

**RESOLUTION**

**#25-53**

**A RESOLUTION BY THE MAYOR AND COUNCIL OF THE CITY OF DUBLIN TO ACKNOWLEDGE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF DUBLIN AND COUNTY OF LAURENS DEVELOPMENT AUTHORITY AND YKK AP AMERICA, INC. FOR BOND-FINANCED PERSONAL PROPERTY IMPROVEMENTS AND PAYMENTS IN LIEU OF TAXES; TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER THE SAME; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER LAWFUL PURPOSES.**

**WHEREAS**, the City of Dublin and County of Laurens Development Authority (the “Authority”) is authorized under O.C.G.A. § 36-62-1 et seq. to issue revenue bonds and hold title to personal property to promote economic development; and

**WHEREAS**, YKK AP America, Inc. (the “Company”) owns and operates a manufacturing facility at 1229 US-441 Bypass, Dublin, GA (the “Facility”) and proposes a modernization project consisting solely of personal property (equipment, machinery, fixtures, cabling) (the “Project”) with total costs up to \$50,000,000 in five phases (2025–2029); and

**WHEREAS**, the Authority will acquire title to the Project via bills of sale, issue a single draw-down revenue bond (max \$50,000,000) to Company as purchaser, and lease the Project back to Company under a triple-net Bond Lease structured to create a nontaxable usufruct/bailment for hire; and

**WHEREAS**, the Bond is a limited obligation of the Authority payable solely from lease payments by Company; neither the City, the County, nor the State shall have any liability for repayment of the Bond or any costs of the Project; and

**WHEREAS**, in lieu of ad valorem taxes on the Project while titled to the Authority, Company will make annual Payments in Lieu of Taxes (PILOT) per the Savings Schedule:

Year	PILOT %	Savings %
1	0%	100%
2	20%	80%
3	40%	60%
4	60%	40%
5	80%	20%
6+	100%	0%

with Year 1 for each Phase being: Phase I (2026), II (2027), III (2028), IV (2029), V (2030); and

**WHEREAS**, Company commits to cumulative Investment Goals (\$25.6M by 2026, \$35.3M by 2027, \$45.1M by 2028, \$50M by 2029+) and 450 full-time jobs at the Facility; shortfalls trigger Recovery Payments (average of Jobs & Investment Shortfall % × annual tax savings) paid pro rata to taxing authorities; and

**WHEREAS**, the Project will modernize operations, improve safety, reduce emissions, retain/expand 450 jobs, and inject \$50M+ in capital—benefits the City Council finds outweigh foregone taxes during the PILOT term;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL** that upon approval by the City/Staff Attorney as to its form, and upon the recommendation of the City Manager, the Mayor is authorized to execute and deliver an acknowledgement to a MOU in substantially the same form as attached hereto as Exhibit “A” with appropriate terms and conditions consistent with the purpose of this resolution, subject to such additions, deletions, and revisions as deemed appropriate by the City Manager.

**BE IT FURTHER RESOLVED** that the City Manager, in consultation with the City/Staff Attorney, may approve such modifications, changes, or cancellation as may be deemed appropriate by him and in the best interest of the City at all points in time during the term of the MOU for the completion of the Project and the Mayor may execute and deliver the same upon said approval.

**BE IT FURTHER RESOLVED** that all actions of the City, its officers, and staff in connection with the acknowledgement, execution, delivery, and performance of agreement contemplated herein and the purposes of this Resolution are hereby approved, ratified, and confirmed. Upon recommendation of the City Manager, the Mayor is further authorized to execute any other document in furtherance of the purposes of this Resolution.

**BE IT FURTHER RESOLVED** that this Resolution shall have immediate effect upon its adoption.

**SO RESOLVED** by the Mayor and Council of the City of Dublin this 6th day of November, 2025 by a vote of 5 to 1.

**CITY OF DUBLIN, GEORGIA**

BY:   
**Joshua E. Kight, Mayor**

ATTEST:

  
**R. Blake Daniels, Interim City Clerk**

(SEAL)



RESOLUTION

#25-53

2

**MEMORANDUM OF UNDERSTANDING**

by and between

**CITY OF DUBLIN AND COUNTY OF LAURENS  
DEVELOPMENT AUTHORITY,**

a Georgia development authority, as the “Authority”

and

**YKK AP AMERICA INC.,**

a New York corporation, as the “Company”.

# TABLE OF CONTENTS

	Page
<b>1. THE PROJECT .....</b>	<b>1</b>
1.1. Description of the Project .....	1
1.2. Total Project Costs.....	3
1.3. Closing .....	3
1.4. Site .....	3
1.5. Environmental.....	3
1.6. Development of the Project .....	4
1.7. Indemnity by the Company.....	5
1.8. Year 1 .....	5
<b>2. FINANCING OF THE PROJECT.....</b>	<b>6</b>
2.1. Bond.....	6
2.2. Maximum Principal Amount of Bond .....	6
2.3. Transaction Costs.....	6
2.4. Tax Status of the Bond.....	6
2.5. Roles of Counsel.....	6
2.6. Repayment of the Bond .....	7
2.7. The Bond Lease .....	7
2.8. Purchase Option .....	7
2.9. Definitive Documents .....	7
2.10. Transfers .....	7
2.11. Statutory Compliance; Permitted Uses .....	11
<b>3. INCENTIVES TO BE PROVIDED .....</b>	<b>11</b>
3.1. Purpose of Incentives.....	11
3.2. Public Interests Protected.....	11
3.3. Permitting.....	11
3.4. Ad Valorem Tax Savings.....	11
3.5. Acknowledgments; Intergovernmental Agreement .....	13
<b>4. GOALS.....</b>	<b>13</b>
4.1. Inducement.....	13
4.2. Jobs Goal.....	14
4.3. Jobs Shortfall Percentage.....	14
4.4. Investment Goal .....	14
4.5. Investment Shortfall Percentage .....	14
4.6. Annual Report.....	14
4.7. Recovery Payments.....	15
4.8. Failure to File Report and Make Required Payments .....	15
<b>5. TERMINATION OF AGREEMENT .....</b>	<b>16</b>
5.1. Delay .....	16

5.2.	Approval by Governing Bodies .....	16
5.3.	Closing Conditions .....	16
5.4.	The Authority's Termination Rights.....	16
5.5.	The Company's Termination Rights.....	16
5.6.	Effect of Termination.....	17
<b>6.</b>	<b>MISCELLANEOUS .....</b>	<b>17</b>
6.1.	Notices .....	17
6.2.	Confidential Information .....	17
6.3.	No Partnership or Agency.....	18
6.4.	Survival of MOU .....	18
6.5.	Governing Law; Venue.....	18
6.6.	Amendments .....	18
6.7.	Entire Agreement.....	18
6.8.	Severability .....	18
6.9.	Counterparts .....	18
6.10.	No Personal Liability of Representatives of Public Bodies.....	18
6.11.	No Personal Liability of Representatives of Company.....	19
6.12.	Exclusion of Consequential Damages .....	19
6.13.	Legal Compliance .....	19
6.14.	Effective Date .....	19
Schedule 1.1	Description of the Project	
Schedule 1.4.1	Description of the Site	
Schedule 3.4.1	Savings Schedule	
Schedule 4	Incentives Schedule	
Schedule 4.2	Rules for Satisfying the Jobs Goal	
Schedule 4.4	Rules for Satisfying the Investment Goal	
Schedule 4.6	Form of Annual Report	

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (this “**Agreement**”) is entered into as of the Effective Date set forth below by and among the **CITY OF DUBLIN AND COUNTY OF LAURENS DEVELOPMENT AUTHORITY** (the “**Authority**”), a development authority and public body corporate and politic duly created by local amendment to the Georgia constitution, Ga. L. 1962, p. 1160, ratified by electors in the general election in 1962, and continued by Ga. L. 1987, p. 4525, as supplemented by Ga. L. 1963, p. 2206, Ga. L. 1976, p. 4007, Ga. L. 1977, p. 3075, and Ga. L. 1979, p. 3109 (the “**Act**”), and **YKK AP AMERICA INC.**, a New York corporation (the “**Company**”), each a “**Party**,” and collectively, the “**Parties**.” **LAURENS COUNTY** (the “**County**”), a county and political subdivision of the State of Georgia (the “**State**”), the **CITY OF DUBLIN** (the “**City**”), a municipality located in the State, the **BOARD OF TAX ASSESSORS OF LAURENS COUNTY** (the “**Board of Assessors**”) and the **TAX COMMISSIONER OF LAURENS COUNTY** (the “**Tax Commissioner**”) are each executing an Acknowledgment hereof attached to this Agreement in order to acknowledge their respective agreements to the provisions hereof which are applicable to them, but are not considered to be Parties.

