

AN ORDINANCE #11-02

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE FEE AGREEMENT BY AND BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA, AND IMO USA CORP., TO PROVIDE FOR INFRASTRUCTURE CREDITS; AND OTHER RELATED MATTERS.

WHEREAS, the County acting by and through its County Council is authorized and empowered under and pursuant to the provisions of Title 4 and Title 12 of the Code of Laws of South Carolina, 1976, as amended (collectively, "Act") (i) to enter into agreements with qualifying companies to encourage investment in projects constituting economic development property through which the economic development of the State of South Carolina will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; (ii) to covenant with such industry to accept certain fee payments in lieu of ad valorem taxes ("FILOT") with respect to such investment; (iii) under Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended ("MCIP Act") to create multi-county industrial parks with one or more contiguous counties and include certain properties therein, and, in its discretion, include within the boundaries of these parks the property of qualifying industries, and under the authority provided in the MCIP Act, the County has created previously a multi-county park with Orangeburg County, South Carolina ("Park"); (iv) to provide credits to qualifying companies to offset qualifying infrastructure related expenditures pursuant to Sections 4-1-175, 4-29-68 and 12-44-70 of the Code of Laws of South Carolina 1976, as amended ("Infrastructure Credit Act"); and (v) to make and execute contracts of the type hereinafter described pursuant to Section 4-9-30 of the Code of Laws of South Carolina, 1976, as amended ("Code").

WHEREAS, IMO USA Corp., a company authorized to conduct business in the State of South Carolina, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities (collectively, "Company"), is operating a facility in the County ("Project");

WHEREAS, the Company entered into a FILOT Agreement with the County, dated May 17, 2010 ("Fee Agreement") and attached as Exhibit A, with respect to the Company's planned investment of approximately \$47,000,000 and the creation of 190 new jobs ("Project Commitment");

WHEREAS, in connection with the Project, the County and the Company desire to amend the Fee Agreement to reflect the following: (i) to provide for the grant of an additional annual Special Source Revenue Credit equal to no more than \$30,000 per year up to a total cumulative amount of \$60,000; (ii) to provide for other modifications as more fully set forth in the First Amendment (defined below), including but limited to, a Recapture Special Source Revenue Credit (as further defined in the First Amendment); and (iii) to further reflect that the Special Source Revenue Credits may be applied against expenditures for machinery and equipment as permitted by the newly amended Infrastructure Credit Act that was adopted pursuant to the South Carolina Economic Development Competitiveness Act, 2010 S.C. Acts 290; and .

WHEREAS, the County has determined to amend the Fee Agreement and has negotiated and prepared the "First Amendment to the Fee Agreement" ("First Amendment"), which is attached as Exhibit B, the provisions of which will reflect the modifications set forth above.

NOW THEREFORE, BE IT ORDAINED, by the County Council:

Section 1. *Authorization to Execute and Deliver First Amendment to Fee Agreement.* The Chair of County Council, or in the Chair's absence, the Vice-Chair, is authorized and directed to execute and deliver the First Amendment, and which is in substantially final form as attached to this Ordinance and presented before this meeting, with any minor modifications and revisions as may be approved by the Chair of County Council in the name of and on behalf of the County, and the Clerk to County Council is authorized and directed to attest the same; and the Chair of County Council is further authorized and directed to deliver the executed First Amendment to the Company.

Section 2. *General Repealer.* The County Council repeals any part of an ordinance, or a resolution that conflicts with any part of this Ordinance.


Section 3. *Severability.* Should any part, provision, or term of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding or determination shall not affect the rest and remainder of the Ordinance or any part, provision or term thereof, all of which is deemed separable.

Section 4. *Further Acts.* The County Council authorizes the Chair of the County Council, the County Administrator, other County staff, and the County Attorney, along with any designees and agents who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an "Authorized Individual"), to take whatever further actions, and enter into whatever further agreements, as any Authorized Individual deems to be reasonably necessary and prudent to effect the intent of this Ordinance and induce the Company to locate the Project in the County.

This Ordinance takes effect and is in full force only after the County Council has approved this Ordinance following three readings and a public hearing.

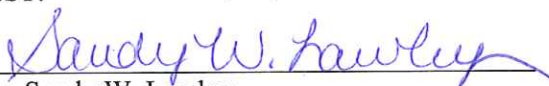
Adopted this 4th day of January, 2010.

