



(f) it appears that the SSRC Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

**Section 2.      Approval of SSRC Agreement.**

Subject to the provisions of Section 4 of this ordinance, and, in order to promote industry, develop trade, and utilize and employ the workforce, products, and natural resources of the State by assisting the Company to expand or locate the Project in the State, the SSRC Agreement is hereby authorized, ratified, and approved.

**Section 3.      Statutory Findings.**

The Council makes the following additional findings:

(a) The County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the SSRC Law.

(b) The Project, the payments in lieu of taxes, and the special source revenue credits set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made.

(c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.

(d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.

(e) The purposes to be accomplished by the Project, *i.e.*, economic development and addition to the tax base of the County, are proper governmental and public purposes.

(f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.

(g) The benefits of the Project to the public will be greater than the costs to the public.

**Section 4.      Approval and Execution of SSRC Agreement.**

The form, terms, and provisions of the SSRC Agreement, attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the SSRC Agreement was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the SSRC Agreement in the name of and on behalf of the County, and thereupon to cause the SSRC Agreement to be delivered to the Company. The SSRC Agreement is to be in substantially the form as attached to this ordinance and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the SSRC Agreement attached to this ordinance.

**Section 5.      Economic Development Fund.**

(A)      The County Council finds that (i) by passage of Ordinance No. 2014-1260, the Council created an Economic Development Fund with the intent to make monies available to the fund from new revenues to the County derived from new and expanded businesses and industry, and (ii) the ability to make monies available to the Economic Development Fund can be difficult because of complexities and legalities applicable to fee-in-lieu of tax arrangements and multi-county parks.

(B)      It is the intent of Council, in the annual County budget, to appropriate monies to the Economic Development Fund based on the new revenue that the County receives pursuant to the SSRC Agreement. Specifically, it is the Council's intent to appropriate from the General Fund of the County an amount based on the following formula: Seven percent (7%) times the amount of money received pursuant to the SSRC Agreement by the County after distribution to other taxing entities in the most recently completed tax year.

**Section 6.      Authority to Act.**

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed to do any and all things necessary to effect the execution and delivery of the SSRC Agreement and the performance of all obligations of the County under and pursuant to the SSRC Agreement.

**Section 7.      Severability.**

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

**Section 8.      Controlling Provisions.**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

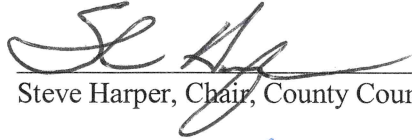
**Section 9.      Effective Date.**

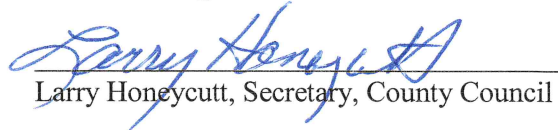
This ordinance takes effect upon Third Reading.

AND IT IS SO ORDAINED

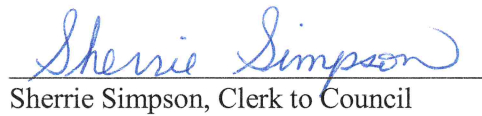
Dated this 23<sup>rd</sup> day of October, 2017.

LANCASTER COUNTY, SOUTH CAROLINA

  
\_\_\_\_\_  
Steve Harper, Chair, County Council

  
\_\_\_\_\_  
Larry Honeycutt, Secretary, County Council

ATTEST:

  
\_\_\_\_\_  
Sherrie Simpson, Clerk to Council

First Reading:	September 25, 2017
Second Reading:	October 9, 2017
Public Hearing:	October 23, 2017
Third Reading:	October 23, 2017



**Exhibit A to Ordinance No. 2017-1471**

**SSRC Agreement**

See attached.

## **SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

This SPECIAL SOURCE REVENUE CREDIT AGREEMENT (the "Agreement") is entered into as of October 23, 2017, by and between Danny Simpson, individually, Simpson Electric Company, a North Carolina corporation (collectively with Danny Simpson, the "Company"), and Lancaster County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina (the "County").

