

Pierce County Board of Commissioners  
Regular Meeting Minutes  
Tuesday, November 3, 2020 6:00PM

Commissioners in Attendance

Neal Bennett, Chairman  
Harold Rozier, District 1  
Mike Streat, District 2  
Randy Dixon, District 3  
David Lowman, District 4

Staff in Attendance

Franklin Rozier, County Attorney  
Jason Rubenbauer, County Manager  
Amy Hitt, County Clerk

1. Call to Order – Chairman Bennett called the meeting to order at 6:00 PM
2. Invocation and Pledge of Allegiance – Reverend Morris Pate gave an invocation and Commissioner David Lowman led the pledge.
3. Approval of the Agenda

Commissioner Randy Dixon made a motion to approve the agenda as presented and Commissioner David Lowman seconded the motion. All voted aye and the motion was approved.

4. Approval of Minutes
  - a. Regular Meeting Minutes, October 6, 2020
  - b. Public Hearing Minutes, October 6, 2020

Commissioner Mike Streat made a motion to approve the October 6, 2020 Public Hearing and Regular Meeting minutes and Commissioner Randy Dixon seconded the motion. All voted aye and the motion was approved.

5. Matt Carter, IDBA Director – Tyre Bridge Project and the future incentives. Mr Carter explained a brief history of the project and that the project applicant name had changed from Hexagon to BayWa R. E. and is represented by McGuireWoods Consulting LLC. They are requesting to have the 1-7 years at 75% abatement and extend the contract for 3 years. Commissioner Lowman asked if any of the property owners were about to drop? Chairman Bennett asked if the landowners were continuing the contracts. Mr.

Carter responded that there was no reason for anyone not to continue on with the contracts. He also made note that the solar owner could possibly change names again.

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (this “**Agreement**”) is entered into as of the Effective Date set forth below by and between the **PIERCE COUNTY INDUSTRIAL DEVELOPMENT AND BUILDING AUTHORITY** (the “**Authority**”), a development authority and public body corporate and politic duly created by the Development Authorities Law, O.C.G.A. Section 36-62-1, *et seq.* (the “**Act**”), and **TYRE BRIDGE SOLAR, LLC** (the “**Company**”), a Georgia limited liability company (the Authority and the Company, each a “**Party**,” or collectively, the “**Parties**”). The **BOARD OF TAX ASSESSORS OF PIERCE COUNTY** (the “**Board of Assessors**”) and the **TAX COMMISSIONER OF PIERCE COUNTY** (the “**Tax Commissioner**”) are each executing an Acknowledgment hereof attached to this Agreement in order to acknowledge their respective agreements to the provisions hereof which are applicable to them, but they are not considered to be Parties.

### 1. THE PROJECT.

1.1. Description of the Project. The project (the “**Project**”) is a solar photovoltaic electricity generation system and consists of (i) one or more structures and related improvements (collectively, the “**Improvements**”), to be constructed by the Company on the approximately 1,000 acre site described in Section 1.5 below (the “**Site**”); and (ii) equipment located on the Site (the “**Equipment**”). The Project will be owned by the Authority and leased to the Company under the Bond Lease (defined below).

1.2. Bond-Financed Sale-Leaseback Structure. In connection with the issuance of the Project Bonds (defined below), the Authority will become the owner of the Project as it then exists. The Authority will lease the Project to the Company under the Bond Lease, and will grant to the Company the Purchase Option (defined below).

1.3. Total Project Costs. “**Total Project Costs**” include all reasonable costs, fees and expenses incurred or paid by the Company in connection with the Project and the issuance of the Project Bonds (defined below). The Company will be responsible for any out-of-pocket costs of or related to the Project (including, without limitation, those related to any change orders or cost overruns) to the extent that Project Bond proceeds are not available or are not sufficient to pay such costs.

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

1.5. Site Description. The Company has acquired, through a long-term lease, a leasehold interest in the Site as more particularly described on Schedule 1.5 attached hereto and incorporated herein by reference. The Company shall be allowed to select another site in Pierce County, Georgia (the “**County**”) for the Project prior to Closing, provided if the Company does select another site for the location of the Project, it shall be a Closing Condition in favor of the Authority that the Authority is satisfied with any environmental site assessment(s) and the environmental condition of such alternative site on conditions similar to Section 1.6 below.

1.6. Environmental Phase I. The Company has caused or will cause, at its own expense, a Phase I environmental site assessment to be made upon the Site, and will provide the same to the Authority within sixty (60) days of the Effective Date of this Agreement. Upon receipt of such Phase I environmental assessment, the Authority shall provide the Company with a written statement of its material objections, if any, with respect to any new matter disclosed in said updated assessment within ten (10) days of receipt of the same. The Company shall have thirty (30) days to redress any such objections, if the Company chooses to so remedy any objections, or if the Company fails to satisfy such objections, then, at the option of the Authority, evidenced by written notice to the Company, the Authority may, as its sole and exclusive remedy, terminate this Agreement as provided in Section 5.4, below. The Authority’s and the Company’s satisfaction with a Phase I environmental assessment conducted pursuant to this paragraph shall be a Closing Condition in favor of the Authority and the Company.

1.7. Construction of the Improvements and Installation of the Equipment.

1.7.1. Design. The Company shall be responsible for the design of the Improvements and the selection of the Equipment.

1.7.2. Utilities. The Company shall be responsible for the delivery of adequate water, sewer, natural gas, and electricity to the Site, if such facilities are required for the solar facility. The Company's ability to acquire governmental approvals or permits to allow for delivery of adequate water, sewer facilities, natural gas or electricity by acceptable providers, or in quantities or at pressures which are acceptable to the Company in its reasonable discretion, shall each be a Closing Condition in favor of the Company.

1.7.3. Construction, Generally. The Company will be responsible for the construction of the Improvements, at the Company's own expense. Without limitation, the Company will select the contractor ("**Contractor**") for such construction and enter into an agreement, as principal and not as agent of the Authority, with the Contractor for the construction of the Improvements. The Improvements shall be constructed in compliance with applicable laws, including applicable zoning laws, building codes, environmental laws and other restrictions, unless the failure to be in compliance with such laws would not have a material adverse effect on the Project.

1.7.4. Acquisition and Installation of Equipment. The Company will be responsible for the acquisition and installation of the Equipment, including, without limitation, payment of the costs thereof. The Bond Lease will provide for the Company to convey title to the Equipment to the Authority from time to time by one or more bills of sale as the items of the Equipment are acquired and installed at the Site.

1.7.5. Indemnity by the Company. The Company shall indemnify, hold harmless and defend the Authority and its members, officers, employees and representatives from and against any and all loss, liabilities and claims (including, without limitation, liens and encumbrances resulting from construction and installation activities) that may arise out of or relate to: (a) any act or omission by or attributable to the Company or the Contractor (including, without limitation, the acts or omissions of their respective vendors, contractors or subcontractors, agents, employees or representatives) related to the Project; or (b) this transaction, including the Project Bonds or the issuance thereof, or the ownership or operation of the Project. The indemnity contained in this Section 1.7.5 shall not apply to any claim, loss or liability which is the result of the gross negligence or willful misconduct of the indemnitee. Said indemnity shall survive the expiration or earlier termination of this Agreement, but at Closing shall be superseded by the indemnities in the Definitive Documents, provided that such shall not affect any accrued liabilities under the indemnities contained herein unless expressly provided otherwise in the Definitive Documents. The indemnities set forth above specifically extend to, but are not limited to, governmental or other claims relating to any actual or alleged violation of any federal, state and local laws, rules, regulations, ordinances, programs, permits, guidance, orders, and consent decrees relating to health, safety, and environmental matters, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superlien and environmental cleanup programs and laws, U.S. Environmental Protection Agency regulations, and Georgia. Environmental Protection Division rules regardless of whether or not any such violation relates to any period prior to the acquisition of the Project by the Authority or its acquisition theretofore by the Company.

1.7.6. Force Majeure. For purposes of this Agreement generally, "*force majeure*" means fires, floods, inclement weather, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the applicable Party's reasonable control. Such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the Party through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds. Where this Agreement expressly provides that a Party's obligations are subject to *force majeure*, then delay or non-performance on the part of such Party shall be excused upon the occurrence and during the continuance of such event of *force majeure*, provided that such Party promptly gives the other Party written notice of the occurrence and abatement of such event of *force majeure*, and subject to any express provisions hereof dealing with such event of *force majeure*. In no event shall *force majeure* excuse any payment obligation.

1.7.7. Permitted Exceptions. Without limitation, the Company shall keep the Project free and clear of all liens and encumbrances attributable to, and under the control of, the Company except for Permitted Exceptions and shall in any event indemnify, hold harmless and defend the Authority and its respective members, officers, employees and representatives from any claim, liability or loss arising out of or related to any lien or encumbrance. Said indemnity shall survive the expiration or earlier termination of this Agreement. As used herein, "**Permitted Exceptions**" shall be defined as any liens,

encumbrances or exceptions contained on Schedule 1.5 hereto or otherwise specified in this Agreement as being acceptable, or defined as such in the Bond Lease. The Authority shall not voluntarily place any lien, claim or encumbrance on the Project (other than in connection with enforcement of its own rights), or voluntarily transfer any interest in the Project to any third party, except in each instance as approved by the Company or contemplated herein.

1.8 Decommissioning, Removal and Restoration. The Company agrees that upon the end of the economic useful life of the Improvements and Equipment or any replacements thereof, or, if earlier, upon the permanent removal of the Project from service, the Company will, or will cause its successors and assigns to, dismantle, remove, and dispose of such Improvements and Equipment in accordance with any applicable governmental laws or regulations, and take such steps as may be reasonably necessary to avoid contamination of the environment by the materials comprising the Equipment, and, if the Site is not used for another electrical generating facility, to the extent allowed by its lease of the Site, restore the Site to the extent necessary to comply with any applicable governmental laws or regulations, including, but not limited to, laws or regulations relating to land use, zoning, revegetation, drainage or environmental conditions applicable to the Project. The Company's obligations under this Section shall survive the expiration or earlier termination of this Agreement, but at Closing shall be superseded by substantially similar requirements in the Bond Lease.