DORCHESTER COUNTY, SOUTH CAROLINA



By: Larry Hargett
Its: County Council Chairman

ATTEST:



By: Sandy W. Lawley
Its: Clerk to County Council

READINGS:

First Reading: November 15, 2010
Second Reading: December 6, 2010
Third Reading: January 4, 2011
Public Hearing: December 6, 2010

EXHIBIT A

Fee Agreement

EXHIBIT B

First Amendment to Fee Agreement

FIRST AMENDMENT TO THE FEE AGREEMENT

This First Amendment to the Fee Agreement ("First Amendment") is made and entered into as of January 4, 2011 by and between Dorchester County, South Carolina ("County"), a body politic and corporate and political subdivision of the State of South Carolina and IMO USA Corp., a Delaware corporation authorized to transact business in the State of South Carolina, along with affiliated or related entities, and assigns (collectively, "Company").

WHEREAS, each capitalized term not defined in this First Amendment has the meaning as provided in the Fee Agreement (as defined below), and if not defined in the Fee Agreement has the meaning provided in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended, and if not defined in Title 12, Chapter 44, then has the meaning as defined in Title 4, Chapter 29 of the Code of Laws of South Carolina 1976, as amended ("Act");

WHEREAS, Company operates a facility in the County ("Project");

WHEREAS, the Company entered into a FILOT Agreement with the County, dated May 17, 2010 ("Fee Agreement"), attached as Exhibit A, with respect to the Company's planned investment of approximately \$47,000,000 and the creation of 190 new jobs ("Project Commitment");

WHEREAS, in connection with the Project, the County and the Company desire to amend the Fee Agreement to reflect the following: (i) to provide for the grant of an additional annual Special Source Revenue Credit equal to no more than \$30,000 per year up to a total cumulative amount of \$60,000; and (ii) provide for other modifications as more fully set forth in this First Amendment;

WHEREAS, by its Ordinance, enacted January 4, 2011, the County authorized the execution and delivery of this First Amendment; and

WHEREAS, the County and the Company now desire to enter into the First Amendment.

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

1. Sections 3.1(c), (d), (e), (f) and (g). Sections 3.1(c), (d), (e), (f) and (g) shall become Sections 3.1(f), (g), (h), (i) and (j), respectively.

2. Additional Special Source Revenue Credit. The following new Section 3.1(c) shall be inserted in the Fee Agreement:

"The County shall provide to the Company as permitted under the Infrastructure Credit Act, as amended, an Additional Special Source Revenue Credit ("Additional SSRC") in annual installments equal to no more than \$30,000 up to a total cumulative amount of \$60,000. The Company may claim the Additional SSRC at any time during the Credit Period. The provision of this Additional SSRC is additive to any other SSRCs provided under this Agreement. The Company shall certify and claim the Additional SSRC in a manner similar to that which is set forth in Section 3.1(b)."

3. Recapture Special Source Revenue Credit. The following new Section 3.1(d) shall be inserted in the Fee Agreement:

“If, at any time, during the term of this Fee Agreement, the Company is required to reimburse the County and/or the South Carolina Energy Office (“SCEO”) with respect to the IEP grant as further defined in that Performance Agreement between the County, the SCEO and the Company dated November 1, 2010 (“Performance Agreement”), the Company shall receive a Special Source Revenue Credit up to the amount of the IEP grant reimbursement made by the Company but not to exceed \$60,000 (“Recapture SSRC”). The Company may elect to apply the Recapture SSRC to its annual FILOT Payments made to the County over a period of years provided that the application of the annual Recapture SSRC does not exceed the total amount of the annual FILOT Payment due the County. In order to qualify for the Recapture SSRC, the Company’s obligation to reimburse the IEP grant shall be based, in part, upon a determination by the SCEO that the HVAC system (for which the IEP grant was, in part, applied) is not an eligible item of expenditures, or, for whatever reason, was not eligible to be acquired with the IEP grant funds or the work related to the HVAC System did not otherwise comply with the IEP guidelines. The Recapture SSRC shall be claimed and credited in the same manner as set forth in Section 3.1(b) of this Fee Agreement.”

