

A RESOLUTION

**AUTHORIZING AN INDUCEMENT AGREEMENT BY DORCHESTER
COUNTY RELATING TO ECONOMIC DEVELOPMENT INCENTIVES
FOR PROJECT ATKINS**

WHEREAS, an entity which has requested that its identity be kept confidential for business reasons (the "Company") is considering the acquisition, construction and equipping of facilities for production and distribution of high technology goods ("Project Atkins"), and the Company is considering locating Project Atkins in Dorchester County, South Carolina (the "County"); and

WHEREAS, Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Simplified FILOT Act"), permits the County to offer certain economic development incentives in connection with undertakings such as Project Atkins, including, among others, an arrangement for payments in lieu of ad valorem property taxes (a "FILOT Arrangement"); and

WHEREAS, the Council has determined that, pursuant to the Act, (a) Project Atkins is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally, (b) Project Atkins will give rise to no pecuniary liability of the County or charge against its general credit or taxing power, (c) the purposes to be accomplished by Project Atkins are proper governmental and public purposes, and (d) the benefits of Project Atkins are greater than the costs because of the substantial direct and indirect economic benefits to the County and its residents that are expected, such as new employment, payroll income, purchases of goods and services in the County, etc.

WHEREAS, the Simplified FILOT Act permits the County to enter into a FILOT Arrangement with certain entities that are willing to commit to the expenditure of not less than Two Million, Five Hundred Thousand Dollars (\$2,500,000) during the investment period (as defined in the Simplified FILOT Act); and

WHEREAS, the Company currently estimates that the cost of planning, designing, acquiring, constructing and completing the proposed Project will require expenditures over the investment period of approximately Two Hundred Million Dollars (\$200,000,000); and result in the hiring of approximately ninety (90) employees; and

WHEREAS, the FILOT Arrangement may provide for annual payments of payments in lieu of ad valorem property taxes during a term terminating the date that is the last day of a property tax year that is the twenty-ninth (29th) year following the first property tax year in which an applicable piece of economic development property is

placed in service, with such payments in lieu of ad valorem property taxes being in an amount not less than the ad valorem property taxes that would be due on Project Atkins if it were taxable, but using (a) an assessment ratio of six (6%) percent, (b) a fair market value to be determined by the South Carolina Department of Revenue in accordance with the Act, and (c) a millage rate determined in accordance with various statutory options; and

WHEREAS, the Simplified FILOT Act permits the County to authorize credits against payments in lieu of ad valorem property taxes that would otherwise be payable by the Company in order to offset some certain improvement costs for Project Atkins; and

WHEREAS, County Council has ascertained that the availability of a FILOT Arrangement pursuant to the Simplified FILOT Act is an essential factor being considered by the Company in determining the desirability of locating Project Atkins in the County; and

WHEREAS, the Company and the County desire to enter into an inducement agreement between the County and the Company to evidence the general terms of a proposed FILOT Arrangement relating to Project Atkins and certain other incentives; and the County desires to define and approve the terms of such an inducement agreement.

NOW, THEREFORE, BE IT RESOLVED by the Dorchester County Council in meeting duly assembled:

1. The inducement agreement attached hereto as Exhibit A (the "Inducement Agreement") is approved. The Chairman of the County Council (the "Chairman") is authorized and directed to execute the Inducement Agreement on behalf of the County. The Clerk of the County Council is authorized and directed to attest to the Inducement Agreement, and the Chairman is authorized and directed to deliver the Inducement Agreement to the Company for its review, and, if acceptable by the Company, execution by the Company. After consultation with the County Attorney, the Chairman of the County Council may approve and execute modifications and amendments to the Inducement Agreement which do not substantially modify the terms of the attached Inducement Agreement and which are mutually acceptable to the Company.

2. The County Council and the duly elected or appointed officials of the County shall take any and all further action necessary to implement the FILOT Arrangement authorized by this resolution and the Inducement Agreement.