## 2. FINANCING OF THE PROJECT.

2.1. Project Bonds. In order to establish the bond-financed sale-leaseback structure that is necessary for the provision of certain of the incentives contemplated herein, including, without limitation, *ad valorem* property tax savings for the Project, the Authority will issue the Authority's revenue bonds (the "**Project Bonds**") to the Company or an Affiliate (as defined in Section 2.10.1 below) of the Company. The Authority will acquire legal title to the Project. The Bond Lease and related Purchase Option will evidence the Company's beneficial ownership of the Project. The Authority and the Company will then enter into the Bond Lease described below.

2.2. Maximum Principal Amount of Project Bonds. Without limitation, the principal amount of the Project Bonds shall in the aggregate accommodate Total Project Costs for the Project. Such accommodation shall be made through structuring the Project Bonds as draw-down bonds in an appropriate maximum principal amount. The maximum principal amount of the Project Bonds to be issued is estimated at \$140,000,000.

2.3. Transaction Costs. The Company shall be responsible for all reasonable out-of-pocket transactional costs of the issuance of the Project Bonds, and other matters related hereto, provided that such costs shall be provided in writing to the Company prior to Closing and be subject to the Company's approval, which shall not be unreasonably withheld. Subject to any applicable limits of federal tax law, cash proceeds of the Project Bonds, if any are available for such purpose, may be used to pay such costs or to reimburse the Company for transaction costs previously paid by it. Such transaction costs include, without limitation: (i) reasonable legal fees and disbursements of Bond Counsel related to the closing of the issuance of the Project Bonds and the preparation and distribution of this Agreement and of transcripts; (ii) the reasonable fees and disbursements of the Authority's Issuer's Counsel related to the transaction; (iii) the court costs relating to validation of the Project Bonds and recording and filing fees; (iv) the Authority's financing fee for the issuance of the Project Bonds payable one-time at Closing in the amount of 1/8<sup>th</sup> of 1% of the maximum principal amount of the Project Bonds; and (v) an annual fee payable to the Authority for its recordkeeping and compliance activities not to exceed 1/32<sup>nd</sup> of 1% of the outstanding balance of the Bonds, to be billed by the Authority as of each anniversary of the date of issuance and due thirty (30) days thereafter. In connection with its execution of this Agreement, the Company will be provided with a cost of issuance budget for the Project Bonds for the Company's review and approval.

2.4. Tax Status of the Project Bonds. The interest on Project Bonds issued to the Company or an Affiliate will not be exempt from federal income taxation. Whether or not the interest on any other series of the Project Bonds will be exempt from federal income taxation shall be as determined by the federal income tax law.

2.5. Roles of Counsel. Daniel Lawton Bennett Jr., Esq., Blackshear, Georgia, shall serve as Issuer's Counsel to the Authority and Seyfarth Shaw LLP, Atlanta, Georgia, Bond Counsel to the Authority, shall serve as Bond Counsel. The Company's Counsel shall be McGuireWoods LLP or such other counsel as the Company may reasonably select.

2.6. Repayment of the Project Bonds. The Company shall be responsible for the repayment of the Project Bonds. Without limitation, the Project Bonds shall not be a general obligation of the Authority, but shall be a special and limited obligation payable solely from the payments received under the Bond Lease and other pledged security. Neither the Authority, the County, the State of Georgia (the "**State**") nor any other public body shall have any obligation or liability for repayment of the Project Bonds.

2.7. The Bond Lease. The Authority and the Company shall enter into a lease (the “**Bond Lease**”) at the Closing. Pursuant to the Bond Lease, the Authority will lease the Project to the Company. The Bond Lease shall contain terms and provisions substantially of the type normally included in bond leases between governmental “conduit” bond issuers and users of bond-financed property. The Bond Lease will be a triple net type lease.

2.8. Purchase Option. Subject to the provisions of any bond purchase agreement related to the Project Bonds, the Authority, in the Bond Lease or by separate instrument, shall grant the Company the option to purchase the Project (the “**Purchase Option**”), to the extent that the Authority holds title thereto at the time, exercisable for (i) an option exercise price of \$10; (ii) plus any other amounts due to the Authority that must be paid at such time, including, without limitation, Community Recovery Payments (defined below) then past due pursuant to the Community Incentives Schedule (defined below); and (iii) if all of the Project Bonds have not theretofore been retired, the Company shall cause all of the Project Bonds to be retired or cancelled. Payment of the amounts so required is a condition to the closing under such purchase option. In the event the Company exercises the purchase option, any provisions of this Agreement that are intended to survive the Closing shall survive the Company’s exercise of the Purchase Option unless otherwise agreed to in writing by the Parties at the time of such exercise.

2.9. Definitive Documents. The term “**Definitive Documents**” means and includes the Project Bonds, the Bond Lease, the Purchase Option, the EDA, the above-mentioned bond purchase agreement, a deed to secure debt and security agreement and any other related documents necessary to implement the transaction described herein. The Definitive Documents will permit the Company to pledge its interest in the Project as collateral for third party financing of the Project, and the Authority will join as is necessary in such pledge, provided that: (a) such pledge is non-recourse to the Authority (except as to its interest in the Project); (b) the documentation of same must be reasonably satisfactory to the Authority and its counsel (including, without limitation, not materially adversely affecting the indemnification and other rights of the Authority); and (c) such transaction must be without liability (except as to its interest in the Project) or expense to the Authority, including payment by the Company of the Authority’s counsel fees, including any fees incurred in connection with the review of any third party financing documents, and disbursements in connection therewith. The Definitive Documents shall be prepared by Bond Counsel and shall be subject to the approval of the Authority, the Company, the purchaser of the Project Bonds and their respective legal counsel. The Parties agree to negotiate in good faith to establish the terms and conditions to be included in the Definitive Documents. It shall be a Closing Condition in favor of each of the Company and the Authority that they reach an agreement on such terms and conditions.

2.10. Transfers.

2.10.1. Transfer of this Agreement. All rights and benefits of the Company under this Agreement and under the Authority’s resolution authorizing this Agreement may be transferred and assigned by the Company, in whole or in part, to: (a) any Affiliate of the Company, (b) any limited partnership, limited liability company, corporation or other investment entity having a “net worth” (as such quoted term is determined in accordance with generally accepted accounting principles consistently applied) of at least \$100,000,000, (c) [RESERVED], (d) any limited partnership, limited liability company, corporation, or investment entity having obtained a guaranty, surety bond issued by a rated insurer or surety company (“**Surety Bond**”) or irrevocable letter of credit (“**LOC**”) reasonably acceptable to the Authority (any such instrument, “**Assignment Security**”) from a limited partnership, limited liability company, corporation, investment entity or financial institution having a valuation equivalent to the value stated in clause (b) of this Section 2.10.1 or, in the case of a surety bond, having an A.M. Best rating established in the provision of such bond, or in the case of a guaranty or letter of credit, having a Standard & Poor’s credit rating at the time of such transfer or assignment of A- or greater; provided, however, that any such guaranty, surety bond or irrevocable letter of credit shall remain in place for the full duration of the PILOTs required under Section 3.2 hereof, or if earlier terminated, shall be replaced by an alternate guaranty, surety bond, or irrevocable letter of credit with a term no shorter than the remaining duration of the PILOTs required under Section 3.2 hereof, with terms acceptable to the Authority, or (e) with the written approval of the Authority, which approval shall not be unreasonably withheld, conditioned or delayed after adequate disclosure of the financial condition of the proposed transferee, to any one or more persons or entities which propose to acquire the Project, in any case with the same effect as if such Affiliate or such persons or entities were named as the “Company” in this Agreement and in the Authority’s resolution authorizing this Agreement. Notwithstanding the foregoing, the Company may not assign any of its rights or benefits hereunder to any entity described in clause (d) hereof if any proceeding for receivership, insolvency, failure to pay any debts, assignment for the benefit of creditors or other similar proceeding has been commenced against such entity and is currently in progress. Unless assigned to an entity described in clauses (d)-(e) hereof, or otherwise agreed to in writing by the Authority, the assignment of the Company’s rights shall not release the Company from its obligations for costs and indemnification incurred or arising hereunder prior to such assignment, and following any such assignment, the assignee shall be solely liable for costs and indemnification hereunder. As used herein, “**Affiliate**” means any person or entity (as used herein “entity” includes, without limitation, any public body) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a specified person or entity. As used herein, the

term "control" of a person or entity means the possession, directly or indirectly, of the power: (A) to vote 10% or more of the voting securities of such person or entity (on a fully diluted basis) having ordinary power to vote in the election of the governing body of such person or entity, or (B) to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding anything in this Section 2.10 to the contrary, the Authority acknowledges and agrees that any transfer or assignment of any membership interests in the Company to an assignee or transferee with a net worth equivalent to the value in clause (b) of this Section 2.10.1 and whose ultimate parent is an integrated energy company in the business of owning and operating power generation facilities in the United States, with a Standard & Poor's credit rating at the time of such transfer or assignment of A- or greater, shall not constitute a transfer or an assignment of this Agreement for purposes of this Section 2.10.

