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MEMORANDUM

TO: Jefferson County Commission
FROM: William F. Rohrbaugh, Counsel for the Jefferson County Development Authority
CC: Nicolas Diehl, Executive Director of the JCDA; Stephanie Grove, County Administrator; and Nathan Cochran, Assistant Prosecuting Attorney
DATE: March 27, 2019
RE: PILOT AGREEMENTS

Commissioners:

The purpose of this memorandum is to provide you with a summary of the general nature and purpose of PILOT Agreements which are sometimes drafted in conjunction with economic development projects in Jefferson County. To begin, the phrase "PILOT" is a simple acronym which stands for "Payment in Lieu of Taxes. As the acronym suggests, these agreements provide for a payment or payments to compensate local government bodies for some or all of the property tax revenues which are lost due to tax exempt ownership or use of real and personal property.

Situations involving PILOT Agreements in West Virginia typically arise as a result of incentives offered by the West Virginia Development Office ("WVDO") to prospective businesses seeking to construct and operate economic development projects in the State. In order to provide a low interest loan for an economic development project, the WVDO (or the West Virginia Economic Development Authority) will typically ask a local government entity to take ownership of the project and then lease it back to the private business which will operate the facility as a tenant before acquiring ownership of the property at the end of the lease term (i.e. capital lease).

Since a local government entity (a county development authority in most cases) will own the project during the term of the lease, the personal and real property are not taxable by operation of law. So, the county and local government bodies are not entitled to any tax revenues during the term of the lease.

In order to compensate the county and local governments for the loss of the property tax revenues associated with the government ownership of the project, the WVDO typically requires the business to enter into a PILOT Agreement pursuant to which the business will make payments to the county and other local governments equivalent to some or all of the corresponding tax revenues which would have been generated if the project was not government owned.

It is important to note that the WVDO negotiates these economic development deals directly with the businesses in question, with varying degrees of participation by local governing bodies. Due to the government ownership of the business assets, a PILOT Agreement is the only mechanism by which counties and other local governments can recoup some or all of the lost property tax revenues which would otherwise be generated by economic development projects funded by the WVDO (through the WVEDA).

Currently pending before the Commission is a proposed PILOT Agreement with TEMA NORTH AMERICA, LLC and its parent company, TEMA TECHNOLOGY and MATERIALS, S.R.I., the terms of which are summarized in a separate memorandum.

Thank you,

William F. Rohrbaugh