3. It is the intent of the County Council that this Resolution shall constitute an "inducement resolution" as defined in the Simplified FILOT Act and an official action on the part of the County. This Resolution shall take effect immediately, it being understood that, prior to the execution of a "fee agreement" pursuant to the Inducement Agreement, the County shall adopt an ordinance upon three readings, and that the third reading of the Ordinance shall follow a public hearing to be held not earlier than fifteen (15) days following the publication of notice of such hearing.

4. The identity of the Company shall not be disclosed by the County until the Company notifies the County in writing that the Company's identity may be disclosed.

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SIGNATURE PAGE FOLLOWS.

DONE AND PASSED this 7th day of February, 2011.

DORCHESTER COUNTY, SOUTH CAROLINA

By: 

Print Name: Larry Hargett
Chairman, Dorchester County Council

ATTEST:

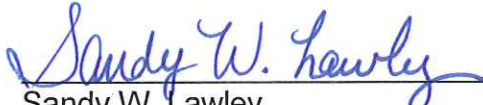

Sandy W. Lawley
Clerk, Dorchester County Council

EXHIBIT A

INDUCEMENT AGREEMENT

THIS INDUCEMENT AGREEMENT (the "Inducement Agreement") is made and entered into between **DORCHESTER COUNTY, SOUTH CAROLINA** (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), and SHOWA DENKO CARBON, INC., a CORPORATION organized and existing under the laws of the State of SOUTH CAROLINA, its successors and assigns (the "Company"). The County and the Company are sometimes jointly referred to herein as the "parties" or separately referred to as a "party." The "Effective Date" of this Inducement Agreement shall be the last date on which a party executes this Inducement Agreement, as shown on the signature page of this Inducement Agreement.

In consideration of the mutual benefits to the parties, the parties agree as follows:

ARTICLE 1

RECITATION OF FACTS

Section 1.1. As a means of setting forth the matters of mutual inducement that have resulted in the making and execution of this Inducement Agreement, the following statements of fact are confirmed:

- (a) The Company is considering the acquisition, construction and equipping of facilities for production and distribution of high technology goods, and other lawful purposes (the "Project"), which Project is to be located in Dorchester County, South Carolina (the "County").
- (b) The County is a body politic and corporate and a political subdivision of the State. The County is authorized and empowered by the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), hereinafter referred to as the "Simplified FILOT Act" or the "Act", to offer certain economic development incentives in connection with undertakings such as the Project, including, among others, an arrangement for payments in lieu of ad valorem property taxes (the "FILOT Arrangement").
- (c) Through the FILOT Arrangement, the industrial development of the State will be promoted and trade will be developed by inducing new industries to locate in the State and by encouraging industries now located in the State to expand their investments and thus utilize and employ manpower and other resources of the State.

- (d) The Project will involve an investment of not less than the Two Million, Five Hundred Thousand Dollars (\$2,500,000) required by the Act for the incentives referred to herein.
- (e) The County Council has determined that, pursuant to the Act, (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally, (ii) the Project will give rise to no pecuniary liability of the County or charge against its general credit or taxing power, (iii) the purposes to be accomplished by the Project are proper governmental and public purposes, and (iv) the benefits of the Project are greater than the costs because of the substantial direct and indirect economic benefits to the County and its residents that are expected, such as new employment, payroll income, purchases of goods and services in the County, property taxes on real and personal property of Project employees located in the County; etc.
- (f) The County has ascertained that the Project would be aided by the availability of the assistance that the County might render through the inducements authorized by the Act for a FILOT Arrangement and certain other incentives. The County has given due consideration to the economic development impact of the proposed expansion and has agreed to enter into a Fee Agreement under the Act, if so determined by the Company, providing for payments-in-lieu-of-taxes pursuant to the Act at the time and on the terms and conditions hereafter set forth.

