

ORDINANCE NO. 22-16

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU-OF-TAX AND INCENTIVE AGREEMENT BY AND BETWEEN MCCORMICK COUNTY, SOUTH CAROLINA AND WEST CAROLINA COMMUNICATIONS, LLC, ACTING FOR ITSELF, ONE OR MORE SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS, LESSORS OR OTHER PROJECT SPONSORS, PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED PAYMENTS IN LIEU OF AD VALOREM TAXES WITH RESPECT TO CERTAIN FACILITIES IN THE COUNTY; AND OTHER MATTERS RELATING THERETO.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF MCCORMICK COUNTY, AS FOLLOWS:

Section 1 Findings. The County Council of McCormick County (the “*County Council*”), the governing body of McCormick County, South Carolina (the “*County*”), makes the following findings of fact in connection with the enactment of this ordinance (this “*Ordinance*”):

(a) The County Council is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “*Code*”), particularly Title 12, Chapter 44 of the Code (the “*Fee Act*”) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “*State*”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; and (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“*FILOT*”) payments, including, but not limited to, negotiated FILOT payments made pursuant to the Fee Act, with respect to a project.

(b) West Carolina Communications, LLC, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the “*Company*”) proposes to acquire, lease, construct, purchase, or install certain machinery, equipment, and other personal property in order to extend broadband infrastructure within the County (the “*Project*”).

(c) Based on information provided to the County by the Company, the County Council has determined that the Project would subserve the purposes of the Fee Act and has made certain findings pertaining thereto in accordance with the Fee Act.

(d) In accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on July 19, 2022, whereby the County agreed to provide the benefits of a negotiated fee in lieu of *ad valorem* tax with respect to the Project and/or a multi-county industrial or business park with respect to the Project; and

(c) The County and the Company have agreed to the specific terms and conditions of such arrangements in a Fee-in-Lieu-of-Tax and Incentive Agreement (the “*Fee Agreement*”) by

and between the County and the Company with respect to the Project, the form of which is attached hereto as **Exhibit A**. It appears that the Agreements now before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

Section 2 Statutory Recitations. As contemplated by Section 12-44-40(I) of the Fee Act, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

- (a) The Project will constitute a “project” within the meaning of the Fee Act; and
- (b) The Project, and the County’s actions herein, will subserve the purposes of the Fee Act; and
- (c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and
- (d) The Project gives rise to no pecuniary liability or charge against the general credit or taxing power of the County or any incorporated municipality; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project are greater than the costs.

Section 3 Negotiated Payment in Lieu of Taxes.

(a) The County hereby agrees to enter into the Fee Agreement. The Fee Agreement shall be in the form of a Fee Agreement, pursuant to the Fee Act, whereby the Company will acquire, construct, or install the Project within the County within certain prescribed time periods and the County will agree to accept certain negotiated FILOT payments with respect to the Project (“*Negotiated Payments-in-Lieu-of-Taxes*”), as set forth in Section 2(b) hereof and in accordance with the terms of the Fee Agreement.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be determined using: (1) an assessment ratio of 6%, (2) the lowest millage rate allowed with respect to each component of the Project, based upon the location of such Project component and the millage rate applicable thereto, pursuant to Section 12-44-50(A)(1)(d) of the Fee Act, as set forth in greater detail in the Fee Agreement, which millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Fee Act for the full term of the Negotiated Payments-in-Lieu-of-Taxes; (3) the fair market value of the Project, as determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act; and (4) and such other terms and conditions as will be specified in the Fee Agreement.

(c) The Negotiated Payments-in-Lieu-of-Taxes shall be calculated as provided in this Section 2(b) for all Economic Development Property placed in service during the Investment Period. For each annual increment of investment in Economic Development Property, the annual Negotiated Payments-in-Lieu-of-Taxes shall be payable for a payment period of twenty (20) years. Accordingly, if such Economic Development Property is placed in service during

more than one year, each year's investment during the Investment Period shall be subject to the Negotiated Payments-in-Lieu-of-Taxes for a payment period of twenty (20) years.

Section 4 Fee Agreement. The form, provisions, terms, and conditions of the Fee Agreement, as attached at **Exhibit A** hereto, are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chairman of the County Council is hereby authorized, empowered, and directed to execute the Fee Agreement in the name and on behalf of the County; the Clerk to the County Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the County Council is further authorized, empowered, and directed to deliver the Fee Agreement to the Company. The Fee Agreement is to be in substantially the form attached hereto and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Fee Agreement attached hereto.

Section 5 Further Acts. The Chairman of the County Council, the County Manager, and the Clerk to the County Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Fee Agreement, including the execution and delivery of certificates and documents as they deem necessary, upon advice of counsel, to accomplish the foregoing.