### **RECITALS**

**WHEREAS**, the County, acting by and through its County Council (the "Council") is authorized and empowered pursuant to the provisions of Sections 4-1-175, 4-29-68 and 12-44-70, Code of Laws of South Carolina 1976, as amended (the "SSRC Law"), to enter into agreements to provide special source revenue credits for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County;

**WHEREAS**, the Company is considering the construction of a corporate headquarters facility, by construction or purchase of certain Land (as defined below), buildings, structures, appurtenances, furnishings, fixtures, machinery, apparatus, and equipment, in the County (the "Project"). The Company anticipates that the Project will result in an investment over seven (7) years of approximately One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) in the County;

**WHEREAS**, the Project is expected to result in the employment of approximately one hundred (100) jobs of which at least fifty (50) will be full-time jobs that meet the County's criteria for incentives;

**WHEREAS**, the County and Chesterfield County, South Carolina have established a joint county industrial and business park (the "Park"), pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170, Code of Laws of South Carolina 1976, as amended (the "MCP Laws"), within which Park the Project is located;

**WHEREAS**, pursuant to the provisions of the Park Agreement (as defined herein) and the MCP Laws, all property within the boundaries of the Park is exempt from *ad valorem* taxes, however, the owners and lessees of the tax exempt property are required to make or cause to be made payments-in-lieu of *ad valorem* taxes to the County; and

**WHEREAS**, by Ordinance No. 2017-\_\_\_\_, enacted on October 23, 2017, Council authorized the execution and delivery of this Agreement.

**NOW, THEREFORE**, in consideration of the respective representations and agreements hereinafter contained, the Company and the County agree as follows:

## ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa.

*“Administrative Expenses”* shall mean the reasonable and necessary out-of-pocket expenses, including reasonable attorneys’ fees, incurred by the County with respect to: (i) the preparation, review, approval and execution of this Agreement; (ii) the preparation, review, approval and execution of any related multi-county park documents; (iii) the preparation, review, approval and execution of other documents related to this Agreement and multi-county park documents; (iv) the fulfillment of its obligations under this Agreement and any multi-county park documents; and (v) the implementation and administration of the terms and provisions of the documents after the date of execution thereof; provided, however, that no such expense shall be considered an Administrative Expense unless the County includes in its request for reimbursement a description of the nature of the Administrative Expense, as required in Section 2.06(b) of this Agreement.

*“Agreement”* shall mean this Special Source Revenue Credit Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

*“Co-Investor”* shall mean the Company, any entity that joins with or is an affiliate of the Company and that participates in the investment in, or financing of, the Project, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, providing funds for or otherwise making investment in real or personal property in connection with the Project. The Company shall notify the County in writing of the identity of any other Co-Investor and shall, to the extent the Company and any such other Co-Investor intend to extend the benefits of the Special Source Revenue Credits to property owned by any such Co-Investor pursuant to this Agreement, comply with the Jobs Commitment and any additional notice requirements, or other applicable provisions, of the SSRC Law.

*“Code”* shall mean the Code of Laws of South Carolina 1976, as amended.

*“Company”* shall mean, individually or collectively as the context may require, Danny Simpson, an individual, and Simpson Electric Company, a North Carolina corporation, and their respective successors and assigns, as permitted herein.

*“Cost”* or *“Cost of Infrastructure”* means the cost of Infrastructure incurred by the Company, whether incurred prior to or after the date of this Agreement, including, to the extent permitted by the SSRC Law, but not limited to: (i) the cost of designing, acquiring, constructing, improving or expanding the Infrastructure; (ii) design, engineering and legal fees incurred in the design, acquisition, construction or improvement of the Infrastructure; (iii) obligations reasonably incurred for labor, materials and other expenses to builders and materialmen in connection with



the acquisition, construction, and installation of the Infrastructure; (iv) the reasonable cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (v) the reasonable expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, 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 Infrastructure; and (vi) all other reasonable costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure.

“*County*” shall mean Lancaster County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

“*Council*” shall mean the governing body of the County.

“*Event of Default*” shall mean, with reference to this Agreement, an occurrence described in Section 5.01 hereof.

“*Fee Payments*” shall mean payments-in-lieu of *ad valorem* property taxes made or to be made by the Company with respect to the Project pursuant to the Park Agreement and the MCP Laws.

“*Full-Time Job*” means a full-time job (*i.e.*, at least thirty (30) hours per week), with health care benefits.

“*Infrastructure*” shall have the meaning attributable to such term under Section 4-29-68 of the Code, and shall specifically include, without limitation, to the extent permitted by law, the following: (i) infrastructure serving the County or the Project, including, but not limited to, buildings, rail improvements, roads, water and sewer facilities and other utilities; (ii) improved or unimproved real property, and all fixtures attached thereto, used in the operation of the Project; and (iii) personal property, including machinery and equipment, used in the operation of the Project.