ARTICLE 2

UNDERTAKINGS ON THE PART OF THE COUNTY

Section 2.1. If the Company elects to proceed under the Act, the County shall enter an agreement (the "Fee Agreement") for the maximum term permitted by the Act. The provisions of the Fee Agreement shall be in a form generally utilized in connection with the Act, as agreed upon by the County and the Company. From the date that the Resolution authorizing the County's execution of this Inducement Agreement is adopted by the County, the Company shall have five (5) years in which to enter into the initial Fee Agreement. The Fee Agreement shall contain, in substance, the following provisions:

- (a) Term of Fee Agreement. The term of the Fee Agreement will commence on the last day of the property tax year during which the first Project assets are "placed in service" (the "Commencement Date"). If Project assets are placed in service in different years, the Commencement Date for each portion of the Project assets shall commence on the last day of the property tax year in which the applicable Project assets are "placed in service". The termination dates for

the Fee Agreement shall be the twenty-ninth (29th) year following the last day of the property tax year in which the applicable Project assets are placed in service.

- (b) Investment Period. From the end of the property tax year in which the Fee Agreement is executed, the Company shall have five (5) years in which to complete its investment in the Project (the "Investment Period"); provided, however, if the Company does not complete its investment in the Project during such initial five (5) year Investment Period, the Company may, by written notice to the County prior to the end of such five (5) year period, extend the Investment Period for up to an additional five (5) years (or a cumulative total of ten [10] years).
- (c) Fee Payments. The Company shall make payments in lieu of taxes during the term of the Fee Agreement (the "Fee Payments"). If portions of the Project are "placed in service" during more than one property tax year, the Company shall make the Fee Payments for such portion of the Project during the applicable term of the Fee Agreement for that portion of the Project.
- (d) Amount of Fee Payments. The Fee Payments shall be in an amount not less than the ad valorem property taxes that would be due on the Project if it were taxable, but using (a) an assessment ratio of six (6%) percent, (b) for real property, a fair market value that is the original income tax basis for South Carolina income tax purposes, without regard to depreciation (which fair market value estimate shall remain the fair market value for the life of the Fee Arrangement), and (c) for personal property, the original income tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes, but without allowance for extraordinary obsolescence.
- (e) Millage. The applicable millage shall be that set forth in the initial Fee Agreement and shall be either (as determined by the Company):
- (i) a fixed millage rate equal to the cumulative ad valorem property tax millage rate levied by the County, or on behalf of all millage levying entities within the district in which the Project is located, based on the millage rate in effect on either (as determined by the Company) June 30 of the calendar year preceding the year the Fee Agreement is signed, or June 30 of the calendar year in which the Fee Agreement is signed, or
 - (ii) a millage rate as determined in (i), except that every fifth year during the term of the Fee Agreement the millage rate shall increase or decrease in step with the average actual millage rate applicable in the district where the Project is located, based on the preceding five (5) year period.

- (f) Inclusion in Multi-County Industrial Park. During the first six (6) years of the Investment Period, the County shall cause the Project to be included in the multi-county industrial development park of the County. Thereafter, unless otherwise agreed in writing by the County and the Company, the Project shall be removed from the multi-county industrial development park of the County
- (g) No County Liability. Any obligations that the County may incur shall not create a pecuniary liability of the County or create a general obligation on its part or by the State of South Carolina.
- (h) Indemnification. The County and its individual officers, agents and employees shall be indemnified by the Company for all expenses incurred by them and for any claim of loss suffered, damage to property, or any injury to, or death of, any person occurring in connection with the planning, design, acquisition, construction, and operation of the Project by the Company.
- (i) Disposal and Replacement of Property. Any property that is part of the Project and is "disposed of", as defined by the Act, shall not be subject to Fee Payments. Any property that is placed in service as a replacement for property that is part of the Project shall, at the option of the Company, qualify for the most beneficial Fee Payments treatment permitted by the Act.
- (j) Fee Credits. During the first six (6) years of the Investment Period (the "Credit Period"), the County shall grant an infrastructure improvement credit (the "Fee Credit") against the Fee Payments otherwise payable by the Company for such year. The Fee Credit shall be the lesser of (a) the Fee Payments otherwise payable for such year, less Five Hundred Thousand Dollars (\$500,000), and (b) the cumulative infrastructure improvement costs of the Project. In determining the cumulative infrastructure improvement costs of the Project available for a Fee Credit each year, all Fee Credits received by the Company in previous years shall first be subtracted.
- (k) Infrastructure Improvement Costs Defined. "Infrastructure improvement costs" shall have the meaning defined by the Act, that is: "the cost of designing, acquiring, constructing, improving or expanding the infrastructure serving the Project; and improved and unimproved real property real property, building and structural components of buildings used in the operation of a project in order to enhance economic development".