Section 6 Severability. The provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 7 General Repealer; Effective Date. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[Remainder of Page Left Blank]

Enacted and approved, in meeting duly assembled, this day of , 2023.

MCCORMICK COUNTY, SOUTH CAROLINA

By: _____
Charles Jennings
Chairman, County Council

[SEAL]

Attest:

By: _____
Crystal B. Barnes, Clerk to County Council,
McCormick County, South Carolina

First Reading:	April 18, 2023
Second Reading:	May 16, 2023
Public Hearing:	June 20, 2023
Third Reading:	June 20, 2023

EXHIBIT A
DRAFT OF FEE AGREEMENT

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and between

MCCORMICK COUNTY, SOUTH CAROLINA

and

WEST CAROLINA COMMUNICATIONS, LLC

Dated June 20, 2023

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

This **FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT** ("*Fee Agreement*") is made and entered into as of June 20, 2023 ("*Effective Date*"), by and between **MCCORMICK COUNTY, SOUTH CAROLINA** (the "*County*"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the "*County Council*") as governing body of the County, and **WEST CAROLINA COMMUNICATIONS, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina, along with its affiliated or related entities, and assigns, as Sponsor (collectively, "*Company*") and any other entity that may join as a Sponsor Affiliate as the term is defined in this Fee Agreement (hereinafter, the County, the Company, and any Sponsor Affiliate are referred to individually as a "*Party*" and, collectively, as "*Parties*").

RECITALS:

WHEREAS, to induce companies to locate in the State of South Carolina (the "*State*") and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the "*Code*") and particularly Title 12, Chapter 44 of the Code (the "*Fee Act*"), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of the Company as Economic Development Property (as defined herein) and provides for the payment of negotiated payments-in-lieu-of-taxes with respect to such property;

WHEREAS, pursuant to the Fee Act, based solely on information the Company provided to the County, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

WHEREAS, in order to induce the Company to make, or cause to be made, new or additional investment through the development or expansion of its facilities located in the County, the County has agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project; and

WHEREAS, pursuant to a Resolution adopted March 21, 2023 the County Council identified the Project, as required under the Fee Act, and pursuant an Ordinance enacted on June 20, 2023 (the "*Ordinance*"), the County Council, authorized the County to enter into this Fee Agreement with the Company, which, establishes, among other things, a negotiated payment-in-lieu-of-taxes arrangement and identifies the property comprising the Project as Economic Development Property, subject to the terms and conditions hereof and the provisions of the Fee Act, all as set forth in greater detail herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained and other value, the Parties hereto agree as follows:

ARTICLE I RECAPITULATION AND DEFINITIONS

SECTION 1.1. Statutorily Required Recapitulation. Pursuant to Section 12-44-55(B) of the Fee Act, the Parties agree to waive a portion of the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Company should be required to retroactively comply with all of the recapitulation requirements of Section 12-44-55 of the Fee Act, then the County agrees to waive any and all penalties and fees of the

County for the Company's noncompliance. The recapitulations required by Section 12-44-55(A) of the Fee Act are as follows:

1. Legal name of each party to the Agreement: McCormick County, South Carolina and West Carolina Communications, LLC
2. County and street address of the project and property subject to the Agreement:
County: McCormick County
Address: The project areas include (1) areas to be closed out by Company in and around the Town of McCormick; and (2) approximately 131 unserved/underserved addresses constructed by Sponsor Affiliate in the northeastern portion of McCormick County near the boundaries of Abbeville and Greenwood Counties.
3. Length and term of the Agreement: Not to exceed 20 years
4. The assessment ratio applicable for each year of the Agreement: 6%
5. The millage rate applicable for each year of the Agreement: See Exhibit A for millage rates in each taxing district within the County where Economic Development Property may be acquired, constructed, or installed.
6. Minimum investment agreed upon: \$ 2,500,000
7. Schedule showing the amount of the fee and its calculation for each year of the agreement: This provision has been waived.
8. Schedule showing the amount to be distributed annually to each of the affected taxing entities: This provision has been waived.
9. Statements answering the following questions:
 - a. Is the project located in a multi-county park? No
 - b. Is disposal of property subject to the fee allowed? Yes
 - c. Will special source revenue bonds be issued or credits for infrastructure investment be allowed in connection with this project? No
 - d. Will payment amounts be modified using a net present value calculation? No
 - e. Do replacement property provisions apply? Yes
10. Any other feature or aspect of the agreement which may affect the calculations of items (7) and (8): This provision is waived.
11. Description of the effect upon the schedules required by items (7) and (8) of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8): This provision is waived.
12. Which party or parties to the Agreement are responsible for updating any information contained in the summary document? This provision is waived.