### 1. THE PROJECT.

#### 1.1. Description of the Project.

1.1.1. The Company currently owns a manufacturing facility (the “**Facility**,” such term including buildings, and existing equipment and other personal property) located at 1229 US-441 Bypass, Dublin, Georgia 31021. The Company desires to undertake a capital project (the “**Project**”) in order to modernize and enhance operations, improve safety, reduce carbonization, and expand the Company’s business at the Facility. The Project shall consist of equipment, machinery, personal fixtures, cabling and other personal property for use by the Company at the Facility in its manufacturing operations thereat. For the avoidance of doubt, the Project is comprised solely of personal property, and the Project does not include any real estate, trade fixtures, building fixtures, or any real property improvements. The Project is more particularly described on Schedule 1.1 attached hereto and incorporated herein by reference.

1.1.2. The Project will be undertaken in phases (each, a “**Phase**,” and collectively, the “**Phases**”). The Company shall undertake and proceed with each Phase on and subject to the terms and conditions of this Agreement. Unless the context otherwise requires, references herein to the Project include all Phases. A Phase reference may include a number to indicate the Phase’s place in the sequence of Phases; *e.g.*, the initial Phase is Phase I. As provided below, there are a total of five (5) Phases, including Phase I.

1.1.3. Each Phase shall each consist of a tranche of Project property for which the Company incurred costs for such Phase. The property whose costs are represented by a tranche shall constitute a Phase, so, for example, the property of the first tranche is Phase I. Phase I shall be comprised of Project property for which the Company incurred costs and which has been acquired and conveyed to the Authority in 2025, Phase II shall be comprised of Project property for which the Company incurred costs and which has been

acquired and conveyed to the Authority in 2026, Phase III shall be comprised of Project property for which the Company incurred costs and which has been acquired and conveyed to the Authority in 2027, Phase IV shall be comprised of Project property for which the Company incurred costs and which has been acquired and conveyed to the Authority in 2028, and Phase V shall be comprised of Project property for which the Company incurred costs and which has been acquired and conveyed to the Authority in 2029 or any year thereafter during the Term of the Bond Lease, as such terms are defined below. The Company shall identify in each Requisition (defined below) the particular Phase to which such items of Project property relate, in accordance with Section 2.2, below.

1.1.4. In connection with the issuance of the below-defined Bond, the Authority will become the owner of the Project as it then exists. The Authority will lease the Project to the Company under the Bond Lease, as described below. There will be a single lease (*i.e.*, the Bond Lease) for all Phases. The Authority will finance its acquisition and leasing of the Project by issuing to the Company the below-defined Bond.

1.1.5. The term “**Force Majeure**” shall mean the following: a general banking moratorium shall have been declared by federal or Georgia authorities, or a major financial crisis or a material disruption in commercial banking shall have occurred (but Force Majeure does not include a mere inability to obtain financing); acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Georgia (the “**State**”) or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; tornadoes; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other event not within the control of the Party claiming Force Majeure. Without limitation, increased costs alone are not sufficient to constitute Force Majeure. Such Party upon claiming Force Majeure agrees, however, to use its reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing such Party from carrying out its obligations under this Agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of such Party, and such Party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of such Party, unfavorable to such Party. For the avoidance of doubt, to the extent that the Governor of the State of Georgia at any time or from time to time hereafter issues an Executive Order declaring there to be in effect a (1) State of Emergency relating to unlawful assemblage and violence, or (2) Public Health State of Emergency relating to pandemics, and the same leads to the impossibility to perform any obligation under this Agreement that is expressly stated to be subject to Force Majeure, then riots and pandemic may be asserted as Force Majeure events.

1.1.5.1. It shall be conditions to a Party being able to claim the benefit of Force Majeure that, (a) such Party promptly certifies to the other Party in writing, (1) what the event of Force Majeure is, (2) the date of the commencement and, when the event of Force Majeure has abated, the date of the abatement, of such event of Force Majeure, (3) for what

obligation the benefit of Force Majeure is claimed, and (b) Force Majeure shall be the proximate cause of the non-performance of such obligation. The foregoing notwithstanding, however, (1) such Party may not claim the benefit of Force Majeure more than twice in the aggregate, (2) in no event shall Force Majeure excuse or postpone a payment obligation, and (3) in no event shall a Party claim Force Majeure in order to protect such Party against the normal risks of contracting.

1.1.5.2. The effect of Force Majeure for purposes of this Agreement shall be as specified in connection with designating an obligation herein as being subject to Force Majeure. For the avoidance of doubt, the benefit of Force Majeure may not be claimed with respect to an obligation unless this Agreement expressly designates that such obligation as being subject to Force Majeure.

1.2. Total Project Costs. “**Total Project Costs**” include all costs, fees and expenses, capitalized or capitalizable for accounting purposes, incurred by the Company in connection with the Project (or any Phase thereof) and the issuance of the Bond. The Company will be responsible for any costs of or related to the Project (including, without limitation, those related to any change orders or cost overruns) to the extent that proceeds of the Bond are not available or are not sufficient to pay such costs.

1.3. Closing. As used herein, the “**Closing**” is the event at which the Bond is issued. References herein to a “**Closing Condition**” are to the optional right of a Party hereto, based on a Closing Condition, to exercise a right provided herein in its favor and to avoid the Closing and terminate this Agreement as provided in Sections 5.4, and 5.5, respectively, below. In connection with the issuance of the Bond, the Parties hereto, prior to Closing, will also enter into an Economic Development Agreement (the “**EDA**”) to reflect any amendments hereto agreed to prior to Closing (or to reflect that there are no such amendments).

1.4. Site.

1.4.1. Access. The Facility’s land (the “**Site**”) is described on Schedule 1.4.1 attached hereto and incorporated herein by reference. In the Bond Lease, the Company shall grant to the Authority a right-of-entry across the Site and access to the Facility as required by the Authority to exercise its rights under this Agreement and the Bond Lease.

1.5. Environmental. It shall be a Closing Condition in favor of the Authority that it be satisfied with the environmental condition of the Site. Notwithstanding anything contained herein, in addition to all other indemnities in favor of the Authority contained herein and in any other Definitive Documents (specifically including, without limitation, the indemnities set forth in Section 1.7, below), the Company shall indemnify the Authority, its members, directors, officers, officials, employees and representatives against any environmental or related claims, liabilities or losses (including, without limitation, relating to the presence of Hazardous Materials at, on, or from the Site, or the violation of or non-compliance with any Environmental Laws, such terms as defined below) relating to or arising from the Site, the Facility or the Project (or any Phase thereof) or the Company’s operations thereat, including, without limitation, the Company’s use of the items of property comprising the Project (or any Phase thereof), regardless of whether any such claim, liability or loss is based on facts or circumstances first existing before or after the Closing, and

regardless, without limitation, of whether any such claim, liability or loss relates to any period prior to the Company's own acquisition of the Site, provided, that the indemnity contained in this Section shall not apply in the case of any particular indemnitee to any claim, loss or liability which is the result of the gross negligence or willful misconduct of such indemnitee. Said indemnity shall survive the Closing and the expiration or earlier termination of this Agreement and the Bond Lease. As used herein, "**Environmental Laws**" means all federal, state and local statutes, codes, regulations, rules, ordinances, orders, standards, permits, licenses, policies and requirements (including consent decrees, judicial decisions and administrative orders) relating to the protection, preservation, remediation or conservation of the environment or worker health or safety, all as amended or reauthorized, or as hereafter amended or reauthorized, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601, et seq., the Resource Conservation Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901, et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., the Atomic Energy Act ("**AEA**"), 42 U.S.C. § 2012, et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq. As used herein, "**Hazardous Materials**" means (1) "hazardous substances," as defined by CERCLA; (2) "hazardous wastes," as defined by RCRA; (3) any radioactive material, including, without limitation, any source, special nuclear or by-product material, as defined by AEA; (4) asbestos in any form or condition; (5) polychlorinated biphenyls; and (6) any other material, substance or waste to which liability or standards of conduct may be imposed under any Environmental Laws.

1.6. Development of the Project.

1.6.1. Utilities. The Company shall be responsible for the delivery of adequate electricity, natural gas, telephone, internet, water and sewer and all other utilities to the Facility. The Company's ability to acquire governmental approvals or permits to allow for delivery of adequate electricity, natural gas, telephone, internet, water and sewer and all other utilities by acceptable providers, or in quantities or at pressures which are acceptable to the Company in its sole discretion, shall each be a Closing Condition in favor of the Company. All permitting and tap fees for utilities shall be the responsibility of the Company.

1.6.2. Design. The Company shall be responsible for the design and selection of the items of property comprising the Project.

1.6.3. Acquisition and Installation of the Project. The Company will be responsible for the acquisition and installation of the items of property comprising the Project, including, without limitation, payment of the costs thereof. The Bond Lease will provide for the Company to convey title to the items of property comprising the Project (and each Phase thereof) to the Authority from time to time by one or more bills of sale as such items are acquired and installed at the Facility or on the Site. The Project (and each Phase thereof) shall be installed and operated in compliance with all applicable laws, rules, regulations and codes including, without limitation applicable zoning laws, building codes, environmental laws and other restrictions.

