 Minimum Contractual Requirements, the Company shall pay the County for the value of the Site conveyance upon the terms set forth in **Section 5.5 (b)(i)** hereof; provided, that, notwithstanding the foregoing, should, as a result, in whole or in part, of force majeure, acts of God, or other matters beyond the reasonable control of the Company, investment in the Project, without respect to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 1 Minimum Contractual Requirements during the above-referenced seven-year period, the above-referenced payment shall only become due to the County if, within seven (7) Property Tax Years following the Property Tax Year during which such shortfall occurs, such investment level in the Project is not resatisfied.

(iii) At Closing, the County and the Company shall execute a memorandum of this Agreement in substantially the form attached hereto as **Exhibit C**, and made a part hereof (the "Memorandum of Agreement"). The Memorandum of Agreement shall be recorded in the Office of the Register of Deeds for Lexington County, South Carolina. This Agreement shall not be recorded. The provisions contained in this paragraph (b), all of which are applicable only upon recordation of the limited warranty deed for the Site referenced herein, shall be binding upon the real estate and shall run with the real estate; provided, however, upon the compliance with the investment and job requirements set forth in this paragraph (b), the provisions of this paragraph (b)

shall thereafter be automatically void and of no further force and effect and in such event, the County shall, and hereby agrees to, file an appropriate termination of the Memorandum of Agreement in the Office of the Register of Deeds for Lexington County, South Carolina. The terms and provisions of this paragraph (b) shall survive any termination of this Agreement under Section 10.1 of this Agreement.

(c) The Site is sold AS IS; provided, however, the County confirms that the Site is in “shovel ready” condition as that term is generally defined and classified by the South Carolina Department of Commerce. The County has good, indefeasible, insurable (at standard title insurance rates), and marketable title to the Site. The Company may, at its own cost, conduct an inspection and due diligence investigations of the Site, to include, but not be limited to, environmental studies (including a Phase I study and a Phase II study if the Phase I indicates the necessity of further environmental testing and investigation), soil testing, wetlands analysis and delineation, utility and water and sewer requirements. If the Company is not satisfied with the Site for any reason whatsoever, in the sole opinion and discretion of the Company, the Company may decide, in the sole and absolute discretion of the Company, to not accept the conveyance of the Site. If the Company decides, in the sole and absolute discretion of the Company, to not accept the conveyance of the Site, the Company may terminate this Agreement and this Agreement shall become null and void and of no further force or effect, and the County has no obligation to find other suitable real property for the Company. The County shall not cause or permit any encumbrances in the form of a mortgage, lien, encumbrance, covenant, condition, restriction, assessment, easement, right-of-way, obligation, encroachment or liability whatsoever, to be placed of record, affect the title insurance to be given the Company pursuant to this Agreement or otherwise exist, from the effective date of this Agreement to the date of termination of this Agreement or closing, excepting, however, such matters that have been specifically approved in writing by the Company. The County acknowledges that the natural amenities of and current state of the Site constitute a material inducement to the Company for entering into this Agreement and, therefore, the County agrees to (i) maintain the natural amenities, specifically, the tree canopy and rolling contour of the land, and soil, in its natural condition, and (ii) maintain any improvements in the condition existing on the effective date of this Agreement and not cause any damage to any improvements located on the Site, or the Site, normal wear and tear excepted. The County further agrees not to cut, clear, excavate, fill, dump or dispose of any materials of any kind on the Site during the pendency of this Agreement.

(d) The cost of the deed recording fee and/or state or local transfer taxes and documentary stamp taxes (S.C. Code Ann. Section 12-24-10, et. seq.), based on the value of the Site conveyed, on the limited warranty deed required hereunder shall be borne by the Company and paid at closing. The per page cost of recording the closing documents, including, without limitation, the limited warranty deed shall be borne by the Company. The County shall pay for any and all due diligence expenses ordered by the County and the County’s own accountants’ fees and financial consultant fees. The Company shall pay for any and all due diligence expenses ordered by the Company, the Company’s own accountants’ fees, financial consultant

fees, and attorneys' fees with this Agreement and the closing, and all title examination costs and title insurance premiums. The County shall bear all risk of loss until recordation of the deed of conveyance. The County and the Company warrant and represent that no real estate broker was involved in this transaction and no commission shall be owed in connection the sale of the Site pursuant to this Agreement. To the best of the County's knowledge and belief, there are no executory contracts, leases, agreements, service contracts, repair agreements and warranty, guaranty rights, maintenance, management or other contracts or agreements affecting the Site except those which may be terminated on thirty (30) days' notice or less, and the County shall disclose and provide all contracts, leases, or agreements affecting the Site to the Company at least forty-five (45) days prior to closing. The County shall not enter into any leases, maintenance, management, or other contracts without the Company's prior written consent which would materially affect the Site or its use and which are not terminable on ten (10) days' notice, and the County shall disclose any such contract(s) to the Company.

(e) At the closing, the County shall provide: (1) the limited warranty deed duly executed in form for recordation; (2) an owner's affidavit, lien waiver affidavit in form sufficient and acceptable to the title company so as to allow it to eliminate the standard owner's exceptions, including the parties' in possession, mechanic's lien, and gap exceptions from the title commitment and policy and running to the benefit of the Company and the title company insuring title to the Site; (3) a FIRPTA non-foreign affidavit; (4) the County ordinance authorizing the County to undertake the subject transaction; (5) a South Carolina Form I-295 Withholding Affidavit; (6) the Memorandum of Agreement (as defined hereinabove); and (7) such further documents as may be customary and reasonably required to vest title to the Site in the Company, to enable the title company to insure the title to the Site, and to give effect to the transaction contemplated under this Agreement, as required by applicable Federal, State, or Local law, or as may reasonably be requested by the Company or the title company.

(f) The Site is subject to the terms and conditions of that certain Declaration of Rights, Restrictions, Affirmative Obligations, and Conditions Which Constitute Covenants Running With Certain Lands of County Of Lexington South Carolina, dated as of December 7, 2010, and recorded on December 7, 2010, in the Office of the Register of Deeds for Lexington County, South Carolina, in Book 14607, at Page 226 (hereinafter referred to as the "Declaration"). The County hereby confirms that the County is the "Developer" under the Declaration, as such term is defined in the Declaration. In connection with the conveyance of the Site to the Company from the County, the County hereby approves and confirms the following with regard to the terms and conditions of the Declaration: (i) the requirement contained in Section 3.4 of the Declaration providing that all improvements shall be completed within one (1) year after the approval of plans by the County shall not be applicable with regard to any and all development and construction on the Site, and the County expressly waives any and all application of this completion requirement with regard to the Site; (ii) the right to re-purchase contained in Section 7.5 of the Declaration shall not be applicable to the Site, and the County expressly waives any and all application of Section 7.5 of the Declaration as it relates to the Site; and (iii) the County hereby expressly approves the development plans, conceptual plans, and

conceptual construction schedules dated as of _____ (the “Development and Conceptual Plans”) with regard to the Company’s development of the Site, and the County hereby confirms that the Development and Conceptual Plans comply with the terms and conditions contained in the Declaration, including, without limitation, height restrictions, and the County and the Company hereby understand that the Development and Conceptual Plans may be further revised with the County’s consent, which consent shall not be unreasonably withheld, conditioned, or delayed. After closing on the Site, the County shall execute a consent and approval to be recorded in the Office of the Register of Deeds for Lexington County, South Carolina, to place parties on notice of the preceding waivers and approvals of the matters contained in the Declaration as they pertain to the Site. Furthermore, following completion of construction of the improvements on the Site by the Company, and from time to time upon the reasonable request of the Company, the County shall record a commercially reasonable compliance estoppel certificate providing that the Site is in compliance with the Declaration, that no defaults exist under the Declaration, and other customary and commercially reasonable matters.

SECTION 5.6. Multi-County Park Designation. The County represents that the Site is presently included in a Multi-County Park. The County agrees to include, if not already included, and to maintain, the Project and the Site in a Multi-County Park, pursuant to Section 13 of Article VIII of the Constitution of the State and the Multi-County Park Act, on terms which provide any additional job tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks for all jobs created at the Site and the Project during the Investment Period and which facilitate the Special Source Credits, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

SECTION 5.7. Special Source Credits.

(a) As reimbursement for investment in Special Source Improvements related to the Project, and subject to the requirements of the Special Source Act and **Section 5.7(f)** hereof, the County agrees to provide to the Company, and the Company shall be entitled to receive, Special Source Credits against any and all Payments-in-Lieu-of-Taxes due as to the Project with respect to ten (10) consecutive Property Tax Years, in an amount equal to 20% of each such Payment-in-Lieu-of-Taxes, commencing with the Property Tax Year with respect to which the initial Payments-in-Lieu-of-Taxes are due as to one or more buildings comprising a portion of the Project (the “Phase 1 Special Source Credits”). In the event that the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, such Phase 1 Special Source Credits shall terminate retroactively and prospectively, and in such event, the Company shall within one hundred eighty (180) days of the end of the Phase 1 Contractual Minimum Requirements Compliance Period make, or cause to be made, payment to the County in the amount of the Phase 1 Special Source Credits theretofore received by the Company; provided, however, that notwithstanding the

foregoing provisions, in the event that the Phase 1 Minimum Contractual Requirements are not satisfied by the end of the Phase 1 Minimum Contractual Requirements Compliance Period, but the Enhanced Investment FILOT Minimum Requirements have nevertheless been satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, the Company shall be entitled to receive and retain Special Source Credits in an amount equal to 10% of such Payments-in-Lieu-of-Taxes due with respect to such ten-year period, retroactively and prospectively, and, in such event, shall be required to pay, or cause to be paid, only one-half (1/2) of such payment to the County.

(b) In addition to the Special Source Credits set forth in **Section 5.7(a)** hereof, and subject to **Section 5.7(g)** hereof, in the event that the Phase 2 Special Source Credits Requirements are satisfied by the end of the Investment Period, the County agrees to provide to the Company, and the Company shall be entitled to receive, additional Special Source Credits against any and all Payment-in-Lieu-of-Taxes due as to Project property comprising investment satisfying the Phase 2 Special Source Credits Requirements, in an amount equal to \$250,000 against each such Payment-in-Lieu-of-Taxes due with respect to ten (10) consecutive Property Tax Years commencing with the Property Tax Year with respect to which the initial Payment-in-Lieu-of-Taxes as to such property is due (the “Phase 2 Special Source Credits”).

(c) In addition to the Special Source Credits set forth in **Section 5.7(a)** and **Section 5.7(b)** hereof, and subject to **Section 5.7(h)** hereof, in the event that the Phase 3 Special Source Credits Requirements are satisfied by the end of the Investment Period, the County agrees to provide to the Company, and the Company shall be entitled to receive, additional Special Source Credits against any and all Payment-in-Lieu-of-Taxes due as to Project property comprising investment satisfying the Phase 3 Special Source Credits Requirements, in an amount equal to \$300,000 against each such Payment-in-Lieu-of-Taxes due with respect to ten (10) consecutive Property Tax Years commencing with the Property Tax Year with respect to which the initial Payment-in-Lieu-of-Taxes to such property is due (the “Phase 3 Special Source Credits”).

(d) The amount of the total annual Special Source Credits set forth in **Sections 5.7(a)**, **5.7(b)**, and **5.7(c)** hereof which are due to the Company shall be reflected on each annual bill sent by the County to the Company for such Payments-in-Lieu-of-Taxes due from the Company as to the Project with respect to each such Property Tax Year by reducing the amount of Payments-in-Lieu-of-Taxes otherwise due as to such Property by the total amount of the Special Source Credits to which the Company is entitled for such Property Tax Year.

(e) In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded in connection with the Project from time to time during the Investment Period by or on behalf of the Company. THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE AN OBLIGATION PAYABLE SOLELY FROM THE AGGREGATE PAYMENTS-IN-LIEU-OF-TAXES RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

(f) Upon commencement of the Company's receipt of the Phase 1 Special Source Credits:

(i) if, within the five (5) Property Tax Years following the Property Tax Year in which the Phase 1 Contractual Minimum Requirements are initially satisfied, investment made in the Project, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 1 Contractual Minimum Requirements, the Phase 1 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if, within the five (5) Property Tax Years following the period set forth in **Section 5.7(f)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 1 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 1 Contractual Minimum Requirements.

(g) Upon commencement of the Company's receipt of the Phase 2 Special Source Credits:

(i) if, within the five (5) Property Tax Years following the Property Tax Year in which the Phase 2 Special Source Credits Requirements are initially satisfied, investment made in Project property satisfying such investment requirements without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 2 Special Source Credits Requirements, the Phase 2 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if, within the five (5) Property Tax Years following the period set forth in **Section 5.7(g)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 2 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing upon the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 2 Special Source Credits Requirements.

(h) Upon commencement of the Company's receipt of the Phase 3 Special Source Credits:

(i) if within the five (5) Property Tax Years following the Property Tax Year in which the Phase 3 Special Source Credits Requirements are initially satisfied, investment made in Project property satisfying such investment requirements, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 3 Special Source Credits Requirements, the Phase 3 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if within the five (5) Property Tax Years following the period set forth in **Section 5.7(h)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 3 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 3 Special Source Credits Requirements set forth in the Phase 3 Special Source Credits.

ARTICLE VI

PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. Protection of Tax Exempt Status of the Project. In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a "project" in accordance with the Act.

ARTICLE VII

EFFECTIVE DATE

SECTION 7.1. Effective Date. This Agreement shall become effective as of the date first written above.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from pecuniary liability in connection with those reasons set forth in (i) or (ii) of **Section 8.1(b)** hereof.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary claims by or on behalf of any Person, arising out of the same, and all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with defending against any such claim, and upon notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents or employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual members, officers, agents or employees.

SECTION 8.2. Assignment and Leasing. Subject to and pursuant to the Fee Act, including Section 12-44-120 thereof, this Agreement may not be assigned unless the County approves such assignment by Resolution; provided, however, that such consent is not required in connection with financing-related transfers or any other transfers not requiring the consent of the County under the Fee Act. The County hereby expressly pre-approves and consents to any transfer or assignment by the Company, or any Affiliate of the Company, of any or all of its interest in the Project and/or this Agreement to, or merger or consolidation with, any other Affiliate of the Company and to any resulting transfer or assignment of any or all of such interest among such entities including, without limitation, to one or more of Nephron Pharmaceuticals

Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus, LLC. Notwithstanding any provision of this Section to the contrary, if and to the extent that the future consent of the County is required in connection with a transfer, assignment or other action referenced in this Section, the County hereby expressly agrees that, to the extent permitted by the Fee Act, such approval may be provided by Resolution of County Council. The Company acknowledges transfers of this Agreement or the Project property may cause the Project property to become ineligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth herein or result in penalties under the Fee Act absent compliance by the Company with the transfer provisions of Section 12-44-120 of the Fee Act.

SECTION 8.3. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company the benefits specified in **Article V** in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Fee Act, the Multi-County Park Act, and the Special Source Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Fee Act, the Multi-County Park Act, or the Special Source Act is unconstitutional or this Agreement, the Multi-County Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then at the request of the Company, the County agrees to extend to the Company the intended benefits of this Agreement and agrees, if requested, to enter into a lease purchase agreement or similar arrangement with the Company pursuant to Section 12-44-160 of the Fee Act, under Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, and to take such other steps as may be appropriate to extend to the Company the intended benefits of this Agreement, including, without limitation, the provision of a special source revenue credit to the extent statutorily allowed, which is commensurate to the benefits which would otherwise accrue to the Company under the Agreement.

SECTION 8.4. Confidentiality. The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information. The County agrees that neither the County nor any employee, agent or contractor of the County: (i) shall request, or be entitled to receive, any such confidential or proprietary information, or (ii) shall request, or be entitled, to inspect the Project or any property associated therewith. To the extent that the Company has heretofore provided confidential and proprietary information regarding the Project in the County which has been provided under written designation of the Company as "Confidential", the County shall not knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with maximum possible advance notice of such requirement to disclose before making

such disclosure, and to cooperate with any attempts by the Company to obtain judicial or other relief from such disclosure requirement, at the expense of the Company.

ARTICLE IX

EVENT OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The occurrence of any one or more of the following events shall be an “Event of Default” under this Agreement:

(a) If the Company shall fail to make, or cause to be made, any Negotiated Payments-in-Lieu-of-Taxes or any other payment required under this Agreement and such failure shall continue for thirty (30) days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company (other than as referred to in **Section 9.1(a)** hereof), and such failure shall continue for a period of thirty (30) days after written notice of default has been given to the Company by the County; provided if by reason of “force majeure” as hereinafter defined, the Company is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than thirty (30) days to cure such default and the Company is diligently attempting to cure such default, there shall be no Event of Default during such inability or cure period. The term “force majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council or other County authority; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

Anything herein to the contrary notwithstanding, failure to satisfy or maintain any investment or job requirements or levels set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate or adjust certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Sections 5.4, 5.5 and 5.7** hereof, which shall be the County’s sole remedies for any such failure.

SECTION 9.2. Remedies on Default. Whenever any Event of Default shall have happened pursuant to **Section 9.1** hereof and be subsisting, the County may (i) terminate this Agreement by providing at least thirty (30) days written notice to the Company specifying the

termination date; or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents. Although the parties acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and any act relating to the enforced collection of taxes. The County's right to receive Negotiated Payments-in-Lieu-of-Taxes shall have a first priority lien status pursuant to Section 12-44-90 of the Fee Act and Title 12, Chapters 4 and 54 of the Code. Upon the default of the County in the performance of any of its obligations hereunder, the 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.

Each right, power, and remedy of the County or the Company 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 the Company 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 the Company of any or all such other rights, powers, or remedies.

SECTION 9.3. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

SECTION 9.4. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the 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.

ARTICLE X

OPTION TO TERMINATE

SECTION 10.1. Option to Terminate. From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Agreement, the Company will become liable for *ad valorem* property taxes, or payments-in-lieu-of-taxes pursuant to the Multi-

County Park Act, as the case may be, on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1**, or, if the termination is of the entire Project, then within one hundred eighty (180) days of termination.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this **Section 11.1**:

If to the Company: Nephron SC, Inc.

With A Copy To: Burnet R. Maybank, III
Tushar V. Chikhliker
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P. O. Drawer 2426
Columbia, S.C. 29202-2426
Facsimile: 803-253-8277

If to the County: Lexington County Council, South Carolina
Attention: Clerk to Council
212 South Lake Drive
Lexington, SC 29072
Facsimile: 803-785-8101

With A Copy To: Jeff M. Anderson
Davis Frawley Anderson McCauley, Ayer, Fisher & Smith, LLC
140 E. Main Street
P.O. Box 489
Lexington, SC 29071-0489
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 11.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County and the Company, as well as any and all additional entities eligible to benefit under this Agreement pursuant to **Section 4.1** hereof or **Section 8.2** hereof, and their respective successors and assigns.

SECTION 11.3. Invalidity and Severability. In the event that the Fee Act or the Negotiated Payments-in-Lieu-of-Taxes or Special Source Credits arrangement described in the Agreement hereof is determined to be invalid or unenforceable in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Agreement; otherwise, in the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4 of the Code.

SECTION 11.4. SECTION 11.4. Payments Due on Saturday, Sunday and Holidays. Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 11.5. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent including, without limitation, any County consent specifically referred to in this Agreement, may be provided by a resolution of County Council.

SECTION 11.6. Execution of Counterparts. This Agreement may be executed in several counterparts, only one of which shall be an original; provided, however, that any action may be brought upon any counterpart of this Agreement or any counterpart of any document that is attached to this Agreement as an exhibit.

SECTION 11.7. 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 thereof.

SECTION 11.8. Law Governing Construction of Agreement. The laws of the State shall govern the construction of this Agreement.

SECTION 11.9. Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

SECTION 11.10. Further Assurance. From time to time the County agrees to execute and deliver to the Company such additional instruments and undertaking further proceedings as the Company may reasonably request to effectuate the purposes of this Agreement.

[EXECUTION PAGE TO FOLLOW]

IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY, each pursuant to due authority, has duly executed this Agreement, all as of the date first above written.

LEXINGTON COUNTY, SOUTH CAROLINA

James E. Kinard, Jr.
Chair of Lexington County Council

ATTEST:

Diana W. Burnett
Clerk, Lexington County Council

NEPHRON SC, INC.

By: _____
Name: _____
Its: _____

EXHIBIT A
SITE
LEGAL DESCRIPTION

[TO BE INSERTED]

EXHIBIT B
FORM OF LIMITED WARRANTY DEED

Attached.

EXHIBIT C

FORM OF MEMORANDUM OF AGREEMENT

Attached.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the
“Permitted Exceptions”):

See Exhibit “B” attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned, unto Grantee, its
successors and assigns forever;

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend
all and singular the Premises unto Grantee, its successors and assigns, against itself, its successors and
assigns, lawfully claiming, or to claim, the same or any part thereof, but no others.

[SIGNATURE PAGE ATTACHED]

[remainder of page intentionally left blank]

SIGNATURE PAGE OF TITLE TO REAL ESTATE LIMITED WARRANTY DEED

WITNESS Grantor's hand and seal this _____ day of _____, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

COUNTY OF LEXINGTON, SOUTH
CAROLINA, a body politic and corporate and a
political subdivision of the State of South
Carolina

Witness Number 1

By: _____ (SEAL)
Name: _____
Title: Chair of Lexington County Council

Witness Number 2

ATTEST:

Diana W. Burnett
Clerk, Lexington County Council

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF SOUTH CAROLINA)

I, _____, a notary public for the State of South Carolina, do hereby certify that County of Lexington, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, by _____, its Chair of Lexington County Council, and attested to by Diana W. Burnett, Clerk of the Lexington County Council, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal, this _____ day of _____, 2012.

Signature of Notary Public
My Commission Expires: _____

EXHIBIT "A"

Legal Description:

Derivation:

Tax Map Number:

EXHIBIT “B”

Permitted Exceptions

1. Grantee shall commence construction on the Premises within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee. If Grantee fails to commence construction on the Premises within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee, Grantor may elect by providing written notice to Grantee that Grantor would like the Premises to be conveyed back to Grantee. Notwithstanding anything to the contrary contained herein, conclusive evidence of the commencement of construction shall be by the recordation of an affidavit of construction commencement (the “Commencement Affidavit”) by Grantee in the Office of the Register of Deeds for Lexington County, South Carolina providing that Grantee has commenced physical work on the Premises and that such work commenced within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed for the Premises, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee. The recordation of the Commencement Affidavit by Grantee in the Office of the Register of Deeds for Lexington County, South Carolina, shall be conclusive evidence of the commencement of construction on the Premises by Grantee, and after recordation of the Commencement Affidavit any and all rights of Grantor to request a reconveyance of the Premises and any requirement of commencement of construction shall thereafter be automatically void and of no further force or effect.

2.

STATE OF SOUTH CAROLINA)
 COUNTY OF _____)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the County of Lexington, bearing Lexington County Tax Map Number _____ and was transferred by County of Lexington, South Carolina to Nephron SC, Inc. on _____, 2012.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes ___ or No XXXX to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.
6. The deed recording fee is computed as follows:
 - (a) _____ Place the amount listed in item 4 above here: \$_____
 - (b) _____ Place the amount listed in item 5 above here: \$0.00
(If no amount is listed, place zero here.)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place result here: \$_____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

_____ Sworn to before me this _____ day of _____, 2012 My Commission Expires: _____ [AFFIX OFFICIAL NOTARY SEAL]	COUNTY OF LEXINGTON, SOUTH CAROLINA By: _____ (SEAL) Name: _____ Title: Chair of Lexington County Council	ATTEST: _____ (SEAL) Diana W. Burnett Clerk, Lexington County Council
--	---	--

SIGNATURE PAGE OF MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, County has hereunto set its hand and affixed its seal effective as of the day and year set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

COUNTY OF LEXINGTON, SOUTH
CAROLINA, a body politic and corporate and a
political subdivision of the State of South
Carolina

Witness Number 1

By: _____ (SEAL)
Name: _____
Title: Chair of Lexington County Council

Witness Number 2

ATTEST:

_____(SEAL)
Diana W. Burnett
Clerk, Lexington County Council

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF SOUTH CAROLINA)

I, _____, a notary public for the State of South Carolina, do hereby certify that County of Lexington, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, by _____, its Chair of Lexington County Council, and attested to by Diana W. Burnett, Clerk of the Lexington County Council, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal, this _____ day of _____, 2012.

_____(SEAL)
Signature of Notary Public
My Commission Expires: _____

EXHIBIT A

Description of the Property

Legal Description:

Derivation:

Tax Map Number:



County of Lexington

Community Development Department
212 South Lake Drive—Suite 401
Lexington, SC 29072
Phone: (803) 785-8121
Fax: (803) 785-8188

MEMORANDUM

TO: Planning and Administration Committee
Lexington County Council

THROUGH: Joe Mergo III, Interim County Administrator

FROM: Ronald T. Scott, Community Development Director

DATE: February 3, 2012

RE: FY 2012-13 Community Development Block Grant (CDBG) Program
FY 2012-13 HOME Investment Partnership Program

The United States Department of Housing and Urban Development (HUD) has notified the County that its FY 2012-13 allocation will be \$1,352,807 for the CDBG Program and \$440,547 for the HOME Program. These funds will not be made available to the County until after July 1, 2012.

A summary is attached of project funding recommendations for the FY 2012-13 CDBG and HOME Programs. The CDBG Program received 12 requests for funding totaling \$1,257,726. All requests were reviewed and evaluated by the Grant Programs Division staff and the Grant Programs Advisory Committee. After preliminary rankings, staff also evaluated the general project eligibility, feasibility, and the capacity of the applicants to administer programs according to federal guidelines. All HOME projects will be administered internally. The County has requested a waiver of the Community Housing Development Organization (CHDO) set-aside for FY 2012-13. These funds will be used toward our standard programs if the waiver is granted by HUD.

It is County Council's authority to approve any proposed projects or combination of projects that total the amount of available funds. Funding for approved projects will not be available until after July 1, 2012, and will be provided on a reimbursable basis after staff review of supporting documentation.

We request County Council's consideration and approval of the proposed CDBG and HOME projects so that we may proceed with developing our Annual Action Plan, which is due to HUD by May 15, 2012. The projects you approve will be listed in our Annual Action Plan and will also be considered as approved for the purposes of the County's FY 2012-13 budget process.

Requested Action: Committee recommendation to County Council for approval of the FY 2012-13 CDBG projects, HOME projects, and the administrative budgets for our HUD grant programs.