Section 2.2. Investment and Job Projections; Adjustments of Fee Credits. It is estimated that the Project will involve an investment of approximately Two Hundred Million Dollars (\$200,000,000) during the Investment Period (the "Investment Projection"),

and result in the hiring of approximately ninety (90) new employees (the "Job Projection). If, at the end of Year 3 of the Investment Period, the investment in the Project is less than the Investment Projection, or the number of new employees hired by the Company for the Project since January 1, 2010 is less than the Job Projection, then the following shall apply:

- (a) If the cumulative investment by the Company achieves an "Achievement Factor" at or above ninety percent (90%) of the Investment Projection (irrespective of the source from which the investment funds are derived) and the Job Projection, then the Company shall be deemed to have complied with its Investment and Job Projections and the Fee Credits set forth in Section 2.1(k) shall continue unchanged. The formula to calculate the Achievement Factor is as follows:

Achievement Formula

50% (Investment Achieved / Investment Projection) plus 50% (Jobs Achieved / Job Projection) = Achievement Factor. (Example: Assume the Investment Achieved is \$175,000,000 and the Jobs Achieved are 100. Then: (1) $\$175,000,000 / \$200,000,000$ Investment Projection = 87.5% x 50% = 43.75%. (2) $100 / 90 = 111\%$ x 50% = 55.5%. Achievement Factor is 43.75% plus 55.5% = 99.25%.) Note: The Achievement Formula above shall include any investment and jobs exceeding the Investment Projection or Job Projection, respectively.

- (b) If, at the end of Year 3 of the Investment Period, the Achievement Factor is at or above seventy percent (70%) but less than ninety percent (90%), then (i) the Company will be required to reimburse the County for a portion of the Fee Credits in Years 1 through 3 of the Investment Period in accordance with the following "Fee Credit Reimbursement Formula" below; and (ii) the Fee Credits in Years 4 through 6 of the Investment Period shall be reduced prospectively in accordance with the following "Fee Credit Adjustment Formula".

Fee Credit Reimbursement Formula

Example: Assume that the Achievement Factor is 80%, using the Achievement Formula under subsection (a), above. The Fee Credit Reimbursement shall be 20% (100% less 80%) of the Fee Credits actually received during Years 1 through 3 of the Investment Period.

Fee Credit Adjustment Formula for Years 4 through 6

Example: Assume that the Achievement Factor is 80%, using the Achievement Formula under subsection (a), above. The Fee Credit for Years 4 through 6 of the Investment Period shall be 20% (100% less 80%) less than the Fee Credits that would have been received if the Achievement Factor in Years 1 through 3 of the Investment Period had been 90% or higher.

- (c) Prior to any requirement for the Company to reimburse the County for excess Fee Credits pursuant to subsection (b), above, the Chairman of County Council shall meet with an appropriate Company official to discuss the Company's investment and job creation, potential reimbursement of the excess Fee Credits for Years 1 through 3, and adjustment of the Fee Credits for Years 4 through 6. Following this meeting, if the County desires to enforce the reimbursement and adjustment provisions set forth in this Section 2.2; or, alternatively, the County desires to authorize another arrangement agreed to by the County and the Company, the County Council shall adopt a resolution confirming its determination.

Section 2.3. Implementation. The County Council and other officials of the County will perform such other acts and adopt such further proceedings as may reasonably be required to faithfully implement the undertakings of the County and to consummate the proposed financing of the Project by the Company. After consultation with the County Attorney, the Chairman of the County Council may enter into non-substantive modifications to this Inducement Agreement as may be mutually acceptable to the Chairman of the County Council and the Company.

ARTICLE 3

UNDERTAKINGS ON THE PART OF THE COMPANY

Section 3.1. Confirmation of Conditions. The Company concurs with the conditions set forth under Sections 2.1 and 2.2, above.