**2.10.1.1.** Any provision of this Section 2.10.1 to the contrary notwithstanding, (a) any LOC must be issued by a national (U.S.) bank or a banking institution organized under the laws of any state, territory of the U.S. or the District of Columbia, the business of which is substantially confined to banking and is supervised by the state or territorial banking commission or similar official, or by a (U.S.) branch of a foreign bank, (b) any Surety Bond must be issued by a domestic (formed under the laws of a State of the United States) insurance or surety company which is regulated by the State insurance commission or similar official, (c) in the case of any provider of Assignment Security that is not such a bank, banking institution or regulated insurance or surety company, the service of process provisions below shall apply, (d) the Assignment Security must be in form and substance reasonably satisfactory to the Authority, and (e) the Assignment Security shall be issued to, or in favor of, the Authority. If such provider is not a resident of the State of Georgia, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation or other entity, then in any such event the provider by written instrument in form and substance satisfactory to Authority must designate the Secretary of State, State of Georgia, as its agent for the purpose of service of process in any court action between it and the Authority arising out of or based upon this Agreement and the service will be made as provided by the laws of the State of Georgia for service upon a non-resident. If for any reason service of such process is not possible, and such provider does not have a resident agent for service of process, as an alternative method of service of process, such provider may be personally served with such process out of Georgia, by the registered mailing of such complaint and process to the provider at the address set out in the aforementioned designation and such service will constitute valid service upon the provider as of the date of mailing and the provider will have 30 days from date of mailing to respond thereto. Such designation shall further specify that such provider agrees to the process so served, submits to the jurisdiction of the court and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

**2.10.2.** Transfer of the Project, the Bond Lease and the Other Definitive Documents. Except as expressly provided in this Agreement, the Company may not, without the prior written consent of the Authority: (a) transfer the Project; or (b) assign its interests and rights under the Bond Lease or other Definitive Documents or sublease any part of the Project. However, the Company may transfer or sublease the Project to an Affiliate of the Company, or as otherwise may be provided herein or in the Definitive Documents. The Company, as tenant may, subject to approval by the Authority (which approval shall not be unreasonably withheld, delayed or conditioned), as landlord sublease the Project for a term which does not extend beyond the term of the Bond Lease minus one day, provided that the sublease is expressly subject and subordinate to the Bond Lease, and that the Company is not released from its obligations under the Bond Lease. Unless otherwise agreed in writing by the Authority, no transfer and assignment shall relieve the Company from primary liability for any of its obligations incurred or arising hereunder prior to such transfer and assignment, and in the event of any such transfer and assignment, the transferee or the assignee (as the case may be) shall be solely liable for payment of the Basic Rent and Additional Rent and for the payment, performance, and observance of the other obligations and agreements on the Company's part herein provided to be performed and observed by the Company.

**2.10.3.** Sales and Use Taxes.

**2.10.3.1.** Payments in Lieu of Sales Tax. If for any year during the term of Bond Lease Georgia law prohibits, excludes, exempts or otherwise does not impose local sales and use taxes (in whole or in part) on machinery, equipment, industrial materials, and/or repair or replacement parts which are necessary and integral to the generation of electricity at the Project, then the Company shall pay to the County for each such year a payment equal to the gross purchase price (on a fully-delivered basis, including therein, without limitation, the costs of transporting such machinery, equipment, industrial materials, and/or repair or replacement parts to the Project) of all machinery, equipment, industrial materials, and/or repair or replacement parts which are necessary and integral to the generation of electricity at the Project and which are purchased during such year multiplied by the sum of all local sales and use taxes, including all County sales and use tax rates and any applicable municipal sales and use tax rates, as then in effect, provided, however, that in no event shall the amount payable in any year by the Company under this Section 2.10.3.1 exceed an amount equal to 2 percent multiplied by the sum of the gross purchase price of all machinery, equipment, industrial materials, and/or repair or replacement parts which are necessary and integral to the generation of electricity at the Project purchased by the Company during such year. For such purposes, "purchase" shall include the concept of "use" as used in Georgia's sales and use tax law. Such additional payments with respect to any year shall be due by January 31 of the succeeding year.

2.10.3.2. Quarterly Reports. On or before the 20th day of each January, April, July and October during the term of the Bond Lease, the Company shall report to the Authority and the County the dollar amount based on delivered cost of all machinery, equipment, industrial materials, and/or repair or replacement parts necessary and integral to the generation of electricity at the Project in the County which are purchased during the immediately preceding three calendar months. Such reports shall be in such detail and accompanied by such documentation as the Authority may reasonably require, including, but not limited to, any invoices, receipts and sales and use tax applications, returns, reports or certificates filed with or granted by the Georgia Department of Revenue. The Company further agrees to keep such records as may be necessary to allow the Authority to determine the amount of sales and use taxes due to the County during the term of the Bond Lease. The Company shall provide to the Authority and the County such documentation supporting any determination hereunder as the Authority may from time to time reasonably request. If any audit conducted hereunder results in a determination that less than all of the sales and use taxes due to the County have been paid, the Company agrees to make a payment to the County in the amount of such deficiency within 30 days of such determination. In the event of any dispute regarding such determination, the Authority shall have the right to audit or have audited the Company's books and records, and in the event that there is a discrepancy in the County's favor amounting to more than 5% of the amount in dispute, the Company shall pay all reasonable costs and expenses incurred by the Authority in connection with such audit. In addition, if the Company fails to timely provide any report required under this Section 2.10.3.2, the Company agrees to pay an administrative fee of 5% of the sales and use tax that is payable to the County based on the amount of the machinery, equipment, industrial materials, and repair and replacement parts disclosed for such report if the failure does not exceed 30 days, and a like administrative fee is imposed for each additional 30-day period or fraction thereof, up to a maximum of 25%. The foregoing notwithstanding, no report need be filed if no sales and use tax liability on the part of the Company is associated with it.

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

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

#### 3.2. Ad Valorem Tax Savings.

3.2.1. Basis for Savings. Under the Act, under which the Authority was created and exists, the Authority pays no tax on its interest in the property comprising the Project. The Parties agree that the Bond Lease shall be structured so that the Company's leasehold interest in the Project is a mere usufruct, or, as to personal property, a nontaxable bailment for hire, and not a taxable estate for years. Thus, while the Bond Lease is in effect, the Company shall pay no actual taxes on its leasehold interest in the Project. However, in order to prevent the taxing authorities from being deprived of revenues relating to the Project during the period title thereto is in the Authority, the Company agrees that in consideration of the Bond Lease structure and other benefits, it shall make payments in lieu of taxes ("**PILOT**") as provided on Schedule 3.2.1 attached hereto and incorporated herein by reference (the "**Savings Schedule**"). For purposes of calculating the payments in lieu of taxes, the cost of the Project shall not be less than \$105,000,000 before depreciation and assessment. Such payments in lieu of taxes will commence in "Year 1." (as defined in Section 4.1 hereof). Prior to Year 1, no *ad valorem* taxes or payments in lieu of taxes shall be payable by the Company. The Company shall pay normal *ad valorem* property taxes with respect to property it owns which is not titled to the Authority in connection with the issue of the Project Bonds.

3.2.2. Reversion to Normal Taxability. If the option to purchase the Project to the extent it is owned by the Authority is exercised upon termination of the Bond Lease or earlier, in whole or in part, or if the Bond Lease is otherwise terminated or expires, the Project will be taxable according to normal *ad valorem* property taxation rules that are applicable to privately-owned property.

#### 3.2.3. Procedures.

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

taxes in the County generally, an amount equal to the payment in lieu of taxes due for such year as so calculated. In the event the Company is required to pay *ad valorem* property taxes on its interest in the Project, the Company shall be entitled to credit such *ad valorem* property taxes against any payments in lieu of taxes due pursuant to this Agreement.

(b) Should the Company fail to make payments in lieu of taxes required by this Agreement at the times and in the manner provided for in this Agreement, the Company shall be obligated to pay to the Tax Commissioner, in addition to such payment in lieu of taxes an amount that shall be equal to the penalties and interest that would be assessed against the Company if such payment in lieu of taxes were delinquent *ad valorem* taxes. The Tax Commissioner shall notify the Company of any such penalties and interest, and will make available a copy to the Authority. The Board of Assessors and the Tax Commissioner shall have all of the rights and remedies related to payments in lieu of taxes, interest and penalties, as they would have in the case of delinquent *ad valorem* taxes, and the Company agrees upon request of the Board of Assessors or the Tax Commissioner to grant any security lien or security interest necessary such that the taxing authorities have the equivalent of tax liens for such purposes, subordinate to any prior security titles or security interests permitted elsewhere herein, provided that such subordinate lien or security interest is allowed by the terms of the instruments governing such prior security titles or security interests. Likewise, the Company shall have all of the same rights and remedies as it would have in the case of a dispute over *ad valorem* property taxes, including, without limitation, the right to dispute the valuation used by the Board of Assessors. The obligation to make payments in lieu of taxes, and any related interest and penalties, shall be obligations to the Tax Commissioner, who upon receipt shall disburse them as though they were payments of normal taxes, or any related interest and penalties, as appropriate. If the Board of Assessors determines that the Company has *ad valorem* tax liability for any tax year for the Project, the Company shall not be obligated to pay any sums as payments in lieu of taxes for said tax year; in such case, to the extent such payments in lieu of taxes for the given tax year have already been paid, the Company shall be entitled to apply for refund of payments in lieu of the taxes otherwise levied and paid to the Tax Commissioner for the subject tax year in accordance with O.C.G.A. §§ 48-5-241 and 48-5-380. Notwithstanding any other provision of this Agreement, any Community Recovery Payments due hereunder (defined below) shall always be paid to the Authority directly by the Company in accordance with the terms of this Agreement.

**3.2.4. Security for PILOTS.** To secure the Company's continuing obligation to make the PILOTS set forth in this Section 3.2, at Closing, the Company shall employ one of the following measures to ensure the annual PILOTS are paid in the event the Company fails to do so: (i) provide a surety bond (substantially in the form set forth in Schedule 3.2.4, below) (the "**Surety Bond**"), issued by an A.M. Best rated insurer or surety company established in the provision of such bond (the "**Surety Company**"), (ii) cause a limited partnership, limited liability company, corporation, or investment entity (the "**Limited Guarantor**") with a net worth at least equivalent to the value stated in clause (b) of Section 2.10.1 hereof to absolutely, unconditionally and irrevocably guaranty such PILOTS (the "**Limited Guaranty**"), or (iii) cause a lending or financial institution with a Standard & Poor's credit rating at the time of such issuance of A- or greater (the "**Letter of Credit Issuer**") to issue an irrevocable letter of credit (the "**Letter of Credit**") (the Letter of Credit, together with the Surety Bond and Limited Guaranty, hereinafter referred to as the "**PILOT Security**"). The PILOT Security must satisfy all of the requirements of Section 2.10.1, above, applicable to Assignment Security, and, without limitation, Section 10.1.1. shall apply equally to the provision of the PILOT Security. The PILOT Security shall be issued on behalf of the Company or its affiliate, be issued to, or in favor of, the Tax Commissioner, and be payable by the Surety Company, Letter of Credit Issuer or Limited Guarantor upon thirty (30) days' notice by the Tax Commissioner upon failure of the Company to make any such PILOTS as required under this Agreement. The PILOT Security shall only secure the PILOTS set forth in this Agreement that represent a reduced Payment Percentage in Years 1 through 7 as set forth in Schedule 3.2.1. The annual amount to be secured and/or paid under the PILOT Security shall be calculated based upon the 2020 millage rate as follows and per the following:

First: [Minimum Required Capital Investment as shown in table below in this Section] x

[Standard DOR Applicable Depreciation] = Depreciated Value

Second: [Depreciated Value] x 40% = Normal Taxable Value

Third: [Normal Taxable Value] x [Applicable Payment Percentage for

Year as shown in Schedule 3.2.1] = Special Taxable Value

Fourth: [Special Taxable Value] x [2020 millage rate] = Secured PILOT For Given  
Year

Example 1: For Year 2, the calculation to determine the PILOT Payment to be secured under the PILOT Security would be:

$$\$105,000,000 \times 91\% = \$95,550,000$$

$$\$95,550,000 \times 40\% = \$38,220,000$$

$$\$38,220,000 \times [25]\% = \$19,110,000$$

$$\$19,110,000 \times [\text{TBD}] \text{ mills} = \$\text{TBD (Secured PILOT for Year 2)}$$

Example 2: For Year 3, the calculation to determine the PILOT Payment to be secured under the PILOT Security would be:

$$\$105,000,000 \times 87\% = \$91,350,000$$

$$\$91,350,000 \times 40\% = \$36,540,000$$

$$\$36,540,000 \times [25]\% = \$18,270,000$$

$$\$18,270,000 \times [\text{TBD}] \text{ mills} = \$498,040 \text{ (Secured PILOT for Year 3)}$$

All of the PILOTs to be secured and payable under the PILOT Security pursuant to the above formula as set forth in the following table:

PILOT AMOUNTS TO BE SECURED UNDER SURETY BOND, LETTER OF CREDIT OR LIMITED GUARANTY					
Year	Min. Capital Investment	Depreciated Value	Normal Taxable Value	Special Taxable Value	Secured PILOT
1	\$105,000,000	\$99,750,000	\$39,900,000	\$19,950,000	TBD
2	\$105,000,000	\$95,550,000	\$38,220,000	\$19,110,000	TBD
3	\$105,000,000	\$91,350,000	\$36,540,000	\$18,270,000	TBD
4	\$105,000,000	\$86,100,000	\$34,440,000	\$17,220,000	TBD
5	\$105,000,000	\$82,950,000	\$33,180,000	\$16,590,000	TBD
6	\$105,000,000	\$78,750,000	\$31,500,000	\$15,750,000	TBD
7	\$105,000,000	\$73,500,000	\$29,400,000	\$14,700,000	TBD

8	\$105,000,000	\$66,150,000	\$26,460,000	\$13,230,000	TBD
9	\$105,000,000	\$59,850,000	\$23,940,000	\$11,970,000	TBD
10	\$105,000,000	\$54,600,000	\$21,840,000	\$10,920,000	TBD
11	\$105,000,000	\$49,350,000	\$19,740,000	\$9,870,000	TBD
12	\$105,000,000	\$43,050,000	\$17,220,000	\$8,610,000	TBD
13	\$105,000,000	\$36,750,000	\$14,700,000	\$7,350,000	TBD
14	\$105,000,000	\$32,550,000	\$13,020,000	\$6,510,000	TBD
15	\$105,000,000	\$30,450,000	\$12,180,000	\$6,090,000	TBD
16	\$105,000,000	\$29,400,000	\$11,760,000	\$5,880,000	TBD
17	\$105,000,000	\$21,000,000	\$8,400,000	\$4,200,000	TBD
Total					TBD

The amounts calculated above are for purposes of convenience in determining the amount of liability for Secured PILOTs payable under the PILOT Security only; the actual amount of PILOTs may be more in any given year during this Agreement and will be determined by the Tax Commissioner based upon actual investment and millage each year in accordance with Section 3.2.1, 3.2.2 and 3.2.3. Notwithstanding any provision of this Agreement to the contrary, neither the Surety Company, the Letter of Credit Issuer, the Limited Guarantor or the Company (as applicable) shall be liable to remit any payment under the PILOT Security, PILOT or Community Recovery Payment (defined below) under this Agreement in the event that the Project is not constructed as a result of the Company being unable to obtain from the County or the State, without unreasonable restriction, any building plan or plat approval, zoning or conditional use permit, or electrical or construction permit, which the Company determines in its discretion is required for the lawful construction and/or operation of the Project.

3.2.5. Board of Assessors. The provisions of this Agreement relative to the assessment and taxability of the Project for *ad valorem* property tax purposes shall be the obligation and responsibility of the Board of Assessors (and not of the Authority or the County). By its Acknowledgement, the Board of Assessors is joining in this Agreement to acknowledge that this Agreement is consistent with applicable requirements and that the Board of Assessors intends and agrees to classify, for taxation purposes, the Company's interest in the Project under the Bond Lease as contemplated in this Agreement.

3.3. Intergovernmental Agreement. The Agreement shall also constitute an intergovernmental agreement under Georgia Constitution Art. IX, Sec. III, Para. I between and among the Authority and the Board of Assessors. Such intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance. By its Acknowledgment hereof, the Board of Assessors agrees to all of the provisions hereof respectively applicable to it. The Tax Commissioner is not a party and only acknowledges he will discharge his duties described hereunder as required by law.

#### 4. JOBS GOALS.

4.1. Inducement. The Company agrees to locate the Project at the Site, provided, that nothing herein contained shall obligate the Company to create any particular level of jobs. The Company's agreement to locate the Project at the Site is based, in part, on the incentives being provided by the Authority in connection with the Bond Lease, this Agreement and the EDA. The Company shall be allowed to select another site in the County for the Project as provided in Section 1.5 herein. Such incentives are being provided to induce the Company to locate the Project at the Site, with attendant investment and job creation on the part of the Company, all of which constitutes valuable, non-cash consideration to the Authority and the citizens of the County and of the State. The parties acknowledge that the incentives provided for in this Agreement serve a public purpose through the capital investment and job creation represented by the Project. The parties further acknowledge that the cost/benefit requirements applicable to the Authority in the course of providing such incentives dictate that some measure of recovery must be applied in the event that the anticipated investment does not for any reason fully materialize. For all purposes of this Agreement, "**Year 1**" means the calendar year following the calendar year in which Company commences solar generation and sale of electricity from the Project, but not later than the calendar year 2023. For purposes of the determination of Year 1, "*force majeure*" shall have the same meaning provided in Section 1.7.6 of this Agreement. Notwithstanding the provisions of this Agreement set forth above, if the Company certifies to the Authority in writing prior to 2023, that an event of *force majeure* has prevented the Company from being able to commence solar generation and sale of electricity from the Project, then the effect of *force majeure* for such purposes shall

be that the determination of Year 1 shall mean the calendar year following 2023. The foregoing notwithstanding, the Company may not claim the benefit of *force majeure* more than once.

4.2. [RESERVED].

4.3. [RESERVED].

4.4. Community Investment Goal. For purposes of this Agreement, the Company shall have the goal of investing in the Project in each year of the Performance Period the amount for such year specified on the Community Goals Table as the applicable Community Investment Goal (the goal applicable in any particular year, the “**Community Investment Goal**”, or the “**Goal**”). [Reserved]

4.5. Schedule 4.4 attached hereto and incorporated herein by reference provides rules that shall apply to satisfying the Community Investment Goal.

4.6. Community Investment Shortfall Percentage. If, for any year in the Performance Period, the cumulative amount of capital investment by the Company or its Affiliates in the Project is less than the Community Investment Goal that is applicable to such year, the actual amount of such investment shall be subtracted from the applicable Community Investment Goal to obtain the “**Community Investment Shortfall**.” The amount of investment constituting the Community Investment Shortfall shall be divided by the applicable Community Investment Goal and converted to a percentage to determine the “**Community Investment Shortfall Percentage**” or the “**Project Shortfall Percentage**.” If there is no shortfall for a year, then for such year the Community Investment Shortfall Percentage shall be 0%.

4.7. Annual Report. On or before February 1 of each year following a calendar year that is in the Performance Period, the Company shall provide to the Authority an annual report for the preceding calendar year which shall include a Community Investment Report, as described below (each an “**Annual Report**”). Each Annual Report shall be in substantially the form of Schedule 4.6 attached hereto and incorporated herein by reference, as revised for the matters being reported.

4.7.1. [RESERVED].

4.7.2. Community Investment Report. The Community Investment Report shall contain a statement as to the Company’s or its Affiliates’ investment in the Project for the subject Annual Report Year, using the methodology prescribed herein.

4.7.3. [RESERVED].

4.7.4. Project Shortfall Percentages. Upon receipt of an Annual Report and any inspection authorized hereunder, the Authority shall confirm the Company’s calculation of the “**Project Shortfall Percentage**.”

4.8. Community Recovery Payments. If there is a Project Shortfall Percentage, then the Company shall calculate in the Annual Report the amount of the “**Community Recovery Payments**,” and the Company shall pay the same to the Tax Commissioner, all pursuant to and as defined in the Community Incentives Schedule. If there is a Project Shortfall Percentage in a given year, the Community Recovery Payment shall be equal to the Project Shortfall Percentage multiplied by the applicable Recovery Value in Schedule 4, except that if the Project Shortfall Percentage is less than 20%, there shall be no Community Recovery Payment due; provided that, however, in no event shall the actual PILOT payments due in any year when added to the amount of any required Community Recovery Payment in any year be less than the calculated annual PILOT for the given year as required under Section 3.2.4

4.9. Failure to File Report and Make Required Payments. If the Company fails to pay any Community Recovery Payment when due, interest shall be paid by the Company thereon at the rate of 1% per month (or such lesser rate as may be allowed by law) until paid. If there has been a failure which is not cured within 30 days following a written notice from the Authority that it be cured, the Authority shall be entitled to enforce its rights under this Section 4 and the Company shall indemnify the Authority for all costs of enforcement, including any court costs and reasonable and actual attorneys’ fees and court costs.

## 5. TERMINATION OF AGREEMENT.

5.1. Delay. If, despite the good faith efforts of the parties, this Agreement and the Acknowledgements hereto are not fully executed on or before 5:00 o'clock p.m., Blackshear, Georgia, time, on December 31, 2020, or the Closing has not occurred by 5:00 o'clock p.m., Blackshear, Georgia, time, on December 31, 2024, then the Authority or the Company may terminate this Agreement by written notice to the other Party, without any further liability except as otherwise expressly provided in this Agreement. The Company and the Authority agree to use commercially reasonable efforts to close the issuance of the Project Bonds as promptly as reasonably possible following execution of this Agreement.