FY 2012-13 BUDGET SUMMARY

CDBG BUDGET SUMMARY

Program Revenue for FY 12-13

FY 12-13 Allocation	\$1,352,807
Unexpended Funds	<u>\$ 64,745</u>
TOTAL:	<u>\$1,417,552</u>

Program Expenses for FY 12-13:

Recommended Projects	\$1,129,214
Program Administration	\$ 248,224
Project Contingency/Uncommitted Funds	<u>\$ 40,114</u>
TOTAL:	<u>\$1,417,552</u>

HOME BUDGET SUMMARY

Program Revenue for FY 12-13

FY 12-13 Allocation	\$ 440,547
Unexpended Funds and Allocation from HOME Fund Balance	\$ 184,000
General Fund Request (HUD Match)	<u>\$ 28,303</u>
TOTAL:	<u>\$ 652,850</u>

Program Expenses for FY 12-13

Recommended Projects	\$ 580,493
Program Administration	<u>\$ 72,357</u>
TOTAL:	<u>\$ 652,850</u>

FY 2012-13 CDBG PROJECT PROPOSALS

<u>PROJECTS</u>	<u>RECOMMENDED FUNDING</u>
<p>(1) Lexington County <i>Minor Home Repair Program</i></p>	<p>\$250,000</p>
<p>(2) Town of Lexington <i>West Lexington Waterline Upgrade</i></p>	<p>\$210,000</p>
<p>(3) City of Cayce <i>Avenues Area Waterline Upgrade</i></p>	<p>\$171,083</p>
<p>(4) Lexington County <i>Homeownership Assistance Program</i></p>	<p>\$150,000</p>
<p>(5) Town of Lexington <i>Keeping Every Youth Safe Afterschool Program</i></p>	<p>\$73,346</p>
<p>(6) Town of Springdale <i>Platt Springs Road Blight Removal</i></p>	<p>\$65,200</p>
<p>(7) Harvest Hope Food Bank <i>Backpack Weekend Child Feeding Program</i></p>	<p>\$64,800</p>
<p>(8) Boys and Girls Club of the Midlands <i>BE GREAT Academy Scholarship Program</i></p>	<p>\$63,800</p>
<p>(9) Lexington County <i>Home Rehabilitation Project Delivery</i></p>	<p>\$45,000</p>
<p>(10) Sistercare, Inc. <i>Shelter Facility Improvements</i></p>	<p>\$18,500</p>
<p>(11) Babcock Center, Inc. <i>Duffie Work Activity Center Improvements</i></p>	<p><u>\$17,485</u></p>
<p>Total</p>	<p>\$1,129,214</p>



FY 2012-13 HOME PROJECT PROPOSALS

PROJECTS

RECOMMENDED FUNDING

(1) Homeownership Assistance

\$420,493

(2) Housing Rehabilitation Program

\$160,000

Total

\$580,493



**COUNTY OF LEXINGTON
HIGHWAY SAFETY ENHANCED DUI ENFORCEMENT
Annual Budget
FY 2012-13 Estimated Revenue**

Object Code	Revenue Account Title	Actual 2010-11	Received Thru Dec 2011-12	Amended Budget Thru Dec 2011-12	Projected Revenues Thru Jun 2011-12	Requested 2012-13	Recommend 2012-13	Approved 2012-13
*LE - Highway Safety Enhanced DUI Enforcement 2491:								
Revenues:								
457000	Federal Grant Income	173,176	144,191	209,049	209,049	177,557	177,557	
461000	Investment Interest	0	0	0	0	0	0	
** Total Revenue		173,176	144,191	209,049	209,049	177,557	177,557	
***Total Appropriation					209,049	177,557	177,557	
FUND BALANCE								
Beginning of Year					10,308	10,308	10,308	
FUND BALANCE - Projected								
End of Year					10,308	10,308	10,308	

COUNTY OF LEXINGTON
HIGHWAY SAFETY ENHANCED DUI ENFORCEMENT
Annual Budget
Fiscal Year - 2012-13

Fund: 2491
Division: Law Enforcement
Organization: 151200 - LE/Operations

Object Expenditure Code Classification	2010-11 Expend	2011-12 Expend (Dec)	2011-12 Amended (Dec)	<i>BUDGET</i>		
				2012-13 Requested	2012-13 Recommend	2012-13 Approved
Personnel						
510100 Salaries & Wages - 2	45,967	36,757	112,202	83,000	82,476	
510199 Special Overtime	894	935	0	0	0	
511112 FICA - Employer's Portion	3,491	2,813	8,628	6,350	6,310	
511114 Police Retirement - Employer's Portion	5,412	4,434	13,045	9,570	10,145	
511120 Insurance Fund Contribution - 2	9,100	7,800	22,100	15,600	15,600	
511130 Workers Compensation	1,576	1,268	3,747	2,789	2,772	
* Total Personnel	66,440	54,007	159,722	117,309	117,303	
Operating Expenses						
521000 Office Supplies	173	0	395	500	500	
521200 Operating Supplies	0	0	1,100	1,000	1,000	
521208 Police Supplies	304	0	546	0	0	
522300 Vehicle Repairs & Maintenance - 2	30	477	1,970	1,000	1,000	
524100 Vehicle Insurance - 2	0	800	2,184	1,092	1,092	
524201 General Tort Liability Insurance	1,446	723	1,534	1,490	1,490	
525004 WAN Service Charges - 2	304	456	2,576	1,200	1,200	
525020 Pagers & Cell Phones - 2	86	259	2,794	1,200	1,200	
525030 800 MHz Radio Service Changes - 2	270	458	2,770	1,200	1,200	
525041 E-mail Service Charges - 2	0	0	162	156	162	
525210 Conference, Meeting & Training Expense	0	0	1,666	2,000	2,000	
525400 Gas, Fuel and Oil	4,663	8,522	26,633	18,800	18,800	
529903 Contingency	0	0	898	0	0	
* Total Operating	7,276	11,695	45,228	29,638	29,644	
** Total Personnel & Operating	73,716	65,702	204,950	146,947	146,947	
Capital						
540000 Small Tools & Minor Equipment	62	0	1,608	0	0	
540010 Minor Software	0	0	0	0	0	
All Other Equipment	89,090	619	2,491			
(2) In-Car Radios, Mounts & Accessories				11,500	11,500	
(1) Large Screen Monitor				4,500	4,500	
(2) ID Barcode/Magnetic Scanner & Software				1,800	1,800	
(2) LIDAR Units w/ Video & Accessories				12,000	12,000	
(2) Passive Alcohol Sensors & Accessories				810	810	
** Total Capital	89,152	619	4,099	30,610	30,610	
*** Total Budget Appropriation	162,868	66,321	209,049	177,557	177,557	

SECTION V. – PROGRAM OVERVIEW

The ultimate goal for the creation of a Driving Under the Influence Traffic Enforcement Unit in Lexington County is to combine resources to effect a positive change in the collision, injury, and arrest rate of traffic and DUI violations. By consolidating the resources and expanding knowledge and skills to perform DUI traffic enforcement, the quality of enforcing the traffic laws will result in an effort to reduce severe and fatal traffic collisions. The expertise and knowledge gained from the specialized training will enhance the unit's capability by using technologically sound equipment and techniques to collect and process evidence for court cases for effective discovery, documentation, and judicial prosecution of criminal offenders.

SECTION VI. B. – LISTING OF POSITIONS

Current Staffing Level:

<u>Job Title</u>	<u>Positions</u>	<u>Full Time Equivalent</u>		<u>Total</u>	<u>Grade</u>
		<u>General Fund</u>	<u>Other Fund</u>		
Traffic Lieutenant	1	1	0	1	20
Traffic Master Deputies	2	2	0	2	13
Traffic Deputies	7	7	0	7	12
Totals:	10	10	0	10	

	<u>Positions</u>	<u>Full Time Equivalent</u>		<u>Total</u>	<u>Grade</u>
		<u>General Fund</u>	<u>Other Fund</u>		
Traffic Deputies	2	0	2	2	12
Totals:	2	0	2	2	

SECTION VI. C. – OPERATING LINE ITEM NARRATIVES

521000 - OFFICE SUPPLIES **\$ 500**

Items to be purchased include but are not limited to pens, file jackets, folders, diskettes, calendars and other general supplies used daily.

521200 - OPERATING SUPPLIES **\$ 1,000**

Items to be purchased are traffic supplies such as video and audiotapes, OSH kits, traffic books, disks, batteries, etc. are for operational purposes for the traffic officers.

522300 - VEHICLE REPAIRS AND MAINTENANCE **\$ 1,000**

Vehicle repairs and maintenance that are needed for the grant vehicles (estimated at \$500 per vehicle).

524100 - VEHICLE INSURANCE **\$ 1,092**

Vehicle insurance is required for the grant vehicles. (\$546 x 2 vehicles = \$1,092)

524201 - GENERAL TORT LIABILITY INSURANCE **\$ 1,490**

General Tort Liability Insurance is required for each person employed by the County. (\$745 x 2 officers = \$1,490)

525004 – WAN SERVICE CHARGES **\$ 1,200**

Air card service will allow the grant traffic officers to have wireless access to the web, GNET and other databases from other counties as well as LCSD to obtain immediate information on the person in question. (\$50/month x 2 officers x 12 months = \$1,200)

525020 - PAGERS AND CELL PHONES **\$ 1,200**

The mobile telephones for the grant traffic officers will allow them to communicate effectively with each other and to make contact to those individuals that are involved in traffic situations. (\$50/month x 2 officers x 12 months = \$1,200)

525030 – 800 MHz RADIO SERVICE CHARGES **\$ 1,200**

The 800 MHz radio fees plus roaming fees is required for the operation of 800 MHz radios. (\$50/month x 2 officers x 12 months = \$1,200)

525041 – E-MAIL SERVICE CHARGES **\$ 162**

The email service is required for immediate communication and immediate transfer of documents for DUI investigative purposes. ($\$6.75/\text{month} \times 2 \text{ traffic officers} \times 12 \text{ months} = \162)

525210 – CONFERENCE, MEETING, & TRAINING EXPENSE **\$ 2,000**

The grant requires that each grant funded person attend at least two training seminars per grant year. These training seminars will teach the most current technological approaches to DUI, vehicle inspection, laws, and investigations that will allow the DUI officers to properly present cases in court for prosecution purposes.

525400 - GAS, FUEL, AND OIL **\$ 18,800**

The grant reimburses the mileage at the federal rate for the grant-funded personnel to allow them to travel to work and scenes while performing their duties. (estimated at $\$0.555 \times 33,873 \text{ miles} = \$18,799.52$)

SECTION VI. D. –CAPITAL LINE ITEM NARRATIVES

(2) IN-CAR RADIOS, MOUNTS AND ACCESSORIES **\$ 11,500**

In-car radios are necessary for continuous communication in areas where radio towers have very low signal capability. Additionally the radios in the vehicle would allow the monitoring of additional channels by scanning multiple sources from highway patrol, the municipalities and other county agencies, which the hand held radios will not do thus allowing for prompt responses.

(1) LARGE SCREEN MONITOR **\$ 4,500**

A large screen monitor is required to process videos, make graphically intensive PowerPoint presentations for prosecution in court and to allow for editing of crime scenes and DUI recorded violations.

(2) ID BARCODE/MAGNETIC SCANNER AND SOFTWARE **\$ 1,800**

The ID scanner will assist on traffic stops by immediately recording a copy of the driver's license, information from vehicle registrations and other legal papers allowing less time and errors than manually recording the information. The scanner must be able to interface with LCSD in-house records management system and SCDMV software to allow for immediate review and retrieval of all pertinent information.

(2) LIDAR UNITS WITH VIDEO AND ACCESSORIES **\$ 12,000**

The LIDAR laser speed gun allows for precise speed measurement of a single vehicle captures video of the violation and the speed and records for case/court purposes. The laser speed gun also measures the distance between cars to allow the enforcement of aggressive driving. The ability to detect speeders and aggressive driving helps officers detect and enforce violations that are strong indicators of impaired driving.

(2) PASSIVE ALCOHOL SENSORS AND ACCESSORIES **\$ 810**

Passive alcohol sensors are used to solidify driving under the influence cases by determining the suspect's blood alcohol level. This device will allow the prosecution and enforcement of alcohol related offenses of individuals less than 21 years of age, as is required by state law. The sensor allows for a measurement of someone's breath for the presence of alcohol as an active device and also allows for the detection of alcohol in beverages which assist for prosecution of open container violations and can sense the amount of alcohol present in a volume of air.



County of Lexington
Department of Public Safety

MEMO

To: Joe Mergo, Interim County Administrator
From: David Kerr, Public Safety Director
Date: February 7, 2012
Subject: Communications Narrowbanding

The Federal Communications Commission (FCC) has mandated through federal legislative action to make additional Very High Frequency (VHF) Channels available in the 150MHz / 450-470 MHz frequency spectrum by January 1, 2013. This mandate splits the 25 kHz bandwidth currently authorized by the FCC to 12.5 kHz, which reduces signal coverage across the County from 90% to approximately 50%. This mandate applies to all public safety VHF frequencies licensed to Lexington County, to include Fire and Emergency Medical Services. By December 31, 2012, Lexington County's 12.5 kHz VHF communication system must be installed, licensed, and fully operational to ensure the continued timely notification and dispatch of our first responders.

Lexington County primarily uses the VHF communications system to page/alert and direct the response of over 350 volunteer and career firefighters. The VHF communications system is also used as a backup to Public Safety's primary communications radio system, Palmetto 800, throughout the County.

Lexington County Public Safety, in cooperation with many state, county and civilian communications experts has explored options to minimize the impacts of the Narrowbanding Mandate on County communications. Having considered multiple technology options, this department recommends the following solution:

- 1) Lexington County installs a three (3) transmitter, VHF Simulcast Communications system. Computer modeling shows that this system

436 Ball Park Road • Lexington, South Carolina • 29072
Phone (803) 785-8287 Fax (803) 785-8589
E-Mail: lcfs@lex-co.com

will likely provide as good, if not better, VHF coverage of Lexington County. (est. one time cost \$450,000)

- 2) Lexington County will place transmitters on three co-use antennas at various locations around the County to optimize coverage. These towers will be chosen based on coverage provided, available infrastructure support, and annual reoccurring costs. Lexington County will incur annual tower lease and system maintenance costs. (est. annual cost \$50,000)
- 3) Pagers and radios currently in use by Lexington County Public Safety will be narrowbanded to allow for use on the new system (est. one time cost \$15,000)
- 4) County frequency licenses will be updated to reflect new narrowbanded frequencies.

This system will have an estimated lifecycle of 8 to 10 years. At that time, if technological advancements in communications evolve, the County may be able to consolidate all emergency communications under one system. We have also been advised that the FCC is likely to mandate future narrowbanding down to 6.25 kHz, however no timeline has been given.

The department recommends that initial installation costs be funded using the Fire Service Contingency Fund (_____). We further recommend that the annual reoccurring tower lease and maintenance costs be funded from the Fire Service Operating Fund (131500).

Public Safety requests that the Council authorize this department to negotiate and enter into a contract with Motorola, Inc. (a state contracted vendor) to build/install a three (3) tower VHF Simulcast Communications System for Lexington County.



COUNTY OF LEXINGTON
PUBLIC WORKS DEPARTMENT
ENGINEERING

M E M O R A N D U M

DATE: February 3, 2012
TO: Joe Mergo, Interim County Administrator
FROM: John Fechtel, Director of Public Works/Assistant County Administrator
RE: Chapter 7 – Agreements, Bonds, and Warranties Review

Attached is a revised Chapter 7 “Draft”. The following is a synopsis of each section:

7.1 – Subdivision Bonding Process

General information but does not state the County receives the right to deny a subdivision bonding process.

7.2 – Subdivision Agreement and Surety Bond

1. Up to 24 months on initial coverage
2. Bond requirements of 125% of the bond estimate (state law).
3. If there are infrastructure “failures”, the developer must work out an approved repair schedule or risk having the bond revoked or other actions taken by the county.

7.1.2 – Bond Estimate

The developer’s engineer will submit a bond estimate to be verified by the County.

7.1.3 – Bonded Plats

Submit bonded plat reflecting all infrastructures necessary for the project to function correctly.

7.1.4 – Signage

Appropriate signage (stop, street, etc.) will be installed once the infrastructure is substantial complete or occupied.

7.1.5 – Reductions

One time reduction allowed at the closure of the 24 month initial coverage, but no less than 50% of the infrastructure the county is to maintain.

7.1.6 – Extensions

After the initial 24 month coverage, a 12 month extension may be requested. If bonds have to be collected by the County and the subdivision developer completes the infrastructure, the funds will be returned to the financial institution.

7.2 – Warranty Period

The County is requiring a two year warranty on the infrastructure to be maintained by the county. When as-builts are approved and the County is satisfied with the work at that time, the bonds can be reduced, but not less than 50% on the County's portion.

7.3 – Reserved

7.4 – Commercial Grassing Agreement

This section allows commercial properties to get a certificate of occupancy (CCO) prior to permanent vegetation by bonding the stabilization yet insuring to the County that all the necessary items in their land disturbance permit are met.

We are sending all of this to the Home Builders Association and our Stakeholders Group for comments. There may be some items, such as warranty bond, that may need further evaluation.

We are requesting the Public Works Committee to not send this to full council until comments are received and evaluated.



Chapter 7-Agreements, Bonds and Warranties

This chapter provides information on the various agreements, bonds and warranties required by the County of Lexington.

7.1 Subdivision Bonding Process

Bonding a subdivision, at the discretion of County Council, provides a Subdivision Agreement and Surety Bond to guarantee completion of the infrastructure of a development. This privilege allows developers the opportunity to sell parcels prior to a Final Plat approval. The bonded infrastructure shall include, but is not limited to roads, storm drainage conveyance systems, sediment and erosion control measures/maintenance, water quality BMP's, and water and sewer systems as well as associated engineering and surveying costs necessary to obtain Final Plat approval. A Bonded Plat shall be recorded with the Register of Deeds for Lexington County which allows subdivision parcels to be conveyed.

Lexington County reserves the right to deny the bonding process to a developer or any person, entity, corporation, LLC, or association in partnership with the developer. If a developer fails to uphold his responsibilities for the completion of the required infrastructure within a specified time, the surety bond shall be collected by Lexington County to complete the development. Should the developer complete the development within an approved schedule for completion after the bond has been collected, the monies shall be returned to the holder of the surety.

The requirements and policies of the subdivision bonding process are described in more detail in Sections 7.1.1 through 7.3.

7.1.1 Subdivision Agreement and Surety Bond

Examples of the Subdivision Agreement and Surety Bond documents are available from the Community Development Department. The Subdivision Agreement and Surety Bond are executed by the developer for approval by the County Attorney and County Administrator. The Subdivision Agreement and Surety Bond shall be executed to allow up to 24 months for the initial coverage period for completion of the infrastructure.

A developer must obtain the surety bond from a FDIC insured financial institution, with Lexington County Council as the beneficiary. The surety bond shall be provided in the form of an irrevocable letter of credit (LOC) or cash deposit in the amount of 125% of the bond estimate as approved by PW/SWD. Lexington County will not accept a surety bond which allows draw downs for monthly expenditures. Payment of monthly expenditures is the sole responsibility of the developer and does not affect the amount of money held in the surety.



If failures of the infrastructure occur during the initial coverage period (24 months) of the surety bond the PW/SWD will provide written notification to the developer of the repair work required. The developer shall then have 30 days to prepare a schedule of corrective actions. If not completed within an approved schedule, the PW/SWD reserves the right to correct the deficiencies using the money in the surety bond to cover the costs, or any other means deemed necessary (building permit holds/stop work orders, etc.).

7.1.2 Bond Estimate

The bond estimate is the associated construction cost, for completing the roads, stormwater conveyance system, sediment and erosion control measures/maintenance, water quality practices, and water and sewer systems as well as associated engineering and surveying costs necessary to obtain Final Plat approval. If the developer is bonding a phase within a larger development, the bond estimate shall include all necessary improvements required for the phase to function as a stand-alone project. The PW/SWD will review the bond estimate to verify the amount adequately covers associated costs should Lexington County be required to complete the infrastructure. The bond estimate shall bear the live signature and seal of the Licensed Professional Engineer of Record.

The Project Engineer's bond estimate is reviewed for approval by the PW/SWD using current cost factors. A copy of the bond estimate spreadsheet including unit cost prices is provided as a template in Appendix Q for use by the Project Engineer. Unit cost prices are at the discretion of PW/SWD and are subject to change.

7.1.3 Bonded Plats

Four copies of a Bonded Plat shall be submitted for redlining along with or prior to the bond estimate submittal. If the developer is bonding a phase within a larger development, the bonded plat shall include all necessary improvements required for the phase to function as a stand-alone project. Upon completion of the review process and required documents, a Bonded Plat will be considered for approval. The Bonded Plat submittal requirements can be found in Appendix Q.

7.1.4 Additional Requirements

Sign fees shall be collected by the PW/SWD prior to Bonded/Final Plat approval. The PW/SWD will place a work order and the signs can be picked up by the developer or installed by Lexington County once the infrastructure of the subdivision has been substantially completed.



Subdivision lots containing temporary sediment traps shall be excluded from platting and shown as future development until 80% of the lots in the area draining to the trap have been built-out and stabilized. These lots may be platted once this requirement has been met and the trap has been removed and installed as a permanent feature according to the approved engineering plans or at the approval of the PW/SWD.

7.1.5 Reductions

A one-time bond reduction may be allowed during at the closure of the initial coverage (24 months) for the infrastructure that has been satisfactorily completed. A request to reduce the surety bond may be submitted to the Community Development Department and shall include a revised Bond Estimate using the template provided. The bond estimate shall contain the required certification signed and sealed by the Engineer of Record. The PW/SWD will review and consider the revised bond estimate for approval. The surety bond shall not be reduced below 50% of the total construction costs of the infrastructure that will be maintained by Lexington County.

7.1.6 Extensions

After the initial coverage period (24 months), a one year extension of the Subdivision Agreement and Surety Bond may be requested. An extension may be granted at the discretion of Lexington County PW/SWD up to a maximum of 3 years with a surety bond equal to 125% of the approved bond estimate. To obtain an extension of the Subdivision Agreement and Surety Bond the developer shall first provide an extension of the surety bond two weeks prior to its expiration date for review and approval.

If the infrastructure work is not completed, or an extension is not obtained prior to the surety expiration date on the third year, the surety will be collected by the County. Should the developer complete the infrastructure after the collection of the surety bond, the monies may be returned to the financial institute upon approval by PW/SWD. Where it appears that the surety bond collected is insufficient to finance the required improvements and the applicant has defaulted, Lexington County reserves the right to charge the developer the cost of the improvements over and above the surety amount.

7.2 Warranty Period

Roads and stormwater management systems that are to be dedicated to Lexington County for public maintenance shall be under warranty by the developer for a period of two years. The warranty period shall begin upon As-built approval after the initial coverage period (24 months). At the time of As-Built approval a one-time bond reduction may be requested. The surety bond



shall never be reduced below 50% of the total construction costs of the infrastructure that will be maintained by Lexington County. Total construction costs shall be calculated using the unit costs reflected on the Bond Estimate Worksheet located in Appendix Q unless the actual contract costs are higher.

The PW/SWD shall maintain surveillance over the infrastructure with a semiannual inspection schedule, as referenced in Chapter 5 and provide written notification to the developer if repair work is required during the warranty period. The developer shall then have 30 days to prepare a schedule of corrective actions. If not completed within the approved schedule, the PW/SWD can correct the repairs using the money in the surety bond or by other means to ensure compliance. Road and/or stormwater conveyance defects that directly affect public safety shall be addressed immediately, either by the developer or by the PW/SWD. If the PW/SWD addresses the problem the monies in the surety bond shall be used to cover the costs of repair.

The Land Disturbance Permit shall not be closed until Final plats approval. Final plats shall be submitted prior to surety expiration. The PW/SWD will provide documentation notifying the developer of Land Disturbance Permit closure upon final plat approval.

7.4 Commercial Grassing Agreement

The Commercial Construction Site Grassing Agreement is an option which allows a commercial construction site to obtain a Certificate of Occupancy (CO) before final stabilization of a site has been achieved. The developer/permit applicant can obtain a Commercial Construction Grassing Agreement by securing monies with the PW/SWD.

Final stabilization is 70 % permanent vegetative coverage across 100 % of the construction site for all disturbed areas without buildings or pavement. Seeding with temporary grass is not considered final stabilization.

7.4.1 Eligibility

To be eligible for a Commercial Construction Site Grassing Agreement, the developer/permit applicant must meet the following criteria:

- i. The approved land disturbance permit shall be for a commercial project. Residential projects are not eligible for the Commercial Site Grassing Agreement.
- ii. The site shall be graded so that permanent grass and/or other methods of final stabilization can be achieved.
- iii. The developer/permit applicant shall attempt to establish permanent grass or seed prior to Lexington County's acceptance of the Commercial Construction Site Grassing Agreement.
- iv. All off site areas disturbed during the construction process shall be completely stabilized (i.e. any off site utility lines).
- v. As-built surveys must be submitted and approved by the PW/SWD for all ponds (detention/retention/amenity).



- vi. All recorded covenants for permanent maintenance for stormwater ponds (detention/retention/amenity) must be approved by the PW/SWD.
- vii. The developer or permit applicant shall agree to the Commercial Construction Site Grassing Agreement.
- viii. All sites greater than 1 acre shall continue with weekly or bi-weekly inspections until the site has been stabilized and the agreement has been released by PW/SWD.

7.4.2 Commercial Grassing Agreement

If the developer/permit applicant meets all eligibility criteria, they may apply for a Commercial Grassing Agreement. By signing the Commercial Grassing Agreement the developer/permit applicant is obligated to have the site completely stabilized by the end of the agreement period set by the PW/SWD.

The PW/SWD will calculate the amount of money to be secured using \$5000 per disturbed acre or any portion of a disturbed acre. The PW/SWD reserves the right to adjust this amount depending on site conditions.

If the site has been completely stabilized before the end of the agreement period, the developer/permit applicant will be refunded the entire amount of the agreement. Any interest accrued by the County while the monies are in its account will remain as the property of Lexington County.

7.4.3 Extensions

A developer/permit applicant can request a one-time agreement extension in the event that unforeseen circumstances do not allow final stabilization to occur. The request must be written and submitted to the PW/SWD at 440 Ball Park Road, Lexington SC 29072, 10 days prior to the expiration of the agreement. This request will be evaluated by the PW/SWD, and an extension will be considered. The PW/SWD reserves all rights to deny an extension request.

7.4.4 Failure to Meet Grassing Agreement Requirements

If the site has not been completely stabilized by the end of the grassing agreement period, or an extension has not been approved, then the developer/permit applicant is in violation of the Lexington County Stormwater Ordinance. The PW/SWD shall issue a criminal citation subject to the penalty jurisdiction of the magistrate's court and the developer/applicant will forfeit all monies secured for the agreement.



COUNTY OF LEXINGTON
PUBLIC WORKS DEPARTMENT
ENGINEERING

M E M O R A N D U M

DATE: February 3, 2012
TO: Joe Mergo, Interim County Administrator
FROM: John Fechtel, Director of Public Works/Assistant County Administrator
RE: SCDOT "C" Fund Review – FY 10/11

Attached is the letter we received about the SCDOT review conducted November 30, 2011. They reviewed ten local paving projects and two state road projects in depth. They reported two minor deficiency items as noted.

All in all, the review went very well. I would like to thank my staff, in particular Jim Starling, along with Angela Seymour, Procurement, and Adam Dubose, Finance, for a real good job that they do all year long. With their organization, we were able to have the required information for the review.



South Carolina
Department of Transportation

January 12, 2012

Mr. James E. Kinard Jr., Chairperson
Lexington County Council
212 South Lake Drive
Lexington, South Carolina 29072

Re: Lexington County Transportation Committee Review – Fiscal Year 10/11

Dear Mr. Kinard:

Reviews of self-administered County Transportation Committees (CTCs) conducted by the South Carolina Department of Transportation (SCDOT) are required in compliance with Paragraph (P) of Section 12-28-2740 of the S. C. Code of Laws 1976. The reviews are to ensure compliance with subsections C, D, F, and I and include evaluating randomly selected projects and financial records. This should not be considered an audit; however, if discrepancies in the project documentation or questions regarding management of C Funds exist, a formal audit may be requested.

SCDOT review team members met with Mr. Jim Starling, Mr. John Fechtel, Ms. Angela Seymour and Mr. Joey Derby on November 30, 2011, to review the following projects in accordance with the aforementioned law:

Local Paving Projects:

Jim Rucker Road – Paving
Payne Lane – Paving
Jayne Lane – Paving
Dogwood Road – Paving
Line Striping Program
Fox Branch Road – Paving
Mission Road/Trailstream Road – Drainage
Micala Drive – Road Failure
Green Haven Drive - Drainage

State Projects:

I. W. Hutto Road – Turn Lane
Church Street (US-321) - Beautification

The following discrepancies were observed:

1. **Deficiency:** There existed no evidence that payment and performance bonds were secured for the Line Striping Project.
Recommended Correction: On future projects, ensure that all work bid and awarded for contracts in excess of \$100,000.00 be covered by the appropriate



bonds. The C Fund Law, Section (I) (1) states, "all bids in excess of one hundred thousand dollars must be accompanied by certified bid bonds, and all work awarded under the contracts must be covered by performance and payment bonds for one hundred percent of the contract value." No exemption is made for contracts that are 100% DBE.

2. **Deficiency:** The bid summary was not published for the I. W. Hutto Road Project in a newspaper of general distribution as stated in subsection I of Section 12-28-2740 of the C Fund law.

Recommended Correction: On future projects, ensure that all bid summaries are published and documentation to this effect is placed in individual project files. Publication of bid summaries onto the county's website is an acceptable alternative to a newspaper of general distribution.

Lexington County needs to ensure that other governmental entities expending County Transportation funds follow the procedures detailed in the South Carolina Procurement Code. Documentation illustrating the adherence to the procedures is to made part of the project file that is maintained by Lexington County. This documentation was omitted from I. W. Hutto Road (S-248) project but was later received by the C Program Administration Office.

The SCDOT review team appreciates the cooperation provided by Mr. Starling and the Lexington County staff. The files were very neat and well organized. We appreciate the professionalism and consideration shown to us during the review. Please do not hesitate to contact me at 803-737-4832 or feasterbm@scdot.org if you have any questions or concerns.

Sincerely,



Batina Feaster
Program Coordinator
C Program Administration

BF:bmf

cc: John Fechtel, Lexington County, Director of Public Works
ec: Brian Keys, Assistant Chief Engineer for Planning, Location, and Design
Herbert Cooper, C Program Administrator
Julie Barker, C Program Manager, RPG-3

EdVenture



EdVenture, the South's largest children's museum, opened in 2003. The museum encompasses 92,000 sq.ft. of hands-on exploration and discovery designed for visitors 0-12 years old and the adults who care for them.

The museum is also the home of EDDIE®, the world's largest child.



Our Mission

To inspire children, youth, and the adults who care for them to experience the joy of learning.

Our Vision

To create new generations of lifelong learners.