“*Jobs Commitment*” means the commitment of the Company and any Co-Investor to employ Full-Time Jobs with respect to the Project as set forth in Section 2.06(a) of this Agreement.

“*Land*” shall mean and refer to the real property in the County more specifically identified in the records of the County Assessor by Parcel Identification No. 0010-00-050.10 and located at 9048 Northfield Drive, Indian Land.

“*Park*” shall mean the joint county industrial and business park established pursuant to the terms of the Park Agreement.

“*Park Agreement*” shall mean the Amended and Restated Master Multi-County Park Agreement, Amended and Restated as of November 9, 2015, between the County and Chesterfield County, South Carolina, as from time to time amended and updated, and as authorized by the MCP Laws.



*“Person”* shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

*“Project”* shall have the meaning ascribed to it in the Recitals.

*“Special Source Revenue Credits”* or *“Credits”* shall mean the special source revenue credits in the amount set forth in Section 3.02 hereof against the Company’s Fee Payments.

*“State”* shall mean the State of South Carolina.

*“Wage Requirement”* means Seventeen Dollars (\$17.00) per hour.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.01 Representations by the County.** The County represents that: (i) it is a body politic and corporate and a political subdivision of the State; (ii) it is authorized by the SSRC Law to enter into this Agreement; (iii) it has approved this Agreement in accordance with the procedural requirements of the SSRC Law and any other applicable state law; and (iv) it has authorized its officials to execute and deliver this Agreement.

**Section 2.02 Statutory Accommodation.** Notwithstanding any other provision of this Agreement, the County is executing this Agreement as a statutory accommodation to assist the Company in achieving the intended benefits and purposes of the SSRC Law. The County has made no independent legal or factual investigation regarding the particulars of the Project and it executes this Agreement in reliance upon representations by the Company that this Agreement and other documents, and the Project, comply with all laws and regulations, particularly those pertinent to industrial development projects in the State. No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating: (i) the construction or acquisition of the Project; (ii) environmental matters pertaining to the Project; (iii) the offer or sale of any securities; or (iv) the marketability of title to any property.

**Section 2.03 No County Monetary Obligations.** This Agreement imposes no obligation on the County for the payment of money. Any obligation which may be imposed on the County by this Agreement does not and shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers.

**Section 2.04 Representations by the Company.** The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Simpson Electric Company is a corporation in good standing under the laws of the State, the Company has the power to enter into this Agreement, and by proper corporate action Simpson Electric Company has been duly authorized to execute and deliver this Agreement.

(b) This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement, will not result in a material breach of any of the terms, conditions, or provisions of any Company restriction or any agreement or instrument to which the Company is now a party or by which it is bound, will not constitute a default under any of the foregoing, 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, other than as may be created or permitted by this Agreement.

(d) To the best knowledge of the undersigned representative of the Company, 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, any of which could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

(e) To the knowledge of the undersigned representative of the Company, there is no pending or threatened action, suit, proceeding, inquiry or investigation which would materially impair the Company's ability to perform its obligations under the Agreement.

#### **Section 2.05 Covenants of the County.**

(a) The County covenants that it will from time to time and at the expense of the Company execute and deliver such further instruments, in form and substance reasonably acceptable to the County, and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; *provided, however*, that such instruments or actions shall never create or constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County, or a charge against its general credit or taxing power, or pledge the credit or taxing power of the State or any other political subdivision of the State.

(b) The County covenants with the Company to maintain the Land in the Park for so long as the Company receives Special Source Revenue Credits pursuant to this Agreement.

#### **Section 2.06 Covenants of the Company.**

(a) For the Project, the Company, and each Co-Investor, agrees and commits to the number of Full-Time Jobs for the Project, paying an average hourly wage rate not less than the Wage Requirement, at the following employment levels and in the designated timeframes: (i) to have employed in Full-Time Jobs an average of not less than thirty (30) for (x) each remaining full month of the calendar year following the month in which the Company receives a certificate of



