

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE REIMBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF ROCK HILL, SOUTH CAROLINA AND WINBRO GROUP TECHNOLOGIES INC. (THE "CORPORATION"), A MASSACHUSETTS CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN SOUTH CAROLINA AND PREVIOUSLY KNOWN TO THE CITY AS "PROJECT WINDSTAR" PURSUANT TO TITLE 4, CHAPTER 1 AND CHAPTER 29, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; AND OTHER MATTERS RELATING TO THE FOREGOING.

WHEREAS, the City of Rock Hill, South Carolina (the "City"), acting by and through its City Council (the "City Council"), is authorized by Sections 4-1-175 and 4-29-68 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), to provide a credit against or payment derived from the revenues received and retained by the City from a payment in lieu of taxes pursuant to Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding, among other things: (a) the infrastructure serving the issuer or the project, and (b) for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise, which property is determined by the City to enhance the economic development of the City; and

WHEREAS, Winbro Group Technologies Inc. (the "Corporation") has represented to the City that it intends to acquire, construct and equip certain buildings, improvements, apparatus, machinery, equipment, furnishings, fixtures and materials for the operation of a turbine engine component manufacturing facility to be located in the City (the "Project") on that certain piece, parcel or lot of land located in the City and being more fully described on Exhibit A attached hereto (the "Land"); and

WHEREAS, York County, South Carolina ("York County") and Chester County, South Carolina ("Chester County") have established a joint-county industrial and business park (the "Park") by entering into an Agreement for the Development of a Joint Industrial and Business Park (York and Chester Counties), dated December 7, 1998, as amended from time to time (the "Park Agreement"), pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and § 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, which Park Agreement was approved by Chester County pursuant to Ordinance No. 12-7-98 enacted by the County Council of Chester County on December 7, 1998, and by York County pursuant to Ordinance No. 7098 enacted by the County Council of York County on December 7, 1998 (the "Park Ordinance"); and

WHEREAS, the Land is located within the Park; and

WHEREAS, at the time the Park was created, City consent was not required, but to the extent that City consent is required, the City hereby consents to the inclusion of the Land in the Park; and

WHEREAS, in connection with the Park Agreement, the Corporation or other owners of the Project property located on the Land are obligated to make or cause to be made payments in lieu of taxes to York County (the "Park Fees") in the total amount equivalent to the *ad valorem* property taxes that would have been due and payable but for the location of the Project within the Park; and

WHEREAS, the City intends to reimburse to the Corporation a portion of the costs incurred by the Corporation to acquire and construct certain (a) infrastructure serving the City or the Project, and (b) improved or unimproved real estate and personal property including machinery and equipment used in the operation of the Project (collectively, the "Infrastructure"); and

WHEREAS, the Project and the Infrastructure will enhance the economic development of the City in that, based on representations of the Corporation, the Project is anticipated to (i) involve a capital investment of not less than \$8,000,000 in Infrastructure, and (ii) result in the creation of approximately 20 full time or full time equivalent jobs in the City, and may result in a total investment of up to \$35,000,000 in Infrastructure and 100 full time or full time equivalent jobs in the City; and

WHEREAS, the Project will provide public benefits incident to conducting business operations, and in order to implement the public purposes enumerated in the Act and in furtherance thereof to assist the Corporation in locating the Project in the City, the City has agreed to enter into an Infrastructure Reimbursement Agreement with the Corporation, in substantially the form attached hereto as Exhibit B, in order to reimburse to the Corporation a portion of the Infrastructure costs incurred by the Corporation with respect to the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCK HILL, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. Authorization of Phase I Reimbursement. In order to promote industry, develop trade and utilize and employ the manpower and natural resources of the State of South Carolina by assisting the Corporation to locate and develop the Project in the State of South Carolina and in the City, the reimbursement of a portion of the costs of the Infrastructure incurred by the Corporation in the manner described herein, is hereby authorized and approved.