1.6.4. Permitted Encumbrances. Without limitation, the Company shall keep the Project (and each Phase thereof) free and clear of all liens and encumbrances, except for Permitted Encumbrances (defined below), and shall in any event indemnify, hold harmless and defend the Authority, the City and the County and their respective officials, members, officers, employees and representatives from any claim, liability or loss arising out of or related to any such lien or encumbrance, including, without limitation, Permitted Encumbrances, provided, that the indemnity contained in this Section shall not apply in the case of any particular indemnitee to any claim, loss or liability which is the result of the gross negligence or willful misconduct of such indemnitee. Said indemnity shall survive the expiration or earlier termination of this Agreement and the Bond Lease. As used herein, “**Permitted Encumbrances**” shall be defined as the Definitive Documents, and any liens, encumbrances or exceptions specified in this Agreement as being acceptable or defined as such in, or as otherwise permitted by, the Bond Lease. The definition of Permitted Encumbrances shall be superseded by a similar definition to be contained in the Bond Lease. For the avoidance of doubt, (i) such provisions of the Bond Lease shall apply to this Agreement, and (ii) such supersession shall not affect liabilities theretofore accrued under the above indemnities.

1.6.5. Insurance. The Bond Lease will contain insurance provisions (including property insurance and general commercial liability insurance) acceptable to the Authority related to the Project, including its installation.

1.7. Indemnity by the Company. The Company shall indemnify, hold harmless and defend the Authority, the City, the County and their officials, members, officers, employees and representatives from and against any and all loss, liabilities and claims (including, without limitation, liens and encumbrances resulting from construction and installation activities) that may arise out of or relate to: (a) the Company’s or its vendors’, contractors’ or subcontractors’, agents’, employees’ or representatives’ entry upon the Site or from any work performed thereon or at the Facility by such persons, (b) any failure to observe and comply with any applicable local, state or federal statute, ordinance, permit, law or regulation (including, without limitation, Environmental Laws) relating to the Project (or any Phase thereof), the Site or the Facility, (c) any damage or destruction of any property, or injury or death to any person, occurring on the Site or at the Facility in connection with the Project (or any Phase thereof), (d) any act or omission by or attributable to the Company or its vendors, contractors or subcontractors, agents, employees or representatives, related to the Project (or any Phase thereof) or the Facility or otherwise related to the Company’s use or operations of any portion thereof; or (e) the transactions contemplated by this Agreement or in the Definitive Documents, including the Bond and the issuance thereof, and the Project and the ownership or operation thereof; provided, that the indemnity contained in this Section shall not apply in the case of any particular indemnitee to any claim, loss or liability which is the result of the gross negligence or willful misconduct of such indemnitee. Said indemnity shall survive the expiration or earlier termination of this Agreement and the Bond Lease and the commencement or abandonment of the Project (or any Phase thereof).

1.8. Year 1. For all purposes of this Agreement, including, without limitation, any Schedules and “Exhibits” hereto, “**Year 1**” is defined for each Phase, respectively, as follows: Year 1 for Phase I shall be 2026; Year 1 for Phase II shall be 2027; Year 1 for Phase III shall be 2028; Year 1 for Phase IV shall be 2029; and Year 1 for Phase V shall be 2030.

1.8.1. “Year”, as used herein, refers to years in a Phase following its Year 1, in sequence and numbered as appropriate.

## 2. FINANCING OF THE PROJECT.

2.1. Bond. In order to establish the bond-financed sale-leaseback structure that is necessary for the provision of certain of the incentives contemplated herein, including, without limitation, *ad valorem* property tax savings for the Project, the Authority will issue the Authority’s revenue bond (the “**Bond**”) to the Company in exchange for title to the Project as it then exists. The Bond will be issued as a single draw-down bond authorized by a resolution adopted by the Authority (the “**Bond Resolution**”). The Authority will hold legal title to all of the Project. The Company may acquire legal title to the Project or any portion thereof, as provided herein.

2.2. Maximum Principal Amount of Bond. Without limitation, the maximum principal amount of the Bond shall in the aggregate accommodate Total Project Costs for the Project. Such accommodation shall be made through structuring the Bond as a single draw-down bond in an appropriate maximum principal amount, now estimated at \$50,000,000. Subject to and in accordance with the “**Bond Purchase Loan Agreement**” to be entered into at Closing by and between the Authority and the Company (in its capacity as purchaser of the Bond), draws may be made on the Bond from time to time with respect to Total Project Costs for any Phase, and such draws shall be made upon the submission by the Company of a written Request for Advance (the form of which will be attached as Exhibit A to the Bond Purchase Loan Agreement), executed by an authorized representative of the Company, and one or more accompanying requisitions (the form of which will be contained at the end of Exhibit A to the Bond Purchase Loan Agreement; each a “**Requisition**”), which shall identify the particular Phase to which such costs and items of Project property relate.

2.3. Transaction Costs. The Company shall be responsible for the transactional costs of the issuance of the Bond. Such transaction costs include, without limitation: (i) reasonable legal fees and disbursements of Authority’s Bond Counsel, related to the preparation, review, negotiation, execution and delivery of this Agreement, the Definitive Documents and any Loan Documents (defined below), and the issuance of the Bond and preparation of transcripts; (ii) the reasonable fees and disbursements of the Authority’s Issuer’s Counsel related to the validation of the Bond and the closing of the issuance of the Bond; (iii) the court costs relating to validation of the Bond and recording and filing fees; and (iv) the Authority’s financing fee equal to 1/8 of 1% of the maximum principal amount of the Bond, which shall be payable in full to the Authority at Closing.

2.4. Tax Status of the Bond. The interest on the Bond contemplated by this Agreement will not be exempt from federal income taxation.

2.5. Roles of Counsel. The law firm of Seyfarth Shaw LLP, Atlanta, Georgia, as counsel to the Authority, shall serve as the Authority’s Bond Counsel and the Authority’s Issuer’s Counsel in connection with the Project, the issuance of the Bond and this Agreement. The Company’s in-house counsel shall serve as the Company’s Counsel in connection with the Project, the issuance of the Bond and this Agreement.

2.6. Repayment of the Bond. The Company shall be responsible for the repayment of the Bond in the manner provided in, and consistent with the provisions of the Definitive Documents. Without limitation, the Bond shall not be a general obligation of the Authority, but shall be a special and limited obligation payable solely from the payments received under the Bond Lease and other pledged security. Neither the Authority, the County, the City, the State nor any other public body shall have any obligation or liability for repayment of the Bond.

2.7. The Bond Lease. The Authority and the Company shall enter into a lease for the Project (the “**Bond Lease**”) at the Closing. Pursuant to the Bond Lease, the Authority will lease the Project to the Company. The Bond Lease shall contain terms and provisions substantially of the type normally included in bond leases between governmental “conduit” bond issuers of bonds issued to achieve *ad valorem* tax savings with respect to certain property and users of such bond-financed property. The Bond Lease will be a triple net type lease. The Bond Lease shall have a term (the “**Term**”) sufficient to accommodate the Savings Schedule for all Phases, provided, that the Term shall be structured to be comprised of intervals, each of less than five (5) years, and each of which shall automatically renew for the next interval unless notice of non-renewal is given by the Company.

2.8. Purchase Option. The Authority, by a separate agreement (the “**Option Agreement**”), which is one of the Definitive Documents, shall grant the Company the option to purchase the Project or any portion thereof (“**Purchase Option**”), to the extent that the Authority holds title thereto at the time, exercisable for (i) an option exercise price of \$10; (ii) plus any other amounts due to the Authority that must be paid at such time by the Company; and (iii) if the Bond has not theretofore been retired, the Company shall cause the Bond to be retired or cancelled. Payment of the amounts so required is a condition to the closing under such Purchase Option.

2.9. Definitive Documents. The term “**Definitive Documents**” means and includes the Bond, the Bond Resolution, the Bond Lease, the Option Agreement, the EDA, the Bond Purchase Loan Agreement, an assignment and security agreement, and any other related documents necessary to implement the transactions described herein. The Definitive Documents shall be prepared by the Authority’s Bond Counsel and shall be subject to the approval of the Authority, the Company and the respective legal counsel thereof. The Parties agree to negotiate in good faith to establish the terms and conditions to be included in the Definitive Documents. It shall be a Closing Condition in favor of each of the Company and the Authority that they reach an agreement on such terms and conditions of the Definitive Documents.

2.10. Transfers.

2.10.1. The rights and benefits of the Company under this Agreement may not be transferred and assigned by the Company, in whole or in part, prior to Closing, except to an Affiliate (defined below) of the Company.

2.10.2. Except as expressly provided in this Section or elsewhere in this Agreement, after the Closing the Company may not, without the prior written consent of the Authority, (a) transfer its interest in the Project, or (b) assign its interests and rights under the Bond Lease or other Definitive Documents or sublease any part of the Project.