Leadership

- Recipient of the 2011 National Medal for Museums
- Named a “Top Ten Children’s Museum” in the United States
- Recognized as 2012 “Best Museum” by Columbia Metropolitan Magazine readers
- Annual \$14 million regional economic impact



Impact



- 18% of EdVenture's visitors live in Lexington County
- Students from every school district in Lexington County have visited EdVenture for a school field trip
- More than 200 students have participated in EdVenture's after school programming at local middle schools
- More than 100 teachers in Lexington County School Districts have received graduate level credit at EdVenture's Hand's On, Minds On! Summer Teacher Institute

EdVenture – The Next Generation



Meeting Community Needs



- Improve 21st century skills and workforce development in our youth
- Attract tourists and increase economic development in our region
- Strengthen support of schools with our world-class educational resources
- Provide access for families and schools to experience EdVenture



Building the Vision with a focus on Early Childhood and STEM education



- Invest in the core product (exhibits, visitor amenities, facility)
- Support new educational programs for school and family audiences
- Create access for underserved children and families

Making it Happen

- Raise \$5 million over the next 3-5 years
- Funding breakdown
 - 50% private sources
 - 50% government
- Funds raised to date \$3 million





APPOINTMENTS BOARDS & COMMISSIONS

February 14, 2012

JOHNNY JEFFCOAT

- **Museum** - Laura Howell; term expired 11/01/11; *confirmed desire NOT to serve another term*

BILL BANNING

- **Assessment Appeals Board** - Paige Hicks; term expires 09/21/13; resigned 12/31/11

TODD CULLUM

- **Board of Zoning Appeals** - Vacant; term expires 12/31/13
- **Museum** - Vacant; term expires 11/01/13

AT LARGE:

Building Codes Board of Appeals

- **Plumbing** - Ashton Shuler; term expired 08/13/11; eligible for reappointment; *confirmed desire NOT to serve another term*
- **Gas/Mechanical** - Marvin Smith; term expired 08/13/11; eligible for reappointment; *confirmed desire NOT to serve another term* - nomination form for Gene Bishop attached

Stormwater Advisory Board

- **Environmental Steward** - Sue Green; term expires 12/09/12; resigned effective 11/16/11
- **Environmental Consultants** - Larry C. Cooke; term expires 12/09/12; resigned effective 01/04/12 - nomination form for John Collum attached



LEXINGTON COUNTY COUNCIL
BOARD/COMMISSION NOMINATION FORM



Name of Board/Commission: Lexington County Board of Adjustments

Nominee: Mr. Gene Bishop

Address: 459 Smith Pond Rd; Lexington, SC 29072-8979

Employed by: Bishop's Heating & Air/ Midlands Technical College

Address: see previous address

Home Telephone: (803) 957-8629 Business Telephone: (803) 513-0689

Mobile Phone: same as business Fax Number: (803) 359-4926

Email Address: bishopg@midlandstech.edu or bishopsheating@windstream.net

Is nominee aware of board/commission activities and responsibilities? yes

Background information (include education, community service activities, previous service on county boards/commissions or any other boards/commissions on which you are currently serving):

Bishop's Heating & Air - 32 years

Midlands Technical College - 22 years

MTC Coordinator of Heating Program - 14 years

Pisgah Lutheran Church Council Member

Volunteer Fireman - 14 years

Coach - Dixie Youth Baseball and Soccer

Board of Heating & Air Contractors for SC

Building Code of Adjustments for 12 years prior to this term

Grandfather of 1 and 1 on the way

Office use only

Submitted by: _____

Council District Number: _____

Date: _____

Please return completed form to:
Lexington County Council
212 South Lake Drive, Suite 601
Lexington, SC 29072
Or Fax to 803-785-8101
For questions call 803-785-8103



LEXINGTON COUNTY COUNCIL
BOARD/COMMISSION NOMINATION FORM

Name of Board/Commission: Stormwater Advisory Board

Nominee: John Collum

Address: 341 Carola Lane, Lexington, SC 29072

Employed by: Tidewater Environmental Services Inc.

Address: P.O. Box 8902, Columbia, SC 29202-8902

Home Telephone: _____ Business Telephone: 803-765-0070

Mobile Phone: 803-960-3633 Fax Number: 803-794-2148

Email Address: john@tidewaterenvironmental.com

Is nominee aware of board/commission activities and responsibilities? Yes

Background information (include education, community service activities, previous service on county boards/commissions or any other boards/commissions on which you are currently serving):

Mr. Collum grew up in Lexington County, in Batesburg-Leesville and graduated from BLHS. After that, he achieved a bachelors degree in Biological Sciences from Clemson University and a Masters of Science in Earth and Environmental Resources Management from the University of South Carolina. He is a 1/3 owner of an environmental and engineering consulting firm in Columbia. Mr. Collum resides in Lexington and currently serves on the following boards/commissions: American Society of Civil Engineers - Midlands Branch Vice President, SC Chamber Environmental Technical Committee, Lexington United Methodist Church Board of Trustees.

Office use only
Submitted by: _____
Council District Number: _____
Date: _____

Please return completed form to: Lexington County Council 212 South Lake Drive, Suite 601 Lexington, SC 29072 Or Fax to 803-785-8101 For questions call 803-785-8103



John A. Collum
Vice President, Senior Project Manager

EXPERIENCE

SC Department of Health and Environmental Control (1999 - 2003)

- Environmental Health Services
- Bureau of Water, Division of Water Quality

Tidewater Environmental Services Inc. (2004 - Present)

- Extensive experience (both as a regulator and consultant) with wetlands permitting & mitigation, the Clean Water Act, and the Coastal Zone Management Act
- Extensive experience with environmental documentation with the National Environmental Policy Act (NEPA) and the Endangered Species Act for transportation improvement projects.

EDUCATION

Clemson University, Clemson, SC
Bachelor of Science, Biological Sciences, 1999

University of South Carolina, Columbia, SC
Master of Earth and Environmental Resources Management, 2001

TRAINING

USACE Regulatory IV, Interagency Wetlands Identification & Delineation, 2001
Natural Stream Channel Classification and Design, 2002
Erosion Prevention and Sediment Control (the CEPSCI Certification, Reg. 0737), 2005
National Highway Institute, NEPA & Transportation Decision Making, 2007
Interagency Consultation for Endangered Species, 2008

ROLES AND RESPONSIBILITIES

Mr. Collum currently serves as Senior Project Manager at Tidewater Environmental Services Inc. He is highly trained and experienced in conducting protected species surveys, identification, and reporting documentation for compliance with the Endangered Species Act; 404/401 permitting; mitigation; wetland delineation; coordination of regulating agencies; and water quality issues. Formerly a project manager for 401 Water Quality Certification for the South Carolina Department of Health and Environmental Control, he has experience in over 250 different projects requiring 401 Certification. Mr. Collum is certified in Stream Classification and Assessment, Natural Channel Design for Stream Restoration, Endangered Species Act consultation, and Wetland Delineation. With over eight years of natural resources consulting experience, he has performed duties in freshwater wetland and critical area delineation, plant identification, 404 compliance inspection, field surveys and site work for wetland restoration, state and Federal permit preparation for public and private clients, and preparation of NEPA documentation for numerous state and Federal projects. Additionally, he has a thorough understanding of state and federal regulations regarding the Clean Water Act, the Endangered Species Act, and the Coastal Zone Management Act.

COUNTY OF LEXINGTON

Procurement Services

MEMORANDUM

(O) 785-8319

(F) 785-2240

DATE: January 9, 2012

TO: Joe Mergo, III
Interim County Administrator

THROUGH: Jeffrey A. Hyde
Procurement Manager

FROM: Angela M. Seymour
Procurement Officer

**SUBJECT: Fourteen (14) Motorola Portable Radios and Ten (10) Pagers
Public Safety/Fire Service**

We have received several requisitions for the purchase of fourteen (14) Motorola portable radios, ten (10) pagers, and accessories for the Public Safety/Fire Service. These items will be purchased from the SC State Contract # DSIT.2009.01 from Motorola, Inc.

Chief Brad Cox, Fire Service Coordinator has reviewed and recommended this purchase. The total cost, including applicable sales tax, is \$43,233.14.

Funds are appropriated in the following accounts:

<u>Account Number</u>	<u>Account Description</u>	<u>Account Balance</u>
1000-131500-5AC540	(14) Portable Radios with Accessories	\$38,038.00
1000-131500-5AC541	(4) Minitor/Pagers with Accessories	\$2,087.00
1000-131500-5AC162	(6) Pagers	\$3,210.00

I concur with the above recommendation and further recommend that this purchase be placed on County Council's agenda for their next scheduled meeting on February 14, 2012.

copy: Larry Porth, Director of Finance/Assistant County Administrator
David Kerr, Public Safety Director
Chief Brad Cox, Fire Service Coordinator

COUNTY OF LEXINGTON

Procurement Services

MEMORANDUM

(O) 785-8166

(F) 785-2240

DATE: February 7, 2012

TO: Joe G. Mergo, III
Interim County Administrator

THROUGH: Jeffrey A. Hyde
Procurement Manager

FROM: Jo Marie Brown
Procurement Officer

**SUBJECT: Electronics Recycling Building at Edmund Landfill
B12038-1/26/12B
Solid Waste Management**

Competitive bids were solicited and advertised for the Electronics Recycling Building at Edmund Landfill. A mandatory pre-bid meeting was held on January 18, 2012, in which eleven (11) contractors attended.

We received nine (9) responsive bids on January 26, 2012 (see attached Bid Tabulation).

The bids were evaluated by Dave Eger, Director of Solid Waste Management; and Jo Marie Brown, Procurement Officer. It is our recommendation to award to the lowest responsive, responsible bidder, W.T. Murphy Construction Company, Inc., in the amount of \$42,978.00.

County funds are appropriated in the following accounts:

<u>Account Number</u>	<u>Account Description</u>	<u>Account Balance</u>
5700-121207-5AC392	Storage Building Construction	\$35,978
5720-121207-5AC303	(1) Storage Building	\$ 7,000

I concur with the above recommendation and further recommend that this bid be placed on County Council's agenda for their next scheduled meeting on February 14, 2012.

copy: Larry Porth, Director of Finance/Assistant County Administrator
Dave Eger, Director of Solid Waste Management

County of Lexington Bid Tabulation

B12038
JMB
1/25/2012

BID # : B12038-1/25/12B

Electronics Recycling Building at Edmund Landfill (Rebid)

Item	Qty	U/M	Description	M. Dillon	MSI Construction	WT Murphy Const.	SD Clifton Const.	HHS,LLC
				Construction	Unit Total	Unit Total	Unit Total	Unit Total
1	1	Job	Base Bid Labor, materials, and equipment for the Electronics Recycling Building at Edmund Landfill per the specifications.	\$ 50,830.00	\$ 50,393.00	\$ 42,978.00	\$ 78,000.00	\$ 43,800.00
2	1	Job	Option 1: cost per additional pre-finished overhead 12'wX10'h, 24 guage steel roll up door outlined in the specifications.	\$ 1,925.00	\$ 3,000.00	\$ 1,498.00	\$ 1,200.00	\$ 2,000.00
3	1	Job	Alternate Bid Labor, materials and equipment for the construction of metal structure for Electronics Recycling Building per specifications.	\$ 58,253.00	\$ 55,798.00		\$ 84,000.00	
4	1	Job	Alternate Option 1: cost per additional pre-finished overhead 12'wX10'h, 24 guage steel roll up door outlined in the specifications.	\$ 1,925.00	\$ 3,700.00		\$ 1,200.00	

Item	Qty	U/M	Description	Core Const.	First Class Const.	Smith	Solid Structures
				Unit Total	Unit Total	Constructors	Unit Total
1	1	Job	Base Bid Labor, materials, and equipment for the Electronics Recycling Building at Edmund Landfill per the specifications.	\$ 46,700.00	\$ 45,381.00	\$ 58,600.00	\$ 43,141.00
2	1	Job	Option 1: cost per additional pre-finished overhead 12'wX10'h, 24 guage steel roll up door outlined in the specifications.	\$ 2,400.00	\$ 2,128.00	\$ 2,220.00	\$ 1,987.00
3	1	Job	Alternate Bid Labor, materials and equipment for the construction of metal structure for Electronics Recycling Building per specifications.	\$ 84,966.00	\$ 50,984.00	\$ 62,900.00	\$ 45,154.00
4	1	Job	Alternate Option 1: cost per additional pre-finished overhead 12'wX10'h, 24 guage steel roll up door outlined in the specifications.	\$ 2,400.00	\$ 2,128.00	\$ 2,460.00	\$ 1,987.00

Bids Received: January 25 @ 3:00 pm

Jo Marie Brown, CPPB
Procurement Officer

MINUTES
LEXINGTON COUNTY COUNCIL
December 13, 2011

Lexington County Council held its regular meeting on Tuesday, December 13, 2011 in Council Chambers beginning at 4:30 p.m. Chairman Kinard presided.

Councilman Davis gave the invocation and Councilman Jeffcoat led the Pledge of Allegiance.

Members attending:	James E. Kinard, Jr.	Frank J. Townsend, III
	George H. (Smokey) Davis	Debra B. Summers
	Bobby C. Keisler	Johnny W. Jeffcoat
	Kenneth Brad Matthews	William B. Banning, Sr.
	M. Todd Cullum	

Also attending: Katherine Hubbard, County Administrator; Joe Mergo, III, Deputy County Administrator; Larry Porth, Finance Director/Assistant County Administrator; John Fachtel, Director of Public Works/Assistant County Administrator; Jeff Anderson, County Attorney; other staff members, citizens of the county and representatives of the media.

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, and posted on the bulletin board located in the lobby of the County Administration Building.

Special Presentation - Presentation of Certificate of Completion from the 2011 South Carolina Economic Development Institute by Heather Simmons Jones, SCEDA President - On behalf of Ms. Jones, Mr. Chuck Whipple, Economic Development Director and SCEDA Past President, presented the Certificate of Completion of the 2011 South Carolina Economic Development Institute to Councilman Banning. The program is a year-long course of multiple sessions that are held across the state that indoctrinates units of local governments or members attached to local governments on how economic development functions in the State of South Carolina.

Lexington and Chapin High School Students - Chairman Kinard recognized students from Lexington and Chapin High Schools attending as part their class assignment and Lexington High School Swim Team.

Special Presentation - Senator Nikki Setzler presented a Senate Resolution to Ms. Diane Bouknight to commend and recognize her upon her retirement as Director of Dental Services for the Family Service Center of South Carolina. Ms. Bouknight is retiring on December 31, 2011 after 32 years of service.

Presentation of Resolution - Lexington High School Swim Team by Councilman Davis - Councilman Davis presented a framed resolution to the Lexington High School Swim Team in appreciation for their continuing to promote boating and swimming safety through their annual “Dam Swim for Drew” event. In addition, Councilman Davis presented a framed resolution to the Karen and Randal Smith, parents of Drew.

Interim County Administrator - Joe G. Mergo, III - Chairman Kinard made a motion, seconded by Mr. Banning to appoint Deputy County Administrator Joe Mergo as Interim County Administrator.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Townsend	Mr. Davis
	Ms. Summers	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

Chairman’s Report - Chairman Kinard reported he attended the Joint Water Municipal Water & Sewer Commission’s Christmas Event; he and fellow council members attended the County Council Strategic Planning Retreat; and he attended the Arbor Day Celebration at Pelion Elementary School.

Christmas Holidays - December 23, December 26, and December 27, 2011- Ms. Hubbard announced the County Offices will be closed December 23, 26, and 27, 2011 for Christmas.

Administrator’s Report - Shining Stars - Ms. Hubbard recognized the following employees for their positive can-do attitude and helpful approach when interacting with others and presented each with an engraved acrylic “Shining Star.” Angie Kicklighter, Solicitor’s Office; Travis Burr, Assessment and Equalization; Janet Smith, Veteran Affairs; Taylor Gollwitzer, Communication; Sharon Butler, Connie Jo Molen, Christy Mayo, Mary Ann Taylor, and Ronda Catron, Auditor’s Office; Marcetta Mayes, Building Services; Candy Kyzer, Beth Harmon, Ladd Roof, and Guy Triano, Sheriff’s Department; and Ron Generoso, Information Services.

Employee Recognition - Katherine Hubbard, County Administrator - CAD Records Management and Jail Management Systems - By video/audio recording, Mr. David Armstrong of SUNGARD, praised the County Lead Team Members who played a vital role in the success of the CAD Record Managements and Jail Systems Software Implementation. The project had a budget of \$2.1 million and a 36-month timeframe to complete. It was noted that the project was on time and under budget with no reduction in the project scope. The following Lead Team Members are: Col. Allan Paavel, Luke Fossum, Olyn Sexton, Ron O’Neill, Andre’ Johnson, Sheriff’s Department; Nikki Rodgers and Cari Reinberg, Public Safety/Communications; Brian Hood, Stuart Platt, and Eric Kehl, Public Safety/EMS; Robert Risinger, Public Safety/Fire Service; Charlie Compton, Ralph Ford, Jack Maguire, and Alison Sengupta, Planning & GIS; and Mike Ujcich, Rick Van Sant, Todd Dunkerley, John Thompkins, Mike Smith, Marlon Buff, and Rose Kitchens, Information Services.

On behalf of SUNGARD, the County was presented the first ever superior “Project Partner of Excellence” Award.

Appointments - Stormwater Advisory Board - Nick J. Leventis - Mr. Cullum made a motion, seconded by Mr. Jeffcoat to appoint Mr. Nick Leventis. Mr. Leventis replaces Carl J. Berry, II.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Cullum
	Mr. Jeffcoat	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Keisler	Mr. Matthews
	Mr. Banning	

Golden Hill’s Special Purpose Tax District - Stuart Ford - Mr. Banning made a motion, seconded by Ms. Summers to appoint Mr. Stuart Ford. Mr. Ford replaces Mr. Jim Duckett.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Ms. Summers	Mr. Townsend
	Mr. Davis	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

Bids/Purchases/RFPs - A motion was made by Mr. Keisler, seconded by Mr. Banning to approve the following bids (Tabs 3-9).

Interior Demolition of Former DSS Building and Auxiliary Administration Building - Building Services - Bids were solicited for the interior demolition of the former DSS building and Auxiliary Administration building. Eight (8) responsive bids were received. Staff recommended the award of the project to Empire Dismantlement Corporation in the amount of \$63,630.

Three (3) Ambulances (Replacements) - Public Safety/EMS - Staff recommended the purchase of three (3) replacement ambulances for Public Safety/EMS from Taylor Made Ambulances through Lexington County Contract Number C10025-05/18/10S. Total cost, including tax, is \$445,556.

Three (3) Mobile Data Terminals and Three (3) 800 MHz Radios (Replacements) - Public Safety/EMS - Staff recommended the purchase of three (3) replacement mobile data terminals and three (3) replacement 800 MHz radios for Public Safety/EMS from Motorola through State Contract Number DSIT.2009.01. Total cost, including tax, is \$48,919.82.

Two (2) 4WD SUVs with Accessories (Replacement/Addition) and (1) Vehicle (Replacement) - Public Safety/Fire Service - Staff recommended the purchase of three (3) fleet vehicle replacements with emergency equipment and installation for Public Safety/Fire Service. The vehicles will be purchased from the following appropriate vendors through State Contract Numbers 400002991 and 4400004333: Benson Chrysler Plymouth Dodge - \$59,053.10 and Vic Bailey Ford - \$32,226.63. The emergency equipment and installation will be procured through various solicitation processes. Total cost, including tax, is \$91,279.73.

One (1) Marked Vehicle with Accessories (Addition) - Sheriff’s Department - Staff recommended the purchase of an additional marked vehicle with accessories for the Sheriff’s Department. The vehicle will be purchased (\$27,982) from Love Chevrolet through State Contract Number 4400004322. The emergency equipment and installation (\$2,863.53) will be purchased through West Chatham Warning

Devices. Total cost, including tax, is \$30,845.53.

Request for Approval to Utilize the Request for Qualifications Process for C-Funds Engineering Services for Public Works - Public Works - Staff requested the use of the Request for Qualification s(RFQ) process to seek qualifications for the acquisition of a contract for C-Funds Engineering Services for Public Works. Due to the scope of the project, it is not practical or advantageous to write a comprehensive set of specifications that may limit resources or restrict competition. A review panel will be responsible for reviewing and evaluating proposals based upon specific evaluation factors.

Solid Tires with Rim & Rubber Wear Pads for Heavy Equipment - Term Contract - Solid Waste Management - Competitive bids were solicited for a term contract for solid tires and rim and rubber wear pads for heavy equipment for Solid Waste Management. The term of the contract will for the initial period of one (1) year with the option to extend the contract for two (2) additional one (1) years periods, if deemed to be in the best interest of the County. One (1) bid was received. Staff recommended the award of the contract to SETCO Solid Tires Inc. Total cost, including tax, is \$79,656.17.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Keisler
	Mr. Banning	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

Approval of Minutes - Meeting of October 25, 2011 - Ms. Summers made a motion, seconded by Mr. Davis to approve the minutes as submitted.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Ms. Summers
	Mr. Davis	Mr. Townsend
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Committee Reports - Economic Development, B. Banning, Sr., Chairman - Ordinance 11-20 - An Ordinance Approving a Contract for the Conveyance of Real Property for Project Panther - 1st Reading by Title Only - Mr. Banning reported the Committee met earlier in the day and voted unanimously to recommend to full Council for approval first reading by title of Ordinance 11-20.

Mr. Banning made a motion, seconded by Ms. Summers to approve first reading by title of Ordinance 11-20.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Ms. Summers	Mr. Townsend
	Mr. Davis	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

Ordinance - Ordinance 11-21 - An Ordinance Approving an Amendment to the Fee-in-Lieu of Tax Agreement for Project Panther - 1st Reading by Title Only - Also, Mr. Banning reported the Committee voted unanimously to recommend to full Council for approval first reading by title of Ordinance 11-21.

Mr. Banning made a motion, seconded by Mr. Davis to approve first reading by title of Ordinance 11-21.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Davis	Mr. Townsend
	Ms. Summers	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

Ordinance 11-22 - An Ordinance Approving a Supplemental Appropriation for the Purchase of Real Property (Project Tee Pee) - 1st Reading by Title Only - Also, the Committee voted unanimously to recommend to full Council for approval first reading by title of Ordinance 11-22.

Mr. Banning made a motion, seconded by Mr. Jeffcoat to approve first reading by title of Ordinance 11-22.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Jeffcoat	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Keisler	Mr. Matthews
	Mr. Cullum	

Planning & Administration, J. Jeffcoat, Chairman - Community Development Block Grant-Recovery Program Amendment to the 2008 Action Plan (Goal 1) - Mr. Jeffcoat reported during the afternoon meeting of the Planning & Administration Committee, the Committee reviewed a request from staff to approve the Recovery Program Amendment to the 2008 Action Plan. The amendment is to reallocate the remaining \$22,840.34 of CDBG-R funds for the Bitternut Court paving and drainage project to the City of West Columbia plus an additional \$8,659.66 in uncommitted CDBG funds for the demolition and clearance of three (3) residential units. The Committee voted to recommend to full Council for approval the Community Development Block Grant Recovery Amendment to the 2008 Action Plan contingent on the owner’s approval for the demolish and clearance of the three residential units.

Mr. Jeffcoat made a motion, seconded by Mr. Matthews to approve the Community Development Block Grant Recovery Amendment to the 2008 Action Plan.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Jeffcoat
	Mr. Matthews	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Keisler	Mr. Banning
	Mr. Cullum	

Homelessness Prevention and Rapid Re-housing Program (HPRP) - Administrative Budgetary Transfer - In addition, the Committee reviewed staff’s request to approve the revised HPRP budget. Staff requested the transfer of HPRP funds from the contingency and Relocation and Stabilization account to the Financial Assistance and Relocation and Stabilization account and reallocate those remaining funds of \$25,750 to Lexington Interfaith Communities Services (LICS) to assist with homelessness. The Committee voted in favor to recommend to full Council for approval.

Mr. Jeffcoat made a motion, seconded by Mr. Davis to approve the Homelessness Prevention and Rapid Re-housing Program Administrative Budgetary Transfer.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Jeffcoat
	Mr. Davis	Mr. Townsend
	Ms. Summers	Mr. Keisler
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Community Development Block Grant (CDBG) Program Demolition and Clearance Program - Also, the Committee reviewed staff’s request to transfer \$20,000 of CDBG funds into the Demolition and Clearance Program to assist staff in addressing the increased need for demolition of blighted structures. The funds will be reallocated from the unused funds from the Alley & Holmes Street Road Paving project and the CDBG project contingency. The Committee voted in favor to recommend to full Council for approval.

Mr. Jeffcoat made a motion, seconded by Mr. Matthews to approve the Community Development Block Grant (CDBG) Program Demolition and Clearance transfer.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Jeffcoat
	Mr. Matthews	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Keisler	Mr. Banning
	Mr. Cullum	

Justice S. Davis Chairman - Sol/DUI Prosecution Program Grant Award - Mr. Davis reported the Committee voted in unanimously in favor to recommend to full Council for approval the acceptance of the grant award. The award of \$75,000 requires no County match and will be used to fund a dedicated DUI prosecutor in Magistrate Courts throughout the Eleventh Judicial Circuit. This is the second year of funding.

Mr. Davis made a motion, seconded by Mr. Jeffcoat to accept the grant award.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Jeffcoat	Mr. Townsend
	Ms. Summers	Mr. Keisler
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Pretrial Service Program Grant Application - Mr. Davis reported the Committee also reviewed staff's request to apply for the Pretrial Service Program grant. The grant application in the amount of \$35,000 requires a 10% match, which will come from the general fund. The funds, if awarded, will be used to hire a consultant to assist in the development of a Pretrial Service Pilot Program. The Committee voted unanimously in favor to recommend to full Council for approval.

Mr. Davis made a motion, seconded by Mr. Banning to approve staff's request to submit the grant application.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Banning	Mr. Townsend
	Ms. Summers	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

FY 11 Bulletproof Vest Partnership Grant Award - The Committee voted unanimously in favor to recommend to full Council for approval the acceptance of the grant award. The award of \$2,164.83 requires a 50% match that comes from the Sheriff's budget. The funds will be used to purchase replacement vests.

Mr. Davis made a motion, seconded by Mr. Townsend to accept of the grant award.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Townsend	Ms. Summers
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

FY 11 Incident Management Team Grant Award - The Committee voted in favor to recommend to full Council for approval the acceptance of the grant award. The award of \$100,000 requires no County match and will be used to enhance the Midlands Regional Type III Incident Management Team.

Mr. Davis made a motion, seconded by Ms. Summers to accept the grant award.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Ms. Summers	Mr. Townsend
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Forensic Lab Module Grant Application - The Committee voted in favor to recommend to full Council to approve staff's request to apply for the Forensic Lab Module grant. The grant application in the amount of \$23,900 requires no County match. If awarded, the funds will be used to purchase software and an evidence cart.

Mr. Davis made a motion, seconded by Mr. Keisler to approve staff's request to submit the grant.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor	Mr. Kinard	Mr. Davis
	Mr. Keisler	Mr. Townsend
	Ms. Summers	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Gas Chromatograph/Gas Mass Spectrometer Grant Application - The Committee voted unanimously in favor to recommend to full Council to approve staff's request to apply for the Gas Chromatograph/Gas Mass Spectrometer grant. The grant application in the amount of \$94,860 requires a 10% County match. If awarded, the funds will be used to purchase a new gas chromatograph/gas mass spectrometer.

Mr. Davis made a motion, seconded by Mr. Townsend to approve staff's request to apply for the grant.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Townsend	Ms. Summers

Mr. Keisler	Mr. Jeffcoat
Mr. Matthews	Mr. Banning
Mr. Cullum	

Highway Drug Interdiction Grant Application - The Committee voted unanimously in favor to recommend to full Council to approve staff's request to apply for the Highway Drug Interdiction grant. The grant application in the amount of \$289,416 requires a 10% County match, which will come from the Sheriff's Department's budget. If awarded, the funds will be used to fund two investigators, operating supplies, and equipment.

Mr. Davis made a motion, seconded by Mr. Keisler to approve staff's request to apply for the grant.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Keisler	Mr. Townsend
	Ms. Summers	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Portable Live Scan Unit Grant Application - The Committee voted unanimously in favor to recommend to full Council to approve staff's request to apply for the Portable Live Scan Unit grant. The grant application in the amount of \$32,400 requires a 10% County match, which will come from the Sheriff's Department's budget. If awarded, the funds will be used to purchase a portable live scan unit and a printer.

Mr. Davis made a motion, seconded by Mr. Townsend to approve staff's request to apply for the grant.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Townsend	Ms. Summers
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Drug Parcel Interdiction Grant Application - The Committee voted unanimously in favor to recommend to full Council to approve staff's request to apply for the Drug Parcel Interdiction grant. The grant application in the amount of \$224,614 requires a 10% match, which will come from the Sheriff's Department's budget.