4. Priority of Expenditures Against Which SSRCs Will Be Applied. The following new Section 3.1(e) shall be inserted in the Fee Agreement:

“With respect to this Section 3.1, unless otherwise specified in writing by the Company, all SSRC benefits claimed under this Agreement shall be deemed to be claimed against real property expenditures of the Company and other items of infrastructure, as permitted under the Infrastructure Credit Act, as amended, and lastly, against machinery and equipment”

5. Exhibit A. The “[Form] of Certificate of Special Source Revenue Credit” attached as Exhibit A to the Fee Agreement shall be replaced with the revised certificate attached as Exhibit B to this First Amendment.

6. Section 4.3. Section 4.3 shall be amended by the insertion of the following as the last paragraph in the section:

“The County shall use its best efforts to consider the purchase and installation of one or more solar lamp products offered by the Company.”

7. Remainder of Agreements. Except as described in Sections 1 through 5 of this First Amendment, the Fee Agreement remains unchanged and in full force.

8. Severability. If any term, provision, or any portion of this First Amendment shall to any extent and for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this First Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this First Amendment shall be valid and enforceable to the fullest extent permitted by the law. To the extent that any benefits for the Company provided under this First Amendment are held invalid or unenforceable as set forth in this Section 7, the County shall take whatever action required and permitted under the law to provide the Company with incentives that would afford the Company the same or substantially similar value of those benefits found invalid or unenforceable.

9. Counterparts. The parties may execute this First Amendment in counterparts, each of which is an original and all of which, together, constitutes one and the same First Amendment.

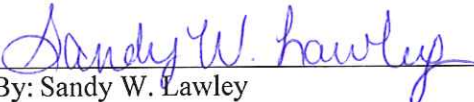
IN WITNESS WHEREOF, Dorchester County, South Carolina, has executed this First Amendment by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council, and the Company, as Sponsor, has executed this First Amendment by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

DORCHESTER COUNTY, SOUTH CAROLINA



By: Larry Hargett
Its: County Council Chairman

ATTEST:



By: Sandy W. Lawley
Its: Clerk to County Council

IN WITNESS WHEREOF, Dorchester County, South Carolina, has executed this First Amendment by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council, and the Company, as Sponsor, has executed this First Amendment by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

IMO USA CORP.

By: 

Its: *Unverzagt*

EXHIBIT A
FEE AGREEMENT

EXHIBIT B

[FORM OF]

CERTIFICATE OF SPECIAL SOURCE REVENUE CREDIT

Reference is made to that certain Fee Agreement dated as of May 17, 2010, as amended on January 4, 2011, ("Fee Agreement"), by and between Dorchester County, South Carolina ("County"), and IMO USA Corp. ("Company"). Each capitalized term not defined in this Certificate has the meaning ascribed in the Fee Agreement.

In accordance with the terms of the Fee Agreement, the undersigned authorized agent of the Company certifies to the County:

1. The Company is entitled to claim a Special Source Revenue Credit (each, a "Credit") against each annual FILOT Payment, for up to 10 years during the term of the Fee Agreement, for a portion of each FILOT Payment, as set forth in Article III of the Fee Agreement, with respect to the Project, not exceeding an amount for which a credit is permitted under the Infrastructure Credit Act.

2. The Company is entitled to claim an Additional Special Source Revenue Credit and/or a Recapture Special Source Revenue Credit (each, a "Credit") against annual FILOT Payments, as set forth in Article III of the Fee Agreement, with respect to the Project, not exceeding an amount for which a credit is permitted under the Infrastructure Credit Act.

3. The invoice for the annual FILOT Payment for tax year 20__, provided by the County Auditor, specifies the FILOT Payment due with respect to the Project on January 15, 20__, to be \$_____.

4. The amount of the Special Source Revenue Credit representing (40%) of the FILOT Payment due to the Company equals \$_____.

5. The amount of the Additional Special Source Revenue Credit due to the Company equals \$_____ and the Recapture Special Source Revenue Credit, if applicable, due to the Company equals \$_____.

6. The sum of the Special Source Revenue Credits set forth in (4) and (5) above equal a total Credit due to the Company equal to \$_____.

7. The Company is remitting or has remitted the total amount of the FILOT Payment for the current property tax year set forth above.

8. The Credit specified in this Certificate for the current Property Tax Year, together with the amount of all Credits previously claimed pursuant to the Fee Agreement, do not, in the aggregate, exceed the total cost of all infrastructure improvements and other eligible items funded by the Company and all investors, for which a Credit is permitted under the Act.

IN WITNESS WHEREOF, I have executed this Certificate as of _____

_____, _____.

IMO USA Corp.

By:

Name: _____

Title: _____