

ORDINANCE NO. 12-05

AN ORDINANCE AUTHORIZING ECONOMIC DEVELOPMENT INCENTIVES, INCLUDING A FEE AGREEMENT, BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA, AND SHOWA DENKO CARBON, INC., WHEREBY DORCHESTER COUNTY WILL ENTER INTO AN ARRANGEMENT FOR PAYMENTS IN LIEU OF PROPERTY TAXES

WHEREAS, Dorchester County, South Carolina (the "County") desires to provide economic development incentives to **Showa Denko Carbon, Inc.**, a South Carolina corporation (the "Company"), in the form of a payments-in-lieu-of-property tax arrangement (the "FILOT Arrangement") in order to induce the Company to acquire, construct and equip additional facilities for production and distribution of high technology goods, and other lawful purposes (such facilities and other related capital improvements by or for the Company in the County during the applicable period being hereinafter defined collectively as the "Project"); and

WHEREAS, the Project will result in total investment by the Company of not less than Two Million, Five Hundred Thousand Dollars (\$2,500,000); and 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, Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (hereinafter referred to as the "Simplified FILOT Act" or the "Act") authorizes and empowers the County to offer certain economic development incentives in connection with undertakings such as the Project, including a FILOT Arrangement; and

WHEREAS, the County, by proper corporate action on February 7, 2011, adopted Resolution 11-03 authorizing County representatives to enter into an inducement agreement and a FILOT Arrangement with the Company, and the County and the Company subsequently entered into an inducement agreement setting forth the general terms of the FILOT Arrangement and other economic incentives available to the Company (the "Inducement Agreement"); and

WHEREAS, pursuant to the Inducement Agreement, the County desires to enter into a FILOT Arrangement with the Company to be evidenced by a Fee Agreement between the County and the Company (the "Fee Agreement"); and

WHEREAS, in connection with the Fee Agreement, the Company will make certain payments to the County in lieu of property taxes, as set forth in the Inducement

Agreement; and

WHEREAS, the County has reviewed the forms of the major documents required for the FILOT Arrangement; and

WHEREAS, these documents are appropriate in form and substance for approval and, to the extent necessary, execution by the County;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

ARTICLE 1: FINDINGS

Section 1.1. Pursuant to the Act, the County Council makes the following findings of fact:

- (a) 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.
- (b) The Project 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 the Project are proper governmental and public purposes.
- (d) The benefits of the Project to the public are greater than the costs to the public.
- (e) The Project constitutes a "project" within the meaning of the Act.
- (f) The form of the Fee Agreement between the County and the Company, a draft copy of which is attached to and made a part of this Ordinance, contains all provisions required by the Act, and otherwise fully complies with applicable law.

ARTICLE 2: AUTHORIZATION AND LIMITATION

Section 2.1. The County shall execute the Fee Agreement attached hereto as Exhibit A, subject to Section 2.2. After execution of the Fee Agreement by the County, it shall be delivered to the Company for execution. In recognition of the fact that the County and the Company cannot accurately determine at this time the exact year in which a portion of the Project will first be placed in service by the Company and the exact list of assets that will be part of the Project, the Company shall be authorized to insert in the

Fee Agreement at the time of execution by the Company, (a) as the effective year, the property tax year in which a portion of the Project is first placed in service by the Company; (b) in accordance with Section 6.1(b) of the Act, the fixed millage rate which is equal to the cumulative ad valorem property tax millage rate levied by the County, on behalf of all millage levying entities within the district in which the Project is located, either (as elected by the Company), (i) June 30 of the calendar year preceding the year the Fee Agreement is executed by the Company, or (ii) June 30 of the calendar year in which the Fee Agreement is executed by the Company; and (c) Exhibit D and Exhibit E specifically identifying the initial Property subject to the Fee Agreement.

Section 2.2. Authority of Chairman of County Council. The Chairman of the County Council and the Clerk of the County Council are authorized to execute and deliver to the Company the Fee Agreement and such supplemental documents (cumulatively, the "Related Documents") as are customary in arrangements of this type or as may be required from time-to-time to accomplish the intent of this Ordinance or any requirements of the Related Documents. After consultation with the County Attorney, the Chairman of the County Council shall, to the extent permitted by the Act, be authorized to make or permit modifications or amendments in the form of the Related Documents as may be agreed upon by the Company, provided that such modifications or amendments do not substantially modify the terms of the FILOT Arrangement set forth in the Fee Agreement attached hereto. In the absence or incapacity of the Chairman of the County Council or the Clerk of the County Council, any other proper officers who are authorized to execute documents on behalf of the County shall be authorized to perform the actions of the Chairman and the Clerk of the County Council.