SECTION 1.2. Rules of Construction; Use of Defined Terms. Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document or agreement shall include any amendments, supplements, addenda, and modifications to that document, unless the context clearly indicates otherwise.

From time to time, reference is made herein to the term taxes or *ad valorem taxes*. All or portions of the Project subject to this Fee Agreement and, as such, are or may be exempt from *ad valorem* taxation

under and by virtue of the provisions of the Fee Act. With respect to the Project, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the Fee Act.

SECTION 1.3. Definitions.

“Act” means, collectively, Title 12 Chapter 44 of the Code (the **“Fee Act”**).

“Administration Expenses” mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including attorneys’ fees at the hourly rates which are standard for legal services to the County but excluding any expenses incurred by the County in defending suits brought by any Company under Section 9.2 hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County shall have furnished to the Company an itemized statement of all expenses incurred; and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice, in the manner of the County’s choice (including, for example, by fixed fee arrangement) for matters deemed necessary and prudent by the County.

“Affiliate” means any corporation, limited liability company, partnership or other Person or entity which owns all or part of the Company or in which the Company has and maintains a minimum 51% equity interest, and any subsidiary, affiliate or other Person, individual, or entity, who bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

“Applicable Governmental Body” means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

“Chair” means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

“Clerk” means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

“Code” means Code of Laws of South Carolina 1976, as in effect on the date hereof and as the same may be amended from time to time.

“Commencement Date” means the last day of the property tax year during which Project property, consisting of Economic Development Property, is first placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the Parties have entered into this Agreement. The parties presently anticipate that the Commencement Date may be, but shall not be required to be, December 31, 2023.

“Company” means West Carolina Communications, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and its affiliated or related entities, successors and assigns.

“Contractual Minimum Requirement” means an investment by the Company and, as applicable, any Sponsor Affiliate(s) in the Project of at least \$2,500,000 (without regard to depreciation, reassessment, or other diminution in value), which investment must be made by no later than December 31, 2028.

“County” means McCormick County, South Carolina, and its successors and assigns.

“County Council” means the County Council of the County.

“County Manager” means the County Manager for the County (or the person or persons authorized to perform the duties thereof in the absence of the County Manager).

“Documents” mean the Ordinance and this Fee Agreement.

“DOR” means the South Carolina Department of Revenue and any successor thereto.

“Economic Development Property” means all property qualifying as economic development property (as defined by the Fee Act), including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Fee Act, together with all Replacement Property.

“Event of Default” means any Event of Default specified in Section 9.1 of this Fee Agreement.

“Fee Agreement” means this Fee Agreement, dated as of the date first written above, by and between the County and the Company.

“Fee Term” means the duration of the Negotiated Payments-in-Lieu-of-Taxes arrangement with respect to each Stage of the Project as specified in Section 5.3 hereof.

“Investment Period” means the period beginning with the first day that Economic Development Property for the Project is purchased or acquired and ending on the last day of the fifth property tax-year following the Commencement Date, subject to any further extension of such period as provided in Section 3.2(b) hereof. By way of example, in the event that Economic Development Property comprising a portion of the Project is placed in service prior to December 31, 2023, the Investment Period shall end on December 31, 2028.

“Negotiated Payments-in-Lieu-of-Taxes” means the payments to be made pursuant to Section 5.1 of this Fee Agreement with respect to that portion of the Project consisting of Economic Development Property.

“Ordinance” means the Ordinance enacted by the County on June 20, 2023, authorizing this Fee Agreement.

“Person” means and includes any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“Project” means: (i) the broadband infrastructure, as described more specifically in **Exhibit B** hereto, qualifying as Economic Development Property and (ii) any Replacement Property, all as measured in accordance with the provisions of Section 4.1 hereof.

“Replacement Property” means any property placed in service as a replacement for any Economic Development Property regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Economic Development Property.

“Sponsor Affiliate” means WC Fiber, LLC or, subject to approval by the County, any other affiliate that joins with or is an affiliate of the Company, whose investment with respect to the Project shall be considered part of the Investment and qualify for Negotiated Fee-in-Lieu Payments and other benefits pursuant to Section 5.1 hereof and Sections 12-44-30 and 12-44-130 of the Fee Act.

“Stage” in respect of the Project, means each annual increment of Project property, if any, placed in service during each year of the Investment Period.

“State” means the State of South Carolina.

“Statutory Minimum Requirement” means investment in the Project of at least \$2,500,000 (without regarding to depreciation, reassessment, or other diminution in value) within the Investment Period, in accordance with Section 12-44-30(14) of the Fee Act.