occupancy or similar type approval from the County for investments made by the Company in the Project; or (y) the six-month period ranging from July 2018 to December 2018, whichever period is later; (ii) to have employed in Full-Time Jobs an average of not less than forty (40) during the twelve month period ending December 31 of the calendar year immediately following the year in which the Company receives a certificate of occupancy or similar type approval from the County for investments made by the Company in the Project; (iii) to have employed in Full-Time Jobs an average of not less than fifty (50) during the twelve month period ending December 31 of the second calendar year immediately following the year in which the Company receives a certificate of occupancy or similar type approval from the County for investments made by the Company in the Project, and for each twelve month period thereafter in which the Company is receiving a Special Source Revenue Credit pursuant to Section 3.02 of this Agreement. The number of Full-Time Jobs shall be based on the average number of Full-Time Jobs for each month during the period in which Full-Time Jobs are measured as provided in this Section 2.06(a). The County acknowledges and agrees that in determining whether Company, or any Co-Investor, is in compliance with the provisions of this Section 2.06(a), Company, and each Co-Investor, may include in the measurement period Full-Time Jobs of the Company and any other Co-Investor in the Project.

(b) The Company agrees to reimburse the County from time to time for its Administrative Expenses promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County. The written request shall include a description of the nature of the Administrative Expenses, *provided, however*, the maximum total reimbursement for Administrative Expenses pursuant to this subsection (b) is capped at Five Thousand Dollars (\$5,000.00).

(c) The Company acknowledges that under the MCP Laws, the Project and Land is exempt from *ad valorem* property taxes and that the Company is required to make annual Fee Payments with respect to the Project and Land in an amount equal to what such *ad valorem* property taxes would be if the Project were not located in the Park, less the Special Source Revenue Credit that is provided in Section 3.02. The Fee Payments to be made by the Company under this Agreement shall be calculated in the same manner as *ad valorem* taxes. The collection and enforcement of the Fee Payments shall be as provided in Section 12-2-90 of the Code.

**Section 2.07 Indemnification.** The Company releases the County, including the members of Council, and the employees, officers, and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that Indemnified Parties shall not be liable for, and agrees to hold Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person or any other liability whatsoever, including without limitation, liability under any regulatory or environmental laws, that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project, or the use thereof except to the extent such losses or damages are attributable to such Indemnified Party's gross negligence, willful misconduct or breach of this Agreement. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities and expenses, including, but not limited to, attorneys' fees and claims arising from such events or occurrences and arising from the performance of an Indemnified Party of any obligations of the County under this Agreement or any breach or default on the part of the Company in the performance of any

covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any grossly negligent or intentional act or negligence of, or failure to act by, the Company, or any of its agents, contractors, servants, employees, lessees or licensees, and from and against all cost, liability, and expenses, including, but not limited to, attorneys' fees incurred in or in connection with any such claim, liability, or action or proceeding brought thereon.

All covenants, stipulations, promises, agreements, and obligations of the County contained in this Agreement shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and not of any member of Council or any officer, agent, servant, or employee of the County in his individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of Council or any officer, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the Project or terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any Person or other legal entity arising out of the same and all costs and expenses, including, but not limited to, attorneys' fees incurred in connection with any such claim or in connection with any action or proceeding brought thereon. If any action, suit, or proceeding is brought against any Indemnified Party, such Indemnified Party shall promptly notify the Company and the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; *provided*, the Company shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company shall be liable for the reasonable cost of such counsel.

The indemnity specified in this Section 2.07 shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

### **ARTICLE III**

#### **SPECIAL SOURCE REVENUE CREDITS**

**Section 3.01 Payment of Cost of Infrastructure.** The Company agrees to pay, or cause to be paid, the Cost of Infrastructure as and when due. The Company agrees that, as of any date during the term of this Agreement, the cumulative dollar amount expended by the Company on Infrastructure shall equal or exceed the cumulative dollar amount of the Special Source Revenue



Credits received by the Company. Upon request of the County, the Company shall provide documentation to the County reflecting the Cost of Infrastructure.

### **Section 3.02 Special Source Revenue Credits.**

(a) The County agrees to provide Special Source Revenue Credits to the Company for five (5) consecutive years equal to fifty percent (50%) of the Fee Payments on all investment in the Project in real and personal property. The County tax officials shall apply the Credits against the Fee Payments that would otherwise be due from the Company. The Special Source Revenue Credits begin with, and shall be applied to, the first Fee Payments due from the Company following the issuance of a certificate of occupancy or similar type approval from the County for investments by the Company in the Project. The Company, and each Co-Investor, must comply with the Jobs Commitment to receive the Credits and the amount of the Credits is subject to adjustment as provided in Section 3.02(e). The County acknowledges and agrees that in determining whether Company, or any Co-Investor, is in compliance with the provisions of the Jobs Commitment contained in Section 2.06(a), Company and each Co-Investor may include in the measurement period Full-Time Jobs of the Company and any other Co-Investor in the Project.