Mr. Davis made a motion, seconded by Ms. Summers to approve staff's request to apply for the grant.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
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Ms. Summers	Mr. Townsend
Mr. Keisler	Mr. Jeffcoat
Mr. Matthews	Mr. Banning
Mr. Cullum	

White Collar Crime Unit Grant Application - The Committee voted unanimously in favor to recommend to full Council to approve staff’s request to apply for the White Collar Crime Unit grant. The grant application in the amount of \$74,221 requires a 10% match, which will come from the Sheriff’s Department’s budget. This is the third and final year of funding.

Mr. Davis made a motion, seconded by Mr. Keisler to approve staff’s request to apply for the grant.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Davis
	Mr. Keisler	Mr. Townsend
	Ms. Summers	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Health & Human Services, J. Jeffcoat, Chairman - 2010 LEMPG Supplemental Grant Award - Mr. Jeffcoat reported the Committee voted unanimously in favor to recommend to full Council to approve the acceptance of the grant award. The award of \$9,000 requires a 50% in-kind match that comes from salaries paid by the County’s General Fund. Funds will be used toward an Emergency Management and Homeland Security Certification for the Emergency Response Coordinator.

Mr. Jeffcoat made a motion, seconded by Mr. Townsend to accept the grant award.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Jeffcoat
	Mr. Townsend	Mr. Davis
	Ms. Summers	Mr. Keisler
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Public Works, T. Cullum, Chairman - Corley Mill Road and US 378 Update - Mr. Cullum reported the Public Works Committee met and received a proposal and plan for the Corley Mill Road and US 378 Highway that involves the County, SCDOT, and Lexington School District One. The estimated cost is \$3.5 million. The County will commit \$900,000 in “C” Funds towards the construction of additional two lanes on the County’s portion of the plan and make a connection to US 378. The funds will come from existing “C” funds and have identified one project (D.E. Clark Road) that may be delayed, up to one year, by using these funds. The Committee voted unanimously in favor to recommend to full Council for approval.

Mr. Cullum made a motion, seconded by Mr. Banning to approve \$900,000 towards the cost of the

construction of the roadway in partnership and SCDOT is to be the managing partner of the project.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Cullum
	Mr. Banning	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	

Saxe Gotha Industrial Park 4-Lane Engineering - Mr. Banning reported under old/new business in the Economic Development Committee, the Committee voted unanimously in favor to recommend to full Council to authorize staff (Public Works) to move forward with the engineering for the 4-lane road at the Saxe Gotha Industrial Park.

Mr. Banning made a motion, seconded by Mr. Townsend to authorize staff (Public Works) to move forward with engineering of the 4-lane road at the Saxe Gotha Industrial Park.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Townsend	Mr. Davis
	Ms. Summers	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Cullum	

Airport, T. Cullum, Chairman - Airport Capital Improvement Plan for FY 2013-2017- Mr. Cullum reported during the Airport Committee, the Committee voted unanimously in favor to recommend to full Council to approve the Airport Capital Improvement Plan for FY2013-2017 as presented.

Mr. Cullum made a motion, seconded by Ms. Summers approve the Airport Capital Improvement Plan for FY2013-2017 as presented.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Cullum
	Ms. Summers	Mr. Townsend
	Mr. Davis	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews
	Mr. Banning	

Mr. Cullum reported the County plans to have its Business Plan and Airport Layout Plan by the end of January, or thereabouts.

Special Remarks by Ms. Katherine Hubbard - Ms. Hubbard publically thanked County Council for their support and guidance and allowing her to serve as the County’s Administrator for the last 5.5 years

and for a pleasurable 17-year career with Lexington County.

Budget Amendment Resolutions - The following BAR's were distributed and signed:

12-070 - An appropriation transfer of \$132,500 and a supplemental appropriation increase of \$132,500 to establish a budget to provide unimpeded access to stairwells #3 and #4 at the Judicial Center.

12-071 - A supplemental appropriation increase of \$16,700 to book the receipt and donation of seven Stryker Stair Pro chairs donated by City of Columbia Metropolitan Medical Response System (MMRS).

12-072 - A supplemental appropriation increase of \$3,800 in Fire Service to purchase a 33'x18' carport for the Sandy Run Fire Station from 1% funds. The carport will replace the BBQ building and old storage building.

12-073 - A supplemental appropriation increase of \$1,000 that Fire Service received from Dixie Pipeline to purchase smoke detectors for residents of Lexington County.

12-074 - An appropriation transfer of \$5,835 and a supplemental appropriation of \$5,835 to adjust the Sheriff's budget in the Bulletproof Vest Program to reflect the actual award received.

12-075 - A supplemental appropriation increase of \$100,000 in the Sheriff's budget to reflect the FY11 Midland's Regional Incident Management Team grant award received from SLED.

12-076 - A supplemental appropriation increase of \$9,000 in Public Safety/Emergency Management to reflect the FY10 Competitive Local Emergency Management Performance Grant (LEMPG) received from the State Emergency Management Division.

12-077 - A supplemental appropriation decrease of \$39,624 in the Solicitor's Budget. The Solicitor's Office was awarded the second year of funding for the DUI Prosecution Program grant and this transaction is to adjust the current budget in Fund 2461 to match the new award and to reduce the budget of unused funds from the last award.

Old Business/New Business - None.

Executive Session/Legal Briefing - During the Committee of the Whole, Council went into Executive Session to discuss four contractual matters and eight legal matters, but did not complete. Therefore, Mr. Kinard asked for a motion to go back into Executive Session.

Ms. Summers made a motion, seconded by Mr. Townsend to into Executive Session.

In Favor:	Mr. Kinard	Ms. Summers
	Mr. Townsend	Mr. Davis
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

Matters Requiring a Vote as a Result of Executive Session - Mr. Kinard reported out of executive session with no motions to be considered.

6:00 P.M. - Public Hearings - Council members present: Kinard, Townsend, Davis, Summers, Keisler, Jeffcoat, Matthews, Cullum and Banning.

Prior to opening the public hearings, Mr. Kinard reviewed the guidelines for public hearings.

Ordinance 11-16 - An Ordinance to Prohibit the Use, Purchase, Sale or Possession of Bath Salts and Synthetic Marijuana Substances in Lexington County - Mr. Kinard opened the public hearing.

Mr. Kinard reported no one signed up in favor or opposition to Ordinance 11-16; therefore, closed the public hearing.

Ordinance 11-17 - Providing for the Expansion of the Service Area Boundaries of Irmo Fire District - Mr. Kinard opened the public hearing.

Mr. Kinard reported no one signed up in favor or opposition to Ordinance 11-17; therefore, closed the public hearing.

Zoning Text Amendment #T11-04 - Buffering Restrictions - Mr. Kinard opened the public hearing.

Mr. Kinard reported no one signed up in favor or opposition to Zoning Text Amendment T11-04; therefore, closed the public hearing.

Old Business/New Business - None.

Motion to Adjourn - Mr. Townsend made a motion, seconded by Ms. Summers to adjourn.

In Favor:	Mr. Kinard	Mr. Townsend
	Ms. Summers	Mr. Davis
	Mr. Keisler	Mr. Jeffcoat
	Mr. Matthews	Mr. Banning
	Mr. Cullum	

There being no further business, the meeting was adjourned.

Respectfully submitted,

Diana W. Burnett
Clerk

James E. Kinard, Jr.
Chairman

MINUTES
SPECIAL CALLED MEETING
LEXINGTON COUNTY COUNCIL
December 20, 2011

Lexington County Council held a special called meeting on Tuesday, December 20, 2011 in Council Chambers beginning at 4:30 p.m. to consider third and final reading on two ordinances prior to the end of the year. Chairman Kinard presided.

Councilman Banning gave the invocation and Mayor Randy Halfacre, Town of Lexington, led the Pledge of Allegiance.

Members attending: James E. Kinard, Jr. Frank J. Townsend, III
George H. (Smokey) Davis Debra B. Summers
Bobby C. Keisler Johnny W. Jeffcoat
Kenneth Brad Matthews William B. Banning, Sr.

Not Present: M. Todd Cullum*

*Mr. Cullum was absent due to a prior commitment.

Also attending: Katherine Hubbard, County Administrator; Joe Mergo, III, Deputy County Administrator; Larry Porth, Finance Director/Assistant County Administrator; John Fechtel, Director of Public Works/Assistant County Administrator; Jeff Anderson, County Attorney; other staff members, citizens of the county and representatives of the media.

In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, and posted on the bulletin board located in the lobby of the County Administration Building.

Bids/Purchases/RFPs - A motion was made by Mr. Banning, seconded by Ms. Summers to approve the **Two (2) Motorgraders Replacements for Public Works** - Staff recommended the purchase of two (2) motorgraders from Flint Equipment through State Contract Number 4400002343. Total cost, including tax, is \$381,894.29.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor: Mr. Kinard Mr. Banning
Ms. Summers Mr. Townsend
Mr. Davis Mr. Keisler
Mr. Jeffcoat Mr. Matthews

Ordinance 11-16 - An Ordinance to Prohibit the Use, Purchase, Sale or Possession of Bath Salts and Synthetic Marijuana Substances in Lexington County - 3rd and Final Reading - Mr. Banning made a motion, seconded by Mr. Davis to approve third and final reading.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Davis	Mr. Townsend
	Ms. Summers	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews

Ordinance 11-17 - Providing for the Expansion of the Service Area Boundaries of Irmo Fire District - 3rd and Final Reading - Mr. Jeffcoat made a motion, seconded by Mr. Matthews to approve third and final reading.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Jeffcoat
	Mr. Matthews	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Keisler	Mr. Banning

Budget Amendment Resolution - The following BAR was distributed and signed:

12-078 - A supplemental appropriation increase of \$8,651 to cover the additional services over and above the original contract that Project Pet is paying for.

Executive Session/Legal Briefing - Mr. Kinard asked for a motion to go into executive session to discuss two contract and three legal matters.

Mr. Banning made a motion, seconded by Mr. Townsend to go into executive session.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Townsend	Mr. Davis
	Ms. Summers	Mr. Keisler
	Mr. Jeffcoat	Mr. Matthews

Matters Requiring a Vote as a Result of Executive Session - Mr. Kinard reported out of executive session with one motion to be considered.

Landfill Easement - Maintenance Agreement for Easement Area - Mr. Banning made a motion, seconded by Mr. Keisler to approve the access easement that we have before us subject to any changes that need to be made as determined by the County Administrator and County Attorney.

Mr. Kinard opened the meeting for discussion; no discussion occurred.

In Favor:	Mr. Kinard	Mr. Banning
	Mr. Keisler	Mr. Townsend
	Mr. Davis	Ms. Summers
	Mr. Jeffcoat	Mr. Matthew

Budget Amendment Resolutions - The following BARs was distributed and signed:

12-079 - An appropriation transfer of \$20,000 into the Demolition and Clearance Program for CDBG to help address the increased need for demolition of blighted structures.

12-080 - An appropriation transfer of \$22,631 and an appropriation transfer of \$8,869 into an account for CDBG Demolition and Clearance in West Columbia.

12-081 - An appropriation transfer of \$25,703 into the LICS Financial Assistance and Relocation/Stabilization programs for CDBG Homelessness Prevention and Rapid Re-housing program.

Old Business/New Business - None.

Motion to Adjourn - Ms. Summers made a motion, seconded by Mr. Matthews to adjourn.

In Favor:	Mr. Kinard	Ms. Summers
	Mr. Matthews	Mr. Townsend
	Mr. Davis	Mr. Keisler
	Mr. Jeffcoat	Mr. Banning

There being no further business, the meeting was adjourned.

Respectfully submitted,

Diana W. Burnett
Clerk

James E. Kinard, Jr.
Chairman



COUNTY OF LEXINGTON, SOUTH CAROLINA

Community Development

County Administration Building, 4th Floor
212 South Lake Drive, Suite 401, Lexington, SC 29072
(803)785-8121

ZONING TEXT AMENDMENT APPLICATION # **T11-04**

Section(s) of the Zoning Ordinance that are affected:

ARTICLE 2-APPLICATION OF REGULATIONS-Chapter 3. Buffering Restrictions

Reason for the request: To create an easier method for monitoring buffering restrictions for residential detached and residential attached (2 dwelling units).

Submitted on behalf of: County Council Planning Commission

Printed Name: Charles M. Compton Title: Director, Planning & GIS

Signature: signature on file

10/28/11	Application Received	11/17/11	Newspaper Advertisement
12/15/11	Planning Commission		

Planning Commission Recommendation: 7-0 approval for December 9, 2011 draft

11/08/11	First Reading	12/13/11	Public Hearing	Second Reading	Third Reading
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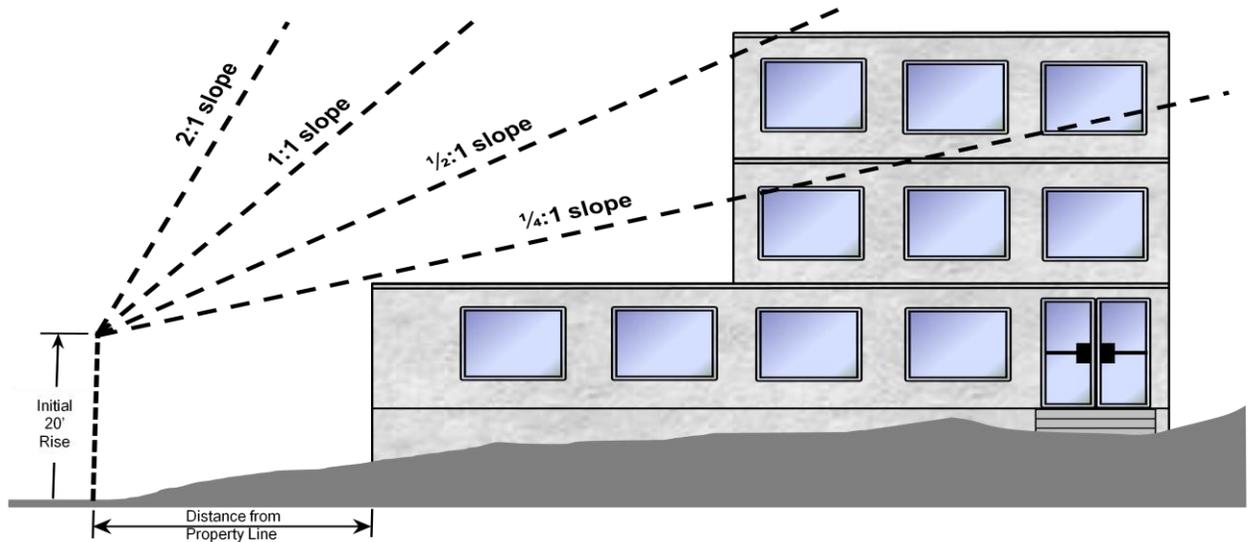
Results: _____

23.00 Purpose

Buffering restrictions are a key component of this Ordinance which strive to achieve compatibility of neighboring activities. To accomplish this goal, each principal activity classification has a separate set of recommended maximum buffering restrictions which address height, buffers, setbacks, and screening. These principal activity categories will find themselves located in projects containing varying degrees of intensity depending on the layout, size, shape, design, etc., of the specific activity itself, the accessory activities, and the associated buildings and structures. Determination of the ideal buffering restrictions for each specific principal activity will be subject to a process outlined in this chapter. Likewise subdivisions and other new developments which may contain a variety of activities will be given internal flexibility with the application of these restrictions in order to achieve a maximum level of creativity in the formation of their project layout.

23.10 Height Regulations

Height regulations are based on the establishment of a height control slope. Initially, a 20-foot rise is permitted at the property line perpendicular to the property line. Then, based on the district concerned, and the activity involved, a height control slope is specified in terms of a ratio of vertical rise to horizontal distance. For example, a 2:1 ratio means that for every 2 feet of vertical rise, an additional 1 foot of horizontal distance is measured off into the interior of the property. The following diagram describes the nature of the height control slope:



The *International Residential Code for One- and Two-family Dwellings* allows no more than three stories above-grade in height; therefore, any Residential Detached or Residential Attached (2 dwelling units) activity that meets a 10-foot setback from adjoining property is exempt from the height requirements of this section.

The following chart is published to assist in determining the maximum permissible structure height allowed with various height control slopes. Heights are listed in feet based upon an initial 20-foot rise at the property line.

Distance from the Property Line	Height Control Slope					
	1/4:1	1/2:1	1:1	2:1	3:1	4:1
5	21.25	22.5	25	30	35	40
10	22.5	25	30	40	50	60
15	23.75	27.5	35	50	65	80
20	25	30	40	60	80	100
25	26.25	32.5	45	70	95	120
30	27.5	35	50	80	110	140
35	28.75	37.5	55	90	125	160
40	30	40	60	100	140	180

Distance from the Property Line	Height Control Slope					
	¼:1	½:1	1:1	2:1	3:1	4:1
45	31.25	42.5	65	110	155	200
50	32.5	45	70	120	170	220
55	33.75	47.5	75	130	185	240
60	35	50	80	140	200	260
65	36.25	52.5	85	150	215	280
70	37.5	55	90	160	230	300
75	38.75	57.5	95	170	245	320
80	40	60	100	180	260	340
85	41.25	62.5	105	190	275	360
90	42.5	65	110	200	290	380
95	43.75	67.5	115	210	305	400
100	45	70	120	220	320	420

A maximum of two above-ground stories are permitted in the LC district.

The chart in Section 23.50 lists the height requirements of this Ordinance by activity type and location.

23.11 Special Requirements for Waterfront Property

In order to protect the unique scenic vistas of significant waterways in Lexington County, special requirements are to be applied to the development of properties in the vicinity of the Saluda River, the Edisto River, the Congaree River, and Lake Murray. Where there are multiple methods for computing the allowed height for a building in this chapter, the most restrictive shall apply. *The International Residential Code for One- and Two-family Dwellings allows no more than three stories above-grade in height; therefore, any Residential Detached or Residential Attached (2 dwelling units) activity that meets a 50-foot buffer distance from the waters of Lake Murray or a 100-foot buffer distance from the shores of the three rivers listed below is exempt from the Special Requirements for Waterfront Property.*

Lake Murray: A special height control slope of ½:1 is to be used along the shores of Lake Murray where the regulated property is designated as a Restrictive Development District. If the property is designated as an Intensive Development District, then a height control slope of 2:1 shall apply. Along the shores of Lake Murray, the location of the initial 20-foot rise shall be considered to be the location of the 360-foot (mean sea level) contour *or the waterfront property line, whichever is the least restrictive.* All property within 1000 feet of the 360-foot contour and designated as a Restrictive Development District shall also comply with the following additional height restrictions which are based on the street classification providing access to the proposed activity:

Local (L) street – No building taller than 70 feet is allowed. That height is measured from the average elevation of the building as it leaves the ground.

Collector (C) street – No building taller than 100 feet is allowed. That height is measured from the average elevation of the building as it leaves the ground.

Arterial (A) street – Height of buildings shall be determined by the other requirements from this chapter.

Congaree River: Because of the extremely varied terrain along the banks of this river, it is very difficult to determine the best elevation from which to measure the “initial 20-foot rise” referenced in Section 23.10. For this river, the beginning elevation for calculating the height control slope for the waterfront property line shall be uniform along the river bank. That elevation shall be the same as the highest elevation on the property that falls within 300 feet of the waterfront property line. A height control slope of 1:1 shall apply to this waterfront property line.

Saluda River: Because of the unique scenic character of the Saluda River, stricter height requirements apply to the adjacent lands. All buildings within 500 feet of the waterfront property lines shall not exceed ~~40~~ 50 feet. Buildings farther than 500 feet but within 1000 feet of the waterfront property lines shall not exceed ~~60~~ 70 feet. That height is measured from the highest elevation of the building as it leaves the ground. ~~A height control slope of~~

~~1:1 shall also apply to the waterfront property lines.~~ For the purpose of this Ordinance, the Saluda River is considered to begin 4000 feet downstream from its discharge point below the Lake Murray Dam.

Edisto River: Because of the unique “black water” aspects of the North Fork of the Edisto River, stricter height requirements apply to the adjacent lands. All buildings within 500 feet of the waterfront property lines shall not exceed 40 50 feet. That height is measured from the highest elevation of the building as it leaves the ground. ~~A height control slope of 1:1 shall also apply to the waterfront property lines.~~ For the purpose of this Ordinance, the Edisto River is considered to begin at the I-20 bridge crossing.

The average elevation as referenced in these regulations shall be computed by selecting the halfway point between the highest and lowest ground elevations surrounding the structure.

ORDINANCE

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE “FILOT AGREEMENT”) BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND NEPHRON SC, INC., ACTING FOR ITSELF, ANY AFFILIATES AND OTHER PROJECT SPONSORS, (THE “COMPANY”), IN CONNECTION WITH THE ESTABLISHMENT OF FACILITIES IN THE COUNTY (THE “PROJECT”); (2) THE COUNTY TO COVENANT IN SUCH FILOT AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE PROJECT; (3) SPECIAL SOURCE CREDITS IN CONNECTION WITH THE PROJECT; (4) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (5) TRANSFER AND CONVEYANCE BY THE COUNTY TO THE COMPANY OF CERTAIN PROPERTY; AND (6) OTHER MATTERS RELATING THERETO.

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, Lexington County, South Carolina (the “County”) is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into fee agreements with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011, and in order to induce Nephron SC, Inc., acting for itself, any affiliates and any other project sponsors (the “Company”), to make, or cause to be made, new or additional investment through the establishment of facilities located in the County (the “Project”), the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and further agreed to provide the Company and the Project with the benefits of certain special source revenue credits and to the inclusion and maintenance of the Project in a Multi-County Park;

WHEREAS, the Project is expected to provide significant economic benefits to the County, and in order to further induce the Company to locate, or cause location of, the Project in the County, the County desires to enter into a Fee in Lieu of Tax and Incentive Agreement (the “FILOT Agreement”) with the Company in connection with the Project, which, amongst other things, (i) establishes a negotiated payment-in-lieu-of-taxes (“Negotiated Payments-in-Lieu-of-Taxes”) arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions of the FILOT Agreement and the provisions of the Fee Act, (ii) provides for certain special source revenue credits (“Special Source Credits”) to pay, or to reimburse the Company for payment of, the costs of certain Special Source Improvements related to the Project, and (iii) agrees to the conveyance by the County to the Company of certain real property and the execution and delivery by the County of certain documentation in connection therewith, including, without limitation, a limited warranty deed, all as set forth in greater detail in the FILOT Agreement;

WHEREAS, the County Council of the County (the “County Council”) has caused to be prepared and presented to the County Council the form of the FILOT Agreement between the County and the Company, which the County proposes to execute and deliver;

WHEREAS, as further inducement to the Company, the County will include the Project, including the Project site within an existing Multi-County Park, if not already so included, and will maintain such designation with respect to the Project, including the Project site, as set forth in greater detail in the FILOT Agreement;

WHEREAS, it appears that the FILOT Agreement and the additional documents referred to therein, and attached thereto, which are before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

Section 1. Pursuant to the Fee Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings:

- (a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;
- (b) 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;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) The benefits of the Project to the public are greater than the costs;
- (e) Neither the Project nor any documents or agreements entered into by the County in connection therewith gives, or will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(f) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk to County Council, including, without limitation, the provisions regarding the Negotiated Payments-in-Lieu-of-Taxes arrangement, the Special Source Credits, and the property conveyance set forth therein, are hereby approved and all of the terms, provisions and conditions of the FILOT Agreement are hereby incorporated herein by reference as if the FILOT Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement and the other documents referred to therein, or attached thereto, to the Company.

Section 3. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be not be materially adverse to the County or the Company and as shall be approved by the officials of the County executing the same, upon advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of FILOT Agreement now before this meeting.

Section 4. The Chair of County Council and the County Administrator, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the FILOT Agreement and the other documents referred to therein, or attached thereto, and the performance of all obligations of the County under and pursuant to the FILOT Agreement and the other documents referred to therein, or attached thereto, and to carry out the transactions contemplated thereby and by this Ordinance.

Section 5. The consummation of all transactions contemplated by the FILOT Agreement is hereby approved.

Section 6. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 8. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ENACTED this _____ day of February, 2012.

LEXINGTON COUNTY, SOUTH CAROLINA

William B. "Bill" Banning, Sr., Chairman
Lexington County Council

ATTEST:

By: _____
Diana W. Burnett
Clerk to Lexington County Council

First Reading: October 25, 2011
Second Reading: February 14, 2012
Public Hearing: February 14, 2012
Third Reading: _____

DRAFT 2/9/12

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

BETWEEN

LEXINGTON COUNTY, SOUTH CAROLINA

AND

NEPHRON SC, INC.

DATED AS OF

FEBRUARY 28, 2012

NPCOL1:2647208.3-AGR-(SIN) 049472-00001

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (the “Agreement”) is made and entered into as of February 28, 2012 by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **NEPHRON SC, INC.**, a corporation organized and existing under the laws of the State of South Carolina, acting for itself, any affiliates or other project sponsors (the “Company”).

WITNESSETH:

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to make investments and thus make use of and employ workers and other resources of the State, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (the Multi-County Park and the Special Source Act, together with the Fee Act, hereinafter collectively referred to as the “Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to the Fee Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011 (the “Inducement Resolution”), and in order to induce the Company to make,

or cause to be made, new investment in the County, the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and agreed to provide the Company and the Project with the benefits of certain Special Source Credits (as defined herein), to include and maintain and maintenance of the Project in a Multi-County Park, and to convey certain real property to the Company, all as set forth greater detail herein; and

WHEREAS, pursuant to an Ordinance adopted on February 28, 2012 (the “Ordinance”), the County Council, authorized the County to enter into this Agreement with the Company, which, establishes, amongst other things, a negotiated payment-in-lieu-of-taxes arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions hereof and the provisions of the Fee Act, and which provides for Special Source Credits to pay, or to reimburse for payment of, the costs of certain Special Source Improvements related to the Project, all as set forth in greater detail herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained and other value, the parties hereto agree as follows:

ARTICLE I

RECAPITULATION AND DEFINITIONS

SECTION 1.1. Statutorily Required Recapitulation. Pursuant to Section 12-44-55(B) of the Fee Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Fee Act, then the County agrees to waive any and all penalties and fees of the County for the Company’s noncompliance.

SECTION 1.2. Rules of Construction; Use of Defined Terms. Unless the context clearly indicates otherwise, in this Agreement words and terms defined in **Section 1.3** hereof are used with the meanings ascribed thereto. The definition of any document or agreement shall include any amendments, supplements, addenda, and modifications to that document, unless the context clearly indicates otherwise.

SECTION 1.3. Definitions.

“**Act**” means, collectively, Title 12 Chapter 44 of the Code (the “Fee Act”), Title 4, Chapter 1 of the Code (the “Multi-County Park Act”) including, without limitation, Section 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, (the “Special Source Act”).

“Affiliate” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or which now or hereafter is owned in whole or in part by the Company or by any partner, shareholder or owner of the Company, as well as any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

“Agreement” means this Agreement dated as of February 28, 2012 between the County and the Company.

“Applicable Governmental Body” means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

“Chair” means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

“Clerk” means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

“Code” means Code of Laws of South Carolina 1976, as in effect on the date hereof, as the same may be amended from time to time.

“Commencement Date” means the last day of the Property Tax Year during which Project property consisting of economic development property (as defined under the Fee Act) is first placed in service; except that this date must not be later than the last day of the Property Tax Year which is three (3) years from the year in which the County and the Company have entered into this Agreement.

“Company” means Nephron SC, Inc., a South Carolina Corporation, and its successors and assigns.

“County” means **Lexington County, South Carolina**, and its successors and assigns.

“County Administrator” means the County Administrator for the County (or the person or persons authorized to perform the duties thereof in the absence of the County Administrator).

“County Council” means the County Council of the County.

“Documents” means the Inducement Resolution, the Ordinance, this Agreement, the Multi-County Park Agreement, and the Ordinances enacted by the County Council to create the Multi-County Park and to add the Site and the Project to the Multi-County Park.

“DOR” means the South Carolina Department of Revenue and any successor thereto.

“Enhanced Investment FILOT Minimum Requirements” shall mean (i) investment in the Project of at least \$150,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) creation of at least 125 new full-time jobs at the Project, all in accordance with Section 12-44-30(7) of the Fee Act.

“Event of Default” shall mean any Event of Default specified in **Section 9.1** of this Agreement.

“Fee Term” shall mean the duration of the Negotiated Payments-in-Lieu-of-Taxes arrangement with respect to each Stage of the Project as specified in **Section 5.3** hereof.

“Full-Time Jobs” shall mean a job requiring a minimum of 35 hours of an employee’s time per week for the entire normal year of the Company’s operation or a job requiring a minimum of 35 hours of an employee’s time per week for a year in which the employee was hired initially for or transferred to the Project.