SECTION 1.4. *Internal References.* Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document. References herein to Title, Chapters or Sections, except the references to Sections of this Fee Agreement or where the intent clearly requires otherwise, refer to Sections of the Code. The words “hereof”, “herein”, “hereunder”, and other words of similar impact refer to this Fee Agreement as a whole.

ARTICLE II LIMITATION OF LIABILITY; EXEMPTION FROM *AD VALOREM* TAXES

SECTION 2.1. *Limitation of Liability.* Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

SECTION 2.2. *Exemption from Ad Valorem Taxes.* The County and the Company acknowledge that pursuant to the Fee Act, to the extent permitted by the Fee Act, upon execution of this Fee Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, is the basis upon which the Company has entered into this Fee Agreement.

ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1. *Representations and Warranties of the County.* The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Fee Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) To the best of the County’s knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or

finding may or would materially adversely affect the validity or enforceability of the Documents, the County's obligations hereunder, or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of the Documents, which require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Fee Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable provisions of the Fee Act, each item of real and personal property comprising the Project shall be considered Economic Development Property.

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

SECTION 3.2. *Covenants by the County.* The County covenants with the Company as follows:

(a) To the extent permitted by law, the Company may request of the County, and the County may approve (or not), in its sole discretion, an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Fee Act. The grant of any, if any, such extension by the County may be approved by a resolution of County Council. Upon the granting of any such extension the County agrees to, at the Company's sole expense, cooperate with the Company in assisting the Company to file with the DOR a copy of such extension within thirty days of the date of execution thereof by the County.

SECTION 3.3. *Representations and Warranties of the Company.* The Company makes the following representations and warranties to the County:

(a) The Company is a cooperative nonprofit membership corporation organized and existing under the laws of the State of South Carolina authorized to transact business in the State. The Company has full power to execute the Documents to which it is a party and to fulfill its obligations described in such Documents and, by proper action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in such Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or

affecting the Company wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Company is a party.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the execution, delivery, and performance by the Company of Documents to which the Company is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

ARTICLE IV COMMENCEMENT AND COMPLETION OF THE PROJECT

SECTION 4.1. *The Project.* The Company and, as applicable, any Sponsor Affiliate(s), has acquired, constructed and/or installed or made plans for the acquisition, lease, construction and/or installation of certain broadband infrastructure and other personal property which comprise the Project and is anticipated to expand access to broadband service within the County. The parties agree that Project property shall consist of such property and any additional personal property as may be identified by the Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement with the Company or any of its Affiliates with respect to Project property, in connection with annual filings with the DOR of Form PT-300, or comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time), for each year within the Investment Period and, with respect to Replacement Property, for each year thereafter during the term of this Fee Agreement.

Pursuant to the Fee Act, the Company and the County hereby agree that to the extent that the property comprising the Project is Economic Development Property, it will remain Economic Development Property so long as such property meets the requirements of the Fee Act.

Notwithstanding any other provision of this Fee Agreement, the Company may place property into service, without any limit as the amount thereof, at any time under this Fee Agreement, but such property may only qualify as Economic Development Property if it is placed in service during the Investment Period, including any, if any, extension period, or is Replacement Property.

All investment in the Project by the Company, by any of its Affiliates, and by any third party to the extent that the Company or any of its Affiliates utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement shall, to the extent permitted by law, count toward any investment requirement or threshold, and the timeframe during which such investment must be made, specified in this Fee Agreement including, without limitation, the Contractual Minimum Requirement and the Statutory Minimum Requirement. Any Sponsor Affiliate shall hereby be entitled, to the extent permitted by the Fee Act, to all rights and benefits set forth in this Fee Agreement including, without limitation, the Negotiated Payments-in-Lieu-of-Taxes arrangement specified in Section 5.1 hereof and shall be bound by all of the terms and provisions of this Fee Agreement related thereto, except as provided otherwise in any separate written agreement, all with respect to each such entity's portion of the Project. The Company shall notify DOR in writing of all such entities to benefit from the Negotiated Payments-in-Lieu-of-Taxes arrangement in accordance with Section 12-44-130(B) of the Fee Act. Any other entity to whom the Company intends to extend the benefits of the Negotiated Payments-in-Lieu-of-Taxes arrangement may, at the request of the Company, be approved by a resolution passed by the County Council, in its sole discretion.

SECTION 4.2. *Diligent Completion.* The Company agrees to use its commercially reasonable efforts to cause the acquisition, construction and installation of the Project to be completed within the Investment Period; however, notwithstanding anything contained in this Fee Agreement to the contrary, the Company shall not be obligated to complete, or cause the completion of, the acquisition, construction, and installation of the Project and may terminate this Fee Agreement with respect to all or a portion of the Project as set forth in Article X herein.