Section 2.3. Limited Obligations. THE FEE AGREEMENT AND ALL OTHER DOCUMENTS EXECUTED IN CONNECTION WITH THE FILOT ARRANGEMENT SHALL BE LIMITED OBLIGATIONS OF THE COUNTY, PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS DERIVED FROM THE PROJECT, AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY. THE RELATED DOCUMENTS EXECUTED IN CONNECTION WITH THIS TRANSACTION DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

ARTICLE 3: MISCELLANEOUS

Section 3.1. Severability. The provisions of this Ordinance are severable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

Section 3.2. Successors and Assigns. This Ordinance shall bind and inure to the benefit of the County and the Company and their successors and assigns.

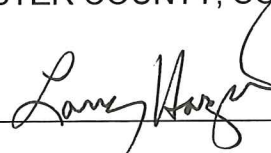
Section 3.3. Ordinance Modification. This Ordinance shall not be amended, rescinded or modified by the County except with the prior written consent of the Company.

Section 3.4. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council and shall supersede any inconsistent ordinances.

PASSED AND APPROVED this 21st day of May, 2012.

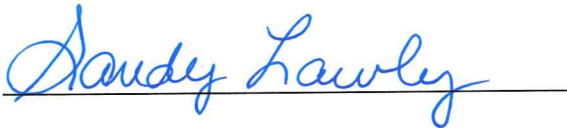
DORCHESTER COUNTY, SOUTH CAROLINA

By: _____



Print Name: Larry Hargett
Chairman, Dorchester County Council

ATTEST:



Print Name: Sandy Lawley
Clerk, Dorchester County Council

First Reading: April 16, 2012

Second Reading: May 7, 2012

Public Hearing: May 7, 2012, 2012

Third Reading: May 21, 2012, 2012

EXHIBIT A: FORM OF FEE AGREEMENT

FEE AGREEMENT

between

DORCHESTER COUNTY, SOUTH CAROLINA

and

SHOWA DENKO CARBON, INC.

Effective Date: December 31, 201__

**Prepared by: McNair Law Firm, P. A.
P. O. Box 1431
Charleston, SC 29402**

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**FEE AGREEMENT BETWEEN SHOWA DENKO CARBON, INC. AND
DORCHESTER COUNTY, SOUTH CAROLINA**

THIS FEE AGREEMENT (the "Agreement") is made and entered into effective as of the Commencement Date, as defined in Section 2.1, by and between DORCHESTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and SHOWA DENKO CARBON, INC., a South Carolina corporation (the "Company"). County and Company are sometimes jointly referred to in this Agreement as the "parties", or severally referred to as a "party".

RECITALS

WHEREAS, the Act, as defined in Section 2.1, below, empowers the several counties of the State of South Carolina to enter into fee agreements with an industry as an optional method of providing fee in lieu of property tax benefits for a project; and

WHEREAS, the County and Company entered into an Inducement Agreement between the parties, as defined in Section 2.1 below; and the Inducement Agreement summarizes the fee in lieu of property tax provisions to be incorporated in an agreement between the Company and the County; and

WHEREAS, the Company owns certain property located in Dorchester County, South Carolina (being part of the "Property" which will become part of the "Project", each as more specifically defined in Section 2.1, below); and

WHEREAS, the parties desire to define the terms under which the Project will qualify for fee in lieu of property tax treatment.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained and the mutual benefits to be derived by the parties, the receipt and adequacy of which are acknowledged by the parties, the County and the Company agree as follows:

1. NO RECAPITULATION REQUIRED

1.1. Recapitulation Waived

In accordance with Section 12-44-55(B) of the Code, as defined in Section 2.1, the parties waive the requirement of a recapitulation of the provisions of this Agreement pursuant to Section 12-44-55(A) of the Code.

2. DEFINITIONS

2.1. *Specific Definitions*

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein shall have the following meanings unless the context or use indicates a different meaning or intent.

"Act" means the FILOT Simplification Act, as defined below.

"Additional Payments" shall have the meaning set forth in Section 5.3 of this Agreement.

"Administrative Expenses" means the reasonable and necessary expenses incurred by the County in reviewing, implementing or amending this Agreement and the Related Documents, including, without limitation, legal fees and expenses incurred by the County, but excluding the salaries and overhead of County personnel. Prior to an Event of Default, no expense shall be considered an Administrative Expense until the County has furnished to the Company a statement in writing indicating in reasonable detail the amount of such expense and the reason it has been or will be incurred. Expenses incurred in connection with a general taxpayer challenge to the validity of the Act shall not be deemed an Administrative Expense unless the Company requests the County to defend the suit on the Company's behalf.