- a) Project Phase I Reimbursement. Subject to the maintenance requirements below, the City shall make five (5) consecutive annual payments ("Infrastructure Reimbursement Payments") to the Corporation which shall be derived from and be equal to that portion of the fees-in-lieu of taxes distributed by York County to the City pursuant to the terms of the Park Agreement with respect to the Project (the "City Park Fees"), if any, for the property tax bill (or fee-in-lieu of tax bill) for the immediately preceding year. The first Infrastructure Reimbursement Payment shall be calculated as described above based on the City Park Fees, if any, for the property tax bill (or fee-in-lieu of tax bill) for the year

immediately following the year in which the Project first commences its manufacturing operations. For purposes of illustration only, and without limitation of the foregoing, if the Project first commences its manufacturing operations in 2011, the first Infrastructure Reimbursement Payment shall be paid in 2013, and shall equal the City Park Fees, if any, for the 2012 property tax bill (or fee-in-lieu of tax bill). The City's obligation to make Infrastructure Reimbursement Payments to the Corporation pursuant to this Subsection (a) is conditioned upon the Corporation's investment of not less than \$8,000,000 in Infrastructure in the City in connection with the Project (the "Minimum Investment"), and the creation of twenty (20) full time or full time equivalent jobs at the Project in the City (the "Minimum Jobs Requirement"), on or before December 31, 2013 (the "Threshold Date"). Investment by the Corporation in property which is exempt from *ad valorem* taxation and payments in lieu of taxes in the State of South Carolina shall not be included in calculating whether the Corporation has met the Minimum Investment. Additionally, to the extent that any of the Infrastructure is comprised of property which has previously been subject to depreciation (prior to its location or relocation in the State of South Carolina) for purposes of calculating *ad valorem* taxes and payments in lieu of taxes applicable thereto, the depreciated value of such Infrastructure at the time of its location or relocation in the State of South Carolina, rather than the original cost of such Infrastructure, shall be included in calculating whether the Corporation has met the Minimum Investment. In the event that the Corporation has not met such Minimum Investment or Minimum Jobs Requirement by the Threshold Date, the Corporation shall lose the benefit of the Infrastructure Reimbursement Payments prospectively and retroactively as more particularly described in the Infrastructure Reimbursement Agreement. In the event that the Corporation meets the Minimum Investment and Minimum Jobs Requirement prior to the Threshold Date, but the Corporation's investment in Infrastructure in connection with the Project based on an income tax basis without regard to depreciation falls below the Minimum Investment or the number of jobs maintained in connection with the Project falls below the Minimum Jobs Requirement prior to payment of the final Infrastructure Reimbursement Payment by the City pursuant to this Subsection (a), then the Corporation shall not be entitled to receive Infrastructure Reimbursement Payments which would otherwise be provided under this Subsection (a) for the year in which such requirements are not met.

- b) Project Phase II Reimbursement. In the event that the Corporation provides notice to the City of its election to commence a second phase of the Project in the City as provided in the Infrastructure Reimbursement Agreement, then, subject to the maintenance requirements below, the City shall make five (5) annual Infrastructure Reimbursement Payments to the Corporation, commencing in the year immediately following the year for which the final Infrastructure Reimbursement Payment is made to the Corporation under Subsection (a) above. The amount of each respective Infrastructure Reimbursement Payment shall be derived from and shall equal fifty percent (50%) of the City Park Fees distributed by York County to the City with respect to the Project, if any, for the prior year's property tax bill (or fee-in-lieu of tax bill). The City's obligation to make Infrastructure Reimbursement Payments to the Corporation pursuant to this Subsection (b) is conditioned upon the Corporation's investment of not less than \$35,000,000 in Infrastructure (including amounts invested in meeting the Minimum Investment) in connection with the Project (the "Minimum Enhanced Investment"), and creation of not

less than 100 new full time or full time equivalent jobs (including jobs created in meeting the Minimum Jobs) in connection with the Project (the “Minimum Enhanced Jobs Requirement”), on or before December 31st of the year which is the second (2nd) year following the year for which the fifth (5th) Infrastructure Reimbursement Payment was made to the Corporation pursuant to Subsection (a) above (the “Enhanced Threshold Date”). Investment by the Corporation in property which is exempt from *ad valorem* taxation and payments in lieu of taxes in the State of South Carolina shall not be included in calculating whether the Corporation has met the Minimum Enhanced Investment. Additionally, to the extent that any of the Infrastructure is comprised of property which has previously been subject to depreciation (prior to its location or relocation in the State of South Carolina) for purposes of calculating *ad valorem* taxes and payments in lieu of taxes applicable thereto, the depreciated value of such Infrastructure at the time of its location or relocation in the State of South Carolina, rather than the original cost of such Infrastructure, shall be included in calculating whether the Corporation has met the Minimum Enhanced Investment.