5.2. Approval by Governing Bodies. Upon its execution of this Agreement, each Party and each signatory of an Acknowledgment hereto represents and warrants that its governing body or other authorized committee or official thereof has approved and authorized its entry into such Agreement or Acknowledgment, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity.

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

5.3.1. Any other Party is in material breach of this Agreement.

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

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

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

5.6. Effect of Termination. If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued, or except as otherwise expressly provided in this Agreement, or shall exist as a result of any prior breach hereof.

## 6. MISCELLANEOUS.

6.1. Notices. Any notice required to be given by any Party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if either (i) delivered personally to the Party or, if such Party is not an individual, to an officer or other legal representative of the Party to whom the same is directed, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent via nationally recognized overnight courier for next business day delivery, addressed to each other Party at the addresses set forth below (or to such other

address as any particular Party may designate for notices to it to each other Party from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the date of personal delivery, the first business day after having been deposited with the courier service or the United States Postal Service:

If to the Authority: Pierce County Industrial Development and Building Authority  
200 SW Central Ave  
Blackshear, Georgia 31516  
Attn: Executive Director

with a copy to: Seyfarth Shaw LLP  
1075 Peachtree Street, N.E.  
Suite 2500  
Atlanta, Georgia 30309-3962  
Attn: Daniel M. McRae

If to the Company: Tyre Bridge Solar LLC  
c/o Hexagon Energy, LLC  
  
722 Preston Ave, Suite 102  
Charlottesville, VA 22903  
Attn: Matthew Hantzmon, CEO

with copies to: McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219-3916  
Attn: Douglas E. Lamb

6.2. Confidential Information. All confidential information acquired by the Authority, the Board of Assessors or the Tax Commissioner relating to the Company, shall be held in confidence by them, subject to their legal obligations as public bodies, including, without limitation O.C.G.A. § 15-18-70, *et seq.* and § 50-14-1, *et seq.* The Company and its advisors shall, prior to the execution and delivery hereof, treat the contents of this Agreement as confidential, and, without limitation, shall not disclose such contents to competing communities or states.

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

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

6.5. Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of Georgia, except for the state's conflicts of law rules. The Company consents to jurisdiction over it and to venue in the County.

6.6. Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the parties hereto.

6.7. Entire Agreement. This Agreement, together with the Definitive Documents (when executed), constitutes the entire agreement between the Parties with respect to the subject matter hereof and, without limitation, supersedes any prior agreement between them relating to the subject matter hereof.

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

6.9. Counterparts; Electronic Transmittal. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. To facilitate execution of this Agreement, the Parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the printed product of a facsimile or electronic transmittal of this Agreement shall be deemed to be "written" and a "writing" for all purposes, and shall otherwise constitute an original document binding upon the transmitting party.

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

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

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

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

6.14 Consequential Damages. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY PARTY OR ANY PERSON OR ENTITY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding and caused it to be delivered as of the following "Effective Date".

**The "Authority":**

**PIERCE COUNTY INDUSTRIAL DEVELOPMENT AND BUILDING AUTHORITY**

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

ATTEST:

\_\_\_\_\_  
Secretary

(AUTHORITY'S SEAL)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**The "Company":**

**TYRE BRIDGE SOLAR, LLC**

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

ATTEST:

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

(COMPANY'S SEAL)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**ACKNOWLEDGED**

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

**The "Board of Assessors":**

**BOARD OF ASSESSORS OF  
PIERCE COUNTY**

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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**ACKNOWLEDGED**

The undersigned acknowledges receipt of this Agreement and will discharge his duties related thereto as required by law.

**The "Pierce County Commission":**

PIERCE COUNTY BOARD OF COMMISSIONERS

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

**SCHEDULE 1.5**

**DESCRIPTION OF THE SITE**

**SCHEDULE 3.2.1**

**SAVINGS SCHEDULE**

1. The Project. For each year in the below table, the Company will pay amounts equal to the corresponding percentage ("**Payment Percentage**") of the normal *ad valorem* property taxes that would be payable if legal title to the Project were vested in the Company, instead of the Authority on January 1 of such year. The corresponding savings percentage ("**Savings Percentage**") is 100% less the Payment Percentage. Such payments shall constitute payments in lieu of taxes.

<u>Year</u>	<u>Payment Percentage</u>	<u>Savings Percentage</u>
Year 1	25.00%	75.00%

Year 2	25.00%	75.00%
Year 3	25.00%	75.00%
Year 4	25.00%	75.00%
Year 5	25.00%	75.00%
Year 6	25.00%	75.00%
Year 7	25.00%	75.00%
Year 8	50.00%	50.00%
Year 9	50.00%	50.00%
Year 10	50.00%	50.00%
Year 11	50.00%	50.00%
Year 12	50.00%	50.00%
Year 13	50.00%	50.00%
Year 14	50.00%	50.00%
Year 15	50.00%	50.00%
Year 16	50.00%	50.00%
Year 17	50.00%	50.00%
Year 18 & thereafter	100.00%	0%

2. The savings applies to all *ad valorem* property taxes (city, county, state and other) with respect to property comprising part of the Project, as applicable, titled to the Authority in connection with the issuance of the Project Bonds. The Company shall pay normal property taxes with respect to property not so titled to the Authority. At the Company's election, the Company may terminate this Agreement in Year 8 or after without penalty (including any Community Recovery payments accruing thereafter) or PILOT payment accruing in Year 8 or after, provided that the Company pays normal *ad valorem* taxes on the Project. For the avoidance of doubt, the savings only applies to personal property and not real property.

**SCHEDULE 3.2.4**

**FORM OF SURETY BOND**

**PERFORMANCE  
BOND**  
(Multiple Year)

**Travelers Casualty and Surety Company of America  
Hartford, CT 06183**

Bond No.: \*\*\*\*\*DRAFT\*\*\*\*\*

KNOWN ALL MEN BY THESE PRESENTS, That \_\_\_\_\_ company, as Principal, and Travelers Casualty and Surety Company of America, a Connecticut corporation, as Surety, are held and firmly bound unto \_\_\_\_\_, as Oblige, in the sum of \_\_\_\_\_ Dollars for the payment whereof said Principal and Surety bind themselves firmly by these presents. \$5,346,776

WHEREAS, Principal has, by written Agreement, dated \_\_\_\_\_, entered into a contract with Oblige, for \_\_\_\_\_ payments in lieu of taxes (as described in section 3.2 of the Memorandum of Understanding which is schedule \_\_\_\_\_ of the Contract), \_\_\_\_\_ ("Contract");

NOW, THEREFORE, the condition of this obligation is such that if Principal shall faithfully perform the Contract according to its terms and conditions during the effective dates of this bond, then this obligation shall be void, otherwise to remain in full force and effect. Surety's obligation hereunder shall not arise unless Principal is in default under the Contract, and has been declared by Oblige to be in default under the Contract; and Oblige has performed its obligations under the Contract. The Surety's obligation is also subject to the following conditions:

1. The effective dates of this bond shall be from \_\_\_\_\_ to \_\_\_\_\_, and Surety shall not be liable for any defaults arising before or after the effective dates of the bond. In the event that Oblige and Principal elect to extend the Contract, Surety, at its sole option, may renew the obligation by continuation certificate or rider setting forth new commencement and expiration dates, and, if applicable, increased or decreased the penal sum. Any failure of Principal to provide a bond for any such contract extension shall not be considered a breach within the effective period of this bond.
2. Surety's aggregate liability under this bond shall in no event exceed the penal sum of the bond. If the bond is renewed by Surety, it shall be considered one continuous bond and in no event shall the penal sum, or any portion thereof, at any two points be added together in determining Surety's liability. Surety shall be entitled to a dollar for dollar reduction of its liability under this Bond to the extent that Surety sustains losses related to the Contract that exceed the Contract balance paid to Surety by Oblige.
3. No suit shall be commenced under this bond after the expiration of one (1) year following the earlier of (a) the expiration date of this bond, or (b) the date that Principal ceased work under the Contract, excluding warranty work. If this bond is provided to comply with bond statutes in the location where the construction work is being performed, and the bond statutes contain a statute of limitations for suits on the performance bond, then the limitation period set forth herein shall be read out of this bond and the statute of limitation set forth in the bond statutes shall be read into this bond. If the limitation set forth in this bond is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable, and said period of limitation shall be deemed to have accrued and shall commence to run no later than the earlier of (y) the expiration date of this bond, or (z) the date Principal ceased work under the Contract, excluding warranty work.
4. Notwithstanding anything in the Contract to the contrary, this does not inure to the benefit of or confer any right of action upon any person other than the named Oblige. This bond shall not be liable for any liability of Principal for tortious acts, whether or not said liability is direct or is imposed by the Contract, and shall not serve as or be a substitute for or supplemental to any liability or other insurance required under the Contract.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Principal)

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

Travelers Casualty and Surety Company of America

By: \_\_\_\_\_, Attorney-in-Fact

**SCHEDULE 4**

**COMMUNITY INCENTIVES SCHEDULE**

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

**INCENTIVES TABLE**

SECTION	INCENTIVE	RECOVERY VALUE	RECOVERY PAID TO
3.2	Property Tax Savings on the Project	Years 1-15: Actual amount of the saved <i>ad valorem</i> property taxes on the Project for the subject year.	Appropriate Taxing Authorities, Pro Rata in Proportion to Applicable Millage Rates

2. If there is a Project Shortfall Percentage that is equal to or greater than 20% in a Performance Period, then for such period the Company shall make a payment with respect to the Tax Savings incentive in the Incentives Table above (each payment, a “**Community Recovery Payment**,” and collectively, the “**Community Recovery Payments**”) to the respective Taxing Authorities so specified above in an amount equal to the Recovery Value for such period multiplied by the Project Shortfall Percentage. For example, if the Project Shortfall Percentage is 28% for a Performance Period, the Company would owe a Community Recovery Payment of 28% of the tax savings enjoyed by the Company in the previous tax year. If the Project Shortfall Percentage is less than 20%, there shall be no Community Recovery Payment due.

3. [RESERVED].