"Agreement" or *"Fee Agreement"* means this Agreement as originally executed and any supplements or amendments thereto.

"Authorized Company Representative" means any person or persons at the time designated to act on behalf of the Company by the most current written certificate furnished to the Clerk of County Council of the County and signed on behalf of the Company by the Chairman of the Board, Chief Executive Officer, President, any Vice President, the Secretary, Treasurer, or General Manager of the Company.

"Business day" means any day other than a Saturday, Sunday or a date that is an official State of South Carolina or federal holiday. Unless otherwise expressly provided by applicable law, in any case in which the last date for action by or notice to a party falls on a day which is not a business day, then the action required or notice to be given may be made or given on the next following business day.

"Code" means the Code of Laws of South Carolina, 1976, as amended.

"Commencement Date" means the last day of the property tax year during which the Project or a portion of the Project is first placed in service, pursuant to Section 12-44-30(2) of the Act. If portions of the Project are placed in service in different years, the

Commencement Date for each portion of the Project shall be the last day of the property tax year during which such portion of the Project is first placed in service. (Example: For Property placed in service in 2014, the Commencement Date is December 31, 2014.).

"Company" means Showa Denko Carbon, Inc., a South Carolina corporation, its successors and assigns.

"Completion Date" means five (5) years after the Commencement Date, provided that if the Company does not complete its investment in the Project during such five (5) year period, the Company may, by written notice to the County prior to the end of such five (5) year period, extend the period in which to complete its investment in the Project for up to an additional five (5) years.

"Cost" or "Cost of the Project" means the cost to the Company of acquiring the Property, during the Investment Period, by construction, purchase, or lease, and shall be deemed to include, whether incurred prior to or after the Commencement Date: (a) costs incurred for architects, engineers, designers, landscape architects, attorneys, estimators, and other Project consultants, (b) costs incurred for labor, materials and other expenses to contractors, builders and suppliers in connection with the acquisition, construction and installation of the Project; (c) financing costs, (d) the cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction and installation of the Project; (e) the expenses of the Company for tests, borings, surveys, test and pilot operations, estimates, studies, plans and specifications, and preliminary investigations, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction and installation of the Project; (f) other costs that the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction and installation of the Project; (g) costs incurred by the Company for the acquisition and insuring of any interest in the land upon which the Project is located; and (h) any sums required to reimburse the Company for advances made by it for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project.

"County" means Dorchester County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"County Council" means the governing body of the County and any successor governing body of the County.

"Default" means an event or condition, the occurrence of which would, after the passage of any time permitted for cure or the giving of notice or both, become an Event of Default as defined in Article 8 hereof.

"Department of Revenue" means the South Carolina Department of Revenue or its successor agency.

"Equipment" shall have the meaning set forth in Exhibits C and D of this Agreement.

"Event of Default" means any of those events set forth in Section 8.1 of this Agreement.

"Fee Payments" shall have the meaning set forth in Section 6.1 of this Agreement.

"FILOT Simplification Act" means Title 12, Chapter 44 of the Code, as amended from time to time, pursuant to which this Agreement is executed by the parties.

"Independent Counsel" means an attorney authorized to practice law in South Carolina.

"Inducement Agreement" means the Inducement Agreement between the County and the Company, executed by the County on February 7, 2011, and any amendments thereto.

"Investment Period" means the five (5) year period beginning with the Commencement Date; provided, however, if the Company does not complete its investment in the Project during the initial five (5) year period, the Company may, by written notice to the County prior to the end of the initial five (5) year period, extend the Investment Period for up to an additional five (5) years.

"Minimum Investment Level" means a Cost of the Project of at least Two Million, Five Hundred Thousand Dollars (\$2,500,000).

"Ordinance" means Dorchester County Ordinance 12-05 approved by Dorchester County Council on May 21, 2012, which Ordinance authorized execution and delivery of this Agreement and other applicable Related Documents by the County.

"Person" means any individual, association, corporation, partnership, limited liability company, unincorporated organization, joint venture, trust, or government or agency or political subdivision thereof.

"*Prime Rate*" means the prime rate of interest then being charged by lenders as stated from time to time in *The Wall Street Journal*.

"*Project*" means the facilities of the Company located within the County, of which the Property is a part.

"*Property*" shall mean the Equipment and the Real Property.

"*Real Property*" shall have the meaning set forth in Exhibits B and D of this Agreement.

"*Related Documents*" means this Agreement, the Inducement Agreement, the Ordinance, and any documents to which the County and/or the Company are or become parties that are reasonably required for the consummation of the transactions contemplated hereby or thereby.

"*Replacement Property*" means all Property that is placed in service as a replacement for a portion of the Property, to the maximum extent permitted by the Act.