The foregoing shall not be construed to impose any restriction on the transfer of equity interests in the Company.

2.10.3. The Company, as the tenant under the Bond Lease, may sublease (or lease, to the extent that a leasing continues beyond the Term) the Project as a whole or in portions, provided, that (a) any such transaction outside of the ordinary course of the Company's business shall be subject to prior approval by the Authority, as the landlord under the Bond Lease, which may not unreasonably be withheld, conditioned or delayed, and (b) in the case of all transactions, the sublease is expressly subject and subordinate to the Bond Lease, and that the Company is not released from its obligations under the Bond Lease.

2.10.4. The Company may assign the Bond Lease and the other Definitive Documents without the consent of the Authority, but upon prior or contemporaneous notice to the Authority, in the event that, (a) (i) the Company expressly agrees, by written instrument in form and substance reasonably satisfactory to the Authority, to remain obligated for all obligations and liabilities thereunder, whether incurred before, as of, or after such assignment, and to maintain its legal existence and solvency, provided that clause (b) of Section 2.10.5, below must be satisfied, and, (ii) the assignee is solvent, after giving effect to such transaction, and expressly assumes in writing and agrees to pay and to perform all of the Company's obligations and liabilities thereunder, whether incurred before, as of, or after such assignment, or (b) the Company consolidates with or merges into another domestic entity or permits one or more domestic legal entities to consolidate with or merge into it, but only on the condition that, either, (i) if the Company is the transferee or surviving entity, then the Company expressly agrees, by written instrument in form and substance reasonably satisfactory to the Authority, to remain obligated for all obligations and liabilities thereunder, whether incurred before, as of, or after such assignment, and is solvent, after giving effect to such transaction, and agrees to maintain its legal existence and solvency, and, (ii) if the Company is not the transferee or surviving entity, then the transferee or surviving entity shall be solvent, after giving effect to the transaction, and shall expressly assume in writing and agree to pay and to perform all of the Company's obligations and liabilities thereunder, whether incurred before, as of, or after such transaction.

2.10.5. The Company may assign its interest in the Project, and the Bond Lease and the other Definitive Documents, pursuant to an Exempt Assignment (defined below) without the approval of the Authority, but upon prior or contemporaneous notice to the Authority; provided that, (a) any assignee of the Company shall agree to fully and unconditionally assume all obligations of the Company arising under such Bond Lease and such other Definitive Documents, including, without limitation, all indemnity provisions contained in the Bond Lease and the other Definitive Documents, and (b) the assignor and assignee must first receive prior written confirmation from the Authority that the Authority is satisfied that the Company will have the financial capability thereafter to satisfy, and will continue to satisfy, its continuing indemnification and other obligations; without limitation, the Authority may condition its satisfaction with such financial capability upon the Company providing surety satisfactory to the Authority.

2.10.6. Any provision hereof to the contrary notwithstanding, any assignment by the Company of any interest in this Agreement, the Project, the Bond Lease or the other Definitive Documents shall be further subject to the following conditions:

2.10.6.1. If the Authority should, in a writing approved by a resolution of the Authority, consent to an assignment, then the Authority in such consent may agree to release the assignor from all liabilities and obligations accruing under the assigned documents or instruments after the effective date of such assignment;

2.10.6.2. The assignor shall, within fifteen (15) days after the delivery thereof, furnish or cause to be furnished to the Authority and (after the issuance of the Bond) to the holder of the Bond a true and complete copy of each such assignment, together with any instrument of assumption; and

2.10.6.3. An assignee of the interest of the Company under the Bond Lease must also be the holder of the Bond and the assignee of the Company's interest under the other Definitive Documents. A pledgee of the interest of the Company under the Bond Lease must also be the pledgee of the Bond and the pledgee of the Company's interest under the other Definitive Documents. An assignee must assume all obligations of the Company under the assigned instruments and documents. In the event a pledgee shall ever become the owner of the rights and interests of the Company under the pledged instruments and documents by reason of judicial foreclosure, nonjudicial sale under power or other proceedings brought by the pledgee to enforce its rights thereunder, or through any other means or manner in connection therewith, the pledgee shall assume all obligations and responsibilities of the Company thereunder arising from and after the date it becomes the owner.

2.10.6.4. Notwithstanding anything herein, no such assignment may be made unless the Company's rights under this Agreement and the Bond Lease and the other Definitive Documents are assigned simultaneously to, and assumed by, the same assignee. For the avoidance of doubt, the Bond Lease and the other Definitive Documents may only be assigned to an assignee to whom the Bond is also transferred (such that such assignee shall become the holder of the Bond), so at all times the tenant under the Bond Lease and the holder of the Bond will be the same.

2.10.7. An "**Exempt Assignment**" means any of the following assignments:

2.10.7.1. A pledge pursuant to any bona fide assignment or leasehold assignment (including, without limitation, any pledge of personal property);

2.10.7.2. The acquisition by any assignee or leasehold assignee or its designee of the leasehold interest through the exercise of any right or remedy of such assignee or leasehold assignee under a bona fide assignment or leasehold assignment, including any assignment of the leasehold interest to an assignee or the leasehold assignee or its designee made in lieu of foreclosure;

2.10.7.3. Any foreclosure sale by any assignee or leasehold assignee pursuant to any power of sale contained in a bona fide assignment or leasehold assignment;

2.10.7.4. Any sale or assignment of the leasehold interest by any assignee or leasehold assignee (or its designee) which has acquired the leasehold interest by means of any transaction described above; and

2.10.7.5. Any sale or assignment of the leasehold interest to any person or entity if, (1) the financial condition of the proposed assignee is satisfactory to the Authority, and (2) the proposed assignee possesses experience for the operation of the Project that is satisfactory to the Authority.

2.10.7.6. The Bond Lease shall contain provisions similar to those above in this Section 2.10, which shall supersede such above restrictions as to the Bond Lease and the other "Bond Documents"; *i.e.*, the other Definitive Documents. For the avoidance of doubt, such provisions of the Bond Lease shall apply to this Agreement, and an assignee of the Bond Lease shall also assume this Agreement and the Bond Documents.

2.10.8. As used herein, "**Affiliate**" means any person or entity (as used herein "entity" includes, without limitation, any public body) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a specified person or entity. Without limitation, "control" of the other person or entity is deemed to exist if a person or entity possesses, directly or indirectly, the power: (A) to vote 10% or more of the voting securities of such other person or entity (on a fully diluted basis) having ordinary power to vote in the election of the governing body of such other person or entity, or (B) to direct or cause the direction of the management or policies of the other person or entity, whether through the ownership of voting securities, by contract or otherwise.

2.10.9. Loan Documents. Any senior security instrument, subordination agreement and/or any other document or instrument that is requested or required by any Lender (defined below), requested of the Authority by the Company, consented to by the Bondholder, and approved by the Chairman of the Authority (provided that the same is nonrecourse to the Authority except that recourse may be had to its interest in the Project other than its Unassigned Rights as defined in the Bond Lease) may be executed and delivered by the appropriate officers of the Authority, and may include such changes, corrections, completions, deletions, insertions, variations, additions, or omissions to the related Definitive Documents that are consistent with the intent and purpose of the Bond Resolution and are approved by the Chairman of the Authority; such consistency and approval shall be conclusively evidenced by the Chairman's execution of each such document or instrument. Any such senior security instrument, subordination agreement or other document or instrument shall be prepared at the expense of the Company and reviewed by Authority's counsel at the expense of the Company and shall be subject to the approval by the Chairman of the Authority. The foregoing and any other provision hereof or of any Loan Document (defined below) to the contrary notwithstanding, the Authority's only liability under any such senior security instrument, subordination agreement, or other document or instrument shall be limited to recourse to the Authority's interest in the Project, and in no event shall the Authority's Unassigned Rights or its rights under the EDA and this Agreement be assigned, pledged or subordinated. "**Lender**" means any financial institution or other bona fide lender, or purchaser or holder of debt instruments or debt securities which has advanced credit to the Company with respect to the Project (including, without limitation, by issuing a letter of credit or similar instrument to support debt obligations issued by or on behalf of the Company to finance the

Project), including any agent or trustee for any of the foregoing, and including a leasehold pledgee, and “**Loan Documents**” means the documents and instruments evidencing and securing such loan.

2.11. Statutory Compliance; Permitted Uses. The Act requires, and the Bond Lease will provide, that the Company must operate the Project (and each Phase thereof) at all times as a “project” permitted by the Act, and the Bond Lease will further provide that the permitted uses of the Project (and each Phase thereof) are restricted to those that are described in the Project description provided for on Schedule 1.1 hereto.

### **3. INCENTIVES TO BE PROVIDED.**

3.1. Purpose of Incentives. In order to induce the Company to locate the Project at the Site, the following economic inducements will be provided for the Project by the Authority and other entities, as applicable.