*Example No. 1.* As an example of how and when the Credits are applied, and only as an example, assume the Company is a calendar year taxpayer (January 1 through December 31), it completes construction of a facility on the Land and receives a certificate of occupancy or similar type approval from the County on June 29, 2018 to occupy and use the facility for the purposes of the Project. The County tax officials will prepare a Fee Payment bill in the fall of 2019 for the Company's real and personal property and payment will be due from the Company in January 2020 and it is this Fee Payment that will include the first of the five consecutive years of the Special Source Revenue Credits. Pursuant to the Jobs Commitment, to receive the full amount of the Credit on the Fee Payment due in January 2020, the Company will have to have had employed in Full-Time Jobs an average of not less than thirty (30) during the six-month period of July 2018 through December 2018. See Section 3.02(e) for examples of how the amount of the Credit is adjusted when the Jobs Commitment is not met.

*Example No. 2.* As another example of how and when the Credits are applied, and only as an example, making the same assumptions as in Example No. 1 above, but also assuming the Company has received Credits on the Fee Payments due in January 2020 (first year) and January 2021 (second year). To receive the Credit on the Fee Payment due in January 2022 (third year), the Company will have to have had employed in Full-Time Jobs an average of not less than fifty (50) during the twelve-month period of January 2020 through December 2020.

(b) In accordance with Section 4-29-68(A)(2)(ii) of the Code, to the extent that the Company claims Special Source Revenue Credits as payment for personal property, including machinery and equipment, if such property is removed from the Project during the term of this Agreement, the amount of the Fee Payments due on such personal property for the year in which the personal property was removed from the Project also shall be due for the two years following such removal.

(c) Company agrees, as soon as reasonably practicable following the end of each tax year of the Company, to submit to the County Economic Development Director a certification on Company letterhead listing the aggregate number of Full-Time Jobs maintained by the Company at the end of such tax year.

(d) For purposes of determining compliance with the Jobs Commitment, Company agrees to provide to the County Economic Development Director, by January 30 of each year, a copy of all of Company's filings with the State (if required to file by the State) for the preceding calendar year including: (i) reports submitted to the South Carolina Coordinating Council for Economic Development with respect to any Job Development Credits awarded in connection with the Project; (ii) Department of Revenue Form SC SCH. TC 4 (New Jobs Credit); and (iii) South Carolina Department of Employment and Workforce quarterly contribution and wage reports (such as Form UCE 120). Company agrees to redact any personally identifying information and proprietary and confidential information prior to submitting any form to the County Economic Development Director. In lieu of providing any of the forms specifically identified in this subsection, Company and the County Economic Development Director may agree on an alternative method for the Company to demonstrate compliance with the Jobs Commitment.

(e) Company agrees that the Special Source Revenue Credits for a year shall be reduced to the extent that the Company fails to meet the Jobs Commitment in the prior year, in a percentage amount equal to (A) the amount by which the number of jobs satisfying the Jobs Commitment at the Project at the end of such year is less than the number of jobs contained in the Jobs Commitment for such year, *divided by* (B) the number of jobs contained in the Jobs Commitment for such year.

*Example No. 3.* As an example of how the Credits are adjusted when the Jobs Commitment is not met, and by way of example only, using the assumptions contained in Example No. 1 in Section 3.02(a), assume that to receive the second year of the Credit the Jobs Commitment number is 40 jobs and the actual number of Full-Time Jobs satisfying the Jobs Commitment is 30, and the Special Source Revenue Credit to which the Company would otherwise be entitled for the Fee Payment due in January 2021 is \$50,000.00, then the reduction of the Special Source Revenue Credit pursuant to this subsection (e) would be calculated as follows:

**Jobs Commitment for period January 2019 through December 2019: 40 Full-Time Jobs**

**Jobs Maintained for period January 2019 through December 2019: 30 Full-Time Jobs**

**Special Source Revenue Credit reduction for Fee Payment due January 2021:**

$$[40 - 30] / 40 = 10 / 40 = 25\%$$

$$25\% \times \$50,000.00 = \mathbf{\$12,500.00}$$

*Example No. 4.* As an additional example of how the Credits are adjusted when the Jobs Commitment is not met, and by way of example only, making the same assumptions as in Example No. 1 in Section 3.02(a), but also assuming the Company has received Credits on the Fee Payments



due in January 2020 (first year) and January 2021 (second year), and to receive the Credit on the Fee Payment due in January 2022 (third year), assume the Company has to have had employed in Full-Time Jobs an average of not less than fifty (50) during the twelve month period of January 2020 through December 2020 and the actual number of jobs satisfying the Jobs Commitment is 40, and the Special Source Revenue Credit to which the Company would otherwise be entitled for the Fee Payment due in January 2022 is \$25,000.00, then the reduction of the Special Source Revenue Credit pursuant to this subsection (e) would be calculated as follows:

**Jobs Commitment for period January 2020 through December 2020: 50 Full-Time Jobs**

**Jobs Maintained for period January 2020 through December 2020: 40 Full-Time Jobs**

**Special Source Revenue Credit reduction for Fee Payment due January 2022:**

$$[50 - 40] / 50 = 10 / 50 = 20\%$$

$$20\% \times \$25,000.00: \mathbf{\$5,000.00}$$

(f) Notwithstanding any other provision of this Agreement, Company acknowledges and agrees that County's obligation to provide the Special Source Revenue Credits ends, and this Agreement is terminated, if the Company ceases operations. For purposes of this Section 3.02(f), "cease operations" means permanent closure of the facility. Company agrees that if this Agreement is terminated pursuant to this Section 3.02(f), that under no circumstance shall the County be required to refund or pay any monies to Company. Notwithstanding the foregoing, in no event shall the occurrence of the event described in this paragraph (f) constitute an Event of Default under this Agreement.

(g) Prior to reducing the Special Source Revenue Credits, as provided in Section 3.02(e), the County shall provide notice, in the manner provided in Section 6.05, to the Company of the proposed reduction and the County shall provide the Company the opportunity to provide additional information to the County to demonstrate compliance with the Jobs Commitment.

## ARTICLE IV TITLE TO INFRASTRUCTURE

**Section 4.01 Transfer of Project.** The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, to others. No sale, lease, conveyance, or grant shall relieve the County from the County's obligations to provide the Special Source Revenue Credits to the Company's successor or assignee under this Agreement; *provided, however,* that (a) such assignee must continue to make Fee Payments pursuant to the Park Agreement in the same manner and to the same extent as required of the Company; and (b) the County consents to or ratifies the assignment of this Agreement by passage of a resolution by Council, with such consent to be granted in the sole discretion of the Council.

## ARTICLE V DEFAULTS AND REMEDIES

**Section 5.01 Events of Default.** If the County or Company shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Agreement, including the failure of the Company to pay Fee Payments when due, which failure shall continue for a period of thirty (30) days after written notice by the non-breaching party specifying the failure and requesting that it be remedied is given via first-class mail, the County or Company (as the case may be) shall be in default under this Agreement (an “Event of Default”); *provided, however*, that no failure on the part of the Company to meet any level of the Jobs Commitment set forth in this Agreement shall constitute an Event of Default, and the sole remedies for any such failure shall be those remedies set forth in Section 3.02. Nothing in this section limits the County’s rights to enforce the collection of Fee Payments pursuant to such methods and procedures as authorized by law.

**Section 5.02 Legal Proceedings by Company or County.** Upon the happening and continuance of an Event of Default, then and in every such case the Company or County (as the case may be) in their discretion may:

- (a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its rights and require the breaching party to carry out any agreements with or for its benefit and to perform the breaching party’s duties under the SSRC Law and this Agreement;
- (b) bring suit upon this Agreement;
- (c) exercise any and all rights and remedies provided by the applicable laws of the State; or
- (d) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

**Section 5.03 Remedies Not Exclusive.** No remedy in this Agreement conferred upon or reserved to the Company or the County is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

**Section 5.04 Nonwaiver.** No delay or omission of the Company or the County to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Article V to the Company or the County may be exercised from time to time and as often as may be deemed expedient.



## **ARTICLE VI MISCELLANEOUS**

**Section 6.01 Successors and Assigns.** All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, and for the benefit of, the County, shall, to the extent permitted by law, bind and inure to the benefit of the successors of the County from time to time, and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County shall be transferred.

**Section 6.02 Provisions of Agreement for Sole Benefit of County and Company.** Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company, any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

**Section 6.03 Severability.** In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement and the Special Source Revenue Credits shall be construed and enforced as if the illegal or invalid provision had not been contained herein or therein.