"*State*" means the State of South Carolina.

"*Term*" means the period beginning on the Commencement Date. The Term shall terminate on the "*Termination Date*", being the earlier of (a) the twenty-ninth (29th) year following the first property tax year in which the applicable Property is placed in service, (b) such earlier termination as is authorized by this Agreement, (c) the end of the Investment Period if the Cost of the Property acquired during the Investment Period is less than the Minimum Investment Level (as defined above), or (d) such earlier date as is agreed upon by the parties. (Example: Unless earlier terminated pursuant to (b), (c), or (d), the Termination Date for Property placed in service in 2014 shall be December 31, 2043. If portions of the Project are placed in service during the Investment Period but after 2014, the Term for such portion of the Project shall commence on the last day of the property tax year in which the applicable Property is placed in service and the Termination Date for such Property shall be determined in the same manner as set forth above.)

2.2. References to Agreement

The words "hereof," "herein," "hereunder" and other words of similar import refer to this Agreement.

3. REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties by the County

The County warrants that:

(A) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out the County's obligations hereunder. The Project constitutes or will constitute a "project" within the meaning of the Act. By proper action by County Council, the County has been duly authorized to execute and deliver this Agreement and the other Related Documents.

(B) Prior to the delivery of this Agreement, the County enacted the Ordinance.

(C) To the best of its knowledge and information, the execution and delivery of the Related Documents and compliance by the County with the terms and conditions thereof will not constitute a material breach of, or a material default under any existing law, regulation, decree, or order, or any material agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound.

(D) To the best of its knowledge and information, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, that would materially, adversely affect the validity or enforceability of the Related Documents.

3.2. Representations and Warranties by Company

The Company represents and warrants that:

(A) The Company is a corporation organized in, and in good standing under, the laws of the State of South Carolina, has power to enter into this Agreement, and, by proper action, has been duly authorized to execute and deliver any Related Documents.

(B) To the best of its knowledge and information, the execution and delivery of the Related Documents and compliance by the Company with the terms and conditions thereof will not constitute a material breach of, or a material default under (i) any existing law, regulation, decree, or order, or (ii) any material term, condition, or provision of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound; and will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company that would materially restrict the Company's ability to make any payments hereunder, other than as may be permitted or required by

the Related Documents.

(C) To the best of its knowledge and information, no event has occurred and no condition exists with respect to the Company that would constitute an "Event of Default" as described in Section 8.1 hereof.

(D) To the best of its knowledge and information, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal that would materially and adversely affect the validity or enforceability of the Related Documents.

(E) The Company intends to operate the Project for the purposes permitted by this Agreement or other lawful purposes agreed upon in writing by the parties.

(F) The execution of this Agreement by the County and the Company has been instrumental in inducing the Company to locate its facility in the County and in the State.

(G) To the best of its knowledge and information, the Cost of the Property to be acquired during the Investment Period shall not be less than the Minimum Investment Level, as defined in Section 2.1, but there shall not be any maximum Cost of the Property to be acquired during the Investment Period.

(H) All Administrative Expenses of the County in entering into this Agreement shall be borne by the Company.

4. PROPERTY

4.1. Purchase of Property

To the best of knowledge and information of the parties, the Property identified in this Agreement will be placed in service no later than the Completion Date.

5. TERM, FEES AND ADDITIONAL PAYMENTS

5.1. Term

Subject to the provisions herein, this Agreement shall be and remain in full force and effect during the Term, as defined in Section 2.1.

5.2. Fee Payments

The Company shall pay to the County all amounts due and payable as Fee Payments pursuant to Section 6.1 hereof. Unless otherwise expressly provided in the Act or required by law, returns calculating Fee Payments shall be filed and Fee

Payments shall be payable at the same time that ad valorem property tax returns and tax payments for the Property would otherwise be due under applicable State law and regulations in the absence of this Agreement.

5.3. Additional Payments

In addition to the Fee Payments, the Company shall pay, as "Additional Payments" to or on behalf of the County, any Administrative Expenses, as defined in Section 2.1, above. Such Additional Payments shall be payable by the Company within forty-five (45) business days after receipt by the Company from the County of a statement in writing stating in reasonable detail the amount of such Additional Payments, the payee, and the reason they have been incurred or will be incurred within the next forty-five (45) business days.

5.4. Failure to Pay in a Timely Manner

If the Company fails to make in a timely manner any of the payments required in this Article 5, then, unless otherwise expressly approved by the County in writing, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, together with interest thereon (to the extent permitted by law) from the date the payment was due, at the rate per annum which is equal to the Prime Rate or, in the case of the Fee Payments, an amount equal to any interest and penalties required by law for late payment of comparable ad valorem property taxes. In the event of any failure on the part of the Company to pay any such amounts, liabilities or obligations, the County shall have all rights, powers and remedies provided for herein, by law, equity or otherwise.