3.2. Public Interests Protected. In consideration of the Company locating, installing and operating the Project at the Facility on the Site, and the related job maintenance or creation and capital investment by the Company, the Authority shall grant the Company the Purchase Option, as provided in Section 2.8 herein. In determining to provide the following incentives to the Company and grant the Purchase Option to the Company, the Authority has taken into account the total consideration being received by the Authority in consequence of the Project, including, without limitation, the Project’s anticipated generation and maintenance of jobs and additional investment within the Authority’s area of operations, and the public revenues flowing therefrom. The Authority has found and determined, and hereby finds and determines, that the interests of the public in such transaction are protected by this Agreement, including its requirements relating to Recovery Payments (provided for in Section 4.7, below), and that such total consideration will be equal to or greater than the benefits to be derived by the Company hereunder; therefore, such benefits do not violate the prohibition in the Georgia Constitution on the payment by public bodies of gratuities to private sector persons.

3.3. Permitting. The Company shall apply for, and use its best efforts to obtain, all permits, licenses, authorizations, and approvals required by all governmental authorities including those of the City in connection with the acquisition, installation, equipping, operation, and use of the Project. If reasonably requested by the Company, the Authority shall reasonably assist the Company with obtaining permitting and navigating the local and state permitting process. It shall be a Closing Condition in favor of the Company that it shall have obtained all such permits, licenses, authorizations, and approvals required by all governmental authorities to the extent available at the time of Closing in connection with the installation, equipping, operation, and use of the Project.

#### **3.4. Ad Valorem Tax Savings.**

3.4.1. Basis for Savings. Under the Act, under which the Authority was created and exists, the Authority pays no tax on its interest in the property comprising the Project. The Parties agree that the Bond Lease shall be structured, and shall incorporate the restrictions on use set forth in this Agreement and to be set forth in the Bond Lease, so that the Company’s leasehold interest in the Project is a mere usufruct, or, as to personal

property, a nontaxable bailment for hire, and not a taxable estate for years. Thus, while the Bond Lease is in effect, the Company shall pay no actual taxes on its leasehold interest in the Project. However, in order to prevent the taxing authorities from being totally deprived of revenues relating to the Project during the period title thereto is in the Authority, the Company agrees that in consideration of the Bond Lease structure and other benefits, it shall make payments in lieu of taxes as provided on Schedule 3.4.1 attached hereto and incorporated herein by reference (the “**Savings Schedule**”). The Company shall pay normal *ad valorem* property taxes with respect to property it owns (including any property being used at the Facility) which is not titled to the Authority in connection with the issue of the Bond.

3.4.2. Reversion to Normal Taxability. If the Purchase Option is exercised upon termination of the Bond Lease or earlier, in whole or in part, or if the Bond Lease is otherwise terminated or expires and the Project is conveyed to the Company, the Project will be taxable according to normal *ad valorem* property taxation rules that are applicable to privately-owned property.

3.4.3. Procedures.

(a) In order to determine the amount of payments in lieu of taxes payable pursuant to this Agreement, at the time property tax returns are due in the County and City, the Company shall file a report with the Board of Assessors of the property comprising the Project (and each Phase thereof) and its value, in the same format and in the same manner as a property tax return. The Company shall indicate on its reports those items that have been conveyed to the Authority and are part of the Project and subject to the provisions of this Agreement, and to which Phase such items are a part of. The Board of Assessors shall determine the assessed value of the Project (and each Phase thereof) as though legal title to it were held by the Company and shall notify the Tax Commissioner and City thereof, who shall calculate the amount of payments in lieu of taxes payable by the Company with respect thereto pursuant to this Agreement, and shall invoice the Company therefore, with copy to the Authority. Such public bodies shall coordinate such procedures with general procedures applicable to the payment of normal property taxes, such that, for example, the Tax Commissioner and City shall mail such invoice at the time tax bills are mailed for the relevant tax year. Likewise, the Company shall pay by separate check to the Tax Commissioner and City, on or before the date set for the payment of *ad valorem* property taxes in the County and City generally, an amount equal to the payment in lieu of taxes due for such year (if any) as so calculated.

(b) Should the Company fail to make payments in lieu of taxes required by this Agreement at the times and in the manner provided for in this Agreement, the Company shall be obligated to pay to the Tax Commissioner and City, in addition to such payment in lieu of taxes an amount that shall be equal to the penalties and interest that would be assessed against the Company if such payment in lieu of taxes were delinquent *ad valorem* taxes. The Tax Commissioner and City shall notify the Company of any such penalties and interest, with copy to the Authority. The Board of Assessors, the Tax Commissioner and the City shall have all of the rights and remedies (including, without limitation, audit rights) related to payments in lieu of taxes, interest and penalties, as they would have in the case of *ad valorem* taxes (including, without limitation, delinquent *ad valorem* taxes), and the Tax Commissioner and City may place and

enforce tax liens on the Project to secure the payments of such payments in lieu of taxes, penalties and interest. Likewise, the Company shall have all of the same rights and remedies as it would have in the case of a dispute over *ad valorem* property taxes, including, without limitation, the right to dispute the valuation used by the Board of Assessors. Without limitation, the Authority, the Board of Assessors and the Company agree that the Company shall have the right of arbitration provided in O.C.G.A. Sec. 48-5-311(f) and the right of appeal to the Superior Court provided in O.C.G.A. Sec. 48-5-311(g). The obligation to make payments in lieu of taxes, and any related interest and penalties, shall be obligations to the Tax Commissioner and City, who upon receipt shall disburse them as though they were payments of normal taxes, or any related interest and penalties, as appropriate.

3.4.4. Board of Assessors. The provisions of this Agreement relative to the assessment and taxability of the Project for *ad valorem* property tax purposes shall be the obligation and responsibility of the Board of Assessors and not of the Authority, the City or the County. By its Acknowledgement, the Board of Assessors is joining in this Agreement to acknowledge that this Agreement is consistent with applicable requirements regarding the Company's interest in the Project under the Bond Lease as contemplated in this Agreement. It shall be a Closing Condition in favor of both the Authority and the Company that the validation order for the Bond becomes final by December 31, 2025, and specifically adjudge that the Company has no taxable interest in the Project, as contemplated in this Agreement. Nonetheless, the Parties acknowledge that the Authority has no control over the administration of the property tax laws of the State and shall have no responsibility for adherence by the taxing authorities to such validation order. Rather, the Company shall indemnify, hold harmless and defend the Authority, its members, directors, officers, employees, and representatives from and against any claim, liability or loss related to the imposition of property taxes, assessments or other charges on the Project, provided, that the indemnity contained in this Section shall not apply in the case of any particular indemnitee to any claim, loss or liability which is the result of the gross negligence or willful misconduct of such indemnitee. Said indemnity shall survive the expiration or earlier termination of this Agreement, the Closing, and the Bond Lease.

3.5. Acknowledgments; Intergovernmental Agreement. By execution of their respective Acknowledgments hereto, the officials or public bodies executing same agree to the provisions hereof applicable to them respectively. This Agreement and the Acknowledgments hereof shall collectively constitute an intergovernmental agreement under the Georgia Constitution Art. IX, Sec. III, Para. I among the public bodies and public officials executing same. Such intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

#### 4. GOALS.

4.1. Inducement. The Company agrees to locate the Project at the Site, within the jurisdiction of the Authority, provided, that nothing herein contained shall obligate the Company to make any particular level of investment or create any particular level of jobs. Rather, the Company's responsibilities regarding such matters shall be governed exclusively by the provisions hereof relating to Recovery Payments. The Company's foregoing agreement to locate the Project at the Site, is based, in part, on the incentives being provided by the Authority in connection with

the Bond Lease and this Agreement. Such incentives are being provided to induce the Company to locate the Project at the Site, with attendant job creation or maintenance on the part of the Company, and accompanying investment by the Company, all of which constitutes valuable, non-cash consideration to the Authority and the citizens of the County and of the State. The Parties acknowledge that the incentives provided for in this Agreement serve a public purpose through the job creation or maintenance and investment generation represented by the Project. The Parties further acknowledge that the cost/benefit requirements applicable to the Authority in the course of providing such incentives dictate that some measure of recovery must be applied in the event that the anticipated jobs and investment do not for any reason fully materialize, and such measure of recovery is set forth in Schedule 4 attached hereto and incorporated herein by reference.

4.2. Jobs Goal. For the Performance Period for each Phase, as provided on the Goals Table (“**Goals Table**”) included on the “Incentives Schedule” attached as Schedule 4 hereto (such period, the “**Performance Period**”), and with respect to the incentives covered by the Incentives Table, the Company shall have the goal of retaining not fewer than the number of full-time jobs at the Facility specified on the Goals Table as the applicable Jobs Goal (the goal applicable in any particular year being the “**Jobs Goal**” for such year). For purposes of this Agreement, the number of “full-time jobs” shall be defined and determined, from time to time, as provided on Schedule 4.2 attached hereto and incorporated herein by reference. Schedule 4.2 also determines how the number of full-time jobs shall be calculated.