SECTION 4.3. *Modifications to Project.* The Company may make, or cause to be made, from time to time any additions, modifications to the Project that it may deem desirable for its business purposes.

SECTION 4.4. *Payment of Administration Expenses.* The Company shall reimburse, or cause to be reimbursed, the County, from time to time, for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement's terms and provisions, with respect to the Company, promptly upon written request therefor, but in no event later than thirty days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized hereby, and aside from the attorneys' fees and costs set forth below, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions contemplated hereunder. The parties understand that internal and external legal counsel to the County has estimated the aggregate fees and other expenses for the negotiating, drafting of the Inducement Resolution and the Documents, and attending various meetings related to the same, shall not exceed \$7,500. The Company shall pay such amount to the County within 30 days of the execution of this Fee Agreement.

SECTION 4.5. *Reports, Filings.* In accordance with Section 12-44-90 of the Fee Act, the Company shall cause a copy of this Fee Agreement, as well as a copy of the completed DOR Form PT-443, to be filed with the County Auditor, the County Assessor, the County Treasurer and DOR within thirty days after the date of execution and delivery hereof and shall also cause a copy of this Fee Agreement to be filed with the County Auditor and the County Assessor of McCormick County, South Carolina. In addition, the Company shall provide the County Auditor, the County Assessor, and the County Treasurer with a copy of all annual filings made by the Company to DOR pursuant to this Fee Agreement and the Fee Act.

ARTICLE V NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES

SECTION 5.1. *Negotiated Payments-in-Lieu-of-Taxes.* The parties acknowledge that to the extent provided by Article X, Section 3 of the Constitution of the State, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section 5.1. In accordance with the Fee Act, and unless this Fee Agreement is sooner terminated, the Company shall make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Fee Act. Such amounts shall be calculated and payable as follows:

(a) Subject to the provisions of Section 5.4, the County has agreed to accept, and the Company has agreed to make, or cause to be made, annual Negotiated Payments-in-Lieu-of- Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using (i) an assessment ratio of 6%; (ii) the millage rate applicable to the various components of the Project, based upon the location thereof within the County and the total millage rate levied therein, as set forth in **Exhibit A** hereof, which shall be fixed for the term of this Fee Agreement; and (iii) the fair market value of such property which shall be determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act as follows:

(i) for real property if such real property is constructed for the fee or is purchased in an arm's length transaction, by utilizing the original income tax basis for South Carolina income tax purposes without regard to depreciation, reassessment, or other diminution in value, which value shall remain fixed for the Fee Term; and

(ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation, reassessment, or other diminution in value, allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

(c) The Company shall make, or cause to be made, Negotiated Payments-in-Lieu-of- Taxes for each year during the term hereof beginning with the property tax year following the year Project property consisting of Economic Development Property is first placed in service. The Negotiated Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any Economic Development Property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding the Fee Term as provided for in Section 5.3 herein. Pursuant to and subject to the Fee Act: (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year; (ii) Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same property tax year that the Replacement Property is placed in service; (iii) more than one piece of Replacement Property can replace a single piece of property; (iv) Replacement Property does not have to serve the same function as the Project property it is replacing; (v) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Project property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for Economic Development Property were not allowed; and (vi) Replacement Property is entitled to Negotiated Payments-in-Lieu-of-Taxes pursuant to this Section 5.1 hereof for the remaining portion of the Fee Term hereof applicable to the property which it is replacing.

SECTION 5.2. *Disposal of Property; Replacement Property.*

(a) In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section 5.2. Subject to the provisions of Section 5.4 hereof with regard to the maintenance of certain investment levels, and this Section 5.2 with respect to Replacement Property, the Negotiated Payments-in-Lieu-of-Taxes required by Section 5.1 hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section 5.2.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to Section 5.2(a) hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced.

SECTION 5.3. *Fee Term.* The applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which such Stage of the Project is placed in service through the last day of the property tax year which is the nineteenth year following such year; provided, that the maximum term of this Fee Agreement shall not be more than twenty years from the end of the last year of the Investment Period. This Fee Agreement shall terminate, as to the Negotiated Payments-in-Lieu-of-Taxes arrangement, with respect to the Project or any Stage or part thereof, upon the earlier to occur of (a) payment of the final installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to Section 5.1 hereof, or (b) exercise by the Company of its option to terminate pursuant to Section 10.1 hereof.