4. For purposes of the Community Investment Goal, “*force majeure*” shall have the same meaning provided in Section 1.7.6 of this Agreement. Notwithstanding the provisions of this Agreement set forth above, the Community Investment Goal in any year is subject to the effect of *force majeure* as provided below, if the Company certifies to the Authority in writing in the applicable Annual Report of the dates of the commencement and, if the event of *force majeure* has abated, the date of the abatement, of such event of *force majeure*. The effect of *force majeure* for such purposes shall be that for any year in which the Company is entitled to claim, and does claim, the benefit of such provision, the requirement for the Company to be in compliance with its Community Investment Goal shall be suspended for such year, but the Performance Period shall be extended by another year, which shall immediately follow the *force majeure* year. The Company’s Community Investment Goal requirements shall resume as scheduled beginning with the extension year, and shall continue as scheduled through the same number of remaining years as would have applied if there had been no event of *force majeure*. Termination or expiration of the Bond Lease or any other of the Definitive Documents shall not affect such requirements hereunder, even if the Performance Period is extended beyond such termination or expiration. The foregoing notwithstanding, (a) the Company may not claim the benefit of *force majeure* more than twice, and (b) in no event shall *force majeure* excuse or postpone a payment obligation.

5. The Company shall pay any Community Recovery Payment to the Party or Parties specified above simultaneously with its delivery of the Annual Report for the subject year as required by this Agreement.

6. Notwithstanding any other provision hereof to the contrary, in no event shall the aggregate amount of all Community Recovery Payments made hereunder exceed the actual aggregate amount of the saved *ad valorem* property taxes on the Project, calculated cumulatively through the date of calculation, with any unpaid accrued liability being due at such time as provided herein.

**SCHEDULE 4.2**

**[RESERVED]**

SCHEDULE 4.4

**RULES FOR SATISFYING THE COMMUNITY INVESTMENT GOAL**

1. Only capital investments in the Project by the Company or its Affiliates shall be counted, except as provided in 4 below.
2. Original cost, without regard to depreciation, shall be used in calculating whether the Community Investment Goal is met, except as provided in 3, below.
3. Transferred equipment relocated by the Company or its Affiliates to the Project, to be used as part of the Project, may be counted at net book value, or, if requested and substantiated by the Company to the Authority's reasonable satisfaction, and approved by the Authority (which approval shall not be unreasonably withheld, delayed or conditioned), its fair market value.
4. Machinery and equipment leased to the Company or its Affiliates under an operating lease (even though such property is not titled to the Authority and is not leased to the Company under the Bond Lease) and other machinery and equipment owned or beneficially owned by the Company or its Affiliates but not leased to it under the Bond Lease, shall be counted.

**SCHEDULE 4.6**

**FORM OF ANNUAL REPORT**

[AUTHORITY]

[DATE]

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

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

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

1. [RESERVED]..

2. Community Investment Report.

As of December 31, 20\_\_, the total investment in Pierce County in the Project is \$\_\_\_\_\_. We have enclosed \_\_\_\_\_ as evidence of such investment.

The Community Investment Goal for \_\_\_\_\_ was \$\_\_\_\_\_. The Community Investment Shortfall for the year \_\_\_\_\_ is \$\_\_\_\_\_.

3. Community Recovery Payments

The Community Investment Shortfall for 20\_\_ is \$\_\_\_\_\_. Therefore, the Project Shortfall Percentage for 20\_\_ is \_\_\_\_%. [IF A COMMUNITY RECOVERY PAYMENT IS DUE, THAT PAYMENT SHOULD BE CALCULATED HERE BASED ON TERMS AND PROVISIONS OF THE MOU]

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

Sincerely,  
Enclosures

Commissioner Randy Dixon made a motion to move forward and sign the revised MOU as presented and Commissioner David Lowman seconded the motion. All voted aye and motion was approved.

6. County Manager Report and September 2020 Financials.

**Financial Report & County Manager Report**

November 3, 2020

- Financial Report as of 09/30/2020
  - i. Unrestricted Cash and overall budget continue to be in a strong position
  - ii. LOST collections are up over the same period last year by 10.23%
  - iii. Total expenses are performing better than expected overall
- County Manager Report
  - a. Elections
    - i. Early Voting
      - 1. Total Registered Voters for Pierce County =13,062
        - a. 2016
          - i. Registered Voters 9,283 (79.28%)
        - b. 2018
          - i. Registered Voters 10,855 (63.54%)
      - 2. Total Early Votes = 8,784 (67.25%)
        - a. Absentee ballots cast = 1,283
        - b. In-person early votes cast = 6,421
      - 3. Election Day (Today as of 5:00 pm)
        - a. Eagle Station = 344
        - b. Blackshear Gymnasium = 736
      - 4. Pierce County was #12 in the state for voter turnout on Monday, November 1<sup>st</sup>
    - ii. Fire
      - 1. Receive 1997 International Fire
        - a. Will be housed in Bearville
      - 2. Picking up 2001 International Fire Truck
        - a. Will be housed at the Walkerville Fire Station
      - 3. COVID-19 Testing continues in Pierce County
        - a. Two times per week
          - i. Tuesday & Thursday
            - 1. 8:00 am—12:00 pm
            - 2. 5:30 pm—7:30 pm
          - ii. At the health department. They have a tent set-up for testing.
        - b. 688 total cases
        - c. 46 confirmed cases in last two weeks
      - 4. Total Fire Calls 358 to date
  - iii. Parks & Recreation

1. Land and Water Conservation Grant has been submitted
  2. SGA Tournaments will have a tournament again this Saturday
- iv. Roads
1. Loan application has been submitted for the Bonneyman/Riverwoods Project
  2. Tuten Road reopened last Monday, October 26<sup>th</sup>

**Pierce County Board of Commissioners**  
**Summary Financial Report**  
September 30, 2020

9/30/2020  
General Fund-Cash & Investment \$ 6,247,834

General Fund - Revenues (YTD Totals)	Original	Amended	YTD 2020		YTD 2019
	Budget	Budget	Actual	%	Actual
Taxes	\$ 8,365,000	\$ 8,365,000	\$ 7,346,054	87.8%	\$ 6,677,071
Licenses/Fees/Permits	\$ 140,500	\$ 140,500	\$ 108,534	77.2%	\$ 123,049
Charges for Services	\$ 521,850	\$ 521,850	\$ 358,446	68.7%	\$ 648,669
Fines/Forfeitures	\$ 180,600	\$ 180,600	\$ 114,826	63.6%	\$ 145,324
Intergovernmental	\$ 110,000	\$ 110,000	\$ 340,208	309.3%	\$ 94,737
Other	\$ 169,500	\$ 169,500	\$ 26,508	15.6%	\$ 119,347
<b>Total Revenues</b>	<b>\$ 9,487,450</b>	<b>\$ 9,487,450</b>	<b>\$ 8,294,576</b>	<b>87.4%</b>	<b>\$ 7,808,197</b>

Expenditures Analysis by Function (YTD Totals)	Original	Amended	YTD 2020		YTD 2019
	Budget	Budget	Actual	%	Actual
General Admin	\$ 2,099,265	\$ 2,195,765	\$ 1,223,311	55.7%	\$ 1,341,859
Judiciary	\$ 1,113,637	\$ 1,113,637	\$ 738,205	66.3%	\$ 768,778
Public Safety	\$ 3,908,895	\$ 4,058,395	\$ 2,705,101	66.7%	\$ 2,767,338
Public Works	\$ 1,169,503	\$ 1,169,503	\$ 712,375	60.9%	\$ 744,165
Health & Welfare	\$ 343,115	\$ 343,115	\$ 109,787	32.0%	\$ 204,133
Community Development	\$ 456,343	\$ 456,343	\$ 415,179	91.0%	\$ 312,226
Contingency	\$ 80,000	\$ 80,000	\$ -	0.0%	\$ -
<b>Total Expenditures</b>	<b>\$ 9,170,758</b>	<b>\$ 9,416,758</b>	<b>\$ 5,903,958</b>	<b>62.7%</b>	<b>\$ 6,138,499</b>
Transfers to E911	\$ 41,692	\$ 41,692	\$ 31,269	75.0%	\$ 52,735
Transfers to Rec	\$ 275,000	\$ 301,990	\$ 206,250	68.3%	\$ 150,000
<b>Total Expenditures/Transfers</b>	<b>\$ 9,487,450</b>	<b>\$ 9,760,440</b>	<b>\$ 6,141,477</b>	<b>62.9%</b>	<b>\$ 6,341,234</b>

Payroll (Current Month)	Total Payroll	Overtime Pay	OT Hours Pd
Road	\$ 25,502	\$ 192	11.00
Sheriff Admin/Patrol/Detectives	\$ 70,509	\$ 12,596	490.75
Jail/Work Detail	\$ 40,474	\$ 11,893	652.50
EMS	\$ -	\$ -	-
E911	\$ 14,484	\$ 2,280	119.25
Other Depts	\$ 112,789	\$ 601	153.75
<b>Totals</b>	<b>\$ 263,758</b>	<b>\$ 27,561</b>	<b>1,427.25</b>

Other Items (YTD Totals)	Year 2020	Year 2019	Increase (Decrease)
Revenue-Loc Opt Sales Tax	\$ 1,018,625	\$ 924,102	\$ 94,523
Revenue-EMS Collections	\$ 1,682	\$ 208,624	\$ (206,943)
Revenue-Fines & Forfeiture	\$ 114,826	\$ 145,324	\$ (30,499)
Expenditures-Total Payroll	\$ 2,565,088	\$ 2,870,729	\$ (305,640)
Expenditures-Overtime Pay	\$ 270,201	\$ 357,877	\$ (87,676)
Expenditures-Electricity	\$ 168,236	\$ 171,398	\$ (3,162)
Expenditures-Fuel Costs	\$ 132,425	\$ 152,398	\$ (19,973)
Expenditures-Prisoner Housing	\$ 59,847	\$ 144,272	\$ (84,425)

Chairman Bennett asked Mr. Rubenbauer for an update on the joint project with the City of Blackshear. Mr. Rubenbauer stated that the bids have been awarded and we should start seeing work any time. The project is still scheduled to be complete by December 31, 2020.