“Inducement Resolution” shall mean the Inducement Resolution for Project Cauliflower of the County Council adopted on October 25, 2011.

“Investment Period” shall initially mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the tenth Property Tax Year following the Commencement Date; provided, that the Company may request an extension of such period as set forth in **Section 3.2(b)** hereof.

“Multi-County Park” means the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which includes the Project and which is designated by the County as such pursuant to the any agreement that supersedes or replaces the initial Multi-County Park Agreement set forth herein.

“Multi-County Park Agreement” shall mean the Agreement for Development of Joint County Industrial Park dated December 11, 1995 between the County and Calhoun County as amended to include the Project and as further amended, supplemented, or replaced from time to time.

“Negotiated Payments-in-Lieu-of-Taxes” means the payments to be made pursuant to **Section 5.1** of this Agreement with respect to that portion of the Project consisting of economic development property (as defined under the Fee Act).

“Ordinance” means the Ordinance adopted by the County on February 28, 2012, authorizing the County’s execution, delivery, performance, and entering into of this Agreement.

“Payments-in-Lieu-of-Taxes” means any and all payments-in-lieu-of-taxes to be made with respect to the Project whether made as Negotiated Payments-in-Lieu-of-Taxes pursuant to the Fee Act or made as payments-in-lieu-of-taxes pursuant to the Multi-County Park Act.

“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.

“Phase 1 Contractual Minimum Requirements” shall mean (i) investment in the Project of at least \$313,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation of at least 700 Full-Time Jobs, all within the Phase 1 Contractual Minimum Requirements Compliance Period.

“Phase 1 Contractual Minimum Requirements Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the seventh Property Tax Year following the Commencement Date.

“Phase 2 Special Source Credits Requirements” shall mean (i) additional investment in the Project (without regard to depreciation, reassessment or other diminution in value) of at least \$205,000,000 and (ii) the creation of at least 250 Full-Time Jobs at the Project, all in excess of the investment and job requirements set forth in the Phase 1 Contractual Minimum Requirements, and within the Investment Period.

“Phase 3 Special Source Credits Requirements” shall mean (i) additional investment in the Project (without regard to depreciation, reassessment or other diminution in value) of at least \$244,000,000 and (ii) the creation of at least 285 Full-Time Jobs at the Project, all in excess of the aggregate investment and job requirements set forth in the Phase 1 Contractual Minimum Requirements and the Phase 2 Special Source Credits Requirements and within the Investment Period.

“Project” shall mean (i) the Site and all buildings structures, fixtures, and other improvements now or hereafter located at the Site including, without limitation, rail, water, sewage treatment and disposal facilities, and air and other pollution control facilities; (ii) all machinery, apparatus, equipment, fixtures, office facilities, furnishings, pollution control equipment and other personal property now or hereafter located at the Site; and (iii) any Replacement Property; provided, however, except as to Replacement Property and any other property placed in service in the County in resatisfaction of the investment maintenance levels as set forth in **Section 5.5(b)(ii)** hereof, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

“Property Tax Year” shall mean the annual period which is equal to the fiscal year of the Company, i.e., the annual period ending on December 31 of each year.

“Replacement Property” means any property placed in service after the Investment Period as a replacement for any economic development property (as defined under the Fee Act) theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in **Section 5.2** hereof.

“Site” means the land at which Project property will be located in the County which land is further described in **Exhibit A** hereto.

“Special Source Credits” mean the special source revenue credits described in **Section 5.7** hereof.

“Special Source Improvements” means, to the extent paid for, or caused to be paid for, by the Company, or used by the Company pursuant to any financing, lease, license or other access arrangement, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all in accordance with the Special Source Act. For purposes of this Agreement, Special Source Improvements shall be deemed to include, without limitation, all roadwork, rail, water, sewer, drainage, power and utility facilities serving the Project, as well as any land comprising the Site, the buildings, fixtures and other real property improvements at the Site, and the personal property, including machinery and equipment, located at the Site, and any additions or improvements to any of the foregoing, whether paid for by the Company directly or pursuant to any lease, license or other access arrangement.

“Stage” with respect to the Project shall mean each individual annual increment of Project property, if any, placed in service during the Investment Period.

“Standard FILOT Minimum Requirement Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the fifth Property Tax Year following the Commencement Date.

“Standard FILOT Minimum Requirement” shall mean investment in the Project of at least \$5,000,000 (without regard to depreciation, reassessment, or other diminution in value) within the Standard FILOT Minimum Requirement Compliance Period, in accordance with Section 12-44-30(14) of the Fee Act.

“State” means the State of South Carolina.

SECTION 1.4. Internal References. Any reference to any agreement or document in this Article I or otherwise in this Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document. References herein to Title, Chapters or Sections, except the references to Sections of this Agreement or where the

intent clearly requires otherwise, refer to Sections of the Code. The words “hereof”, “herein”, “hereunder”, and other words of similar impact refer to this Agreement as a whole.

ARTICLE II

LIMITATION OF LIABILITY; EXEMPTION FROM *AD VALOREM* TAXES

SECTION 2.1. Limitation of Liability. Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

SECTION 2.2. Exemption from Ad Valorem Taxes. The County and the Company acknowledge that pursuant to the Act, upon execution of this Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, is the basis upon which the Company has entered into this Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1. Representations and Warranties of the County. The County makes the following representations and warranties to the Company, and covenants with the Company, as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially adversely affect the validity or enforceability of the Documents, the

County's obligations hereunder, or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable provisions of the Fee Act, each item of real and personal property comprising the Project shall be considered economic development property (as defined under the Fee Act).

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

SECTION 3.2. Covenants by the County. The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations under the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) To the extent permitted by law, the Company may request of the County, and the County may approve in its sole discretion, an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Fee Act. The grant of any such extension by the County may be approved by a resolution of County Council. Upon the granting of any such extension the County agrees to, at the Company's expense, cooperate with the Company in assisting the Company to file with the DOR a copy of documentation evidencing such extension within thirty (30) days of the date of execution thereof by the County.

SECTION 3.3. Representations and Warranties of the Company. The Company makes the following representations and warranties to the County:

(a) The Company is a corporation authorized to transact business in the State. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in such Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in such Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Company is a party.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the execution, delivery, and performance by the Company of Documents to which the Company is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The Company will pay all reasonable and necessary costs of the County, including attorney's fees, incurred in connection with the negotiation, authorization, execution and delivery of this Agreement. Legal counsel to the County has estimated its attorney's fees in connection with such matters to be \$_____ or less.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF THE PROJECT AND THE SPECIAL SOURCE IMPROVEMENTS

SECTION 4.1. The Project. The Company has acquired, constructed and/or installed or has made or will make plans for the acquisition, construction and/or installation of certain real property improvements and machinery, equipment, and other personal property comprising the Project. The parties agree that Project property shall consist of the Site, such property and any additional real and personal property as may be identified by the Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement

with the Company or any of its Affiliates with respect to Project property, on, or in connection with, annual filings with the DOR of a SCDOR PT-300, or comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time), with respect to each Property Tax Year within the Investment Period and, as to Replacement Property, with respect to each Property Tax Year thereafter during the term of this Agreement. The Project will consist of facilities utilized primarily in connection with the manufacturing of pharmaceutical products and related activities.

Pursuant to the Fee Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property (as defined under the Fee Act), so long as such property meets the requirements of the Fee Act.

Notwithstanding any other provision of this Agreement, the Company may place property into service at any time under this Agreement, but such property may only qualify as economic development property (as defined under the Fee Act) if it is placed in service during the Investment Period, including any additional extension period thereto, or is Replacement Property.

All investment in, and job creation at, the Project by the Company, by any of its Affiliates, including, without limitation, Nephron Pharmaceutical Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus LLC, and by any third party to the extent that the Company or any of its Affiliates utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement, shall, to the extent permitted by law, count toward each investment and job requirement or threshold specified in this Agreement including, without limitation, the Phase 1 Contractual Minimum Requirements, the Enhanced Investment FILOT Minimum Requirements, the Standard FILOT Minimum Requirement, the Phase 2 Special Source Credits Requirements, and the Phase 3 Special Source Credits Requirements. Notwithstanding anything in this Agreement or the other Documents to the contrary, each such Affiliate or third party, upon written notice by the Company to the County of the identity of such Affiliate or third party, which notice is hereby provided to the County with respect to Nephron Pharmaceutical Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus LLC, shall hereby also be entitled, to the extent permitted by the Act, to all rights, interests, and benefits to which the Company is entitled under this Agreement including, without limitation, the Negotiated Payments-in-Lieu-of-Taxes and Special Source Credits arrangements and shall also be bound by all of the duties, restrictions, and obligations to which the Company has agreed upon under this Agreement (but excluding the benefits and obligations specified in **Section 5.5** hereof), all only with respect to each such entity's portion of the Project. The Company shall notify DOR in writing of all such entities to benefit from the Negotiated Payments-in-Lieu-of-Taxes arrangement in accordance with Section 12-44-130(B) of the Fee Act. Any other entity to whom the Company intends to extend the benefits of this Agreement may, at the request of the Company, be approved by a resolution passed by the County Council, in its sole discretion.

SECTION 4.2. Diligent Completion. The Company agrees to use reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Agreement or the other Documents to the contrary, the Company shall not be obligated to complete, acquire, construct, and install, or cause the completion, acquisition, construction, and installation of, all or any portion of the Project, and may terminate this Agreement with respect to all or any portion of the Project as set forth in **Article X** herein.

SECTION 4.3. Modifications to Project. The Company may make, or cause to be made, from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes, in its sole discretion.

SECTION 4.4. Special Source Improvements. The Company agrees to provide, or cause to be provided, the funding for the designing, acquiring, constructing, improving, or expanding of Special Source Improvements related to the establishment of the Project.

SECTION 4.5. Reports; Filings. In accordance with Section 12-44-90 of the Fee Act, the Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 of DOR, to be filed with the County Auditor, the County Assessor, the County Treasurer and DOR within thirty (30) days after the date of execution and delivery hereof and shall also cause a copy of this Agreement to be filed with the County Auditor and the County Assessor of Calhoun County. In addition, the Company shall provide the County Auditor, the County Assessor, and the County Treasurer with a copy of all annual filings made by the Company to DOR pursuant to this Agreement and the Fee Act.

ARTICLE V

NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE CREDITS

SECTION 5.1. Negotiated Payments-in-Lieu-of-Taxes. The parties acknowledge that under Section 12-44-40 of the Fee Act, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes with respect to the Project as provided in this **Section 5.1**. In accordance with the Fee Act, and unless this Agreement is sooner terminated, the Company shall make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Fee Act. Such amounts shall be calculated and payable as follows:

(a) Subject to the provisions of **Section 5.4** hereof, the County has agreed to accept, and the Company has agreed to make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using (i) an assessment ratio of 4%; (ii) a millage rate which is fixed at **284.190** mills for each 30-year payment period applicable to each

Stage of the Project as set forth in **Section 5.3** hereof; and (iii) the fair market value of such property which shall be determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act as follows:

- (i) for real property if such real property is constructed for the fee or is purchased in an arm's length transaction, by utilizing the original income tax basis for South Carolina income tax purposes without regard to depreciation, reassessment, or other diminution in value; provided, however, that the Company and the County may agree to hereafter amend this Agreement as to Project real property so as to determine the fair market value of any such real property in accordance with any other method permitted by the Fee Act; and
- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation, reassessment, or other diminution in value, allowable for property tax purposes, except that the Project is not entitled to extraordinary obsolescence.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code.

(c) The Company shall make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the Property Tax Year for which the Project property consisting of economic development property (as defined under the Fee Act) is first placed in service. The Negotiated Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Agreement when, but for this Agreement, such taxes would have been paid with respect to the Project.

(d) Any economic development property (as defined under the Fee Act) placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding thirty (30) years following the Property Tax Year in which such property was placed in service. Pursuant to and subject to the Fee Act: (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same Property Tax Year; (ii) Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same Property Tax Year that the Replacement Property is placed in service; (iii) more than one piece of property can replace a single piece of property; (iv) Replacement Property does not have to serve the same function as the Project property it is

replacing; (v) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Project property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property (as defined under the Fee Act) were not allowed; and (vi) Replacement Property is entitled to Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof for the remaining portion of the thirty-year payment period referred to in this **Section 5.1(d)** applicable to the property which it is replacing.

SECTION 5.2. Disposal of Property; Replacement Property.

(a) In any instance where the Company, in its sole discretion, determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to **Section 5.2** hereof. Subject to the provisions of **Section 5.4** hereof with regard to the maintenance of certain investment levels, and **Section 5.2** hereof with respect to Replacement Property, the Negotiated Payments-in-Lieu-of-Taxes required by **Section 5.1** hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to **Section 5.2** hereof.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to **Section 5.2(a)** hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced.

SECTION 5.3. Fee Term. The applicable term of the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in this Agreement shall be measured separately for each Stage beginning from the last day of the Property Tax Year in which such Stage of the Project is placed in service through the last day of the Property Tax Year which is the twenty-ninth year following such year. This Agreement shall terminate, as to the Negotiated Payments-in-Lieu-of-Taxes arrangement, with respect to the Project or any Stage or part thereof, upon the earlier to occur of (a) payment of the final installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof with respect to the Project or such Stage or part thereof, as the case may be, or (b) exercise by the Company of its option to terminate pursuant to **Section 10.1** hereof with respect to the Project or such Stage or part thereof, as the case may be,.

SECTION 5.4. Failure to Achieve or Maintain FILOT Investment Requirements.

(a) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance

Period, but the Standard FILOT Minimum Requirement is nevertheless satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, retroactively and prospectively. In such event, within one hundred eighty (180) days following the end of the Phase 1 Contractual Minimum Requirements Compliance Period, the Company shall make, or cause to be made, payment to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of Negotiated Payments-in-Lieu-of-Taxes which would have otherwise been due in the case of an applicable assessment ratio equal to 6%.

(b) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, and the Standard FILOT Minimum Requirement is not satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, then the Negotiated Payments-in-Lieu-of-Taxes shall revert to *ad valorem* property taxation, retroactively and prospectively, and the County shall terminate this Agreement. In the event that the County terminates this Agreement pursuant to this **Section 5.4(b)**, within one hundred eighty (180) days following the end of the Phase 1 Contractual Minimum Requirements Compliance Period, the Company shall, if deemed due by the County, make, or cause to be made, payments to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of *ad valorem* property taxes which would otherwise have been due, subject to **Section 5.4(d)** hereof, plus any interest required to be paid under Section 12-44-140(B) of the Fee Act.

(c)

(i) In the event that the Phase 1 Contractual Minimum Requirements are satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but following the Phase 1 Contractual Minimum Requirements Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 1 Contractual Minimum Requirements, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains at least the investment level set forth in the Enhanced Investment FILOT Minimum Requirement, then the Project shall nevertheless continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof including, without limitation, with an applicable assessment ratio of 4%, retroactively and prospectively.

(ii) In the event that the Phase 1 Contractual Minimum Requirements are satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but following the Phase 1 Contractual Minimum Requirements Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the

investment level set forth in the Enhanced Investment FILOT Minimum Requirement, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains at least the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated Payments-in-Lieu-of-Taxes due as to the Project with respect to the Property Tax Year during which such investment shortfall occurs.

(iii) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but the Project nevertheless continues to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement pursuant to this **Section 5.4**, if following the Standard FILOT Minimum Requirement Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall prospectively, commencing with any Payments-in-Lieu-of-Taxes due as to the Project with respect to the Property Tax Year during which such investment level shortfall occurs, be subject to *ad valorem* property taxation or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act, as the case may be, subject to **Section 5.4(d)** hereof.

(d) In the event that the Company is required to make, or to cause to be made, any differential payment to the County or is no longer eligible for Negotiated Payments-in-Lieu-of-Taxes, pursuant to **paragraphs (b) or (c) of Section 5.4** hereof, in calculating any such differential payment or prospective *ad valorem* property tax or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act due from the Company, as the case may be, the Company shall be entitled: (1) to enjoy the five-year exemptions from *ad valorem* property taxes (or fees in lieu of property taxes) provided by Article X, Section 3 of the Constitution of the State, and any other property tax exemption that would have been available to the Company; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* property taxes hereunder or under the Fee Act.

SECTION 5.5. Property Conveyance. The real property located and shown at the Site attached hereto as **Exhibit A** and made a part hereof, together with and including all improvements, rights, members, easements, riparian rights, timber, minerals, appurtenances and hereditaments belonging or in anywise incident or appertaining to the Site, shall be conveyed by limited warranty deed, in substantially the form attached hereto as **Exhibit B** and made a part hereof, by the County to the Company within the later to occur of either (i) thirty (30) days after approval and execution of this Agreement, or (ii) thirty (30) days of the satisfaction, in the sole discretion of the Company, of all conditions to closing and any title and/or due diligence

objections raised by the Company. The County has no obligation to correct any defect in title. If the Company is not satisfied with the results of the title examination, the Company's sole right is to terminate this Agreement. The closing shall be held at the offices of the Company's South Carolina counsel, Nexsen Pruet, LLC in Columbia, South Carolina, unless an alternative location is mutually agreed upon by the County and the Company; provided, however, all parties hereto agree that the closing may be conducted in escrow without any applicable parties having to be physically present at the closing. The County shall deliver possession of the Site at closing. The conveyance shall be subject only to the easements and restrictions of public record at the Office of the Register of Deeds for Lexington County, South Carolina, provided that they are not objected to by the Company, and provided further that they do not interfere with the use, operation, and development of the Site or the Project for the Company's intended purpose (the same being primarily the development, construction, and operation of a pharmaceutical manufacturing facility), and to all applicable governmental ordinances and statutes, and subject to the following conditions which shall be included in the conveyance deed or other appropriate documents, as applicable and necessary, which will be recorded in the Lexington County, South Carolina Register of Deeds Office and all which shall survive the closing for only so long as these terms may expressly provide in this Agreement, if at all:

(a) The Company shall commence construction on the Site within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company. If the Company fails to commence construction on the Site within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company, the County may elect by providing written notice to the Company that the County would like the Site to be conveyed back to the County. Notwithstanding anything to the contrary contained herein, conclusive evidence of the commencement of construction shall be by the recordation of an affidavit of construction commencement (the "Commencement Affidavit") by the Company in the Office of the Register of Deeds for Lexington County, South Carolina providing that the Company has commenced physical work on the Site and that such work commenced within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company. The recordation of the Commencement Affidavit by the Company in the Office of the Register of Deeds for Lexington County, South Carolina, shall be conclusive evidence of the commencement of construction on the Site by the Company, and after recordation of the Commencement Affidavit any and all rights of the County to request a reconveyance of the Site and any requirement of commencement of construction shall thereafter be automatically void and of no further force or effect. The provisions of this paragraph shall be included in the limited warranty deed from the County to the Company.

(b)

(i) Should either or both the Phase 1 Contractual Minimum Requirements not be satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, upon written request by the County accompanied by verification that such requirements have not been satisfied, the Company shall have until the end of the Property Tax Year following the Property Tax Year in which such written notice from the County is received by the Company to either show compliance or come into compliance with any such requirement. If, within such cure period, the Company shall not achieve compliance with such requirements, upon written request of the County, the Company shall pay the County for the value of the Site conveyance at the value of \$60,000 per acre within ninety (90) days after written notice from the County to the Company of the failure to satisfy such requirements.

(ii) Should the Phase 1 Contractual Minimum Requirements be satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, or by the end of the cure period described in **Section 5.5(b)(i)** hereof, as the case may be, but within seven (7) Property Tax Years following the Property Tax Year in which such requirements are initially satisfied, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 1 Minimum Contractual Requirements, the Company shall pay the County for the value of the Site conveyance upon the terms set forth in **Section 5.5 (b)(i)** hereof; provided, that, notwithstanding the foregoing, should, as a result, in whole or in part, of force majeure, acts of God, or other matters beyond the reasonable control of the Company, investment in the Project, without respect to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 1 Minimum Contractual Requirements during the above-referenced seven-year period, the above-referenced payment shall only become due to the County if, within seven (7) Property Tax Years following the Property Tax Year during which such shortfall occurs, such investment level in the Project is not resatisfied.

(iii) At Closing, the County and the Company shall execute a memorandum of this Agreement in substantially the form attached hereto as **Exhibit C**, and made a part hereof (the "Memorandum of Agreement"). The Memorandum of Agreement shall be recorded in the Office of the Register of Deeds for Lexington County, South Carolina. This Agreement shall not be recorded. The provisions contained in this paragraph (b), all of which are applicable only upon recordation of the limited warranty deed for the Site referenced herein, shall be binding upon the real estate and shall run with the real estate; provided, however, upon the compliance with the investment and job requirements set forth in this paragraph (b), the provisions of this paragraph (b)

shall thereafter be automatically void and of no further force and effect and in such event, the County shall, and hereby agrees to, file an appropriate termination of the Memorandum of Agreement in the Office of the Register of Deeds for Lexington County, South Carolina. The terms and provisions of this paragraph (b) shall survive any termination of this Agreement under Section 10.1 of this Agreement.

(c) The Site is sold AS IS; provided, however, the County confirms that the Site is in “shovel ready” condition as that term is generally defined and classified by the South Carolina Department of Commerce. The County has good, indefeasible, insurable (at standard title insurance rates), and marketable title to the Site. The Company may, at its own cost, conduct an inspection and due diligence investigations of the Site, to include, but not be limited to, environmental studies (including a Phase I study and a Phase II study if the Phase I indicates the necessity of further environmental testing and investigation), soil testing, wetlands analysis and delineation, utility and water and sewer requirements. If the Company is not satisfied with the Site for any reason whatsoever, in the sole opinion and discretion of the Company, the Company may decide, in the sole and absolute discretion of the Company, to not accept the conveyance of the Site. If the Company decides, in the sole and absolute discretion of the Company, to not accept the conveyance of the Site, the Company may terminate this Agreement and this Agreement shall become null and void and of no further force or effect, and the County has no obligation to find other suitable real property for the Company. The County shall not cause or permit any encumbrances in the form of a mortgage, lien, encumbrance, covenant, condition, restriction, assessment, easement, right-of-way, obligation, encroachment or liability whatsoever, to be placed of record, affect the title insurance to be given the Company pursuant to this Agreement or otherwise exist, from the effective date of this Agreement to the date of termination of this Agreement or closing, excepting, however, such matters that have been specifically approved in writing by the Company. The County acknowledges that the natural amenities of and current state of the Site constitute a material inducement to the Company for entering into this Agreement and, therefore, the County agrees to (i) maintain the natural amenities, specifically, the tree canopy and rolling contour of the land, and soil, in its natural condition, and (ii) maintain any improvements in the condition existing on the effective date of this Agreement and not cause any damage to any improvements located on the Site, or the Site, normal wear and tear excepted. The County further agrees not to cut, clear, excavate, fill, dump or dispose of any materials of any kind on the Site during the pendency of this Agreement.

(d) The cost of the deed recording fee and/or state or local transfer taxes and documentary stamp taxes (S.C. Code Ann. Section 12-24-10, et. seq.), based on the value of the Site conveyed, on the limited warranty deed required hereunder shall be borne by the Company and paid at closing. The per page cost of recording the closing documents, including, without limitation, the limited warranty deed shall be borne by the Company. The County shall pay for any and all due diligence expenses ordered by the County and the County’s own accountants’ fees and financial consultant fees. The Company shall pay for any and all due diligence expenses ordered by the Company, the Company’s own accountants’ fees, financial consultant

fees, and attorneys' fees with this Agreement and the closing, and all title examination costs and title insurance premiums. The County shall bear all risk of loss until recordation of the deed of conveyance. The County and the Company warrant and represent that no real estate broker was involved in this transaction and no commission shall be owed in connection the sale of the Site pursuant to this Agreement. To the best of the County's knowledge and belief, there are no executory contracts, leases, agreements, service contracts, repair agreements and warranty, guaranty rights, maintenance, management or other contracts or agreements affecting the Site except those which may be terminated on thirty (30) days' notice or less, and the County shall disclose and provide all contracts, leases, or agreements affecting the Site to the Company at least forty-five (45) days prior to closing. The County shall not enter into any leases, maintenance, management, or other contracts without the Company's prior written consent which would materially affect the Site or its use and which are not terminable on ten (10) days' notice, and the County shall disclose any such contract(s) to the Company.

(e) At the closing, the County shall provide: (1) the limited warranty deed duly executed in form for recordation; (2) an owner's affidavit, lien waiver affidavit in form sufficient and acceptable to the title company so as to allow it to eliminate the standard owner's exceptions, including the parties' in possession, mechanic's lien, and gap exceptions from the title commitment and policy and running to the benefit of the Company and the title company insuring title to the Site; (3) a FIRPTA non-foreign affidavit; (4) the County ordinance authorizing the County to undertake the subject transaction; (5) a South Carolina Form I-295 Withholding Affidavit; (6) the Memorandum of Agreement (as defined hereinabove); and (7) such further documents as may be customary and reasonably required to vest title to the Site in the Company, to enable the title company to insure the title to the Site, and to give effect to the transaction contemplated under this Agreement, as required by applicable Federal, State, or Local law, or as may reasonably be requested by the Company or the title company.

(f) The Site is subject to the terms and conditions of that certain Declaration of Rights, Restrictions, Affirmative Obligations, and Conditions Which Constitute Covenants Running With Certain Lands of County Of Lexington South Carolina, dated as of December 7, 2010, and recorded on December 7, 2010, in the Office of the Register of Deeds for Lexington County, South Carolina, in Book 14607, at Page 226 (hereinafter referred to as the "Declaration"). The County hereby confirms that the County is the "Developer" under the Declaration, as such term is defined in the Declaration. In connection with the conveyance of the Site to the Company from the County, the County hereby approves and confirms the following with regard to the terms and conditions of the Declaration: (i) the requirement contained in Section 3.4 of the Declaration providing that all improvements shall be completed within one (1) year after the approval of plans by the County shall not be applicable with regard to any and all development and construction on the Site, and the County expressly waives any and all application of this completion requirement with regard to the Site; (ii) the right to re-purchase contained in Section 7.5 of the Declaration shall not be applicable to the Site, and the County expressly waives any and all application of Section 7.5 of the Declaration as it relates to the Site; and (iii) the County hereby expressly approves the development plans, conceptual plans, and

conceptual construction schedules dated as of _____ (the “Development and Conceptual Plans”) with regard to the Company’s development of the Site, and the County hereby confirms that the Development and Conceptual Plans comply with the terms and conditions contained in the Declaration, including, without limitation, height restrictions, and the County and the Company hereby understand that the Development and Conceptual Plans may be further revised with the County’s consent, which consent shall not be unreasonably withheld, conditioned, or delayed. After closing on the Site, the County shall execute a consent and approval to be recorded in the Office of the Register of Deeds for Lexington County, South Carolina, to place parties on notice of the preceding waivers and approvals of the matters contained in the Declaration as they pertain to the Site. Furthermore, following completion of construction of the improvements on the Site by the Company, and from time to time upon the reasonable request of the Company, the County shall record a commercially reasonable compliance estoppel certificate providing that the Site is in compliance with the Declaration, that no defaults exist under the Declaration, and other customary and commercially reasonable matters.

SECTION 5.6. Multi-County Park Designation. The County represents that the Site is presently included in a Multi-County Park. The County agrees to include, if not already included, and to maintain, the Project and the Site in a Multi-County Park, pursuant to Section 13 of Article VIII of the Constitution of the State and the Multi-County Park Act, on terms which provide any additional job tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks for all jobs created at the Site and the Project during the Investment Period and which facilitate the Special Source Credits, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

SECTION 5.7. Special Source Credits.

(a) As reimbursement for investment in Special Source Improvements related to the Project, and subject to the requirements of the Special Source Act and **Section 5.7(f)** hereof, the County agrees to provide to the Company, and the Company shall be entitled to receive, Special Source Credits against any and all Payments-in-Lieu-of-Taxes due as to the Project with respect to ten (10) consecutive Property Tax Years, in an amount equal to 20% of each such Payment-in-Lieu-of-Taxes, commencing with the Property Tax Year with respect to which the initial Payments-in-Lieu-of-Taxes are due as to one or more buildings comprising a portion of the Project (the “Phase 1 Special Source Credits”). In the event that the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, such Phase 1 Special Source Credits shall terminate retroactively and prospectively, and in such event, the Company shall within one hundred eighty (180) days of the end of the Phase 1 Contractual Minimum Requirements Compliance Period make, or cause to be made, payment to the County in the amount of the Phase 1 Special Source Credits theretofore received by the Company; provided, however, that notwithstanding the

foregoing provisions, in the event that the Phase 1 Minimum Contractual Requirements are not satisfied by the end of the Phase 1 Minimum Contractual Requirements Compliance Period, but the Enhanced Investment FILOT Minimum Requirements have nevertheless been satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, the Company shall be entitled to receive and retain Special Source Credits in an amount equal to 10% of such Payments-in-Lieu-of-Taxes due with respect to such ten-year period, retroactively and prospectively, and, in such event, shall be required to pay, or cause to be paid, only one-half (1/2) of such payment to the County.