SECTION 5.4. *Failure to Achieve or Maintain Investment Requirements.*

(a) In the event that the Contractual Minimum Requirement is not satisfied, as to both the amount invested by the Company and the timeframe in which such investment must be made, then the Negotiated Payments-in-Lieu-of-Taxes shall revert retroactively to *ad valorem* property taxation and the County shall terminate this Fee Agreement. In the event that the County terminates this Fee Agreement pursuant to the provisions of this Section 5.4, by no later than December 31, 2028 the Company shall make, or cause to be made, payments to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of *ad valorem* property taxes which would otherwise have been due, subject to Section 5.4(c) hereof, provided, however, that notwithstanding the foregoing provisions of this Section 5.4(a), as long as the Statutory Minimum Requirement is nevertheless satisfied by December 31, 2028, upon request of the Company, the County may, but is not required to, by resolution of County Council, in its sole discretion, elect to waive any or all of the differential payment to the County otherwise required by this Section 5.4(a).

(b) In the event that the Company is required to make, or to cause to be made, any differential payment to the County or is no longer eligible for Negotiated Payments-in-Lieu-of-Taxes, pursuant to paragraphs (a) of this Section, in calculating any such differential payment or prospective *ad valorem* property tax due from the Company, the Company shall be entitled: (1) to enjoy any other property tax exemption that would have been available to the Company with respect to the Project had the Company and the County not entered into this Fee Agreement; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* property taxes hereunder or under the Fee Act.

(c) Notwithstanding anything herein to the contrary, including without limitation the provisions of Section 9.2 hereof, the remedies stated in this Section 5.4 hereof shall be the County's sole remedies for failure to meet any required investment level hereunder or under the Fee Act.

SECTION 5.5. *[Reserved]*

SECTION 5.6. *Leased Equipment.* To the extent that applicable law allows or is revised or construed to allow the benefits of the Fee Act, in the form of Negotiated Fee-in-Lieu of Tax Payments as described in Section 5.1 hereof, to be applicable to personal property to be installed at the Project and leased to but not purchased by the Company or, as applicable, any Sponsor Affiliate, from at least one third party, under any form of lease, then that personal property, at the Company's or Sponsor Affiliate's sole election, will become subject to Negotiated Fee-in-Lieu of Tax Payments to the same extent as the Economic Development Property under this Fee Agreement, upon proper application of the law and applicable procedures by the Company or, as applicable, any Sponsor Affiliate and so long as the value of such leased

assets are reported by the Company or, as applicable, any Sponsor Affiliate on their respective DOR Form PT-300.

ARTICLE VI PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. *Protection of Tax Exempt Status of the Project.* In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State or any political subdivision thereof, the County and the Company covenant that:

(a) all rights and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section 6.1 and any other provision in any document shall arise, then in that case, this Section 6.1 shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or other political subdivision of the State in which any part of the Project is located, provided, however, the County shall not be liable to the Company for any violation of this subitem; and

(c) the Company will maintain the Project as a “project” in accordance with the Fee Act.

ARTICLE VII EFFECTIVE DATE

SECTION 7.1. *Effective Date.* This Fee Agreement shall become effective as of the date first written above.

ARTICLE VIII SPECIAL COVENANTS

SECTION 8.1. *Indemnification Covenants.*

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees (collectively, the “*Indemnified Parties*”) harmless from pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) hereof.

(b) Notwithstanding the fact that it is the intention of the Parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if any of the Indemnified Parties should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the Indemnified Parties against all pecuniary claims by or on behalf of any Person, arising (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, and all reasonable costs and expenses, including reasonable attorney’s fees, incurred in connection with defending against any such claim, and upon notice from the County, the Company at its own expense shall defend the Indemnified Party in any such action or proceeding. An Indemnified Party may not avail itself of the indemnification provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in

order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

The Company is entitled to manage and control the defense of or response to any claim, charge, lawsuit, regulatory proceeding or other action, for itself and the Indemnified Party; provided the Company is not entitled to settle any matter at the separate expense or liability of any Indemnified Party without the consent of that Indemnified Party. To the extent any Indemnified Party desires to use separate counsel for any reason, other than a conflict of interest, that Indemnified Party is responsible for its independent legal fees.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents or employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual members, officers, agents or employees.