7. Discussion and vote to approve Resolution 2020.11.03.1 establishing additional facilities to be used as a Pierce County Courthouse Annex. Commissioner Mike Streat asked about

the security of the building? Chairman Bennett stated that the Office of the Sheriff would provide security when the building was being operated as courthouse annex.

GEORGIA, PIERCE COUNTY.

A RESOLUTION ESTABLISHING ADDITIONAL FACILITIES TO BE USED AS A PIERCE COUNTY COURTHOUSE ANNEX

RESOLUTION NO. 2020.11.03.1

The Board of Commissioners of Pierce County, Georgia, as the governing authority of said County, in its regular monthly meeting held the 3rd day of November, 2020, do hereby resolve as follows:

WHEREAS, due to the Covid-19 medical crisis, a need has arisen for additional space at the PIERCE County Courthouse in Blackshear, Georgia, in order for the Superior Court to conduct court related business, and,

WHEREAS, due to spacing between individuals being a Covid-19 health requirement in the courtroom, the adjoining rooms to the courtroom and the Pierce County Courthouse in general, and,

WHEREAS, additional space is needed for the Superior Court of Pierce County to conduct matters coming before it, so as to be able to meet the spacing compliance requirements, and,

WHEREAS, a determination has been made by a committee of individuals named by the Chief Superior Court Judge of Pierce County, that adequate spacing can be had at the Southeast Georgia Regional Agriculture Center (SEGARAC) and the NFC Gymnasium in Blackshear, Georgia, and,

WHEREAS, based on the foregoing, the Board of Commissioners of Pierce County having considered the foregoing provisions do hereby resolve to adopt this resolution naming and identifying the Southeast Georgia Regional Agriculture Center (SEGARAC) and the NFC Gymnasium, both located at 705 College Avenue, Blackshear, Georgia 31516, as additional facilities to be utilized as a Pierce County Courthouse Annex.

SO, RESOLVED AND ADOPTED this 3rd day of November, 2020, by a Motion duly made and passed by the said Pierce County Board of Commissioners.

\_\_\_\_\_  
Neal Bennett

Chairman

Attest: \_\_\_\_\_

Amy Hitt

County Clerk

Commissioner Randy Dixon made a motion to approve the resolution and Commissioner David Lowman seconded the motion. All voted aye and motion was approved.

8. Discussion and vote to approve a Resolution authorizing application for GDOT Grant for 5311 Transit Funding by the Pierce County Board of Commissioners.

**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION FOR A GRANT FOR PUBLIC TRANSPORTATION ASSISTANCE UNDER TITLE 49 U.S.C., SECTION 5311.**

**WHEREAS**, the Federal Transit Administration and the Georgia Department of Transportation are authorized to make grants to non-urbanized (rural) areas for mass transportation projects; and

**WHEREAS**, the contract for financial assistance will impose certain obligations upon Applicant, including the provision of the local share of project costs; and

**WHEREAS**, it is required by the United States Department of Transportation and the Georgia Department of Transportation in accordance with the provisions of Title VI of the Civil Rights Act of 1964, that in connection with the filing of an application for assistance under the Federal Transit Act, the applicant gives an assurance that it will comply with Title VI of the Civil Rights Act of 1964 and the United States Department of Transportation requirements thereunder; and

**WHEREAS**, it is the goal of the Applicant that Minority Business Enterprise (Disadvantaged Business Enterprise and Women's Business Enterprise) be utilized to the fullest extent possible in connection with this project, and that definitive procedures shall be established and administered to ensure that minority business shall have the maximum feasible opportunity to compete for contracts and purchase orders when procuring construction contracts, supplies, equipment contracts, or consultant and other services.

**NOW THEREFORE, BE IT RESOLVED BY \_PIERCE COUNTY BOARD OF COMMISSIONERS\_, hereinafter referred to as the "Applicant",**

1. That the Designated Official, Neal Bennett, Chairman hereinafter, referred to as the "Official" is authorized to execute and file an application on the behalf of the Applicant, a City/County government, with the Georgia Department of Transportation to aid in the financing of public transportation assistance pursuant to Section 5311 of the Federal Transit Act.
2. That the Official is authorized to execute and file such application and assurances or any other document required by the U.S. Department of Transportation and the Georgia Department of Transportation effectuating the purpose of Title VI of the Civil Rights Act of 1964.
3. That the Official is authorized to execute and file all other standard assurances or any other document required by the Georgia Department of Transportation or the U.S. Department of Transportation in connection with the application for public transportation assistance.
4. That the Official is authorized to execute grant contract agreements on behalf of the Applicant with the Georgia Department of Transportation.

5. That the Official is authorized to set forth and execute Minority Business Enterprise, DBE (Disadvantaged Business Enterprise) and WBE (Women Business Enterprise) policies and procedures in connection with the project's procurement needs as applicable.
6. That the applicant while making application to or receiving grants from the Federal Transit Administration will comply with FTA Circular 9040.1G, FTA Certifications and Assurances for Federal Assistance 2021 as listed in this grant application and General Operating Guidelines as illustrated in the *Georgia State Management Plan*.
7. That the applicant has or will have available the required non-federal funds to meet local share requirements for this grant application, and will reimburse the Official for any local share requirements on a proportional basis.

APPROVED AND ADOPTED this 3RD day of NOVEMBER, 2020.

\_\_\_\_\_  
 Authorized Official  
**NEAL BENNETT, CHAIRMAN**  
 Type Name and Title

Signed, sealed and delivered this 3RD day of NOVEMBER, 2020 in the presence of

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Notary Public/Notary Seal

**CERTIFICATE**

The undersigned duly qualified and acting COUNTY CLERK of PIERCE COUNTY (Title of Certifying/Attesting Official) Applicant's Legal Name certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting held on NOVEMBER 3, 2020.

**AMY HITT**  
 Name of Certifying/Attesting Officer  
**COUNTY CLERK**  
 Title of Certifying/Attesting Officer



(Page 2 of 2)

Commissioner Harold Rozier made a motion to approve the Resolution to apply for the GDOT 5311 Transit grant for 2022 and Commissioner Randy Dixon seconded the motion. All voted aye and motion was approved.

9. Discussion and vote to approve a Resolution authorizing application for GDOT Grant for 5311 Transit funding by the Southern Georgia Regional Commission.

**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION FOR A GRANT FOR PUBLIC TRANSPORTATION ASSISTANCE UNDER TITLE 49 U.S.C., SECTION 5311.**

**WHEREAS**, the Federal Transit Administration and the Georgia Department of Transportation are authorized to make grants to non-urbanized (rural) areas for mass transportation projects; and

**WHEREAS**, the contract for financial assistance will impose certain obligations upon Applicant, including the provision of the local share of project costs; and

**WHEREAS**, it is required by the United States Department of Transportation and the Georgia Department of Transportation in accordance with the provisions of Title VI of the Civil Rights Act of 1964, that in connection with the filing of an application for assistance under the Federal Transit Act, the applicant gives an assurance that it will comply with Title VI of the Civil Rights Act of 1964 and the United States Department of Transportation requirements thereunder; and

**WHEREAS**, it is the goal of the Applicant that Minority Business Enterprise (Disadvantaged Business Enterprise and Women's Business Enterprise) be utilized to the fullest extent possible in connection with this project, and that definitive procedures shall be established and administered to ensure that minority business shall have the maximum feasible opportunity to compete for contracts and purchase orders when procuring construction contracts, supplies, equipment contracts, or consultant and other services.

**NOW THEREFORE, BE IT RESOLVED BY \_PIERCE COUNTY BOARD OF COMMISSIONERS\_, hereinafter referred to as the "Applicant",**

1. That the Designated Official, *Southern Georgia Regional Commission* hereinafter, referred to as the "Official" is authorized to execute and file an application on the behalf of the Applicant, a City/County government, with the Georgia Department of Transportation to aid in the financing of public transportation assistance pursuant to Section 5311 of the Federal Transit Act.
2. That the Official is authorized to execute and file such application and assurances or any other document required by the U.S. Department of Transportation and the Georgia Department of Transportation effectuating the purpose of Title VI of the Civil Rights Act of 1964.
3. That the Official is authorized to execute and file all other standard assurances or any other document required by the Georgia Department of Transportation or the U.S. Department of Transportation in connection with the application for public transportation assistance.
4. That the Official is authorized to execute grant contract agreements on behalf of the Applicant with the Georgia Department of Transportation.

5. That the Official is authorized to set forth and execute Minority Business Enterprise, DBE (Disadvantaged Business Enterprise) and WBE (Women Business Enterprise) policies and procedures in connection with the project's procurement needs as applicable.
6. That the applicant while making application to or receiving grants from the Federal Transit Administration will comply with FTA Circular 9040.1G, FTA Certifications and Assurances for Federal Assistance 2021 as listed in this grant application and General Operating Guidelines as illustrated in the *Georgia State Management Plan*.
7. That the applicant has or will have available the required non-federal funds to meet local share requirements for this grant application, and will reimburse the Official for any local share requirements on a proportional basis.

APPROVED AND ADOPTED this 3RD day of NOVEMBER, 2020.

\_\_\_\_\_  
Authorized Official

**NEAL BENNETT, CHAIRMAN**

\_\_\_\_\_  
Type Name and Title

Signed, sealed and delivered this 3RD day of NOVEMBER, 2020 in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public/Notary Seal

**CERTIFICATE**

The undersigned duly qualified and acting COUNTY CLERK of  
PIERCE COUNTY (Title of Certifying/Attesting Official) (Applicant's Legal Name) certifies  
that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting held  
on NOVEMBER 3, 2020.

**AMY HITT**  
\_\_\_\_\_  
Name of Certifying/Attesting Officer  
**COUNTY CLERK**  
\_\_\_\_\_  
Title of Certifying/Attesting Officer

(Place Seal Here)

(Page 2 of 2)

*FTA Section 5311 Grant Application - FY 2022*

Commissioner Randy Dixon made a motion to approve the Resolution for the Southern Regional Commission to apply for the GDOT 5311 Transit grant on behalf of Pierce County and Commissioner David Lowman seconded the motion. All voted aye and motion was approved.

10. Discussion and vote to reappoint Tony Walsh to the Joint Planning Advisory Board for a term to begin January 1, 2021 and expiring December 31, 2023.

