

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING A FEE IN LIEU OF TAX ARRANGEMENT FOR THE BENEFIT OF SCIO DIAMOND TECHNOLOGY CORPORATION (THE "COMPANY") PURSUANT TO A FEE IN LIEU OF TAX AGREEMENT BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND THE COMPANY; AND OTHER MATTERS RELATING TO THE FOREGOING.**

**WHEREAS**, Greenville County, South Carolina (the "County"), acting by and through its County Council (the "County Council") is authorized and empowered under and pursuant to the provisions of the Code of Laws of the State of South Carolina, 1976, as amended (the "Code"), including, without limitation, Chapter 44 of Title 12 of the Code (the "Act"), and the case law of the Courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to commercial enterprises as inducements for economic development within the County; to acquire, or cause to be acquired, properties (which such properties constitute "projects" as defined in the Act) and to enter into agreements with any business to construct, operate, maintain and improve such projects; to enter into or allow financing agreements with respect to such projects; and, to accept any grants for such projects through which powers the industrial and business development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and thus utilize and employ the manpower, agricultural products and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, tourism or other public benefits not otherwise provided locally; and

**WHEREAS**, the County is authorized by the Act to execute one or more fee-in-lieu of tax agreements (each, a "Fee Agreement"), as provided for in the Act, with respect to such projects; and

**WHEREAS**, Scio Diamond Technology Corporation, a Nevada corporation and previously identified to the County as "Project Gem" (the "Company"), has represented to the County that the Company intends to acquire by construction and purchase certain leasehold improvements, furnishings, fixtures, apparatus, and equipment for the construction of a manufacturing facility in the County (the "Project"); and

**WHEREAS**, based on representations by the Company that the Project will represent an otherwise taxable capital investment in the County of not less than Twelve Million Dollars (\$12,000,000.00), and will create an anticipated fifty (50) new full time equivalent jobs, with benefits, during the period beginning with the first day that real or personal property comprising the Project is purchased or acquired and ending five (5) years after the last day of the property tax year during which any portion of the Project is first placed in service, and that such investment and jobs creation will enhance the economic development of the County, and, in furtherance thereof, the County desires to assist the Company in locating the Project within the County; and

**WHEREAS**, pursuant to certain negotiations heretofore undertaken between the County and the Company with respect to the Project as reflected in a Resolution duly adopted by County Council on October 18, 2011, (i) the County agreed to enter into a fee in lieu of *ad valorem* taxes arrangement with the Company; and (ii) the Company has agreed to make FILOT Payments (as defined below) with respect to the Project as authorized in the Act; and

**WHEREAS**, the County and the Company have agreed to the specific terms and conditions of such fee in lieu of *ad valorem* taxes arrangement as set forth in that certain Fee in Lieu of Tax Agreement between the County and the Company (the “Fee Agreement”) to be dated as of December 1, 2012 or such other date as the parties may agree, which is to be in substantially the form presented to this meeting and filed with the Clerk to County Council; and

**WHEREAS**, pursuant to the provisions of the Fee Agreement, the Company will be obligated to make payments-in-lieu of taxes to the County, as required by the Act; and

**WHEREAS**, the acquisition and construction of the Project will serve the intended purposes and in all respects conform to the provisions and requirements of the Act; and

**WHEREAS**, it appears that the draft Fee Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

**NOW, THEREFORE, BE IT ORDAINED** by Greenville County, South Carolina, as follows:

**Section 1.** As contemplated by the Act and based on the representations of the Company as recited herein, it is hereby found, determined and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and will subserve the purposes and in all respects conform to the provisions and requirements of the Act;
- (b) It is anticipated that the Project will benefit the general public welfare and serve a public purpose of the County by providing services, employment, recreation and other public benefits not otherwise provided locally;
- (c) Neither the Project, nor any documents or agreements entered into by the County in connection therewith will constitute or give rise to any pecuniary liability of the County or a charge against its general credit or taxing power;
- (d) The purposes to be accomplished by the Project, i.e., economic development, creation or retention of jobs, and addition to the tax base of the County, are proper governmental and public purposes;
- (e) The benefits of the Project to the public are greater than the costs to the public;
- (f) The Fee Agreement will require the Company to make fee in lieu of tax payments

(g) The FILOT Payments referred to in item (f) above shall be calculated as specified in Section 5.01 of the Fee Agreement.

**Section 2.** The form, terms, and provisions of the Fee Agreement presented to this meeting and filed with the Clerk to County Council be and they are hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. Chairman of County Council, the Administrator of the County and the Clerk to County Council be and hereby are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting 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 officials of the County executing the same, upon the advice of the County Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

**Section 3.** Pursuant to Section 12-44-55(B) of the Act, the County hereby agrees that no recapitulation information, as set forth in Section 12-44-55(A) of the Act is required to be provided by the Company in the Fee Agreement, or in any other documents or agreements in connection with the fee in lieu of tax arrangement between the Company and the County. The Company shall file a copy of the South Carolina Department of Revenue form PT-443 with the County after the execution of the Fee Agreement by the County and the Company.

**Section 4.** The Chairman of County Council, the County Administrator and the Clerk to the County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary or proper to effect the execution and delivery of the Fee Agreement, and the performance of all obligations of the County under and pursuant to the Fee Agreement. The Chairman of County Council, the County Administrator and the Clerk to County Council, and any other proper officer of County, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and to cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance.

**Section 5.** The provisions of this Ordinance are hereby declared to be separable 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 6.** All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict only, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

WITNESS our hands and seals as of this 20<sup>th</sup> day of November, 2012.

**GREENVILLE COUNTY, SOUTH CAROLINA**

BY: \_\_\_\_\_  
Chairman of County Council  
Greenville County, South Carolina

BY: \_\_\_\_\_  
County Administrator  
Greenville County, South Carolina

ATTEST:

BY: \_\_\_\_\_  
Clerk to County Council  
Greenville County, South Carolina

First Reading:       October 16, 2012  
Second Reading:     November 6, 2012  
Third Reading:       November 20, 2012  
Public Hearing:       November 6, 2012