SECTION 8.2. *Assignment and Leasing.* Subject to and pursuant to the Fee Act, including Section 12-44-120 thereof, with the County's consent, which shall not be unreasonably withheld, any or all of the Company's interest in the Project and/or this Fee Agreement may be transferred or assigned by the Company or any assignee to any other entity; provided, however, that such consent is not required in connection with financing-related transfers or any other transfers not requiring the consent of the County to the extent permitted by the Fee Act. The County hereby expressly consents to any transfer or assignment by the Company of any or all of its interest in the Project and/or this Fee Agreement to any Affiliates of the Company and to any transfer or assignment of any or all of such interest among other such Affiliates. Except as otherwise required by the Fee Act or this Fee Agreement, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of this Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Fee Act. Notwithstanding any provision of this Section 8.2 to the contrary, if and to the extent that the future consent of the County is required in connection with a transfer, assignment or other action referenced in this Section, the County hereby expressly agrees that, to the extent permitted by the Fee Act, such approval may be provided by a letter or other writing executed by the Chair or the County Manager, and each of those two officials are hereby expressly authorized to provide such consent on behalf of the County. If, notwithstanding the foregoing sentence, the Company elects to obtain additional action by County Council indicating such consent, a resolution passed by County Council shall be sufficient to indicate such additional County Council consent.

SECTION 8.3. *Commensurate Benefits.* The parties acknowledge the intent of this Fee Agreement, in part, is to afford the Company the benefits specified in Article V hereof in consideration of the Company's decision to locate the Project within the County, and this Fee Agreement has been entered into in reliance upon the enactment of the Fee Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Fee Act is unconstitutional or this Fee Agreement or agreements similar in nature to this Fee Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Fee Agreement in any material respect, then at the request of the Company, the County agrees to extend to the Company the intended benefits of this Fee Agreement and agrees, if requested, to enter into a lease purchase agreement or similar arrangement with the Company pursuant to Section 12-44-160 of the Fee Act, under Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, and to take such other steps as may be appropriate to extend to the Company the intended benefits of this Fee Agreement, including, without limitation, the provision of a special source revenue credit which is commensurate to the benefits which would otherwise accrue to the Company under the Fee Agreement.

SECTION 8.4. *Confidentiality.* The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information. The County agrees that neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information, or (ii) shall request or be entitled to inspect the

Project or any property associated therewith. To the extent that the Company has heretofore provided confidential and proprietary information regarding the Project in the County which has been provided under written designation of the Company as "Confidential," the County shall not knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless permitted to do so by State law. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with advance notice, reasonable under the circumstances, of such requirement before making such disclosure, and to cooperate with any attempts by the Company to obtain judicial or other relief from such disclosure requirement, at the expense of the Company, provided, however, the County shall not be liable to the Company for any violation of this subitem.

ARTICLE IX EVENT OF DEFAULT AND REMEDIES

SECTION 9.1. *Events of Default Defined.* The occurrence of any one or more of the following events shall be an "Event of Default" under this Fee Agreement:

(a) If the Company shall fail to make, or cause to be made, any Negotiated Payments- in-Lieu-of-Taxes or any other amount required under this Fee Agreement and such failure shall continue for thirty days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of thirty days after written notice of default has been given to the Company by the County; provided if by reason of "force majeure" as hereinafter defined, the Company is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than thirty days to cure such default and the Company is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term "force majeure" as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council or other County authority; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

(d) Anything herein to the contrary notwithstanding, failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Fee Agreement, the sole remedy for which is set forth in Section 5.4 hereof.

SECTION 9.2. *Remedies on Default.* Whenever any Event of Default shall have happened and be subsisting, the County, after having given written notice to the Company, or, as applicable, any Sponsor Affiliate (a copy of which shall be provided to the Company by the County), of such default and after the expiration of a thirty (30) day cure period may (i) terminate this Fee Agreement; or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents. Although the parties acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title

12, Chapter 51) and any act relating to the enforced collection of taxes. The County's right to receive Negotiated Payments-in-Lieu-of-Taxes shall have a first priority lien status pursuant to Section 12-44-90 of the Fee Act and Title 12, Chapters 4 and 54 of the Code. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Fee Agreement, including, without limitation, a suit for mandamus or specific performance.

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

SECTION 9.3. *No Additional Waiver Implied by One Waiver.* In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE X OPTION TO TERMINATE

SECTION 10.1. *Option to Terminate.* From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least thirty days-notice, the Company may terminate this Fee Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Fee Agreement, the Company will become liable for *ad valorem* property taxes on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Fee Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1, or, if the termination is of the entire Project, then within one hundred eighty (180) days of termination.

ARTICLE XI MISCELLANEOUS

SECTION 11.1. *Notices.* All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.1:

If to the Company:

West Carolina Communications, LLC
Attn: Jeff T. Wilson, Chief Executive Officer
229 Highway 28 Bypass
Abbeville, SC 29620

With copy to (such copy shall not constitute notice):

Christopher S. McDonald, Esq.
The Tiencken Law Firm, LLC
234 Seven Farms Dr., Suite 114
Charleston, SC 29492

If to the County:

McCormick County Council, South Carolina
Attention: Columbus Stephens, County Administrator
610 South Mine Street
McCormick, SC 29835
Telephone: (864) 852-2231
Email: cstephens@mccormickcountysc.org

With copy to:

Michael E. Kozlarek
King Kozlarek Law LLC
Post Office Box 565
Greenville, SC 29602-0565
Email: michael@kingkozlarek.com

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt, or (2) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 11.2. *Binding Effect.* This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns, subject to Section 8.2 hereof.