In the event the Corporation has not met such Minimum Enhanced Investment or Minimum Enhanced Jobs Requirement by the Enhanced Threshold Date, the Corporation shall lose the benefit of the Infrastructure Reimbursement Payments prospectively and retroactively as more particularly described in the Infrastructure Reimbursement Agreement. In the event that the Corporation meets the Minimum Enhanced Investment and Minimum Enhanced Jobs Requirement prior to the Enhanced Threshold Date, but the Corporation’s investment in Infrastructure in connection with the Project based on an income tax basis without regard to depreciation falls below the Minimum Enhanced Investment or the number of jobs maintained in connection with the Project falls below the Minimum Enhanced Jobs Requirement prior to payment of the final Infrastructure Reimbursement Payment by the City pursuant to this Subsection (b), then the Corporation shall not be entitled to receive Infrastructure Reimbursement Payments which would otherwise be provided under this Subsection (b) for the year in which such requirements are not met.

In the event the second phase of the Project is not located on the Land, the City’s obligation to make Infrastructure Reimbursement Payments to the Corporation pursuant to this Subsection (b) is conditioned upon the location of the second phase of the Project (i) within the City, and (ii) within a joint county industrial and business park under Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended. The City agrees to provide its consent to the inclusion of such property in a joint county industrial and business park.

Section 2. Infrastructure Reimbursement Agreement. The City Council hereby authorizes the execution and delivery of the Infrastructure Reimbursement Agreement with the Corporation. The City Manager is hereby authorized, empowered, and directed to execute, and the Municipal Clerk is hereby authorized to attest, the Infrastructure Reimbursement Agreement in the name and on behalf of the City, and thereupon to cause the Infrastructure Reimbursement Agreement to be delivered to the Corporation. The Infrastructure Reimbursement Agreement is to be in substantially the form attached hereto as Exhibit B, or with such changes therein as shall be approved by the City Manager, the City Manager’s execution thereof to constitute conclusive

evidence of the approval of any and all changes or revisions therein from the form of Infrastructure Reimbursement Agreement now before this meeting.

Section 3. Limited Obligation. The obligation to make Infrastructure Reimbursement Payments to the Corporation is a limited obligation of the City payable by the City solely from the City Park Fees, if any. The obligation to make Infrastructure Reimbursement Payments is not and shall never constitute an indebtedness of the City within the meaning of any state constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing in this Ordinance or the Infrastructure Reimbursement Agreement shall be construed as an obligation of or commitment by the City to expend any of its funds for such reimbursement other than the City Park Fees distributed by York County to the City with respect to the Project, if any.

In addition, to the extent that any portion of the City Park Fees constitute “Tax Revenues” as defined in the City’s General Bond Ordinance No. 2009-45, enacted by the City Council of the City on October 12, 2009, as amended or supplemented from time to time (the “TIF Bond Ordinance”), the City’s obligation to make Infrastructure Reimbursement Payments to the Corporation shall be subject to the availability of such moneys remaining, if any, after application in accordance with the Bond Ordinance.

Section 4. Further Actions and Documents. The Mayor of the City, the City Manager and the Municipal Clerk of the City, and any other proper officer of the City, 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. Provisions Separable. 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. Conflicts. 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.

[Execution Page Follows]

Enacted by the City Council of the City of Rock Hill, South Carolina, this 8th day of November, 2010.

CITY OF ROCK HILL, SOUTH CAROLINA

A. Douglas Echols, Jr., Mayor

Susie B. Hinton, Mayor Pro Tempore

John A. Black, III

Kathy Pender

James C. Reno, Jr.

Osbey Roddey

Kevin Sutton

(SEAL)
ATTEST:

Anne H. Poag
Interim Municipal Clerk

Date of First Reading: October 11, 2010
Date of Second Reading: November 8, 2010

Exhibit A

Land

All that certain piece, parcel or lot of land lying, being and situate in the City of Rock Hill, York County, South Carolina, near the intersection of Overview Drive and Club House Road, containing 1.77 acres, more or less, as shown and described on that certain plat entitled "York County Commission for Technical Education" prepared by Hucks and Associates, PC dated May 3, 2006 and recorded in the Office of the Clerk of Court for York County, South Carolina on May 4, 2006 in Plat Book D-99 at Page 4, reference to which plat is hereby made for a more particular description of the Land.

York County Tax Map No.: 700-01-01-088

Exhibit B

Form of Infrastructure Reimbursement Agreement

[see attached]