**Section 6.04 No Liability for Personnel of County or Company.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or Council, or of the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of Council nor any official executing this Agreement shall be liable personally on the Agreement or the Special Source Revenue Credits or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 6.05 Notices.** All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent electronically and confirmed by United States first-class registered mail, postage prepaid, addressed as follows:

(a) As to the County:

Lancaster County  
Attn: Steve Willis, County Administrator  
101 N. Main St. (29720)  
P.O. Box 1809 (29721-1809)  
Lancaster, SC  
Telephone: (803) 416-9300  
Fax: (803) 285-3361  
Email: [swillis@lancastercountysc.net](mailto:swillis@lancastercountysc.net)

with a copy (which shall not constitute notice) to:

Mr. Jamie Gilbert  
Economic Development Director, Lancaster County  
P.O. Box 1809  
Lancaster, SC 29721  
Telephone: (803) 286-3633  
Fax: (803) 416-9497  
Email: jgilbert@lancastercountysc.net

(b) as to the Company:

Simpson Electric Company  
Attention: Danny Simpson, President  
8916 Crump Road  
Charlotte, NC 28273  
Email: danny@simpsonelectricnc.com

with a copy (which shall not constitute notice) to:

Womble Carlyle Sandridge & Rice, LLP  
Attention: Stephanie L. Yarbrough  
5 Exchange Street  
Charleston, SC 29401  
Telephone: (843) 720-4621  
Email: styarbrough@wcsr.com

The County and the Company may, by notice given as provided by this Section 6.05, designate any further or different address to which subsequent notices, certificates, requests or other communications shall be sent.

**Section 6.06 Applicable Law.** The laws of the State shall govern the construction of this Agreement.

**Section 6.07 Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument.

**Section 6.08 Amendments.** This Agreement may be amended only by written agreement of the parties hereto. The County hereby agrees that, to the extent allowable by law, any such amendment may be approved by passage of a resolution by Council.

**Section 6.09 Waiver.** Either 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.

**Section 6.10 Effective Date.** This Agreement shall become effective as of the date first written above.

**Section 6.11 Termination.** (a) The term of this Agreement shall be from the effective date of this Agreement until December 31, 2023 unless earlier terminated pursuant to Section 3.02(f) hereof or pursuant to the exercise by the Company of its option to terminate pursuant to this Section 6.11(b).

(b) From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least thirty (30) days' notice, the Company may terminate this Agreement with respect to the entire Project or any portion thereof. In the event the Company should fail to make any of the payments required under this Agreement, 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.

**Section 6.12. Confidential Information.** (a) The Company agrees that the County and its authorized agents have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project and to have access to and examine and inspect all the Company's books and records pertaining to the Project. The right of examination and inspection shall be exercised only upon reasonable and necessary terms and conditions prescribed by the Company to protect the Company's confidentiality and proprietary rights.

(b) The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information, including, but not limited to, trade secrets, financial, sales or other information concerning the Company's operations and processes ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Company and could have a significant detrimental impact on the Company's employees and also upon the County. Except as required by law, including, without limitation, court orders, the County agrees to use its best reasonable efforts to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the Confidential Information which may be obtained from the Company, its agents or representatives, when the Confidential Information is clearly marked and identified as Confidential Information and known to the County to be Confidential Information. The County shall not knowingly and willfully disclose and shall cause all employees, agents and representatives of the County not to knowingly and willfully disclose the marked and identified Confidential Information to any person or entity other than in accordance with the terms of this Agreement. If a demand is made for the release, under color of law, to a third party of any Confidential Information, the County shall notify the Company and give the Company the opportunity to contest the release.

**[EXECUTION PAGES FOLLOW]**

IN WITNESS WHEREOF, the County, acting by and through the Council, has caused this Agreement to be executed in its name and behalf by the Council Chair and Council Secretary and to be attested by the Clerk to Council and the Company has caused this Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**LANCASTER COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Steve Harper, Chair, County Council

By: \_\_\_\_\_  
Larry Honeycutt, Secretary, County Council

**ATTEST:**

By: \_\_\_\_\_  
Sherrie Simpson, Clerk to Council

[COMPANY SIGNATURES FOLLOW ON NEXT PAGE]



**SIMPSON ELECTRIC COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Danny Simpson, individually**

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