SECTION 11.3. *Invalidity and Severability.* In the event that the Fee Act or the Negotiated Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid or unenforceable in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4 of the Code.

SECTION 11.4. *Payments Due on Saturday, Sunday and Holidays.* Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 11.5. *Fiscal Year; Property Tax Year.* If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly, except that Negotiated Payments-in-Lieu-of-Taxes shall always be required to be made at the same time and subject to the same conditions, penalties, and enforcement, as with *ad valorem* property taxes.

SECTION 11.6. *Amendments, Changes and Modifications.* Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent including, without limitation, any County consent specifically referred to in this Fee Agreement, may, at the sole discretion of the County, be provided by a resolution of County Council.

SECTION 11.7. *Execution of Counterparts.* This Fee Agreement may be executed in several counterparts, only one of which shall be an original; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

SECTION 11.8. *Entire Understanding.* This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery thereof.

SECTION 11.9. *Law Governing Construction of Agreement.* The laws of the State shall govern the construction of this Fee Agreement.

SECTION 11.10. *Headings.* The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

SECTION 11.11. *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments and undertaking further proceedings as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

SECTION 11.12. *Use of Local Goods, Services, and Suppliers.* The Company agrees, in construction of the Project, to make commercially reasonable efforts to make use of goods, services, and suppliers that are derived from contractors, vendors, and service providers that are based in or have a significant presence in the County.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, MCCORMICK COUNTY, SOUTH CAROLINA, and the WEST CAROLINA COMMUNICATIONS, LLC, each pursuant to due authority, has duly executed this Fee Agreement, all as of the date first above written.

**MCCORMICK COUNTY, SOUTH
CAROLINA**

Charles Jennings
Chairman, County Council

ATTEST:

Crystal B. Barnes
Clerk to County Council

[Signature Page of Company to Follow]

[Signature Page of County]

**WEST CAROLINA COMMUNICATIONS,
LLC**

Jeff T. Wilson
Chief Executive Officer

EXHIBIT A
MILLAGES APPLICABLE TO PROJECT COMPONENTS

STATE OF SOUTH CAROLINA *
*
COUNTY OF MCCORMICK *

FILED
GWENDOLYN D. CHILES
2022 SEP 29 P 12:37
RESOLUTION 03-22
CLERK OF COURT
MCCORMICK COUNTY, SC

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated value of a mill for County purposes is \$48,178;

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated value of a mill for School operational is \$26,410;

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated millage necessary for servicing the School General Obligation Bond Series 2022 is twenty seven (27) mils;

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated millage necessary for servicing the General Obligation Bond Series 2008B is three and five tenths (3.5) mils;

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated millage necessary for servicing the General Obligation Bond Series 2020 is seven and five tenths (7.5) mils;

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated value of a mill for the Savannah Lakes Special Tax District is \$21,843;

WHEREAS, the Honorable Clarissa Parks, Auditor of the County of McCormick has notified the County Council that the anticipated millage necessary for servicing Savannah Lakes Special Tax District is eleven and six tenths (11.6) mils;

WHEREAS, pursuant to Section 6-1-320(A) as amended, Code of Laws of South Carolina, 1976, the consumer price index, as determined by the Department of Revenue, is 4.70 and the population increase, as determined by the Office of Research & Statistics, is 2.60%, for a total millage rate cap of 7.29 mils;

WHEREAS, the County Council enacted Ordinance 22-01 to provide funding and levy taxes in the amount of 135.8 mills;

WHEREAS, local option sales tax credit will be set at .000424.

THEREFORE, BE IT RESOLVED, that the McCormick County Council hereby sets the millage rates as follows

County General Operations	135.8 mils
School District Operations	151 mils
School District Bond 2022	27 mils
SLV Special Tax Dist.	11.6 mils
General Obligation Bond 2008B	3.5 mils
General Obligation Bond 2020	7.5 mils

EXHIBIT B PROJECT DESCRIPTION

Project Description:

- WC FIBER LLC, an affiliate of West Carolina Communications and West Rural Telephone Cooperative, will construct approximately 130 unserved/underserved McCormick County addresses in the northeastern portion of McCormick County.
- West Carolina Communications will be closing out copper cut over to fiber to the home projects in and around the town of McCormick.