4.3. Jobs Shortfall Percentage. If, for any year in the Performance Period, the number of full-time jobs at the Facility is less than the Jobs Goal that is applicable to such year, the actual number of such full-time jobs shall be subtracted from the applicable Jobs Goal to obtain the “**Jobs Shortfall**.” The number of jobs constituting the Jobs Shortfall shall be divided by the applicable Jobs Goal and converted to a percentage to determine the “**Jobs Shortfall Percentage**” for such year. If there is no shortfall, such percentage shall be 0%.

4.4. Investment Goal. For purposes of the incentives covered by the Incentives Table, the Company shall have an “**Investment Goal**” of the Company having invested, in the aggregate, in the Project in each year of the Performance Period for each Phase the amount for such year specified on the Goals Table as the applicable Investment Goal (the goal applicable in any particular year, the “**Investment Goal**”). For purposes of the Investment Goal the investment at the Project shall be calculated on a cumulative basis from the date hereof to the end of each year of the Performance Period. Schedule 4.4 attached hereto and incorporated herein by reference provides rules that shall apply to satisfying the Investment Goal.

4.5. Investment Shortfall Percentage. If, for any year in the Performance Period, the cumulative amount of capital investment by the Company in the Project from the date hereof is less than the Investment Goal that is applicable to such year, then the actual amount of such investment shall be subtracted from the applicable Investment Goal to obtain the “**Investment Shortfall**.” The amount of investment constituting the Investment Shortfall shall be divided by the applicable Investment Goal and converted to a percentage to determine the “**Investment Shortfall Percentage**.”

4.6. Annual Report. On or before February 1 of each Year following a calendar year that is in the Performance Period, the Company shall provide to the Authority an annual report for

the preceding calendar year which shall include a Jobs Report and an Investment Report, as described below (each an “**Annual Report**”). Each Annual Report shall be in substantially the form of Schedule 4.6 attached hereto and incorporated herein by reference, as revised for the matters being reported. Simultaneously with its submission of each Annual Report, the Company shall submit to the Authority updated certificates of insurance and endorsements reasonably satisfactory to the Authority evidencing the Company’s compliance with the insurance requirements to be set forth in the Bond Lease applicable to the Company in connection with the Project.

4.6.1. Jobs Report. The Jobs Report shall contain a statement as to the full-time jobs at the Facility for the immediately preceding year (each, an “**Annual Report Year**”) using the methodology prescribed herein, and shall provide such supporting extracts from the Company’s employment records (consistent with the privacy rights of its employees) as the Authority shall reasonably request.

4.6.2. Investment Report. The Investment Report shall contain a statement as to the investment in the Project by the Company for the subject Annual Report Year, using the methodology prescribed herein.

4.6.3. Inspection Rights. No more often than once per year, the Authority and its agents shall be permitted to inspect employment and investment records of the Company, specifically related to the Facility and the Project, to verify such information during normal business hours and upon reasonable notice. The Company may reasonably redact such records to protect the confidentiality of the Company and its employees or customers.

4.6.4. Project Shortfall Percentages. The Annual Report shall calculate any Jobs Shortfall Percentage and any Investment Shortfall Percentage. The average of the Jobs Shortfall Percentage and the Investment Shortfall Percentage shall be the “**Project Shortfall Percentage,**” which shall also be calculated and stated in the Annual Report.

4.7. Recovery Payments. If an Annual Report shows that, for the immediately preceding Annual Report Year, there is a Project Shortfall Percentage greater than 0%, then, the Company, in such Annual Report, shall calculate the amount of the Recovery Payment (defined in the Incentives Table). Recovery Payments shall be payable on the terms set forth in the Incentives Table. For the avoidance of doubt, if the Project Shortfall Percentage is 0% or less, there shall be no Recovery Payment due.

4.8. Failure to File Report and Make Required Payments. If the Company fails to pay any Recovery Payment when due, interest shall be paid by the Company thereon at the rate of seven percent (7%) per annum (or such lesser rate as may be allowed by law) until paid. If there has been a failure which is not cured within thirty (30) days following a written notice from the Authority to the Company that said failure be cured, the Authority shall be entitled to enforce its rights under this Section 4.8 and the Company shall indemnify the Authority for all costs of enforcement, including any court costs and reasonable and actual attorneys’ fees and court costs. The Company shall be liable for the payment of any such interest, fees and costs. Notwithstanding the foregoing, the Company shall be responsible for all reasonable costs actually incurred by the Authority in connection with monitoring compliance and addressing any non-compliance by the

Company with this Agreement, including, without limitation, Annual Report errors, omissions and discrepancies, and the Authority shall provide the Company itemized invoices documenting any costs so incurred. Such costs may include, but are not limited to, reasonable fees and disbursements of attorneys actually incurred by the Authority. Without limitation, the Company shall be responsible for compliance with the provisions of this Article 4.

## **5. TERMINATION OF AGREEMENT.**

5.1. Delay. If, despite the good faith efforts of the Parties, this Agreement is not fully executed by October 31, 2025, or the Closing has not occurred by December 31, 2025, then the Authority or the Company may terminate this Agreement by written notice to the other, without any further liability to the other Party except as otherwise expressly provided in this Agreement.

5.2. Approval by Governing Bodies. Upon its execution of this Agreement, each Party hereto represents and warrants that its governing body or other authorized committee or official thereof has approved and authorized its entry into such Agreement or Acknowledgment.

5.3. Closing Conditions. Any Party shall have the right to terminate this Agreement prior to the Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice to the other Party, if:

5.3.1. The other Party is in breach of this Agreement beyond any applicable notice and cure period.

5.3.2. There has been commenced or threatened against the Authority, the Company, or any Affiliate of the Company, any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the matters that are the subjects of this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with, any of such matters. An uncontested validation proceeding for the Bond shall not be considered a proceeding within the meaning of this Section.

5.4. The Authority's Termination Rights. The Authority shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the Company, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Authority shall have the right to terminate this Agreement, effective immediately upon giving written notice to the Company if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Authority has not been satisfied. If the Authority does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.5. The Company's Termination Rights. The Company shall have the right to terminate this Agreement prior to Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the Authority, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Company shall have the right to terminate this Agreement, effective

immediately upon giving written notice to the Authority if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Company has not been satisfied. If the Company does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.6. Effect of Termination. If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued (which shall include, without limitation, amounts incurred to date under Section 2.3, above), or except as otherwise expressly provided in this Agreement, or shall exist as a result of any prior breach hereof.

**6. MISCELLANEOUS.**

6.1. Notices. Any notice required to be given by any Party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if either (i) delivered personally to the Party or, if such Party is not an individual, to an officer or other legal representative of the Party to whom the same is directed, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent via nationally recognized overnight courier for next business day delivery, addressed to each other Party at the addresses set forth below (or to such other address as any particular Party may designate for notices to it to each other Party from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the date of personal delivery, the first business day after having been deposited with the courier service or the United States Postal Service:

If to the Authority: City of Dublin and County of Laurens Development Authority  
1200 Bellevue Avenue  
Dublin, Georgia 31021  
Attn: President

with a copy to: Seyfarth Shaw LLP  
1075 Peachtree Street, N.E., Suite 2500  
Atlanta, Georgia 30309  
Attn: Daniel M. McRae, Esq.

If to the Company: YKK AP America Inc.  
1229 Highway 441 Bypass,  
Dublin, Georgia 31021  
Attn: Controller

with a copy to: YKK AP America Inc.  
101 Marietta Street NW, Suite 2100  
Atlanta, Georgia 30303  
Attn: Legal Department

6.2. Confidential Information. All confidential information acquired by the Authority relating to the Company shall be held in confidence by it, subject to its legal obligations as a public

body, including, without limitation O.C.G.A. § 50-14-1, *et seq.* and § 50-18-70, *et seq.* The Company and its advisors shall, prior to the execution and delivery hereof, treat the contents of this Agreement as confidential, and, without limitation, shall not disclose such contents to competing communities or states.

6.3. No Partnership or Agency. No partnership or agency relationship between or among the Parties shall be created as a result of this Agreement.

6.4. Survival of MOU. This Agreement shall survive Closing and the expiration or termination of the Bond Lease, but may be superseded in whole or in part by the EDA to the extent that the EDA expressly so provides.

6.5. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Georgia without regard to choice of law or conflict of law provisions that would allow or require the application of the law of another jurisdiction. The exclusive venue for any suit, action or proceeding under this Agreement shall be in any state or federal court of competent jurisdiction sitting in Laurens County, Georgia, and the Parties hereto each submits to the jurisdiction of such courts.