(b) In addition to the Special Source Credits set forth in **Section 5.7(a)** hereof, and subject to **Section 5.7(g)** hereof, in the event that the Phase 2 Special Source Credits Requirements are satisfied by the end of the Investment Period, the County agrees to provide to the Company, and the Company shall be entitled to receive, additional Special Source Credits against any and all Payment-in-Lieu-of-Taxes due as to Project property comprising investment satisfying the Phase 2 Special Source Credits Requirements, in an amount equal to \$250,000 against each such Payment-in-Lieu-of-Taxes due with respect to ten (10) consecutive Property Tax Years commencing with the Property Tax Year with respect to which the initial Payment-in-Lieu-of-Taxes as to such property is due (the “Phase 2 Special Source Credits”).

(c) In addition to the Special Source Credits set forth in **Section 5.7(a)** and **Section 5.7(b)** hereof, and subject to **Section 5.7(h)** hereof, in the event that the Phase 3 Special Source Credits Requirements are satisfied by the end of the Investment Period, the County agrees to provide to the Company, and the Company shall be entitled to receive, additional Special Source Credits against any and all Payment-in-Lieu-of-Taxes due as to Project property comprising investment satisfying the Phase 3 Special Source Credits Requirements, in an amount equal to \$300,000 against each such Payment-in-Lieu-of-Taxes due with respect to ten (10) consecutive Property Tax Years commencing with the Property Tax Year with respect to which the initial Payment-in-Lieu-of-Taxes to such property is due (the “Phase 3 Special Source Credits”).

(d) The amount of the total annual Special Source Credits set forth in **Sections 5.7(a)**, **5.7(b)**, and **5.7(c)** hereof which are due to the Company shall be reflected on each annual bill sent by the County to the Company for such Payments-in-Lieu-of-Taxes due from the Company as to the Project with respect to each such Property Tax Year by reducing the amount of Payments-in-Lieu-of-Taxes otherwise due as to such Property by the total amount of the Special Source Credits to which the Company is entitled for such Property Tax Year.

(e) In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded in connection with the Project from time to time during the Investment Period by or on behalf of the Company. THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE AN OBLIGATION PAYABLE SOLELY FROM THE AGGREGATE PAYMENTS-IN-LIEU-OF-TAXES RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

(f) Upon commencement of the Company's receipt of the Phase 1 Special Source Credits:

(i) if, within the five (5) Property Tax Years following the Property Tax Year in which the Phase 1 Contractual Minimum Requirements are initially satisfied, investment made in the Project, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 1 Contractual Minimum Requirements, the Phase 1 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if, within the five (5) Property Tax Years following the period set forth in **Section 5.7(f)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 1 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 1 Contractual Minimum Requirements.

(g) Upon commencement of the Company's receipt of the Phase 2 Special Source Credits:

(i) if, within the five (5) Property Tax Years following the Property Tax Year in which the Phase 2 Special Source Credits Requirements are initially satisfied, investment made in Project property satisfying such investment requirements without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 2 Special Source Credits Requirements, the Phase 2 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if, within the five (5) Property Tax Years following the period set forth in **Section 5.7(g)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 2 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing upon the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 2 Special Source Credits Requirements.

(h) Upon commencement of the Company's receipt of the Phase 3 Special Source Credits:

(i) if within the five (5) Property Tax Years following the Property Tax Year in which the Phase 3 Special Source Credits Requirements are initially satisfied, investment made in Project property satisfying such investment requirements, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 3 Special Source Credits Requirements, the Phase 3 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if within the five (5) Property Tax Years following the period set forth in **Section 5.7(h)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 3 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 3 Special Source Credits Requirements set forth in the Phase 3 Special Source Credits.

ARTICLE VI

PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. Protection of Tax Exempt Status of the Project. In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a "project" in accordance with the Act.

ARTICLE VII

EFFECTIVE DATE

SECTION 7.1. Effective Date. This Agreement shall become effective as of the date first written above.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from pecuniary liability in connection with those reasons set forth in (i) or (ii) of **Section 8.1(b)** hereof.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary claims by or on behalf of any Person, arising out of the same, and all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with defending against any such claim, and upon notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents or employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual members, officers, agents or employees.

SECTION 8.2. Assignment and Leasing. Subject to and pursuant to the Fee Act, including Section 12-44-120 thereof, this Agreement may not be assigned unless the County approves such assignment by Resolution; provided, however, that such consent is not required in connection with financing-related transfers or any other transfers not requiring the consent of the County under the Fee Act. The County hereby expressly pre-approves and consents to any transfer or assignment by the Company, or any Affiliate of the Company, of any or all of its interest in the Project and/or this Agreement to, or merger or consolidation with, any other Affiliate of the Company and to any resulting transfer or assignment of any or all of such interest among such entities including, without limitation, to one or more of Nephron Pharmaceuticals

Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus, LLC. Notwithstanding any provision of this Section to the contrary, if and to the extent that the future consent of the County is required in connection with a transfer, assignment or other action referenced in this Section, the County hereby expressly agrees that, to the extent permitted by the Fee Act, such approval may be provided by Resolution of County Council. The Company acknowledges transfers of this Agreement or the Project property may cause the Project property to become ineligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth herein or result in penalties under the Fee Act absent compliance by the Company with the transfer provisions of Section 12-44-120 of the Fee Act.

SECTION 8.3. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company the benefits specified in **Article V** in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Fee Act, the Multi-County Park Act, and the Special Source Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Fee Act, the Multi-County Park Act, or the Special Source Act is unconstitutional or this Agreement, the Multi-County Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then at the request of the Company, the County agrees to extend to the Company the intended benefits of this Agreement and agrees, if requested, to enter into a lease purchase agreement or similar arrangement with the Company pursuant to Section 12-44-160 of the Fee Act, under Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, and to take such other steps as may be appropriate to extend to the Company the intended benefits of this Agreement, including, without limitation, the provision of a special source revenue credit to the extent statutorily allowed, which is commensurate to the benefits which would otherwise accrue to the Company under the Agreement.

SECTION 8.4. Confidentiality. The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information. The County agrees that neither the County nor any employee, agent or contractor of the County: (i) shall request, or be entitled to receive, any such confidential or proprietary information, or (ii) shall request, or be entitled, to inspect the Project or any property associated therewith. To the extent that the Company has heretofore provided confidential and proprietary information regarding the Project in the County which has been provided under written designation of the Company as "Confidential", the County shall not knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with maximum possible advance notice of such requirement to disclose before making

such disclosure, and to cooperate with any attempts by the Company to obtain judicial or other relief from such disclosure requirement, at the expense of the Company.

ARTICLE IX

EVENT OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The occurrence of any one or more of the following events shall be an “Event of Default” under this Agreement:

(a) If the Company shall fail to make, or cause to be made, any Negotiated Payments-in-Lieu-of-Taxes or any other payment required under this Agreement and such failure shall continue for thirty (30) days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company (other than as referred to in **Section 9.1(a)** hereof), and such failure shall continue for a period of thirty (30) days after written notice of default has been given to the Company by the County; provided if by reason of “force majeure” as hereinafter defined, the Company is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than thirty (30) days to cure such default and the Company is diligently attempting to cure such default, there shall be no Event of Default during such inability or cure period. The term “force majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council or other County authority; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

Anything herein to the contrary notwithstanding, failure to satisfy or maintain any investment or job requirements or levels set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate or adjust certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Sections 5.4, 5.5 and 5.7** hereof, which shall be the County’s sole remedies for any such failure.

SECTION 9.2. Remedies on Default. Whenever any Event of Default shall have happened pursuant to **Section 9.1** hereof and be subsisting, the County may (i) terminate this Agreement by providing at least thirty (30) days written notice to the Company specifying the

termination date; or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents. Although the parties acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and any act relating to the enforced collection of taxes. The County's right to receive Negotiated Payments-in-Lieu-of-Taxes shall have a first priority lien status pursuant to Section 12-44-90 of the Fee Act and Title 12, Chapters 4 and 54 of the Code. Upon the default of the County in the performance of any of its obligations hereunder, the 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.

Each right, power, and remedy of the County or the Company 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 the Company 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 the Company of any or all such other rights, powers, or remedies.

SECTION 9.3. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

SECTION 9.4. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the 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.

ARTICLE X

OPTION TO TERMINATE

SECTION 10.1. Option to Terminate. From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Agreement, the Company will become liable for *ad valorem* property taxes, or payments-in-lieu-of-taxes pursuant to the Multi-

County Park Act, as the case may be, on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1**, or, if the termination is of the entire Project, then within one hundred eighty (180) days of termination.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this **Section 11.1**:

If to the Company: Nephron SC, Inc.

With A Copy To: Burnet R. Maybank, III
Tushar V. Chikhliker
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P. O. Drawer 2426
Columbia, S.C. 29202-2426
Facsimile: 803-253-8277

If to the County: Lexington County Council, South Carolina
Attention: Clerk to Council
212 South Lake Drive
Lexington, SC 29072
Facsimile: 803-785-8101

With A Copy To: Jeff M. Anderson
Davis Frawley Anderson McCauley, Ayer, Fisher & Smith, LLC
140 E. Main Street
P.O. Box 489
Lexington, SC 29071-0489
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 11.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County and the Company, as well as any and all additional entities eligible to benefit under this Agreement pursuant to **Section 4.1** hereof or **Section 8.2** hereof, and their respective successors and assigns.

SECTION 11.3. Invalidity and Severability. In the event that the Fee Act or the Negotiated Payments-in-Lieu-of-Taxes or Special Source Credits arrangement described in the Agreement hereof is determined to be invalid or unenforceable in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Agreement; otherwise, in the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4 of the Code.

SECTION 11.4. SECTION 11.4. Payments Due on Saturday, Sunday and Holidays. Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 11.5. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent including, without limitation, any County consent specifically referred to in this Agreement, may be provided by a resolution of County Council.

SECTION 11.6. Execution of Counterparts. This Agreement may be executed in several counterparts, only one of which shall be an original; provided, however, that any action may be brought upon any counterpart of this Agreement or any counterpart of any document that is attached to this Agreement as an exhibit.

SECTION 11.7. 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 thereof.

SECTION 11.8. Law Governing Construction of Agreement. The laws of the State shall govern the construction of this Agreement.

SECTION 11.9. Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

SECTION 11.10. Further Assurance. From time to time the County agrees to execute and deliver to the Company such additional instruments and undertaking further proceedings as the Company may reasonably request to effectuate the purposes of this Agreement.

[EXECUTION PAGE TO FOLLOW]

IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY, each pursuant to due authority, has duly executed this Agreement, all as of the date first above written.

LEXINGTON COUNTY, SOUTH CAROLINA

James E. Kinard, Jr.
Chair of Lexington County Council

ATTEST:

Diana W. Burnett
Clerk, Lexington County Council

NEPHRON SC, INC.

By: _____
Name: _____
Its: _____

EXHIBIT A
SITE
LEGAL DESCRIPTION

[TO BE INSERTED]

EXHIBIT B
FORM OF LIMITED WARRANTY DEED

Attached.

EXHIBIT C

FORM OF MEMORANDUM OF AGREEMENT

Attached.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

**TITLE TO REAL ESTATE
LIMITED WARRANTY DEED**

KNOW ALL BY THESE PRESENTS that **COUNTY OF LEXINGTON, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (hereinafter sometimes referred to as “Grantor”), for and in consideration of the sum of \$10.00 and other valuable consideration to Grantor paid by **NEPHRON SC, INC.**, a South Carolina corporation (hereinafter sometimes referred to as “Grantee”), in the State aforesaid, the receipt and legal sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, convey, and confirm unto Grantee all of Grantor’s right, title, and interest in and to that certain tract or parcel of land (collectively the “Premises”) described as follows:

DESCRIPTION OF PREMISES CONVEYED

See Exhibit “A” attached hereto and incorporated herein by reference.

GRANTEE’S MAILING ADDRESS: For the purposes of this Title to Real Estate Limited Warranty Deed Grantee’s mailing address is _____.

TOGETHER WITH ALL AND SINGULAR the rights, members, easements, any and all crops and timber growing on the Premises, any and all surface or subsurface sand, gravel, oil, gas, or mineral rights on the Premises, any and all surface and subsurface water appurtenant to the Premises, all well, spring, reservoir, and water rights of any type, riparian rights, littoral rights, intangible property, permits, licenses, variances, waivers, authorizations, and hereditaments and appurtenances to the Premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the
“Permitted Exceptions”):

See Exhibit “B” attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned, unto Grantee, its
successors and assigns forever;

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend
all and singular the Premises unto Grantee, its successors and assigns, against itself, its successors and
assigns, lawfully claiming, or to claim, the same or any part thereof, but no others.

[SIGNATURE PAGE ATTACHED]

[remainder of page intentionally left blank]

SIGNATURE PAGE OF TITLE TO REAL ESTATE LIMITED WARRANTY DEED

WITNESS Grantor's hand and seal this _____ day of _____, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

COUNTY OF LEXINGTON, SOUTH
CAROLINA, a body politic and corporate and a
political subdivision of the State of South
Carolina

Witness Number 1

By: _____ (SEAL)
Name: _____
Title: Chair of Lexington County Council

Witness Number 2

ATTEST:

Diana W. Burnett
Clerk, Lexington County Council

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF SOUTH CAROLINA)

I, _____, a notary public for the State of South Carolina, do hereby certify that County of Lexington, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, by _____, its Chair of Lexington County Council, and attested to by Diana W. Burnett, Clerk of the Lexington County Council, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal, this _____ day of _____, 2012.

Signature of Notary Public
My Commission Expires: _____

EXHIBIT "A"

Legal Description:

Derivation:

Tax Map Number:

EXHIBIT "B"

Permitted Exceptions

1. Grantee shall commence construction on the Premises within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee. If Grantee fails to commence construction on the Premises within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee, Grantor may elect by providing written notice to Grantee that Grantor would like the Premises to be conveyed back to Grantee. Notwithstanding anything to the contrary contained herein, conclusive evidence of the commencement of construction shall be by the recordation of an affidavit of construction commencement (the "Commencement Affidavit") by Grantee in the Office of the Register of Deeds for Lexington County, South Carolina providing that Grantee has commenced physical work on the Premises and that such work commenced within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed for the Premises, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee. The recordation of the Commencement Affidavit by Grantee in the Office of the Register of Deeds for Lexington County, South Carolina, shall be conclusive evidence of the commencement of construction on the Premises by Grantee, and after recordation of the Commencement Affidavit any and all rights of Grantor to request a reconveyance of the Premises and any requirement of commencement of construction shall thereafter be automatically void and of no further force or effect.

2.

STATE OF SOUTH CAROLINA)
 COUNTY OF _____)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the County of Lexington, bearing Lexington County Tax Map Number _____ and was transferred by County of Lexington, South Carolina to Nephron SC, Inc. on _____, 2012.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes ___ or No XXXX to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.
6. The deed recording fee is computed as follows:
 - (a) _____ Place the amount listed in item 4 above here: \$_____
 - (b) _____ Place the amount listed in item 5 above here: \$0.00
(If no amount is listed, place zero here.)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place result here: \$_____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

_____ Sworn to before me this _____ day of _____, 2012 My Commission Expires: _____ [AFFIX OFFICIAL NOTARY SEAL]	COUNTY OF LEXINGTON, SOUTH CAROLINA By: _____ (SEAL) Name: _____ Title: Chair of Lexington County Council	ATTEST: _____ (SEAL) Diana W. Burnett Clerk, Lexington County Council
--	---	--

SIGNATURE PAGE OF MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, County has hereunto set its hand and affixed its seal effective as of the day and year set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

COUNTY OF LEXINGTON, SOUTH
CAROLINA, a body politic and corporate and a
political subdivision of the State of South
Carolina

Witness Number 1

By: _____ (SEAL)
Name: _____
Title: Chair of Lexington County Council

Witness Number 2

ATTEST:

_____(SEAL)
Diana W. Burnett
Clerk, Lexington County Council

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF SOUTH CAROLINA)

I, _____, a notary public for the State of South Carolina, do hereby certify that County of Lexington, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, by _____, its Chair of Lexington County Council, and attested to by Diana W. Burnett, Clerk of the Lexington County Council, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal, this _____ day of _____, 2012.

_____(SEAL)
Signature of Notary Public
My Commission Expires: _____

EXHIBIT A

Description of the Property

Legal Description:

Derivation:

Tax Map Number:



COMMITTEE REPORT

RE: Replacement Vehicle for Sheriff's Department

DATE: February 7, 2012

COMMITTEE: Justice

MAJORITY REPORT: Yes

The Justice Committee met on Tuesday, January 24, 2012, to review a request from the Sheriff's Department to purchase a replacement vehicle for the Sheriff's Department.

Colonel Paavel presented a request to purchase a service truck from Fire Service (County #15051) to replace a vehicle in the Sheriff's fleet (County #30587). The truck would be utilized by the Dive and Swift-Water Rescue Team. The Fire Service truck has been estimated at \$6,500 by Fleet Services. The Sheriff's vehicle has been deadlined and sold for \$2,825. In addition to the \$2,825, the Lexington County Sheriff's Foundation will provide the balance of \$3,675 for the purchase of the Fire Service vehicle. No additional funding will be necessary since this will only be a replacement vehicle.

The Justice Committee voted unanimously in favor to recommend full Council to approve staff's request to purchase the replacement vehicle for the Sheriff's Department.



DRAFT
(as of December 29, 2011)

COUNTY OF LEXINGTON, SOUTH CAROLINA

ORDINANCE #12-1

AN ORDINANCE AMENDING THE LEXINGTON COUNTY LANDSCAPE AND OPEN SPACE ORDINANCE

Pursuant to the authority granted by the Constitution of the State of South Carolina and General Assembly of the State of South Carolina, be it ordained and enacted by the Lexington County Council as follows:

Amendments to the Landscape and Open Space Ordinance are to be considered that would update the restrictions contained therein and as a minimum address the following issues:

1. Address the scope of the regulations.
2. Modify and expand the definitions.
3. Update and expand the Landscaping Requirements.
4. Modify the Open Space Requirements.

Make the following changes and additions to:

Article 1 – Authority

1.2 Intent

The purpose of this Ordinance is to protect and enhance the character, appearance, and image of Lexington County through attractive and creative landscape design and open space; to ensure land-use compatibility through proper use of vegetation and open space as transition areas and screening; and to preserve scenic, canopied tree corridors **while balancing the needs and demands of a quickly developing community.**

1.3 Scope of Regulations

Except as otherwise stated, the regulations set forth herein shall apply to all Residential Attached dwelling units and Mobile Home Parks, as defined within the Lexington County Zoning Ordinance; all residential and nonresidential subdivisions, as defined and regulated within Article 4; and all nonresidential development within the unincorporated area of Lexington County, with the exception of the following development conditions/activities:

- a. Any public road construction or utility construction project, except as described in Article 3, Section 4 Service Areas/Utilities.
- b. Any land used for Crops and Animal Operations, as defined in the Lexington County Zoning Ordinance. These definitions include the raising of trees, vines, field, forage, or other plant crops intended to provide food or fiber. However, processing areas/buildings, transport and warehousing, and retail or wholesale activities related

to crops and animal operations are not exempt from the terms of this Ordinance. Section 3.1.7 Clearcutting, further defines the exemptions allowed for timber harvesting.

- c. Nonresidential development containing a parking lot that is used as a display/storage area greater than 10,000 square feet shall be exempt from the provisions of Article 3, Section 3 Parking Lots, within the display area only (i.e., automobile, boat and craft dealerships; truck terminals; etc.).
- d. Advertising signs, as defined and regulated in the Lexington County Zoning Ordinance.

Some of the residential activities, exempted above from the scope of these regulations, must follow the requirements of Article 3, Section 7 Scenic Corridor Protection.

1.6 Exclusions

~~Because such activities are developed with benefit of public hearings and other input, In the interest of meeting the public need for services in an efficient and timely manner, and because such activities are developed with the benefit of public input, any facility or activity established or expanded~~ **owned and operated** by Lexington County is exempt from the provisions ~~and administrative procedures~~ of this Ordinance. However, the development **and operation plan** for all such **exempt** activities shall be ~~devised~~ **conducted** with a diligent effort to meet the requirements of this Ordinance.

Make the following changes and additions to:

Article 2 – Definitions

2.2 Definitions

Bioretention Pond – A structure that utilizes soils and woody and herbaceous plants to remove pollutants from stormwater runoff.

~~Tree, Canopy, Large~~ – Any single- or **multi-stem** tree of a species which normally reaches a height of 30 feet or more ~~and a crown spread of 20 feet or more~~ at maturity.

~~Tree, Understory, Small~~ – Any single- or multi-stem tree of a species which normally reaches a height of between 8 and 30 feet ~~and a crown spread of less than 20 feet~~ at maturity.

Make the following changes and additions to:

Article 3 – Landscaping Requirements

Sections 1(General), 3(Parking Lots), 4(Service Areas/Utilities), and 6(Road Corridors)

3.1.2 Planting and Maintenance

- c. All newly planted trees and shrubs shall be mulched evenly around each individual plant and extend to the dripline, but no less than a 4-foot radius from the trunk of the tree or shrub. The mulch should be two to three inches in depth. Group plantings, including shrubbery, shall have a defined bed area that shall be mulched. Natural areas with groupings of trees that are preserved to meet provisions of this Ordinance do not require mulch; however, individual trees that are protected will require mulch. The mulched areas should be maintained and kept free of weeds and grass.

~~e.d.~~ New trees must be planted properly, to include soil/site preparation and protection of roots. See Appendix.

3.1.3 Species Selection

f. To encourage diversity and flexibility of design, no more than ~~60~~ 40 percent of any one species ~~can be used for new tree plantings~~ ~~of tree may be used~~ in the overall development plan.

3.3.3 Trees

b. Where overhead utilities exist or are planned, ~~or where space restricts the use of canopy trees~~, understory trees may be required instead of large canopy trees, at a replacement density of ~~three~~ two understory trees for each canopy tree.

3.4.3 Detention/Retention Ponds

c. ~~For detention and retention ponds that are part of a storm/surface water system that is to be dedicated to the County, a common area shall be platted adjacent to the perimeter of the newly created County parcel. This common area shall be adequately sized to provide for either landscaping that is consistent with the overall design of the development or vegetation to screen the stormwater structure. Pond access across the common area must be provided and dedicated to the County. Easements for stormwater discharge may also be required within this common area. All platted parcels must conform to applicable Lexington County Subdivision and Land Development Regulations.~~

d. ~~Bioretention systems will be considered to have met the additional landscape requirements noted in this section of the Ordinance.~~

~~e.e.~~ The development of any system shall be in accordance with the provisions of the Lexington County Stormwater Management Ordinance, to include the requirement of fencing for safety purposes.

3.4.4 Screening

The use of vegetation for screening is strongly encouraged; however, if fencing or a wall is used for screening of service areas, utilities, or ponds, at least 50 percent of the structure shall be softened with shrubbery or other vegetation. The vegetation must be placed on the outside property line of the structure. Access and room for maintenance must be incorporated into the design and placement of the structure and subsequent vegetation. ~~The substance of the fencing, wall, or other screening structure must be approved by the Landscape Administrator.~~

3.6.1 Identification of Road Corridors

Any road identified as an Arterial, Collector, or Local Road by the Lexington County Zoning Ordinance shall be considered a road corridor. ~~When the road, and/or its right-of-way, is located within the boundaries of a municipality, the provisions of this section shall still apply if the parcel is located in the unincorporated portion of Lexington County.~~ Where any road corridor or portion thereof is also identified as a scenic corridor, the requirements of Section 7 Scenic Corridor Protection shall prevail.

3.6.3 Trees

- d. ~~Large canopy trees to provide shade will be required except where there exist overhead utilities.~~ Where overhead utilities exist or are planned, **or where space restricts the use of canopy trees**, understory trees may be required instead of large canopy trees at a replacement density of ~~three~~ **two** understory trees for each canopy tree.

Make the following changes and additions to:

Article 4 – Open Space Requirements

4.1 Residential Subdivisions

The purpose of this section is to provide guidelines for the establishment of suitable and useable open space within all proposed residential subdivisions with lot sizes less than 2 acres or which have at least ten lots.

4.1.1 Quantity of Open Space

At least 10 percent of the total gross land area of the subdivision shall be designated as open space. The following shall be counted toward this minimum open space requirement provided they are actually set aside on property separate from the subdivision parcels:

- a. Natural features (riparian areas, wetlands, natural ponds, streams, wildlife corridors, steep slopes, etc.), natural hazard areas (floodplains, floodways, etc.), stormwater features (drainage channels, ditches, ponds, etc.), and land area occupied by Low Impact Development (LID) stormwater devices;
- b. Land designated as open space as a result of the Scenic Corridor Section of this Ordinance; ~~and,~~
- c. Land occupied by active and passive recreational uses such as pools, playgrounds, tennis courts, jogging trails, ball fields, and clubhouses used primarily for recreation purposes. However, this category of open space can only encompass up to 50 percent of the required open space; **and,**
- d. **Land occupied by landscaped buffers or landscaped common areas.**

This Ordinance shall take effect _____, 2012.

Enacted the _____ day of _____, 2012

Chairman, Lexington County Council

ATTEST:

Diana W. Burnett, Clerk

First Reading: _____
Public Hearing: _____
Second Reading: _____
Third & Final Reading: _____
Filed w/Clerk of Court: _____

ORDINANCE

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE “FILOT AGREEMENT”) BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND NEPHRON SC, INC., ACTING FOR ITSELF, ANY AFFILIATES AND OTHER PROJECT SPONSORS, (THE “COMPANY”), IN CONNECTION WITH THE ESTABLISHMENT OF FACILITIES IN THE COUNTY (THE “PROJECT”); (2) THE COUNTY TO COVENANT IN SUCH FILOT AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE PROJECT; (3) SPECIAL SOURCE CREDITS IN CONNECTION WITH THE PROJECT; (4) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (5) TRANSFER AND CONVEYANCE BY THE COUNTY TO THE COMPANY OF CERTAIN PROPERTY; AND (6) OTHER MATTERS RELATING THERETO.

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, Lexington County, South Carolina (the “County”) is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into fee agreements with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011, and in order to induce Nephron SC, Inc., acting for itself, any affiliates and any other project sponsors (the “Company”), to make, or cause to be made, new or additional investment through the establishment of facilities located in the County (the “Project”), the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and further agreed to provide the Company and the Project with the benefits of certain special source revenue credits and to the inclusion and maintenance of the Project in a Multi-County Park;

WHEREAS, the Project is expected to provide significant economic benefits to the County, and in order to further induce the Company to locate, or cause location of, the Project in the County, the County desires to enter into a Fee in Lieu of Tax and Incentive Agreement (the “FILOT Agreement”) with the Company in connection with the Project, which, amongst other things, (i) establishes a negotiated payment-in-lieu-of-taxes (“Negotiated Payments-in-Lieu-of-Taxes”) arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions of the FILOT Agreement and the provisions of the Fee Act, (ii) provides for certain special source revenue credits (“Special Source Credits”) to pay, or to reimburse the Company for payment of, the costs of certain Special Source Improvements related to the Project, and (iii) agrees to the conveyance by the County to the Company of certain real property and the execution and delivery by the County of certain documentation in connection therewith, including, without limitation, a limited warranty deed, all as set forth in greater detail in the FILOT Agreement;

WHEREAS, the County Council of the County (the “County Council”) has caused to be prepared and presented to the County Council the form of the FILOT Agreement between the County and the Company, which the County proposes to execute and deliver;

WHEREAS, as further inducement to the Company, the County will include the Project, including the Project site within an existing Multi-County Park, if not already so included, and will maintain such designation with respect to the Project, including the Project site, as set forth in greater detail in the FILOT Agreement;

WHEREAS, it appears that the FILOT Agreement and the additional documents referred to therein, and attached thereto, which are before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

Section 1. Pursuant to the Fee Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings:

- (a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;
- (b) 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;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) The benefits of the Project to the public are greater than the costs;
- (e) Neither the Project nor any documents or agreements entered into by the County in connection therewith gives, or will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(f) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk to County Council, including, without limitation, the provisions regarding the Negotiated Payments-in-Lieu-of-Taxes arrangement, the Special Source Credits, and the property conveyance set forth therein, are hereby approved and all of the terms, provisions and conditions of the FILOT Agreement are hereby incorporated herein by reference as if the FILOT Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement and the other documents referred to therein, or attached thereto, to the Company.