Commissioner Harold Rozier made a motion to appoint Tony Walsh to the Joint Planning and Advisory Board for a term beginning January 1, 2021 and expiring December 31, 2023 and was seconded by Commissioner David Lowman. All voted aye and motion was approved.

11. Discussion and vote to approve Ordinance on Ponds, Lakes, Dams and Spillways. Mr. Rubenbauer stated that the county has been trying to maintain areas and we have no permits or requirements for this type of situation close to county right-of-way. This will keep us from having people create problems with county roads.

**PIERCE COUNTY, GEORGIA  
ORDINANCE NO. 11-03-01**

**AN ORDINANCE BY THE PIERCE COUNTY BOARD OF COMMISSIONERS TO ADOPT REGULATIONS OF THE CONSTRUCTION AND MAINTENANCE OF PONDS, LAKES, DAMS AND SPILLWAY OR FLOOD CONTROL STRUCTURES**

**WHEREAS**, O.C.G.A § 36-1-20 authorizes the County to adopt ordinances preserving the public health, safety, and welfare, and to adopt appropriate measures to enforce those ordinances; and

**WHEREAS**, in the interest of the health, safety, and general welfare of the citizens of Pierce County, Georgia, the Board of Commissioner of Pierce County desires to exercise its authority to adopt and ordinance regulating the construction and maintenance of pond, lakes, dams, and spillway or flood control structures; and

**WHEREAS**, appropriate notice and hearing on the ordinance contained herein have been carried out according to general and local law.

**NOW, THEREFORE**, the Board of Commissioners of Pierce County, Georgia hereby ordain as follows:

Section 1: The language attached hereto as Exhibit A and incorporated by reference as if fully set forth herein is hereby adopted and approved, and shall be codified as Chapter 14, Article II, Division 4 of the Code of Ordinances.

Section 2: All other ordinances shall continue in full force and effect and shall remain unaffected, except where such ordinance, or part thereof, conflict herewith, in which case such ordinance, or part thereof, is hereby repealed.

Section 3: It is the express intent of the Board of Commissioners of Pierce County, Georgia that this ordinance be consistent with both federal and state law. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 4: This Ordinance shall become effective immediately upon its adoption.

Adopted this 3<sup>rd</sup> day of November, 2020.

**PIERCE COUNTY BOARD OF COMMISSIONERS:**

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Neal Bennett, Chairman

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Harold Rozier, District 1 Commissioner

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Mike Streat, District 2 Commissioner

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Randy Dixon, District 3 Commissioner

---

David Lowman, District 4 Commissioner

Attest:

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Amy Hitt, County Clerk

**EXHIBIT "A"**  
**POND, DAM, LAKE AND SPILLWAY OR FLOOD CONTROL STRUCTURES**

**ARTICLE II**

**SECTION 1-1 Pond, Lake, Dam, and Spillway/Flood Control Structure Requirements**

The construction of ponds, lakes, dams, or spillways in Pierce County are permitted for agricultural purposes only. The property owner shall acquire a permit from the Pierce County Planning & Codes Office prior to the construction of a pond, lake, dam, or spillway. The construction of ponds, lakes, dams or spillways within Pierce County, Georgia shall comply with the requirements set forth below, as well as any additional requirements needed to preserve the surrounding land used for agricultural purposes, to protect adjoining property owners, and to protect county rights-of-way including, road and drainage pipes. The following requirements are not intended to supersede or contradict any State or Federal regulations pertaining to the construction of ponds, lakes, dams, spillways or watercourses. All State and Federal permits shall be properly obtained and presented to the Pierce County Planning and Codes Office when applying for a local permit.

**Requirements for constructing a pond, lake, dam, or spillway:**

- 1) No part of a pond or lake shall be constructed closer than 150 feet from any public right-of-way, or public/private easement. If the width of an easement containing a public roadway cannot be determined, 30 feet shall be added to the 150-foot setback, and shall be measured from the centerline of the roadway;
- 2) Ponds or lakes shall not be constructed closer than 30 feet from a property line, but at no time shall be closer than 150 feet to an existing residence on an adjoining parcel (said measurements are to be measured from maximum fill line);
- 3) The pond or lake shall have a spillway constructed, which allows the overflow to follow the natural drainage course. A stamped site plan review must be prepared and stamped by a registered Georgia Engineer or Surveyor. Additionally, a letter of final approval must be provided by a registered Georgia engineer upon completion;
- 4) Any pond or lake constructed closer than 150 feet to a public or private roadway, and the enclosure/water impounding area of the pond or lake is located below, or at the same grade as the roadway, shall require the installation of a guardrail to prevent vehicle entry from the road. A guardrail may not be necessary if vegetation exists between the pond or lake and the roadway, which would reasonably prevent vehicle entry from the road. If the pond or lake is located closer than 150 feet to the roadway, and is at a grade above the roadway, a guardrail may be required, if vehicle entry from the roadway is possible. The Pierce County Road Superintendent, or a Georgia Licensed Highway Engineer, shall determine if a guardrail is required, and the guardrail shall be constructed according to the

requirements and specifications of the Georgia Department of Transportation or Federal Highway Safety Standards. All costs for the installation of the guardrail, if required by the permit application, shall be born by the pond, lake, or dam owner and shall be installed by the Pierce County Road Department or their certified designee to ensure proper installation and location;

- 5) Any dam or spillway, which shall be built to control the overflow of a pond or lake, shall be constructed to anticipate, at a minimum, a 100-year flood event. No connections to any Pierce County pipes shall be made until approved by the County Road Superintendent which shall be noted on the final permit;
  - a. If connections to Pierce County owned pipes is approved, the connection must be made by a highly qualified contractor, with documented experience in making the proper fitted connections;
  - b. Collars shall be used which shall be sufficient to prevent leakage from the connection site at all times;
  - c. Pipes shall be equipped with approved control devices, to allow for the complete shut-off of water flowing through the pipes and shall be inspected, by the property owner, on a regular basis to insure proper operation at all times;
  - d. Random inspections of all ponds, dams, spillways, pipes, and control valves will be conducted by Pierce County personnel to ensure that all equipment is in proper working condition, free of debris and/or beaver dams or other blockages, and ready for any emergency event that may take place requiring the flow of water to be stopped in a timely manner to prevent hazards to public or private property downstream from the pond or lake;
    - i. If designated County inspector finds defects in the pond, lake, dam, spillways, pipes, or shut-off valves, the inspector shall notify the owner who will have a designated amount of time to correct the issues present, but such time shall not exceed thirty (30) days;
    - ii. Failure to comply with the notification may result in fines of \$100 per day;
    - iii. If maintenance is conducted by the county, to protect public rights-of-way or other property in the event of a natural disaster, all activities shall be billed to the property owner using the current Federal Emergency Management rates for all equipment and personnel costs needed to eliminate the deficiency;
    - iv. Failure to remit payment to the County for services rendered at the time due, may result in additional penalties, including liens placed on the personal assets of the property owner;
    - v. In extreme cases where a property owner fails to comply with orders by or payments to the County, the owner's property may be forfeited to Pierce County;
  - e. The property owner shall bear all costs associated with the pipe connections, installations, and all other costs associated with proper maintenance of the pipes, which are located on the property owners side, of the properly installed collar of the drain control system;
  - f. When it is deemed necessary, the County reserves the right to cutoff the flow of water in order to maintain, repair, and provide upkeep to the pipes and roadways to prevent damage to the County right-of-way. If locks are installed on valves or closures, the County Road Superintendent shall be provided a key, at the time of the installation, to allow ready access in the event of an emergency situation;
  - g. A stamped site plan review must be prepared and stamped by a registered Georgia Engineer or Surveyor. Additionally, a letter of final approval must be provided by a registered Georgia engineer upon completion.

- 6) In an effort to ensure that projects are completed in a timely manner, the property owner shall be required to secure a performance bond in the amount of \$5,000.

Commissioner Randy Dixon made a motion to approve Ordinance 11-03-01 Regulations of the construction and maintenance of ponds, lakes, dams and spillway or flood control structures and Commissioner Harold Rozier seconded the motion. All voted aye and motion was approved.

12. Discussion and request to declare surplus property for sale.

<b>LAST 4 OF VIN</b>	<b>DESCRIPTION</b>
4843	<b>1994 Chevrolet C1500 Pickup</b>
2028	<b>1994 Ford F350</b>
1893	<b>1989 International Tractor</b>
5975	<b>1995 Ford Crown Victoria</b>
3081	<b>1997 Chevrolet S10 Truck</b>
2721	<b>1994 Ford F150 Truck</b>
0412	<b>1997 Ford Truck</b>
1645	<b>1984 International Transtar F4370</b>
8129	<b>1997 Ford Crown Vic - Black</b>
4901	<b>1997 Ford Crown Vic - Gray</b>
9219	<b>1991 Blue Bird Bus - Tan</b>
0344	<b>1980 Ford F600</b>
4479	<b>1993 Ford E350 AMBULANCE</b>
4056	<b>2004 Ford DRW Super Duty</b>
2183	<b>2002 FORD F150 XL</b>
6737	<b>2000 GMC Sierra (OLD ASPHALT TRUCK)</b>
7537	<b>1994 GMC Sierra C1500 Truck</b>
3485	<b>1998 FORD F150</b>
No VIN	<b>NEW HOLLAND 575E BACKHOE</b>
No VIN	<b>FORD 3910 FARM TRACTOR</b>
3695	<b>2006 KW Truck Tractor Construction T Model</b>
5437	<b>2003 Ford Truck LGT Convtnl</b>

Commissioner Randy Dixon made a motion to approve the surplus property list as presented and Commissioner David Lowman seconded the motion. All voted aye and motion was approved.

13. Discussion and vote the purchase of a vehicle for the Office of the Sheriff not to exceed \$30,000.00 to be paid from the 2014 SPLOST. Commissioner David Lowman asked if this gets us caught up on vehicles. Mr. Rubenbauer stated that to stay caught up we have to stay on a cycle of 5 vehicles per year for the Office of the Sheriff.

Commissioner Harold Rozier made a motion to approve the purchase of a vehicle for the Office of the Sheriff not to exceed \$30,000.00 and to be paid from 14SPLOST and Commissioner Randy Dixon seconded the motion. All voted aye and motion was approved.

14. Adjourn – Chairman Bennett adjourned the meeting at 6:32 PM