6.6. Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the Parties hereto. This Agreement does not confer any rights or remedies upon any person or entity (including, without limitation, any public body), other than the Parties to this Agreement and their respective permitted successors and assigns. Without limitation, a writing executed only by the Parties hereto or their respective permitted successors and assigns shall be effective to amend or terminate this Agreement or any of the Definitive Documents, provided, that no provision which would adversely affect the rights or obligations of any public body or public official shall be binding on such public body or public official without the consent or approval of such public body or public official.

6.7. Entire Agreement. This Agreement, together with the Definitive Documents (when executed), constitutes the entire agreement between the Parties with respect to the subject matter hereof.

6.8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

6.9. Counterparts. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

6.10. No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, or employee of the Authority, the City or the County (including the members and staff of the Board of Assessors and the Tax Commissioner) shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all parties hereto, to the extent legally permissible, waive and release any and all claims against each such official, member, director,

officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

6.11. No Personal Liability of Representatives of Company. No official, member, manager, director, officer, agent, or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

6.12. Exclusion of Consequential Damages. UNDER NO CIRCUMSTANCES SHALL THE AUTHORITY, THE BOARD OF ASSESSORS, THE TAX COMMISSIONER, THE CITY OR THE COUNTY BE LIABLE TO THE COMPANY OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, COLLATERAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE.

6.13. Legal Compliance. The Company agrees that it and its officers and employees acting for it in matters relating to this Agreement shall comply with all applicable provisions of law, including, without limitation, O.C.G.A. § 50-36-1 relating, in part, to public benefits.

6.14. Effective Date. This Agreement shall not be effective until it has been fully executed by all Parties hereto.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum of Understanding and caused it to be delivered as of the following **“Effective Date”**:  
\_\_\_\_\_, 2025.

**The “Authority”:**

**CITY OF DUBLIN AND COUNTY OF  
LAURENS DEVELOPMENT AUTHORITY**

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

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

**The "Company":**

**YKK AP AMERICA INC.,**  
a New York corporation

By: \_\_\_\_\_(SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

**ACKNOWLEDGED**

The undersigned acknowledges this Agreement and agrees to the provisions hereof that are applicable to the County.

**LAURENS COUNTY**

By: \_\_\_\_\_  
Chairman, Board of Commissioners

Attest:

\_\_\_\_\_  
Clerk, Board of Commissioners

[COUNTY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

**ACKNOWLEDGED**

The undersigned acknowledges this Agreement and agrees to the provisions hereof that are applicable to the City.

**CITY OF DUBLIN**

By: *[Signature]*  
Mayor

Attest:

*[Signature]*  
City Clerk

[CITY'S SEAL]



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

**ACKNOWLEDGED**

The undersigned acknowledges this Agreement and agrees to the provisions hereof that are applicable to the Board of Assessors.

**BOARD OF TAX ASSESSORS  
OF LAURENS COUNTY**

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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

**ACKNOWLEDGED**

The undersigned acknowledges this Agreement and agrees to the provisions hereof that are applicable to the Tax Commissioner.

**TAX COMMISSIONER OF  
OF LAURENS COUNTY**

By: \_\_\_\_\_  
Darla Brown, Tax Commissioner

[SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING]

## **SCHEDULE 1.1**

### **DESCRIPTION OF THE PROJECT**

The Project shall consist of equipment, machinery, personal fixtures, cabling and other personal property for use by the Company at the Facility in its manufacturing operations thereat. For the avoidance of doubt, the Project is comprised solely of personal property, and the Project does not include any real estate, trade fixtures, building fixtures, or any real property improvements. The Project will modernize and enhance operations, improve safety, reduce carbonization, and expand the Company's business at the Facility.

SCHEDULE 1.1

## SCHEDULE 1.4.1

### DESCRIPTION OF SITE

All that tract or parcel of land being or lying in the 342<sup>nd</sup> GMD of Laurens County, Georgia in Land Lots 112 and 113 of the 1<sup>st</sup> land district, being more particularly described as follows:

Beginning at a point formed by the intersection of Honeysuckle Road (dirt road) and the northerly right of way of Fire Tower Road (100' right of way); thence from said point of beginning proceed along the northern right of way of Fire Tower Road a bearing of N 43°57'40" W a distance of 1430.27 feet to a point; thence N 46°06'35" E a distance of 752.17 feet to a point; thence S 43°53'25" E a distance of 345.32 feet to a point; thence N 46°06'35" E a distance of 878.50 feet to a point; thence S 43°53'25" E a distance of 1077.91 feet to a point; thence S 45°51'43" W along the eastern right of way of Honeysuckle Road a distance of 1628.92 feet to a point, said point being the true Point of Beginning.

The tract contains 43.42 acres.

SCHEDULE 1.4.1

**SCHEDULE 3.4.1**

**SAVINGS SCHEDULE**

1. There are no tax savings with respect to special district levies of assessments or fees for any tax year.
2. For each Year in the table below, for each Phase, each having its own Year 1 and its own Performance Period, respectively, the Company will pay amounts equal to the corresponding Payment Percentage, set forth below, of the normal *ad valorem* property taxes that would be payable if legal title to the property of such Phase were vested in the Company, instead of the Authority, on January 1 of such Year. The corresponding Savings Percentage is 100% less the Payment Percentage. Such payments shall constitute payments in lieu of taxes.
3. The applicable Payment Percentages and Savings Percentages for each Phase, each having its own Year 1, respectively, are as follows:

<b>Year</b>	<b>Savings Percentage</b>	<b>Payment Percentage</b>
1	100%	0%
2	80%	20%
3	60%	40%
4	40%	60%
5	20%	80%
6 and thereafter	0%	100%

4. The savings applies to all *ad valorem* property taxes (school, city, county, state and other) with respect to property comprising part of the Project titled to the Authority in connection with the issuance of the Bond. The Company shall pay normal *ad valorem* property taxes with respect to property not so titled to the Authority.

**SCHEDULE 4**

**INCENTIVES SCHEDULE**

1. The recovery value (“**Recovery Value**”) of each of the incentives provided pursuant to the Sections of this Agreement identified below shall be as specified in the rows of the table set forth below (the “**Incentives Table**”), with any payments to be made by the Company as provided in this Incentives Schedule to the recipients indicated as follows:

**INCENTIVES TABLE**

<b>SECTION</b>	<b>INCENTIVE</b>	<b>RECOVERY VALUE</b>	<b>RECOVERY FACTOR</b>	<b>RECOVERY PAID TO*</b>
3.4	Property Tax Savings on the Project	Actual amount of <i>ad valorem</i> property taxes on the Project saved each year	100%	Appropriate Taxing Authorities, Pro Rata in Proportion to Applicable Millage Rates

2. The Company shall make a payment with respect to each incentive listed in the Incentives Table above (each payment, a “**Recovery Payment**,” and collectively, the “**Recovery Payments**”) to the respective parties so specified as provided in Paragraph 5, below, provided, that no Recovery Payment shall be required for any incentive whose Recovery Factor is 0%.
3. The table (“**Goals Table**”) set forth below sets forth the applicable Jobs Goal and Investment Goal and the applicable Year (tax year) and Performance Period for each Phase. For the avoidance of doubt, for each Year in the Performance Period, a single Investment Goal and a single Jobs Goal for all Phases shall apply to the Project.

**GOALS TABLE**

In the table below, each Tax Year, regardless of Phase, has the Payment Percentage and Savings Percentage for that year already shown in Paragraph 3 of the Savings Schedule. For calendar years in which a Phase receives no property tax savings (i.e., not a numbered Tax Year), the Payment Percentage is 100% and the Savings Percentage is 0%.

A full size copy of the table is on file with the Authority and is hereby incorporated herein by reference.