6. FEE PAYMENTS AND CREDITS

6.1. Fee Payments; Millage; Calculation and Timing;

(A) Fee Payments in Lieu of Property Taxes. The parties acknowledge that during the Term of this Agreement, the Property is exempt from *ad valorem* property taxes. However, in lieu of *ad valorem* property taxes, the Company shall, during the applicable Term, make successive annual Fee Payments for each portion of the Property placed in service during the Investment Period.

(B) Determining Fee Payments. Fee Payments shall be determined as follows:

(1) The amount of Fee Payments due and payable shall be that amount which would be due for *ad valorem* property taxes if the Property were subject to ad valorem property taxes, but using (i) an assessment ratio of six (6%) percent, (ii) a fixed millage rate of _____ (being the millage rate equal to the cumulative ad valorem property tax millage rate levied by the County, on behalf of all millage levying entities within the district in which the Project is located on **[check one]** (i) [___] on June 30 of

the calendar year preceding the year this Agreement is executed by the Company, or (ii) [___] June 30 of the calendar year in which this Agreement is executed by the Company), and (iii) a fair market value determined as set forth below in subsection (2), below (which value, to the extent permitted by the Act, is not subject to re-assessment).

(2) Fair market value shall be determined at the time such value would be determined for *ad valorem* property taxes if the Property were taxable. Fair market value for real property shall be determined by using the original tax basis for South Carolina income tax purposes without regard to depreciation, but if real property is constructed or is purchased in an arm's length transaction, fair market value shall be the original income tax basis. Otherwise, the Department of Revenue shall determine fair market value by appraisal. Fair market value for personal property shall be determined by using the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes, except that the Company shall not be entitled to extraordinary obsolescence. If a more favorable method for determining fair market value is subsequently established by amendment to the Code, then the Company may elect to use such method if permitted by law.

(C) Result of Invalidity. In addition to the rights of the Company set forth in Section 8.3, if the Act, this Agreement, or any portion of the Act or this Agreement are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County intend that this Agreement be reformed so as to afford the Company the maximum benefit then permitted by law. If the Property is deemed not to be eligible for Fee Payments in lieu of taxes, the Company shall be entitled (i) to enjoy any exemption from *ad valorem* taxes allowed by law from time to time; (ii) to enjoy all allowable depreciation; and (iii) to receive such other credits, if any, as are allowed by law.

6.2. Credits Against Fee Payments

(A) Amount of 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 for the Project received by the Company in previous years shall first be subtracted.

(B) 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”.

(C) 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:

(1) 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 6.2(A) 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.)

(2) 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 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, 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.

(3) Prior to any requirement for the Company to reimburse the County for excess Fee Credits pursuant to subsection (2), 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; 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.

6.3. Tax Deductions, Other Credits and Exemptions

Unless otherwise precluded by the Act, applicable law or judicial decision, the Company shall also be entitled to all other applicable federal, state and local investment tax credits, exemptions, allowances, and deductions for depreciation and diminution in value, and other similar tax relief provisions relating to the Project. At the request of the Company, the County shall do all reasonable things as are necessary or proper to confirm this right, provided the Company shall pay the reasonable expenses incurred in that undertaking.

6.4. Abating Fee Payments

If the Property is damaged or destroyed, the subject of condemnation proceedings, or otherwise adversely impacted by theft, casualty, or other cause, and the damage, destruction, condemnation, or adverse impact reduces the Property's fair market value, the Fee Payments shall be abated in the same manner as *ad valorem* property taxes would be abated if the Property had been subject to *ad valorem* property taxes.

6.5. Recovery of Improperly Reduced Property Taxes

Pursuant to Section 12-44-140 of the Act, this Agreement shall be automatically terminated if the Company fails to satisfy the Minimum Investment Level (as defined in Section 2.1). If this Agreement is terminated pursuant to this subsection, the Property shall be subject, as of the Commencement Date, to ad valorem property taxation as required by law. At the time of termination, the Company shall pay to the County an additional fee equal to the difference between the total amount of ad valorem property taxes that would have been paid by the Company had the Project been taxable, taking into account exemptions from property taxes that would have been available to the Company, and the total amount of Fee Payments actually made by the Company.

6.6. Disposal and Replacement of Property

Pursuant to Section 12-44-60 of the Act, the Company may elect to include Replacement Property as part of the Property to the maximum extent permitted by the Act. If the Company disposes of part of the Property, the disposed part of the Property shall not be subject to Fee Payments, but may be subject to ad valorem property taxes to the extent it remains within the State of South Carolina, pursuant to Section 12-44-50 of the Act.