Section 3.2. Payments by Company. The Company shall pay all obligations hereunder incurred by the County at the request of the Company, including the reasonable fees of legal counsel for the County in reviewing this Inducement Agreement and subsequent related documents. The Company shall pay all costs of planning, design, acquisition, construction and operation of the Project.

Section 3.3. Project Supervision. The Company will be solely responsible for the

planning, design, acquisition, construction and execution of the proposed Project. The Company shall let contracts for such purposes deemed necessary or desirable by the Company. Such activities may commence before execution of this Inducement Agreement or the Fee Agreement.

Section 3.4. Fee Agreement. If the Company elects to proceed under the Act, the Company shall enter a Fee Agreement pursuant to the provisions of Sections 2.1 and 2.2, above.

Section 3.5. Other Obligations. If the Company elects to proceed as set forth in Section 3.4, it shall:

- (a) perform such further acts and adopt such further proceedings as may reasonably be required to faithfully implement its undertakings and complete the Project;
- (b) apply for, and use its commercially reasonable best efforts to obtain, all permits, licenses, authorizations and approvals required by all governmental authorities in connection with the acquisition, construction, operation and use of the proposed Project; and
- (c) reimburse or otherwise pay, on behalf of the County, all expenses not mentioned herein that are reasonably incurred by the County in connection with the proposed Project.
- (d) carry such insurance as it shall determine is appropriate, insuring against loss or damage or perils generally insured against by businesses similar to the Company, including public liability insurance covering personal injury or property damage with respect to the proposed Project, but the Company may be self-insured.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1. Conditions. All commitments of the County and the Company hereunder are subject to:

- (a) the provisions of the Act; and
- (b) for any additional document contemplated in connection with the FILOT Arrangement and the Project, agreement by the County and the Company on reasonable and mutually acceptable terms consistent with this Inducement

Agreement.

Section 4.2. Waiver of Recapitulation. Pursuant to the Act, the parties waive any requirement for a "recapitulation" of the terms in any Fee Agreement executed pursuant to this Inducement Agreement.

Section 4.3. Timing. If for any reason this Inducement Agreement is not executed and delivered to the County by the Company within five (5) years after the date that the County adopts the Resolution approving this Inducement Agreement, the provisions of this Inducement Agreement shall be canceled, and neither party shall have any rights against the other; provided, however, the Company shall pay the County for all expenses that have been authorized by the Company or reasonably incurred by the County in connection with the review, planning, design, acquisition, construction and carrying out of the proposed Project.

Section 4.4. Notices. All notices and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if (a) personally delivered, delivery charges prepaid, by any entity that provides written confirmation of such delivery, or (b) sent by United States first class mail, postage prepaid (in which event notice shall be deemed to occur three (3) calendar days after the date postmarked), (c) sent by United States certified mail, return receipt requested, postage prepaid (in which event notice shall be deemed to occur on the date on which delivery was accepted or rejected by the recipient), or (d) sent by facsimile or internet to the other party (in which event notice shall be deemed to occur on the date on which delivery is acknowledged in writing by the recipient or such earlier date as is acknowledged by the recipient in writing). Notices and requests shall be addressed as follows or to such other places as may subsequently be designated in writing by such party by proper notice to the other party.

(a) As to the County:

Dorchester County
Attention: Clerk, County Council
201 Johnston Street
St. George, SC 29477
Facsimile: (843) 563-0137 or (843) 832-0137

(b) As to the Company (to be inserted by Company at time of execution by Company):

SHOWA DENKO CARBON, INC.
Attention: Chief Executive Officer
478 RIDGE ROAD
RIDGEVILLE, SC 29472
Facsimile: (843) 851-5477

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IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Inducement Agreement on the respective dates indicated below.

DORCHESTER COUNTY, SOUTH CAROLINA

By: Larry Hargett

Print Name: Larry Hargett
Chairman, Dorchester County Council

Date: February 7, 2011

ATTEST:

Sandy W. Lawley

Sandy W. Lawley
Clerk, Dorchester County Council

SHOWA DENKO CARBON, INC.
(Insert name of Company)

By: Robert C. Whitten

Print Name: ROBERT C. WHITTEN

Title: PRESIDENT AND CEO

Date: February 16, 2011