Section 3. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be not be materially adverse to the County or the Company and as shall be approved by the officials of the County executing the same, upon advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of FILOT Agreement now before this meeting.

Section 4. The Chair of County Council and the County Administrator, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the FILOT Agreement and the other documents referred to therein, or attached thereto, and the performance of all obligations of the County under and pursuant to the FILOT Agreement and the other documents referred to therein, or attached thereto, and to carry out the transactions contemplated thereby and by this Ordinance.

Section 5. The consummation of all transactions contemplated by the FILOT Agreement is hereby approved.

Section 6. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 8. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ENACTED this _____ day of February, 2012.

LEXINGTON COUNTY, SOUTH CAROLINA

William B. "Bill" Banning, Sr., Chairman
Lexington County Council

ATTEST:

By: _____
Diana W. Burnett
Clerk to Lexington County Council

First Reading: October 25, 2011
Second Reading: February 14, 2012
Public Hearing: February 14, 2012
Third Reading: _____

ORDINANCE

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE “FILOT AGREEMENT”) BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND NEPHRON SC, INC., ACTING FOR ITSELF, ANY AFFILIATES AND OTHER PROJECT SPONSORS, (THE “COMPANY”), IN CONNECTION WITH THE ESTABLISHMENT OF FACILITIES IN THE COUNTY (THE “PROJECT”); (2) THE COUNTY TO COVENANT IN SUCH FILOT AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE PROJECT; (3) SPECIAL SOURCE CREDITS IN CONNECTION WITH THE PROJECT; (4) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (5) TRANSFER AND CONVEYANCE BY THE COUNTY TO THE COMPANY OF CERTAIN PROPERTY; AND (6) OTHER MATTERS RELATING THERETO.

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, Lexington County, South Carolina (the “County”) is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into fee agreements with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011, and in order to induce Nephron SC, Inc., acting for itself, any affiliates and any other project sponsors (the “Company”), to make, or cause to be made, new or additional investment through the establishment of facilities located in the County (the “Project”), the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and further agreed to provide the Company and the Project with the benefits of certain special source revenue credits and to the inclusion and maintenance of the Project in a Multi-County Park;

WHEREAS, the Project is expected to provide significant economic benefits to the County, and in order to further induce the Company to locate, or cause location of, the Project in the County, the County desires to enter into a Fee in Lieu of Tax and Incentive Agreement (the “FILOT Agreement”) with the Company in connection with the Project, which, amongst other things, (i) establishes a negotiated payment-in-lieu-of-taxes (“Negotiated Payments-in-Lieu-of-Taxes”) arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions of the FILOT Agreement and the provisions of the Fee Act, (ii) provides for certain special source revenue credits (“Special Source Credits”) to pay, or to reimburse the Company for payment of, the costs of certain Special Source Improvements related to the Project, and (iii) agrees to the conveyance by the County to the Company of certain real property and the execution and delivery by the County of certain documentation in connection therewith, including, without limitation, a limited warranty deed, all as set forth in greater detail in the FILOT Agreement;

WHEREAS, the County Council of the County (the “County Council”) has caused to be prepared and presented to the County Council the form of the FILOT Agreement between the County and the Company, which the County proposes to execute and deliver;

WHEREAS, as further inducement to the Company, the County will include the Project, including the Project site within an existing Multi-County Park, if not already so included, and will maintain such designation with respect to the Project, including the Project site, as set forth in greater detail in the FILOT Agreement;

WHEREAS, it appears that the FILOT Agreement and the additional documents referred to therein, and attached thereto, which are before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

Section 1. Pursuant to the Fee Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings:

- (a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;
- (b) 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;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) The benefits of the Project to the public are greater than the costs;
- (e) Neither the Project nor any documents or agreements entered into by the County in connection therewith gives, or will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(f) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk to County Council, including, without limitation, the provisions regarding the Negotiated Payments-in-Lieu-of-Taxes arrangement, the Special Source Credits, and the property conveyance set forth therein, are hereby approved and all of the terms, provisions and conditions of the FILOT Agreement are hereby incorporated herein by reference as if the FILOT Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement and the other documents referred to therein, or attached thereto, to the Company.

Section 3. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be not be materially adverse to the County or the Company and as shall be approved by the officials of the County executing the same, upon advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of FILOT Agreement now before this meeting.

Section 4. The Chair of County Council and the County Administrator, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the FILOT Agreement and the other documents referred to therein, or attached thereto, and the performance of all obligations of the County under and pursuant to the FILOT Agreement and the other documents referred to therein, or attached thereto, and to carry out the transactions contemplated thereby and by this Ordinance.

Section 5. The consummation of all transactions contemplated by the FILOT Agreement is hereby approved.

Section 6. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 8. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ENACTED this _____ day of February, 2012.

LEXINGTON COUNTY, SOUTH CAROLINA

William B. "Bill" Banning, Sr., Chairman
Lexington County Council

ATTEST:

By: _____
Diana W. Burnett
Clerk to Lexington County Council

First Reading: October 25, 2011
Second Reading: February 14, 2012
Public Hearing: February 14, 2012
Third Reading: _____

DRAFT 2/9/12

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

BETWEEN

LEXINGTON COUNTY, SOUTH CAROLINA

AND

NEPHRON SC, INC.

DATED AS OF

FEBRUARY 28, 2012

NPCOL1:2647208.3-AGR-(SIN) 049472-00001

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (the “Agreement”) is made and entered into as of February 28, 2012 by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **NEPHRON SC, INC.**, a corporation organized and existing under the laws of the State of South Carolina, acting for itself, any affiliates or other project sponsors (the “Company”).

WITNESSETH:

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to make investments and thus make use of and employ workers and other resources of the State, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (the Multi-County Park and the Special Source Act, together with the Fee Act, hereinafter collectively referred to as the “Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

WHEREAS, pursuant to the Fee Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

WHEREAS, pursuant to an Inducement Resolution for Project Cauliflower dated October 25, 2011 (the “Inducement Resolution”), and in order to induce the Company to make,

or cause to be made, new investment in the County, the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and agreed to provide the Company and the Project with the benefits of certain Special Source Credits (as defined herein), to include and maintain and maintenance of the Project in a Multi-County Park, and to convey certain real property to the Company, all as set forth greater detail herein; and

WHEREAS, pursuant to an Ordinance adopted on February 28, 2012 (the “Ordinance”), the County Council, authorized the County to enter into this Agreement with the Company, which, establishes, amongst other things, a negotiated payment-in-lieu-of-taxes arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions hereof and the provisions of the Fee Act, and which provides for Special Source Credits to pay, or to reimburse for payment of, the costs of certain Special Source Improvements related to the Project, all as set forth in greater detail herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained and other value, the parties hereto agree as follows:

ARTICLE I

RECAPITULATION AND DEFINITIONS

SECTION 1.1. Statutorily Required Recapitulation. Pursuant to Section 12-44-55(B) of the Fee Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Fee Act, then the County agrees to waive any and all penalties and fees of the County for the Company’s noncompliance.

SECTION 1.2. Rules of Construction; Use of Defined Terms. Unless the context clearly indicates otherwise, in this Agreement words and terms defined in **Section 1.3** hereof are used with the meanings ascribed thereto. The definition of any document or agreement shall include any amendments, supplements, addenda, and modifications to that document, unless the context clearly indicates otherwise.

SECTION 1.3. Definitions.

“**Act**” means, collectively, Title 12 Chapter 44 of the Code (the “Fee Act”), Title 4, Chapter 1 of the Code (the “Multi-County Park Act”) including, without limitation, Section 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, (the “Special Source Act”).

“Affiliate” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or which now or hereafter is owned in whole or in part by the Company or by any partner, shareholder or owner of the Company, as well as any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

“Agreement” means this Agreement dated as of February 28, 2012 between the County and the Company.

“Applicable Governmental Body” means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

“Chair” means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

“Clerk” means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

“Code” means Code of Laws of South Carolina 1976, as in effect on the date hereof, as the same may be amended from time to time.

“Commencement Date” means the last day of the Property Tax Year during which Project property consisting of economic development property (as defined under the Fee Act) is first placed in service; except that this date must not be later than the last day of the Property Tax Year which is three (3) years from the year in which the County and the Company have entered into this Agreement.

“Company” means Nephron SC, Inc., a South Carolina Corporation, and its successors and assigns.

“County” means **Lexington County, South Carolina**, and its successors and assigns.

“County Administrator” means the County Administrator for the County (or the person or persons authorized to perform the duties thereof in the absence of the County Administrator).

“County Council” means the County Council of the County.

“Documents” means the Inducement Resolution, the Ordinance, this Agreement, the Multi-County Park Agreement, and the Ordinances enacted by the County Council to create the Multi-County Park and to add the Site and the Project to the Multi-County Park.

“DOR” means the South Carolina Department of Revenue and any successor thereto.

“Enhanced Investment FILOT Minimum Requirements” shall mean (i) investment in the Project of at least \$150,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) creation of at least 125 new full-time jobs at the Project, all in accordance with Section 12-44-30(7) of the Fee Act.

“Event of Default” shall mean any Event of Default specified in **Section 9.1** of this Agreement.

“Fee Term” shall mean the duration of the Negotiated Payments-in-Lieu-of-Taxes arrangement with respect to each Stage of the Project as specified in **Section 5.3** hereof.

“Full-Time Jobs” shall mean a job requiring a minimum of 35 hours of an employee’s time per week for the entire normal year of the Company’s operation or a job requiring a minimum of 35 hours of an employee’s time per week for a year in which the employee was hired initially for or transferred to the Project.

“Inducement Resolution” shall mean the Inducement Resolution for Project Cauliflower of the County Council adopted on October 25, 2011.

“Investment Period” shall initially mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the tenth Property Tax Year following the Commencement Date; provided, that the Company may request an extension of such period as set forth in **Section 3.2(b)** hereof.

“Multi-County Park” means the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which includes the Project and which is designated by the County as such pursuant to the any agreement that supersedes or replaces the initial Multi-County Park Agreement set forth herein.

“Multi-County Park Agreement” shall mean the Agreement for Development of Joint County Industrial Park dated December 11, 1995 between the County and Calhoun County as amended to include the Project and as further amended, supplemented, or replaced from time to time.

“Negotiated Payments-in-Lieu-of-Taxes” means the payments to be made pursuant to **Section 5.1** of this Agreement with respect to that portion of the Project consisting of economic development property (as defined under the Fee Act).

“Ordinance” means the Ordinance adopted by the County on February 28, 2012, authorizing the County’s execution, delivery, performance, and entering into of this Agreement.

“Payments-in-Lieu-of-Taxes” means any and all payments-in-lieu-of-taxes to be made with respect to the Project whether made as Negotiated Payments-in-Lieu-of-Taxes pursuant to the Fee Act or made as payments-in-lieu-of-taxes pursuant to the Multi-County Park Act.

“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.

“Phase 1 Contractual Minimum Requirements” shall mean (i) investment in the Project of at least \$313,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation of at least 700 Full-Time Jobs, all within the Phase 1 Contractual Minimum Requirements Compliance Period.

“Phase 1 Contractual Minimum Requirements Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the seventh Property Tax Year following the Commencement Date.

“Phase 2 Special Source Credits Requirements” shall mean (i) additional investment in the Project (without regard to depreciation, reassessment or other diminution in value) of at least \$205,000,000 and (ii) the creation of at least 250 Full-Time Jobs at the Project, all in excess of the investment and job requirements set forth in the Phase 1 Contractual Minimum Requirements, and within the Investment Period.

“Phase 3 Special Source Credits Requirements” shall mean (i) additional investment in the Project (without regard to depreciation, reassessment or other diminution in value) of at least \$244,000,000 and (ii) the creation of at least 285 Full-Time Jobs at the Project, all in excess of the aggregate investment and job requirements set forth in the Phase 1 Contractual Minimum Requirements and the Phase 2 Special Source Credits Requirements and within the Investment Period.

“Project” shall mean (i) the Site and all buildings structures, fixtures, and other improvements now or hereafter located at the Site including, without limitation, rail, water, sewage treatment and disposal facilities, and air and other pollution control facilities; (ii) all machinery, apparatus, equipment, fixtures, office facilities, furnishings, pollution control equipment and other personal property now or hereafter located at the Site; and (iii) any Replacement Property; provided, however, except as to Replacement Property and any other property placed in service in the County in resatisfaction of the investment maintenance levels as set forth in **Section 5.5(b)(ii)** hereof, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

“Property Tax Year” shall mean the annual period which is equal to the fiscal year of the Company, i.e., the annual period ending on December 31 of each year.

“Replacement Property” means any property placed in service after the Investment Period as a replacement for any economic development property (as defined under the Fee Act) theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in **Section 5.2** hereof.

“Site” means the land at which Project property will be located in the County which land is further described in **Exhibit A** hereto.

“Special Source Credits” mean the special source revenue credits described in **Section 5.7** hereof.

“Special Source Improvements” means, to the extent paid for, or caused to be paid for, by the Company, or used by the Company pursuant to any financing, lease, license or other access arrangement, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all in accordance with the Special Source Act. For purposes of this Agreement, Special Source Improvements shall be deemed to include, without limitation, all roadwork, rail, water, sewer, drainage, power and utility facilities serving the Project, as well as any land comprising the Site, the buildings, fixtures and other real property improvements at the Site, and the personal property, including machinery and equipment, located at the Site, and any additions or improvements to any of the foregoing, whether paid for by the Company directly or pursuant to any lease, license or other access arrangement.

“Stage” with respect to the Project shall mean each individual annual increment of Project property, if any, placed in service during the Investment Period.

“Standard FILOT Minimum Requirement Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the fifth Property Tax Year following the Commencement Date.

“Standard FILOT Minimum Requirement” shall mean investment in the Project of at least \$5,000,000 (without regard to depreciation, reassessment, or other diminution in value) within the Standard FILOT Minimum Requirement Compliance Period, in accordance with Section 12-44-30(14) of the Fee Act.

“State” means the State of South Carolina.

SECTION 1.4. Internal References. Any reference to any agreement or document in this Article I or otherwise in this Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document. References herein to Title, Chapters or Sections, except the references to Sections of this Agreement or where the

intent clearly requires otherwise, refer to Sections of the Code. The words “hereof”, “herein”, “hereunder”, and other words of similar impact refer to this Agreement as a whole.

ARTICLE II

LIMITATION OF LIABILITY; EXEMPTION FROM *AD VALOREM* TAXES

SECTION 2.1. Limitation of Liability. Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

SECTION 2.2. Exemption from Ad Valorem Taxes. The County and the Company acknowledge that pursuant to the Act, upon execution of this Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, is the basis upon which the Company has entered into this Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1. Representations and Warranties of the County. The County makes the following representations and warranties to the Company, and covenants with the Company, as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially adversely affect the validity or enforceability of the Documents, the

County's obligations hereunder, or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable provisions of the Fee Act, each item of real and personal property comprising the Project shall be considered economic development property (as defined under the Fee Act).

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

SECTION 3.2. Covenants by the County. The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations under the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) To the extent permitted by law, the Company may request of the County, and the County may approve in its sole discretion, an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Fee Act. The grant of any such extension by the County may be approved by a resolution of County Council. Upon the granting of any such extension the County agrees to, at the Company's expense, cooperate with the Company in assisting the Company to file with the DOR a copy of documentation evidencing such extension within thirty (30) days of the date of execution thereof by the County.

SECTION 3.3. Representations and Warranties of the Company. The Company makes the following representations and warranties to the County:

(a) The Company is a corporation authorized to transact business in the State. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in such Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in such Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Company is a party.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the execution, delivery, and performance by the Company of Documents to which the Company is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The Company will pay all reasonable and necessary costs of the County, including attorney's fees, incurred in connection with the negotiation, authorization, execution and delivery of this Agreement. Legal counsel to the County has estimated its attorney's fees in connection with such matters to be \$_____ or less.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF THE PROJECT AND THE SPECIAL SOURCE IMPROVEMENTS

SECTION 4.1. The Project. The Company has acquired, constructed and/or installed or has made or will make plans for the acquisition, construction and/or installation of certain real property improvements and machinery, equipment, and other personal property comprising the Project. The parties agree that Project property shall consist of the Site, such property and any additional real and personal property as may be identified by the Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement

with the Company or any of its Affiliates with respect to Project property, on, or in connection with, annual filings with the DOR of a SCDOR PT-300, or comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time), with respect to each Property Tax Year within the Investment Period and, as to Replacement Property, with respect to each Property Tax Year thereafter during the term of this Agreement. The Project will consist of facilities utilized primarily in connection with the manufacturing of pharmaceutical products and related activities.

Pursuant to the Fee Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property (as defined under the Fee Act), so long as such property meets the requirements of the Fee Act.

Notwithstanding any other provision of this Agreement, the Company may place property into service at any time under this Agreement, but such property may only qualify as economic development property (as defined under the Fee Act) if it is placed in service during the Investment Period, including any additional extension period thereto, or is Replacement Property.

All investment in, and job creation at, the Project by the Company, by any of its Affiliates, including, without limitation, Nephron Pharmaceutical Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus LLC, and by any third party to the extent that the Company or any of its Affiliates utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement, shall, to the extent permitted by law, count toward each investment and job requirement or threshold specified in this Agreement including, without limitation, the Phase 1 Contractual Minimum Requirements, the Enhanced Investment FILOT Minimum Requirements, the Standard FILOT Minimum Requirement, the Phase 2 Special Source Credits Requirements, and the Phase 3 Special Source Credits Requirements. Notwithstanding anything in this Agreement or the other Documents to the contrary, each such Affiliate or third party, upon written notice by the Company to the County of the identity of such Affiliate or third party, which notice is hereby provided to the County with respect to Nephron Pharmaceutical Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus LLC, shall hereby also be entitled, to the extent permitted by the Act, to all rights, interests, and benefits to which the Company is entitled under this Agreement including, without limitation, the Negotiated Payments-in-Lieu-of-Taxes and Special Source Credits arrangements and shall also be bound by all of the duties, restrictions, and obligations to which the Company has agreed upon under this Agreement (but excluding the benefits and obligations specified in **Section 5.5** hereof), all only with respect to each such entity's portion of the Project. The Company shall notify DOR in writing of all such entities to benefit from the Negotiated Payments-in-Lieu-of-Taxes arrangement in accordance with Section 12-44-130(B) of the Fee Act. Any other entity to whom the Company intends to extend the benefits of this Agreement may, at the request of the Company, be approved by a resolution passed by the County Council, in its sole discretion.

SECTION 4.2. Diligent Completion. The Company agrees to use reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Agreement or the other Documents to the contrary, the Company shall not be obligated to complete, acquire, construct, and install, or cause the completion, acquisition, construction, and installation of, all or any portion of the Project, and may terminate this Agreement with respect to all or any portion of the Project as set forth in **Article X** herein.

SECTION 4.3. Modifications to Project. The Company may make, or cause to be made, from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes, in its sole discretion.

SECTION 4.4. Special Source Improvements. The Company agrees to provide, or cause to be provided, the funding for the designing, acquiring, constructing, improving, or expanding of Special Source Improvements related to the establishment of the Project.

SECTION 4.5. Reports; Filings. In accordance with Section 12-44-90 of the Fee Act, the Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 of DOR, to be filed with the County Auditor, the County Assessor, the County Treasurer and DOR within thirty (30) days after the date of execution and delivery hereof and shall also cause a copy of this Agreement to be filed with the County Auditor and the County Assessor of Calhoun County. In addition, the Company shall provide the County Auditor, the County Assessor, and the County Treasurer with a copy of all annual filings made by the Company to DOR pursuant to this Agreement and the Fee Act.

ARTICLE V

NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE CREDITS

SECTION 5.1. Negotiated Payments-in-Lieu-of-Taxes. The parties acknowledge that under Section 12-44-40 of the Fee Act, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes with respect to the Project as provided in this **Section 5.1**. In accordance with the Fee Act, and unless this Agreement is sooner terminated, the Company shall make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Fee Act. Such amounts shall be calculated and payable as follows:

(a) Subject to the provisions of **Section 5.4** hereof, the County has agreed to accept, and the Company has agreed to make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using (i) an assessment ratio of 4%; (ii) a millage rate which is fixed at **284.190** mills for each 30-year payment period applicable to each

Stage of the Project as set forth in **Section 5.3** hereof; and (iii) the fair market value of such property which shall be determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act as follows:

- (i) for real property if such real property is constructed for the fee or is purchased in an arm's length transaction, by utilizing the original income tax basis for South Carolina income tax purposes without regard to depreciation, reassessment, or other diminution in value; provided, however, that the Company and the County may agree to hereafter amend this Agreement as to Project real property so as to determine the fair market value of any such real property in accordance with any other method permitted by the Fee Act; and
- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation, reassessment, or other diminution in value, allowable for property tax purposes, except that the Project is not entitled to extraordinary obsolescence.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code.

(c) The Company shall make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the Property Tax Year for which the Project property consisting of economic development property (as defined under the Fee Act) is first placed in service. The Negotiated Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Agreement when, but for this Agreement, such taxes would have been paid with respect to the Project.

(d) Any economic development property (as defined under the Fee Act) placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding thirty (30) years following the Property Tax Year in which such property was placed in service. Pursuant to and subject to the Fee Act: (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same Property Tax Year; (ii) Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same Property Tax Year that the Replacement Property is placed in service; (iii) more than one piece of property can replace a single piece of property; (iv) Replacement Property does not have to serve the same function as the Project property it is

replacing; (v) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Project property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property (as defined under the Fee Act) were not allowed; and (vi) Replacement Property is entitled to Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof for the remaining portion of the thirty-year payment period referred to in this **Section 5.1(d)** applicable to the property which it is replacing.

SECTION 5.2. Disposal of Property; Replacement Property.

(a) In any instance where the Company, in its sole discretion, determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to **Section 5.2** hereof. Subject to the provisions of **Section 5.4** hereof with regard to the maintenance of certain investment levels, and **Section 5.2** hereof with respect to Replacement Property, the Negotiated Payments-in-Lieu-of-Taxes required by **Section 5.1** hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to **Section 5.2** hereof.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to **Section 5.2(a)** hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced.

SECTION 5.3. Fee Term. The applicable term of the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in this Agreement shall be measured separately for each Stage beginning from the last day of the Property Tax Year in which such Stage of the Project is placed in service through the last day of the Property Tax Year which is the twenty-ninth year following such year. This Agreement shall terminate, as to the Negotiated Payments-in-Lieu-of-Taxes arrangement, with respect to the Project or any Stage or part thereof, upon the earlier to occur of (a) payment of the final installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof with respect to the Project or such Stage or part thereof, as the case may be, or (b) exercise by the Company of its option to terminate pursuant to **Section 10.1** hereof with respect to the Project or such Stage or part thereof, as the case may be,.

SECTION 5.4. Failure to Achieve or Maintain FILOT Investment Requirements.

(a) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance

Period, but the Standard FILOT Minimum Requirement is nevertheless satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, retroactively and prospectively. In such event, within one hundred eighty (180) days following the end of the Phase 1 Contractual Minimum Requirements Compliance Period, the Company shall make, or cause to be made, payment to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of Negotiated Payments-in-Lieu-of-Taxes which would have otherwise been due in the case of an applicable assessment ratio equal to 6%.

(b) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, and the Standard FILOT Minimum Requirement is not satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, then the Negotiated Payments-in-Lieu-of-Taxes shall revert to *ad valorem* property taxation, retroactively and prospectively, and the County shall terminate this Agreement. In the event that the County terminates this Agreement pursuant to this **Section 5.4(b)**, within one hundred eighty (180) days following the end of the Phase 1 Contractual Minimum Requirements Compliance Period, the Company shall, if deemed due by the County, make, or cause to be made, payments to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of *ad valorem* property taxes which would otherwise have been due, subject to **Section 5.4(d)** hereof, plus any interest required to be paid under Section 12-44-140(B) of the Fee Act.

(c)

(i) In the event that the Phase 1 Contractual Minimum Requirements are satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but following the Phase 1 Contractual Minimum Requirements Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 1 Contractual Minimum Requirements, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains at least the investment level set forth in the Enhanced Investment FILOT Minimum Requirement, then the Project shall nevertheless continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof including, without limitation, with an applicable assessment ratio of 4%, retroactively and prospectively.

(ii) In the event that the Phase 1 Contractual Minimum Requirements are satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but following the Phase 1 Contractual Minimum Requirements Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the

investment level set forth in the Enhanced Investment FILOT Minimum Requirement, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains at least the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated Payments-in-Lieu-of-Taxes due as to the Project with respect to the Property Tax Year during which such investment shortfall occurs.

(iii) In the event that either or both of the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, but the Project nevertheless continues to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement pursuant to this **Section 5.4**, if following the Standard FILOT Minimum Requirement Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall prospectively, commencing with any Payments-in-Lieu-of-Taxes due as to the Project with respect to the Property Tax Year during which such investment level shortfall occurs, be subject to *ad valorem* property taxation or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act, as the case may be, subject to **Section 5.4(d)** hereof.

(d) In the event that the Company is required to make, or to cause to be made, any differential payment to the County or is no longer eligible for Negotiated Payments-in-Lieu-of-Taxes, pursuant to **paragraphs (b) or (c) of Section 5.4** hereof, in calculating any such differential payment or prospective *ad valorem* property tax or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act due from the Company, as the case may be, the Company shall be entitled: (1) to enjoy the five-year exemptions from *ad valorem* property taxes (or fees in lieu of property taxes) provided by Article X, Section 3 of the Constitution of the State, and any other property tax exemption that would have been available to the Company; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* property taxes hereunder or under the Fee Act.

SECTION 5.5. Property Conveyance. The real property located and shown at the Site attached hereto as **Exhibit A** and made a part hereof, together with and including all improvements, rights, members, easements, riparian rights, timber, minerals, appurtenances and hereditaments belonging or in anywise incident or appertaining to the Site, shall be conveyed by limited warranty deed, in substantially the form attached hereto as **Exhibit B** and made a part hereof, by the County to the Company within the later to occur of either (i) thirty (30) days after approval and execution of this Agreement, or (ii) thirty (30) days of the satisfaction, in the sole discretion of the Company, of all conditions to closing and any title and/or due diligence

objections raised by the Company. The County has no obligation to correct any defect in title. If the Company is not satisfied with the results of the title examination, the Company's sole right is to terminate this Agreement. The closing shall be held at the offices of the Company's South Carolina counsel, Nexsen Pruet, LLC in Columbia, South Carolina, unless an alternative location is mutually agreed upon by the County and the Company; provided, however, all parties hereto agree that the closing may be conducted in escrow without any applicable parties having to be physically present at the closing. The County shall deliver possession of the Site at closing. The conveyance shall be subject only to the easements and restrictions of public record at the Office of the Register of Deeds for Lexington County, South Carolina, provided that they are not objected to by the Company, and provided further that they do not interfere with the use, operation, and development of the Site or the Project for the Company's intended purpose (the same being primarily the development, construction, and operation of a pharmaceutical manufacturing facility), and to all applicable governmental ordinances and statutes, and subject to the following conditions which shall be included in the conveyance deed or other appropriate documents, as applicable and necessary, which will be recorded in the Lexington County, South Carolina Register of Deeds Office and all which shall survive the closing for only so long as these terms may expressly provide in this Agreement, if at all:

(a) The Company shall commence construction on the Site within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company. If the Company fails to commence construction on the Site within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company, the County may elect by providing written notice to the Company that the County would like the Site to be conveyed back to the County. Notwithstanding anything to the contrary contained herein, conclusive evidence of the commencement of construction shall be by the recordation of an affidavit of construction commencement (the "Commencement Affidavit") by the Company in the Office of the Register of Deeds for Lexington County, South Carolina providing that the Company has commenced physical work on the Site and that such work commenced within six (6) months of recordation of the limited warranty deed for the Site from the County to the Company, subject to force majeure, acts of God, or other matters beyond the reasonable control of the Company. The recordation of the Commencement Affidavit by the Company in the Office of the Register of Deeds for Lexington County, South Carolina, shall be conclusive evidence of the commencement of construction on the Site by the Company, and after recordation of the Commencement Affidavit any and all rights of the County to request a reconveyance of the Site and any requirement of commencement of construction shall thereafter be automatically void and of no further force or effect. The provisions of this paragraph shall be included in the limited warranty deed from the County to the Company.

(b)

(i) Should either or both the Phase 1 Contractual Minimum Requirements not be satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, upon written request by the County accompanied by verification that such requirements have not been satisfied, the Company shall have until the end of the Property Tax Year following the Property Tax Year in which such written notice from the County is received by the Company to either show compliance or come into compliance with any such requirement. If, within such cure period, the Company shall not achieve compliance with such requirements, upon written request of the County, the Company shall pay the County for the value of the Site conveyance at the value of \$60,000 per acre within ninety (90) days after written notice from the County to the Company of the failure to satisfy such requirements.