7. OTHER COVENANTS

7.1. Use of Project

The Company shall have the right during the Term of this Agreement to use the Project for any lawful purpose authorized by the Act. However, insofar as it is practicable under conditions existing from time to time during the Term of this Agreement, it is the current intent of the Company to use the Project primarily for production and distribution of high technology goods and other lawful purposes.

7.2. Limitation of County's Liability

Any obligation the County may incur hereunder, including an obligation for the payment of money, shall not be deemed to constitute a debt or general obligation of the County but shall be payable solely and exclusively from the revenues and receipts derived by the County from this Agreement. The County may require, as a condition of its participation with the Company in any contest of a claim or in obtaining any license or permits or other legal approvals relating to this Agreement, a deposit by the Company of such amount as is reasonably determined by the County in its sole discretion, after consultation with Company, to assure reimbursement to the County of the expenses incurred by it in such participation, with any amount of such deposit in excess of such expenses to be returned promptly to the Company.

7.3. No Liability of County Personnel; Indemnification

All covenants, agreements and obligations of the County contained herein shall be deemed to be covenants, agreements and obligations of the County and not of any

member of the County Council or any officer, agent, servant or employee of the County in his individual capacity. The County and its individual officers, agents and employees shall be indemnified by the Company for all expenses reasonably incurred by them and for any claim of loss suffered, damage to property, or any injury to, or death of, any person occurring as a result of the planning, design, acquisition, construction, and operation of the Project by the Company.

7.4. Transfer of Property for Other Than Financing Purpose

Pursuant to Section 12-44-120(A) of the Act, (a) an interest in this Agreement or the Property, or (b) an equity interest or other interest in the Company or any entity that constitutes a "sponsor" (as defined in the Act), or both, may be transferred, assigned or leased, as applicable, to another entity at any time on such terms as the parties to such transaction may determine in their sole discretion, provided that such terms are not inconsistent with this Agreement. Except as otherwise permitted by this Agreement or the Act, the Company shall not transfer this Agreement or substantially all of the Property to another entity without the written approval of the County, before or after the transfer, which consent shall not be unreasonably withheld. Such consent shall be deemed to have been given if notice thereof is given to the County and no written objection by the County is received by the Company within ten (10) business days of receipt of such notice. No approval by the County shall be required in connection with transfers to affiliates of the Company or in connection with transfers related to financing arrangements. Transfers relating to financing arrangements shall be governed by Section 7.5, below.

7.5. Transfer, Assignments and Leases of Property for Financing

Transfers, mortgages, asset pledges, assignments, sale-leasebacks, equipment leases, build-to-suit leases, subleases and similar financing arrangements concerning all or part of the Property are permitted in accordance with Sections 12-44-120 (B) and (C) of the Act. No approval shall be required in connection with transfers to sponsor affiliates or other financing-related transfers. The Company shall cause the County and the Department of Revenue to be notified of a financing-related transfer of the Agreement or title to the Property within sixty (60) business days after such transfer. Such notice shall be in writing and shall include the identity of each transferee and any other information reasonably required by the Department of Revenue with any appropriate returns. Failure to provide such notice shall not affect the validity of this Agreement.

7.6. Assistance in Obtaining Permits and Licenses

If any application is made to a governmental or other agency by the Company or the County for any permit, license, or approval to do or to perform certain things necessary for the proper performance of this Agreement, the Company and the County shall execute, upon the request of the other party, such applications as may reasonably be requested or required.

7.7. Filing of Annual Report of Investment in Property

Upon written request by the County, the Company shall provide to the County a copy of the annual return to the Department of Revenue showing the investment of the Company in the Property. The County shall accord this information the same degree of confidentiality as is required for the Department.

8. EVENTS OF DEFAULT AND REMEDIES

8.1. Events of Default by Company

Any one or more of the following events shall constitute an "Event of Default" by Company:

(A) if default shall occur in the due and punctual payment of any Additional Payments to the County, which default shall not have been cured within thirty (30) business days following receipt of written notice thereof from the County (or such longer period as may be authorized by the County);

(B) if Fee Payments, together with any interest or penalties thereon, shall not have been paid within the maximum time that would be permitted by law if the Property were subject to *ad valorem* property taxes;

(C) if the Company shall fail to perform or comply with any of the terms of this Agreement, other than those referred to in the foregoing Subsections (A) or (B), and such default shall (i) continue for thirty (30) business days (or such longer period as may be authorized by the County) after the County has given the Company written notice of such default, or (ii) in the case of any such default that can be cured, but cannot be cured with due diligence within the period stated in (i), if the Company shall fail to proceed promptly and with due diligence to cure the same within such additional period as may be necessary to complete the curing of the same with all due diligence;