CALENDAR YEAR	BOND YEAR	INVESTMENT GOAL	JOBS GOAL	PHASE I	
				TAX YEAR*	PERFORMANCE PERIOD
2026	1	\$6,863,830	450	1	Y
2027	2	\$25,618,251	450	2	Y
2028	3	\$35,319,958	450	3	Y
2029	4	\$45,132,156	450	4	Y
2030	5	\$50,000,000	450	5	Y
2031	6	\$50,000,000	450		N
2032	7	\$50,000,000	450		N
2033	8	\$50,000,000	450		N
2034	9	\$50,000,000	450		N

PHASE II		PHASE III	
TAX YEAR*	PERFORMANCE PERIOD	TAX YEAR*	PERFORMANCE PERIOD
	N		N
1	Y		N
2	Y	1	Y
3	Y	2	Y
4	Y	3	Y
5	Y	4	Y
	N	5	Y
	N		N
	N		N

PHASE IV		PHASE V	
TAX YEAR*	PERFORMANCE PERIOD	TAX YEAR*	PERFORMANCE PERIOD
	N		N
	N		N
	N		N
1	Y		N
2	Y	1	Y
3	Y	2	Y
4	Y	3	Y
5	Y	4	Y
	N	5	Y

SCHEDULE 4

4. The Jobs Goal and the Investment Goal in any Year in the Performance Period are each subject to the effect of Force Majeure. The effect of Force Majeure for such purposes shall be that for any Year in which the Company is entitled to claim, and does claim, the benefit of such provision, the Company shall be considered in compliance with its Jobs Goal and/or Investment Goal, as applicable, provided that, in no event shall Force Majeure extend the Savings Schedule or the Term.
5. For each Year for which a Project Shortfall Percentage is determined to be greater than 0% as provided in this Agreement, in order to determine the Recovery Payment for each incentive in the Incentives Table, such Project Shortfall Percentage shall be multiplied times the Recovery Value, the result shall be multiplied times the corresponding Recovery Factor, the result shall be the Recovery Payment, and the Company shall pay the amount thereof to the Authority simultaneously with its delivery of the Annual Report for the subject Year as required by this Agreement. For the avoidance of doubt, if the Project Shortfall Percentage for a Year is 0% or less, there shall be no Recovery Payment due.
6. (a) Each of the following shall be a “**Trigger Event**” hereunder:
  - (i) The expiration or termination of the Bond Lease at a time when any part of the Project is subject to a Payment Percentage less than 100%, including, without limitation, expiration or termination in connection with the exercise of the Purchase Option.
  - (ii) A “**Plant Closing.**” A Plant Closing is defined as the permanent or temporary shutdown of the Facility, if the shutdown results in an “employment loss” during any 90-day period at the Facility for 80% or more of the Facility’s employees, excluding any part-time employees, or if all jobs are lost at the Facility. The term “employment loss” means (1) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (2) a layoff exceeding six months, or (3) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period. An employment action that results in the effective cessation of production of the work performed at the Facility, even if a few employees remain, is a shutdown. A “temporary shutdown” is a Trigger Event only if there are a sufficient number of terminations, layoffs exceeding six (6) months, or reductions in hours of work as specified under the definition of “employment loss.”
  - (iii) A “**Mass Layoff.**” The term Mass Layoff means a reduction in work force which first, is not the result of a Plant Closing, and second, results in an employment loss at the Facility during any 90-day period for at least 33% of the of the Facility’s employees, excluding part-time employees.
- (b) Upon the occurrence of a Trigger Event, the Purchase Option shall be deemed exercised by the Company, the Company shall cause the Bond to be retired or cancelled, and the Payment Percentage shall thereupon become 100% as to all years after the Year in which the Trigger Event occurred. If necessary to assure that there are no property tax savings after the Year in which the Trigger Event occurred, the Company shall pay to the Authority with respect to the Project, such payments in lieu of taxes as are necessary so that normal property taxes due on

#### SCHEDULE 4

the property plus such payments in lieu of taxes would equal 100% of what normal taxes would be if title to the property had been vested in the Company as of January 1 of the applicable year.

(c) As soon as reasonably possible after it is aware of (but no later than immediately after the occurrence of) a Trigger Event, the Company shall file with the Authority a special Annual Report that shall comply as appropriate with Section 4.6 of this Agreement and shall also calculate what the Recovery Payments would be in the aggregate for each subsequent Year through the end of the period for which any part of the Project is scheduled to be subject to a Payment Percentage less than 100%, ignoring any Force Majeure, using the actual investment amount through the date of the calculation, and assuming that jobs for each year after the year of calculation amount to zero, and making such calculations for each individual Year rather than as provided in Paragraph 5, above. In the calculation of the Special Recovery Payment (defined below), the Company may exclude as a Recovery Value any property tax savings for years after the Project reverts to normal property taxation or the Payment Percentage for all of the Project becomes 100%. The amount so calculated shall be subject to audit by the Authority, and upon acceptance by the Authority, such amount shall constitute a “**Special Recovery Payment.**” The Company shall pay the amount of the Special Recovery Payment to the Authority promptly upon being invoiced therefor and shall pay any past due normal Recovery Payments in arrears. The Authority shall have the same rights and remedies with respect to such Special Recovery Payment as with normal Recovery Payments, including, but not limited to, the Company’s liability for the payment of any interest, fees and costs (including, without limitation, attorneys’ fees incurred by the Authority), as provided in Section 4.8 hereto. For purposes of clarity, failure to pay any Special Recovery Payment payable under this Agreement when due shall result in the accrual of interest thereon in the same manner as for any failure to pay normal Recovery Payments. Any provision of this Agreement to the contrary notwithstanding, the Authority shall be under no obligation to perform under the Purchase Option provided for in Section 2.8 hereof until it has received payment of the Special Recovery Payment and any normal Recovery Payments that are past due.

#### SCHEDULE 4

## SCHEDULE 4.2

### RULES FOR SATISFYING THE JOBS GOAL

1. For purposes of this Agreement, including, without limitation, determining compliance with the Jobs Goal, the number of “full-time jobs” shall be defined and determined, from time to time, as follows:
  - (a) Only direct employees of the Company shall be counted, and only jobs physically performed at the Facility shall be counted.
  - (b) In no event shall any temporary employee or leased employee be counted as occupying a full-time job, regardless of whether or not such person is employed by the Company or any other person or entity.
  - (c) Additionally, “**full-time job**” means the following: a job with no predetermined end date (other than a retirement date), with a regular work week of 35 hours or more on average for the entire normal year of local Company operations, and with benefits provided to other regular employees of the local Company, including the opportunity for access to, but not necessarily paid or subsidized, medical benefits, but does not mean a job classified for federal tax purposes as an independent contractor.
  - (d) For purposes of this Agreement, an individual’s employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. In addition, the employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such terms are defined and delimited from time to time by regulations of the Secretary of Labor, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.
2. The number of full-time jobs shall be calculated as provided below.
  - (a) The number of jobs shall be determined based on the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year.
  - (b) The monthly average number of full-time employees in a taxable year shall be determined by the following method:
    - (i) for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

## SCHEDULE 4.2

- (ii) add the monthly totals of full-time employees; and
- (iii) divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs, except for jobs transferred to the Facility from outside the State of Georgia, and replacement jobs may not be included in the monthly totals.

## **SCHEDULE 4.4**

### **RULES FOR SATISFYING THE INVESTMENT GOAL**

For purposes of the Investment Goal:

1. Only capital investments in the Project by the Company shall be counted, except as provided in 4, below.
2. Original cost, without regard to depreciation, shall be used in calculating whether the Investment Goal is met, except as provided in 3, below.
3. Transferred equipment relocated by the Company to the Facility to be used as part of the Project may be counted at net book value, or, if requested and substantiated by the Company to the Authority's satisfaction, and approved by the Authority, its fair market value.
4. In addition to the property leased to the Company under the Bond Lease, machinery and equipment leased to the Company under an operating lease (even though such property is not titled to the Authority and is not leased to the Company under the Bond Lease) and other machinery and equipment owned or beneficially owned by the Company but not leased to the Company under the Bond Lease, all shall be counted, but shall not be subject to the savings provided for in the Savings Schedule.

**SCHEDULE 4.6**

**FORM OF ANNUAL REPORT**

**Re: Memorandum of Understanding (“MOU”) and Economic Development Agreement (“EDA”) between the [AUTHORITY] (“Authority”) and [COMPANY] (“Company”) regarding the capital project located in [COUNTY], Georgia (the “Project”) – 20\_\_ Annual Report**

Dear \_\_\_\_\_:

This letter shall serve as the 20\_\_ Annual Report, as required under the MOU and EDA.

1. Jobs Report

As of December 31, 20\_\_, the total average number of full-time jobs located at the Facility was \_\_\_\_\_. We have enclosed \_\_\_\_\_, as evidence of such job retention.

The Jobs Goal for \_\_\_\_\_ was \_\_\_\_\_ jobs. The Jobs Shortfall for the year \_\_\_\_\_ is \_\_\_\_\_ jobs. The Jobs Shortfall Percentage is \_\_\_\_\_ % (\_\_\_\_ + \_\_\_\_).

2. Investment Report

As of December 31, 20\_\_, the Company has invested \$\_\_\_\_\_ in the Project.

The Investment Goal for 20\_\_ was \$\_\_\_\_\_. Therefore, the Investment Shortfall Percentage is \_\_\_\_%.

3. Recovery Payments

The Project Shortfall Percentage for 20\_\_ is \_\_\_\_% ((\_\_\_\_% + \_\_\_\_%) ÷ 2). [IF THE PROJECT SHORTFALL PERCENTAGE IS GREATER THAN 0%, THEN A RECOVERY PAYMENT IS DUE. IF A RECOVERY PAYMENT IS DUE, THAT PAYMENT SHOULD BE CALCULATED HERE BASED ON THE INCENTIVES SCHEDULE IN THE MOU AND SUCH PAYMENT MUST BE INCLUDED WITH THIS ANNUAL REPORT.]

Please do not hesitate to let us know if you require any additional information.

Sincerely,

[Company]

Enclosures .