(ii) Should the Phase 1 Contractual Minimum Requirements be satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, or by the end of the cure period described in **Section 5.5(b)(i)** hereof, as the case may be, but within seven (7) Property Tax Years following the Property Tax Year in which such requirements are initially satisfied, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 1 Minimum Contractual Requirements, the Company shall pay the County for the value of the Site conveyance upon the terms set forth in **Section 5.5 (b)(i)** hereof; provided, that, notwithstanding the foregoing, should, as a result, in whole or in part, of force majeure, acts of God, or other matters beyond the reasonable control of the Company, investment in the Project, without respect to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 1 Minimum Contractual Requirements during the above-referenced seven-year period, the above-referenced payment shall only become due to the County if, within seven (7) Property Tax Years following the Property Tax Year during which such shortfall occurs, such investment level in the Project is not resatisfied.

(iii) At Closing, the County and the Company shall execute a memorandum of this Agreement in substantially the form attached hereto as **Exhibit C**, and made a part hereof (the "Memorandum of Agreement"). The Memorandum of Agreement shall be recorded in the Office of the Register of Deeds for Lexington County, South Carolina. This Agreement shall not be recorded. The provisions contained in this paragraph (b), all of which are applicable only upon recordation of the limited warranty deed for the Site referenced herein, shall be binding upon the real estate and shall run with the real estate; provided, however, upon the compliance with the investment and job requirements set forth in this paragraph (b), the provisions of this paragraph (b)

shall thereafter be automatically void and of no further force and effect and in such event, the County shall, and hereby agrees to, file an appropriate termination of the Memorandum of Agreement in the Office of the Register of Deeds for Lexington County, South Carolina. The terms and provisions of this paragraph (b) shall survive any termination of this Agreement under Section 10.1 of this Agreement.

(c) The Site is sold AS IS; provided, however, the County confirms that the Site is in “shovel ready” condition as that term is generally defined and classified by the South Carolina Department of Commerce. The County has good, indefeasible, insurable (at standard title insurance rates), and marketable title to the Site. The Company may, at its own cost, conduct an inspection and due diligence investigations of the Site, to include, but not be limited to, environmental studies (including a Phase I study and a Phase II study if the Phase I indicates the necessity of further environmental testing and investigation), soil testing, wetlands analysis and delineation, utility and water and sewer requirements. If the Company is not satisfied with the Site for any reason whatsoever, in the sole opinion and discretion of the Company, the Company may decide, in the sole and absolute discretion of the Company, to not accept the conveyance of the Site. If the Company decides, in the sole and absolute discretion of the Company, to not accept the conveyance of the Site, the Company may terminate this Agreement and this Agreement shall become null and void and of no further force or effect, and the County has no obligation to find other suitable real property for the Company. The County shall not cause or permit any encumbrances in the form of a mortgage, lien, encumbrance, covenant, condition, restriction, assessment, easement, right-of-way, obligation, encroachment or liability whatsoever, to be placed of record, affect the title insurance to be given the Company pursuant to this Agreement or otherwise exist, from the effective date of this Agreement to the date of termination of this Agreement or closing, excepting, however, such matters that have been specifically approved in writing by the Company. The County acknowledges that the natural amenities of and current state of the Site constitute a material inducement to the Company for entering into this Agreement and, therefore, the County agrees to (i) maintain the natural amenities, specifically, the tree canopy and rolling contour of the land, and soil, in its natural condition, and (ii) maintain any improvements in the condition existing on the effective date of this Agreement and not cause any damage to any improvements located on the Site, or the Site, normal wear and tear excepted. The County further agrees not to cut, clear, excavate, fill, dump or dispose of any materials of any kind on the Site during the pendency of this Agreement.

(d) The cost of the deed recording fee and/or state or local transfer taxes and documentary stamp taxes (S.C. Code Ann. Section 12-24-10, et. seq.), based on the value of the Site conveyed, on the limited warranty deed required hereunder shall be borne by the Company and paid at closing. The per page cost of recording the closing documents, including, without limitation, the limited warranty deed shall be borne by the Company. The County shall pay for any and all due diligence expenses ordered by the County and the County’s own accountants’ fees and financial consultant fees. The Company shall pay for any and all due diligence expenses ordered by the Company, the Company’s own accountants’ fees, financial consultant

fees, and attorneys' fees with this Agreement and the closing, and all title examination costs and title insurance premiums. The County shall bear all risk of loss until recordation of the deed of conveyance. The County and the Company warrant and represent that no real estate broker was involved in this transaction and no commission shall be owed in connection the sale of the Site pursuant to this Agreement. To the best of the County's knowledge and belief, there are no executory contracts, leases, agreements, service contracts, repair agreements and warranty, guaranty rights, maintenance, management or other contracts or agreements affecting the Site except those which may be terminated on thirty (30) days' notice or less, and the County shall disclose and provide all contracts, leases, or agreements affecting the Site to the Company at least forty-five (45) days prior to closing. The County shall not enter into any leases, maintenance, management, or other contracts without the Company's prior written consent which would materially affect the Site or its use and which are not terminable on ten (10) days' notice, and the County shall disclose any such contract(s) to the Company.

(e) At the closing, the County shall provide: (1) the limited warranty deed duly executed in form for recordation; (2) an owner's affidavit, lien waiver affidavit in form sufficient and acceptable to the title company so as to allow it to eliminate the standard owner's exceptions, including the parties' in possession, mechanic's lien, and gap exceptions from the title commitment and policy and running to the benefit of the Company and the title company insuring title to the Site; (3) a FIRPTA non-foreign affidavit; (4) the County ordinance authorizing the County to undertake the subject transaction; (5) a South Carolina Form I-295 Withholding Affidavit; (6) the Memorandum of Agreement (as defined hereinabove); and (7) such further documents as may be customary and reasonably required to vest title to the Site in the Company, to enable the title company to insure the title to the Site, and to give effect to the transaction contemplated under this Agreement, as required by applicable Federal, State, or Local law, or as may reasonably be requested by the Company or the title company.

(f) The Site is subject to the terms and conditions of that certain Declaration of Rights, Restrictions, Affirmative Obligations, and Conditions Which Constitute Covenants Running With Certain Lands of County Of Lexington South Carolina, dated as of December 7, 2010, and recorded on December 7, 2010, in the Office of the Register of Deeds for Lexington County, South Carolina, in Book 14607, at Page 226 (hereinafter referred to as the "Declaration"). The County hereby confirms that the County is the "Developer" under the Declaration, as such term is defined in the Declaration. In connection with the conveyance of the Site to the Company from the County, the County hereby approves and confirms the following with regard to the terms and conditions of the Declaration: (i) the requirement contained in Section 3.4 of the Declaration providing that all improvements shall be completed within one (1) year after the approval of plans by the County shall not be applicable with regard to any and all development and construction on the Site, and the County expressly waives any and all application of this completion requirement with regard to the Site; (ii) the right to re-purchase contained in Section 7.5 of the Declaration shall not be applicable to the Site, and the County expressly waives any and all application of Section 7.5 of the Declaration as it relates to the Site; and (iii) the County hereby expressly approves the development plans, conceptual plans, and

conceptual construction schedules dated as of _____ (the “Development and Conceptual Plans”) with regard to the Company’s development of the Site, and the County hereby confirms that the Development and Conceptual Plans comply with the terms and conditions contained in the Declaration, including, without limitation, height restrictions, and the County and the Company hereby understand that the Development and Conceptual Plans may be further revised with the County’s consent, which consent shall not be unreasonably withheld, conditioned, or delayed. After closing on the Site, the County shall execute a consent and approval to be recorded in the Office of the Register of Deeds for Lexington County, South Carolina, to place parties on notice of the preceding waivers and approvals of the matters contained in the Declaration as they pertain to the Site. Furthermore, following completion of construction of the improvements on the Site by the Company, and from time to time upon the reasonable request of the Company, the County shall record a commercially reasonable compliance estoppel certificate providing that the Site is in compliance with the Declaration, that no defaults exist under the Declaration, and other customary and commercially reasonable matters.

SECTION 5.6. Multi-County Park Designation. The County represents that the Site is presently included in a Multi-County Park. The County agrees to include, if not already included, and to maintain, the Project and the Site in a Multi-County Park, pursuant to Section 13 of Article VIII of the Constitution of the State and the Multi-County Park Act, on terms which provide any additional job tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks for all jobs created at the Site and the Project during the Investment Period and which facilitate the Special Source Credits, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

SECTION 5.7. Special Source Credits.

(a) As reimbursement for investment in Special Source Improvements related to the Project, and subject to the requirements of the Special Source Act and **Section 5.7(f)** hereof, the County agrees to provide to the Company, and the Company shall be entitled to receive, Special Source Credits against any and all Payments-in-Lieu-of-Taxes due as to the Project with respect to ten (10) consecutive Property Tax Years, in an amount equal to 20% of each such Payment-in-Lieu-of-Taxes, commencing with the Property Tax Year with respect to which the initial Payments-in-Lieu-of-Taxes are due as to one or more buildings comprising a portion of the Project (the “Phase 1 Special Source Credits”). In the event that the Phase 1 Contractual Minimum Requirements are not satisfied by the end of the Phase 1 Contractual Minimum Requirements Compliance Period, such Phase 1 Special Source Credits shall terminate retroactively and prospectively, and in such event, the Company shall within one hundred eighty (180) days of the end of the Phase 1 Contractual Minimum Requirements Compliance Period make, or cause to be made, payment to the County in the amount of the Phase 1 Special Source Credits theretofore received by the Company; provided, however, that notwithstanding the

foregoing provisions, in the event that the Phase 1 Minimum Contractual Requirements are not satisfied by the end of the Phase 1 Minimum Contractual Requirements Compliance Period, but the Enhanced Investment FILOT Minimum Requirements have nevertheless been satisfied by the end of the Standard FILOT Minimum Requirement Compliance Period, the Company shall be entitled to receive and retain Special Source Credits in an amount equal to 10% of such Payments-in-Lieu-of-Taxes due with respect to such ten-year period, retroactively and prospectively, and, in such event, shall be required to pay, or cause to be paid, only one-half (1/2) of such payment to the County.

(b) In addition to the Special Source Credits set forth in **Section 5.7(a)** hereof, and subject to **Section 5.7(g)** hereof, in the event that the Phase 2 Special Source Credits Requirements are satisfied by the end of the Investment Period, the County agrees to provide to the Company, and the Company shall be entitled to receive, additional Special Source Credits against any and all Payment-in-Lieu-of-Taxes due as to Project property comprising investment satisfying the Phase 2 Special Source Credits Requirements, in an amount equal to \$250,000 against each such Payment-in-Lieu-of-Taxes due with respect to ten (10) consecutive Property Tax Years commencing with the Property Tax Year with respect to which the initial Payment-in-Lieu-of-Taxes as to such property is due (the “Phase 2 Special Source Credits”).

(c) In addition to the Special Source Credits set forth in **Section 5.7(a)** and **Section 5.7(b)** hereof, and subject to **Section 5.7(h)** hereof, in the event that the Phase 3 Special Source Credits Requirements are satisfied by the end of the Investment Period, the County agrees to provide to the Company, and the Company shall be entitled to receive, additional Special Source Credits against any and all Payment-in-Lieu-of-Taxes due as to Project property comprising investment satisfying the Phase 3 Special Source Credits Requirements, in an amount equal to \$300,000 against each such Payment-in-Lieu-of-Taxes due with respect to ten (10) consecutive Property Tax Years commencing with the Property Tax Year with respect to which the initial Payment-in-Lieu-of-Taxes to such property is due (the “Phase 3 Special Source Credits”).

(d) The amount of the total annual Special Source Credits set forth in **Sections 5.7(a)**, **5.7(b)**, and **5.7(c)** hereof which are due to the Company shall be reflected on each annual bill sent by the County to the Company for such Payments-in-Lieu-of-Taxes due from the Company as to the Project with respect to each such Property Tax Year by reducing the amount of Payments-in-Lieu-of-Taxes otherwise due as to such Property by the total amount of the Special Source Credits to which the Company is entitled for such Property Tax Year.

(e) In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded in connection with the Project from time to time during the Investment Period by or on behalf of the Company. THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE AN OBLIGATION PAYABLE SOLELY FROM THE AGGREGATE PAYMENTS-IN-LIEU-OF-TAXES RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

(f) Upon commencement of the Company's receipt of the Phase 1 Special Source Credits:

(i) if, within the five (5) Property Tax Years following the Property Tax Year in which the Phase 1 Contractual Minimum Requirements are initially satisfied, investment made in the Project, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 1 Contractual Minimum Requirements, the Phase 1 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if, within the five (5) Property Tax Years following the period set forth in **Section 5.7(f)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 1 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 1 Contractual Minimum Requirements.

(g) Upon commencement of the Company's receipt of the Phase 2 Special Source Credits:

(i) if, within the five (5) Property Tax Years following the Property Tax Year in which the Phase 2 Special Source Credits Requirements are initially satisfied, investment made in Project property satisfying such investment requirements without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 2 Special Source Credits Requirements, the Phase 2 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if, within the five (5) Property Tax Years following the period set forth in **Section 5.7(g)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 2 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing upon the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 2 Special Source Credits Requirements.

(h) Upon commencement of the Company's receipt of the Phase 3 Special Source Credits:

(i) if within the five (5) Property Tax Years following the Property Tax Year in which the Phase 3 Special Source Credits Requirements are initially satisfied, investment made in Project property satisfying such investment requirements, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 3 Special Source Credits Requirements, the Phase 3 Special Source Credits shall terminate prospectively commencing with any Payments-in-Lieu-of-Taxes due as to such property with respect to the Property Tax Year during which such investment shortfall occurs; and

(ii) if within the five (5) Property Tax Years following the period set forth in **Section 5.7(h)(i)** above, the investment shortfall referenced therein occurs, the amount of Phase 3 Special Source Credits otherwise applicable to any Payments-in-Lieu-of-Taxes due as to such property with respect to any Property Tax Year during which such investment shortfall occurs shall be reduced on a pro-rata basis by comparing the highest investment level achieved during such Property Tax Year to the investment level set forth in the Phase 3 Special Source Credits Requirements set forth in the Phase 3 Special Source Credits.

ARTICLE VI

PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. Protection of Tax Exempt Status of the Project. In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a "project" in accordance with the Act.

ARTICLE VII

EFFECTIVE DATE

SECTION 7.1. Effective Date. This Agreement shall become effective as of the date first written above.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from pecuniary liability in connection with those reasons set forth in (i) or (ii) of **Section 8.1(b)** hereof.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary claims by or on behalf of any Person, arising out of the same, and all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with defending against any such claim, and upon notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents or employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual members, officers, agents or employees.

SECTION 8.2. Assignment and Leasing. Subject to and pursuant to the Fee Act, including Section 12-44-120 thereof, this Agreement may not be assigned unless the County approves such assignment by Resolution; provided, however, that such consent is not required in connection with financing-related transfers or any other transfers not requiring the consent of the County under the Fee Act. The County hereby expressly pre-approves and consents to any transfer or assignment by the Company, or any Affiliate of the Company, of any or all of its interest in the Project and/or this Agreement to, or merger or consolidation with, any other Affiliate of the Company and to any resulting transfer or assignment of any or all of such interest among such entities including, without limitation, to one or more of Nephron Pharmaceuticals

Corporation, LuLu Trucking, Inc., Loose Screw Construction, LLC, and Kennedy Campus, LLC. Notwithstanding any provision of this Section to the contrary, if and to the extent that the future consent of the County is required in connection with a transfer, assignment or other action referenced in this Section, the County hereby expressly agrees that, to the extent permitted by the Fee Act, such approval may be provided by Resolution of County Council. The Company acknowledges transfers of this Agreement or the Project property may cause the Project property to become ineligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth herein or result in penalties under the Fee Act absent compliance by the Company with the transfer provisions of Section 12-44-120 of the Fee Act.

SECTION 8.3. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company the benefits specified in **Article V** in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Fee Act, the Multi-County Park Act, and the Special Source Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Fee Act, the Multi-County Park Act, or the Special Source Act is unconstitutional or this Agreement, the Multi-County Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then at the request of the Company, the County agrees to extend to the Company the intended benefits of this Agreement and agrees, if requested, to enter into a lease purchase agreement or similar arrangement with the Company pursuant to Section 12-44-160 of the Fee Act, under Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, and to take such other steps as may be appropriate to extend to the Company the intended benefits of this Agreement, including, without limitation, the provision of a special source revenue credit to the extent statutorily allowed, which is commensurate to the benefits which would otherwise accrue to the Company under the Agreement.

SECTION 8.4. Confidentiality. The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information. The County agrees that neither the County nor any employee, agent or contractor of the County: (i) shall request, or be entitled to receive, any such confidential or proprietary information, or (ii) shall request, or be entitled, to inspect the Project or any property associated therewith. To the extent that the Company has heretofore provided confidential and proprietary information regarding the Project in the County which has been provided under written designation of the Company as "Confidential", the County shall not knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with maximum possible advance notice of such requirement to disclose before making

such disclosure, and to cooperate with any attempts by the Company to obtain judicial or other relief from such disclosure requirement, at the expense of the Company.

ARTICLE IX

EVENT OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The occurrence of any one or more of the following events shall be an “Event of Default” under this Agreement:

(a) If the Company shall fail to make, or cause to be made, any Negotiated Payments-in-Lieu-of-Taxes or any other payment required under this Agreement and such failure shall continue for thirty (30) days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company (other than as referred to in **Section 9.1(a)** hereof), and such failure shall continue for a period of thirty (30) days after written notice of default has been given to the Company by the County; provided if by reason of “force majeure” as hereinafter defined, the Company is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than thirty (30) days to cure such default and the Company is diligently attempting to cure such default, there shall be no Event of Default during such inability or cure period. The term “force majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council or other County authority; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

Anything herein to the contrary notwithstanding, failure to satisfy or maintain any investment or job requirements or levels set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate or adjust certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Sections 5.4, 5.5 and 5.7** hereof, which shall be the County’s sole remedies for any such failure.

SECTION 9.2. Remedies on Default. Whenever any Event of Default shall have happened pursuant to **Section 9.1** hereof and be subsisting, the County may (i) terminate this Agreement by providing at least thirty (30) days written notice to the Company specifying the

termination date; or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents. Although the parties acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and any act relating to the enforced collection of taxes. The County's right to receive Negotiated Payments-in-Lieu-of-Taxes shall have a first priority lien status pursuant to Section 12-44-90 of the Fee Act and Title 12, Chapters 4 and 54 of the Code. Upon the default of the County in the performance of any of its obligations hereunder, the 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.

Each right, power, and remedy of the County or the Company 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 the Company 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 the Company of any or all such other rights, powers, or remedies.

SECTION 9.3. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

SECTION 9.4. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the 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.

ARTICLE X

OPTION TO TERMINATE

SECTION 10.1. Option to Terminate. From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Agreement, the Company will become liable for *ad valorem* property taxes, or payments-in-lieu-of-taxes pursuant to the Multi-

County Park Act, as the case may be, on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1**, or, if the termination is of the entire Project, then within one hundred eighty (180) days of termination.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this **Section 11.1**:

If to the Company: Nephron SC, Inc.

With A Copy To: Burnet R. Maybank, III
Tushar V. Chikhliker
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P. O. Drawer 2426
Columbia, S.C. 29202-2426
Facsimile: 803-253-8277

If to the County: Lexington County Council, South Carolina
Attention: Clerk to Council
212 South Lake Drive
Lexington, SC 29072
Facsimile: 803-785-8101

With A Copy To: Jeff M. Anderson
Davis Frawley Anderson McCauley, Ayer, Fisher & Smith, LLC
140 E. Main Street
P.O. Box 489
Lexington, SC 29071-0489
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 11.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County and the Company, as well as any and all additional entities eligible to benefit under this Agreement pursuant to **Section 4.1** hereof or **Section 8.2** hereof, and their respective successors and assigns.

SECTION 11.3. Invalidity and Severability. In the event that the Fee Act or the Negotiated Payments-in-Lieu-of-Taxes or Special Source Credits arrangement described in the Agreement hereof is determined to be invalid or unenforceable in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Agreement; otherwise, in the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4 of the Code.

SECTION 11.4. SECTION 11.4. Payments Due on Saturday, Sunday and Holidays. Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 11.5. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent including, without limitation, any County consent specifically referred to in this Agreement, may be provided by a resolution of County Council.

SECTION 11.6. Execution of Counterparts. This Agreement may be executed in several counterparts, only one of which shall be an original; provided, however, that any action may be brought upon any counterpart of this Agreement or any counterpart of any document that is attached to this Agreement as an exhibit.

SECTION 11.7. 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 thereof.

SECTION 11.8. Law Governing Construction of Agreement. The laws of the State shall govern the construction of this Agreement.

SECTION 11.9. Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

SECTION 11.10. Further Assurance. From time to time the County agrees to execute and deliver to the Company such additional instruments and undertaking further proceedings as the Company may reasonably request to effectuate the purposes of this Agreement.

[EXECUTION PAGE TO FOLLOW]

IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY, each pursuant to due authority, has duly executed this Agreement, all as of the date first above written.

LEXINGTON COUNTY, SOUTH CAROLINA

James E. Kinard, Jr.
Chair of Lexington County Council

ATTEST:

Diana W. Burnett
Clerk, Lexington County Council

NEPHRON SC, INC.

By: _____
Name: _____
Its: _____

EXHIBIT A
SITE
LEGAL DESCRIPTION

[TO BE INSERTED]

EXHIBIT B
FORM OF LIMITED WARRANTY DEED

Attached.

EXHIBIT C

FORM OF MEMORANDUM OF AGREEMENT

Attached.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

**TITLE TO REAL ESTATE
LIMITED WARRANTY DEED**

KNOW ALL BY THESE PRESENTS that **COUNTY OF LEXINGTON, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (hereinafter sometimes referred to as “Grantor”), for and in consideration of the sum of \$10.00 and other valuable consideration to Grantor paid by **NEPHRON SC, INC.**, a South Carolina corporation (hereinafter sometimes referred to as “Grantee”), in the State aforesaid, the receipt and legal sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, convey, and confirm unto Grantee all of Grantor’s right, title, and interest in and to that certain tract or parcel of land (collectively the “Premises”) described as follows:

DESCRIPTION OF PREMISES CONVEYED

See Exhibit “A” attached hereto and incorporated herein by reference.

GRANTEE’S MAILING ADDRESS: For the purposes of this Title to Real Estate Limited Warranty Deed Grantee’s mailing address is _____.

TOGETHER WITH ALL AND SINGULAR the rights, members, easements, any and all crops and timber growing on the Premises, any and all surface or subsurface sand, gravel, oil, gas, or mineral rights on the Premises, any and all surface and subsurface water appurtenant to the Premises, all well, spring, reservoir, and water rights of any type, riparian rights, littoral rights, intangible property, permits, licenses, variances, waivers, authorizations, and hereditaments and appurtenances to the Premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the
“Permitted Exceptions”):

See Exhibit “B” attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned, unto Grantee, its
successors and assigns forever;

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend
all and singular the Premises unto Grantee, its successors and assigns, against itself, its successors and
assigns, lawfully claiming, or to claim, the same or any part thereof, but no others.

[SIGNATURE PAGE ATTACHED]

[remainder of page intentionally left blank]

EXHIBIT "A"

Legal Description:

Derivation:

Tax Map Number:

EXHIBIT “B”

Permitted Exceptions

1. Grantee shall commence construction on the Premises within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee. If Grantee fails to commence construction on the Premises within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee, Grantor may elect by providing written notice to Grantee that Grantor would like the Premises to be conveyed back to Grantee. Notwithstanding anything to the contrary contained herein, conclusive evidence of the commencement of construction shall be by the recordation of an affidavit of construction commencement (the “Commencement Affidavit”) by Grantee in the Office of the Register of Deeds for Lexington County, South Carolina providing that Grantee has commenced physical work on the Premises and that such work commenced within six (6) months of recordation of this Title to Real Estate Limited Warranty Deed for the Premises, subject to force majeure, acts of God, or other matters beyond the reasonable control of Grantee. The recordation of the Commencement Affidavit by Grantee in the Office of the Register of Deeds for Lexington County, South Carolina, shall be conclusive evidence of the commencement of construction on the Premises by Grantee, and after recordation of the Commencement Affidavit any and all rights of Grantor to request a reconveyance of the Premises and any requirement of commencement of construction shall thereafter be automatically void and of no further force or effect.

2.

STATE OF SOUTH CAROLINA)
 COUNTY OF _____)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the County of Lexington, bearing Lexington County Tax Map Number _____ and was transferred by County of Lexington, South Carolina to Nephron SC, Inc. on _____, 2012.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes ___ or No XXXX to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.
6. The deed recording fee is computed as follows:
 - (a) _____ Place the amount listed in item 4 above here: \$_____
 - (b) _____ Place the amount listed in item 5 above here: \$0.00
(If no amount is listed, place zero here.)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place result here: \$_____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$_____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Grantor.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

_____ Sworn to before me this _____ day of _____, 2012 My Commission Expires: _____ [AFFIX OFFICIAL NOTARY SEAL]	COUNTY OF LEXINGTON, SOUTH CAROLINA By: _____ (SEAL) Name: _____ Title: Chair of Lexington County Council	ATTEST: _____ (SEAL) Diana W. Burnett Clerk, Lexington County Council
--	---	--

SIGNATURE PAGE OF MEMORANDUM OF AGREEMENT

IN WITNESS WHEREOF, County has hereunto set its hand and affixed its seal effective as of the day and year set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

COUNTY OF LEXINGTON, SOUTH
CAROLINA, a body politic and corporate and a
political subdivision of the State of South
Carolina

Witness Number 1

By: _____ (SEAL)
Name: _____
Title: Chair of Lexington County Council

Witness Number 2

ATTEST:

_____(SEAL)
Diana W. Burnett
Clerk, Lexington County Council

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF SOUTH CAROLINA)

I, _____, a notary public for the State of South Carolina, do hereby certify that County of Lexington, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, by _____, its Chair of Lexington County Council, and attested to by Diana W. Burnett, Clerk of the Lexington County Council, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal, this _____ day of _____, 2012.

_____(SEAL)
Signature of Notary Public
My Commission Expires: _____

EXHIBIT A

Description of the Property

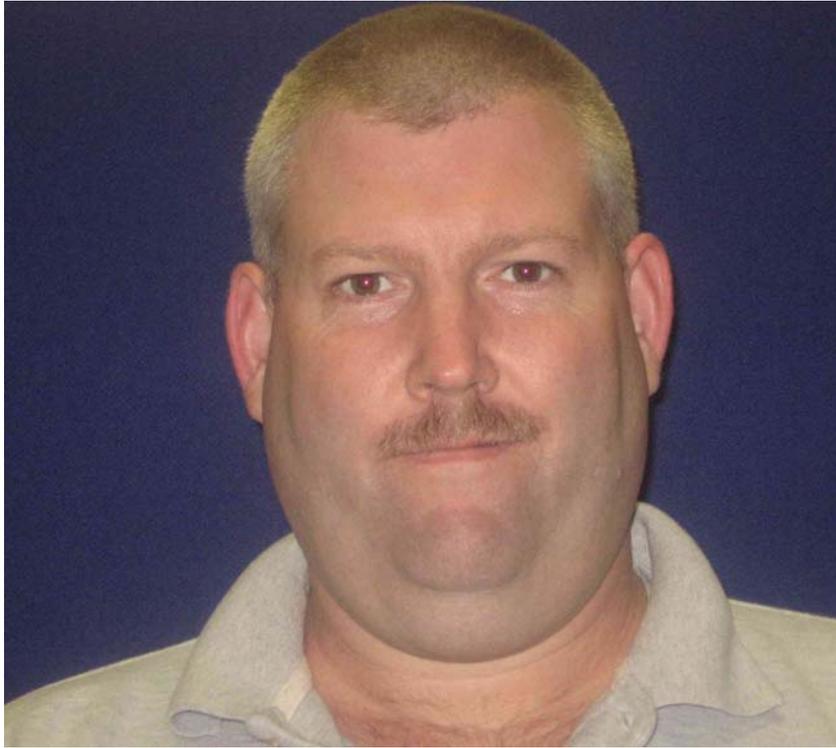
Legal Description:

Derivation:

Tax Map Number:

**Employees of the 4th Quarter
Recognized February 14, 2012**

Mike Vantroost
Breathing Air Technician
Public Safety / Fire Service



**Employees of the 4th Quarter
Recognized February 14, 2012**

Deborah Raulerson
Shift Supervisor
Public Safety / Communications



**Employees of the 4th Quarter
Recognized February 14, 2012**

Angela O'Connell
Library Assistant I, Youth Services
Library Services



**Employees of the 4th Quarter
Recognized February 14, 2012**

Lisa Blakely

Emergency Medical Technician – Intermediate (EMT I)
Public Safety / EMS