(D) if the Company shall file a voluntary petition seeking an order for relief in bankruptcy; or shall be adjudicated insolvent; or shall file any petition or answer or commence a case seeking reorganization, composition, readjustment, liquidation or similar order for relief for itself under any present or future statute, law or regulation; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company or of the Property; or shall make any general assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due;

(E) if a petition shall be filed or a case shall be commenced against the Company seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation, and, within an aggregate of sixty (60) business days (whether or not

consecutive), or such longer period as may be authorized by the County, shall not be dismissed or stayed; or if any trustee, receiver or liquidator of the Company or of all or any substantial part of its properties or of the Property shall be appointed without the consent or acquiescence of the Company and such appointment shall remain unvacated or unstayed for an aggregate of sixty (60) business days (whether or not consecutive), or such longer period as may be authorized by the County; or

(F) if any material representation or warranty made by the Company herein, or any statement, certificate or indemnification furnished or delivered by the Company to the County in connection with the execution and delivery of this Agreement, is untrue in any material and adverse respect as of the date of making the representation or warranty.

8.2. Remedies of County on Event of Default by Company

(A) Upon the occurrence of any Event of Default, the County, may (but shall not be required to) take any one or more of the following actions: (i) terminate this Agreement by not less than thirty (30) business days notice in writing specifying the Termination Date; or (ii) take whatever action at law or in equity as may appear necessary or desirable to collect the sums then due to the County and thereafter to become due to the County, or to enforce observance or performance of any covenant or obligation of the Company under this Agreement.

(B) If the Agreement is terminated because of the failure of the Company to satisfy the Minimum Investment Level, as defined in Section 2.1, then all the Property is subject, as of the Commencement Date, to ad valorem property taxation as required by law. At the time of termination, the Company shall pay to the County an additional fee equal to the difference between the total amount of property taxes that would have been paid by the Company if the Project had been taxable, taking into account exemptions from property taxes that would have been available to the Company, and the total amount of Fee Payments actually made by the Company. No Fee Credit, as defined in Section 6.2, shall be credited in determining the total amount of property taxes that would have been paid by the Company. This additional amount is subject to interest as provided in Section 12-54-25 of the Code.

8.3. Default by County

Upon the failure of the County to perform any obligation it may have under this Agreement or the Related Documents in a timely manner, or if no time for performance is specified, then within thirty (30) business days following written notice thereof from the Company to the County, the Company may pursue any remedy permitted by this Agreement or available by law or in equity, including, but not limited to, specific performance or suit for *mandamus*.

9. MISCELLANEOUS

9.1. Rights and Remedies Cumulative

Each right, power and remedy of the County or the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise by the County or the Company of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by any County or the Company of any or all such other rights, powers or remedies.

9.2. Successors and Assigns

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9.3. Notices; Demands; Requests

All notices, demands 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 evidence 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 registered or 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 e-mail, if receipt of the notice is acknowledged, in writing by the recipient (in which event notice shall be deemed to occur on the date on which the recipient acknowledges receipt of the notice, or such earlier date as the written acknowledgment states as the date of receipt). Notices, demands and requests shall be addressed as follows, or to such other places as may be designated in writing by such party by proper notice to the other party.

(a) As to the County:

Dorchester County
Attention: County Administrator
201 Johnston Street
St. George, SC 29477
Facsimile: (843) 871-8866

(b) As to the Company:

Showa Denko Carbon, Inc.
Attention: Chief Executive Officer
478 Ridge Road
Ridgeville, SC 29472
Facsimile: (843) 851-5477

9.4. 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.

9.5. Applicable Law; Entire Understanding

This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Agreement and the Related Documents express the entire agreement of the parties hereto with each other and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or the Related Documents, certificates delivered in connection with the execution and delivery hereof, or subsequent written agreements between the parties.

9.6. Severability

If any provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the court shall have the authority to modify the provision in that valid manner which is most consistent with the intent of the parties, and the invalidity of such clause or provision shall not affect any of the remaining provisions hereof unless the effect thereof would render enforcement of the remaining provisions clearly unconscionable.

9.7. Headings and Table of Contents; References

The headings of this Agreement and any Table of Contents, Exhibits or Schedules hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. Unless otherwise clearly indicated by the context, all references in this Agreement to particular Articles, Sections, Subsections or Exhibits are references to the designated Articles, Sections, Subsections or Exhibits of this Agreement.

9.8. Multiple Counterparts; Signature Pages

This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Signature pages may be separately executed by the parties and, when all signature pages are combined and delivered to the parties, shall constitute a complete Agreement.

9.9. Curable Invalidity of This Agreement

If this Agreement is determined by a court of applicable jurisdiction to be invalid, and the Company requests, in writing, that the County and the Company cure the invalidity, then the Chairman of the County Council shall be authorized to take such actions as, in the opinion of the County Attorney, will cure the invalidity without adverse material impact on the County; provided, however, that all reasonable expenses of the County in curing the Agreement shall be borne by the Company.

9.10. Invalidity of FILOT Simplification Act

Pursuant to Section 12-44-160 of the Act, if the Act is determined by a court of competent jurisdiction to be unconstitutional or otherwise illegal, and the Company requests, in writing, that the County and the Company enter into a similar arrangement pursuant to the Chapter 12 of Title 4 of the Code (as defined in Section 2.1 of this Agreement) or any other alternative statutory procedure then permitted by the Code, the Chairman of the County Council shall be authorized to execute such other documents as may be required by the applicable statute; provided, however, that (i) the Fee Payments received by the County under the alternative statutory procedure shall be the same as the Fee Payments to be received pursuant to the Agreement, (ii) the Company shall not be relieved of any accrued obligations that exist under the Agreement prior to termination of the Agreement, and (iii) the Company shall bear all expenses of the County in implementing such alternative statutory procedure.

9.11. Amendments

This Agreement may be amended only by a writing signed by all parties hereto.

9.12. Waiver

Any party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

**THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK. SIGNATURE PAGE
FOLLOWS.**

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement effective as of the Commencement Date.

Witnesses

Donald A. Furtado
Sandy Lawley

DORCHESTER COUNTY, SOUTH CAROLINA

By: *Larry Hargett*
Larry Hargett
Chairman, Dorchester County Council

Witnesses

Donald A. Furtado
Larry Hargett

ATTEST:

Sandy Lawley
Sandy Lawley
Clerk, Dorchester County Council

Witnesses

SHOWA DENKO CARBON, INC.

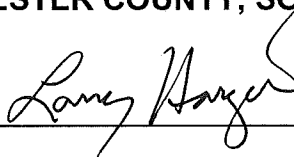
By: _____
Name: _____
Title: _____

EXHIBIT A: NON-DISCLOSURE STATEMENT

The undersigned, on behalf of Dorchester County, South Carolina, (the "County") acknowledge and understand that Showa Denko Carbon, Inc., a South Carolina corporation ("Company"), utilizes confidential and proprietary "state-of-the-art" manufacturing processes and techniques and that any disclosure of any information relating to such processes and techniques and the economics thereof would result in substantial harm to Company and could thereby have a significant detrimental impact on Company and its employees. Consequently, as authorized by South Carolina Code Section 30-4-40, the County shall keep confidential, and cause employees, agents and representatives of the County to keep confidential, the nature, description and type of the machinery, equipment, processes and techniques, and financial information relating thereto ("Confidential Information"), which they observe or obtain from the Company, its agents or representatives, except as may otherwise expressly be required by applicable law. The County and its employees, agents and representatives shall not to disclose such Confidential Information to any person or entity other than in accordance with the terms of the Agreement by and between Company and Dorchester County, South Carolina, and executed by me on this same day, or as may otherwise expressly be required by applicable law.

DORCHESTER COUNTY, SOUTH CAROLINA

By: _____



Print Name: Larry Hargett
Chairman, Dorchester County Council

EXHIBIT B: DESCRIPTION OF REAL PROPERTY

“Real Property” shall be all real property, as such term is defined by applicable South Carolina law, lying and being situate in Dorchester County, South Carolina, which (a) is owned by the Company, and (b) is or becomes part of the Project, including, without limitation, land and buildings, infrastructure, and other improvements on the land (with the exception of buildings, infrastructure, and other improvements on the land which were not added during the Investment Period). The initial Real Property shall be any Property summarized in Exhibit D to this Agreement which is real property. Real Property shall include any Replacement Property that is real property.

EXHIBIT C: DESCRIPTION OF EQUIPMENT

“Equipment” shall be all personal property, as such term is defined by applicable South Carolina law, lying and being situate in Dorchester County, South Carolina, which (a) is owned by the Company, and (b) is or becomes part of the Project, including, without limitation, all trade fixtures, furnishings, equipment, machinery, facilities and other personal property. The initial Equipment shall be any Property summarized in Exhibit E to this Agreement which is personal property. “Equipment” shall include any Replacement Property that is personal property.

EXHIBIT D: LIST OF INITIAL REAL PROPERTY

EXHIBIT E: LIST OF INITIAL PERSONAL PROPERTY