

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND A COMPANY KNOWN TO THE COUNTY AT THIS TIME AS PROJECT DESPERADO WITH RESPECT TO CERTAIN ECONOMIC DEVELOPMENT PROPERTY IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INFRASTRUCTURE CREDIT AGREEMENT BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND PROJECT DESPERADO REFLECTING AN EXTENSION OF THE CREDIT PERIOD AND AN INCREASE IN THE AMOUNT OF THE INFRASTRUCTURE CREDIT; AND OTHER MATTERS RELATED THERETO.

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 Title 12, Chapter 44 (the “*FILOT Act*”), of the Code of Laws of South Carolina 1976, as amended, to enter into agreements with industry whereby the industry would pay fees-in-lieu-of taxes with respect to qualified projects; through all such powers the industrial development of the State of South Carolina (the “*State*”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, pursuant to the FILOT Act, and in order to induce investment in the County, the County did previously adopt an Inducement Resolution dated _____, 2017 (the “*Inducement Resolution*”) with _____, a _____ (the “*Company*”) (which was known to the County at the time as “*Project Desperado*”), with respect to the acquisition, construction, and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute an expansion of the Company’s existing facilities in the County for the manufacture of electronic components, which will result in an estimated investment in economic development property of \$10,000,000 (“*Investment*”) (the “*FILOT Project*”); and

WHEREAS, the Company has represented that the FILOT Project will involve an of investment of approximately \$10,000,000 in the County and the expected creation of approximately 102 new, full-time jobs at the FILOT Project, all within the Investment Period (as such term is defined in the hereinafter defined Fee Agreement); and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that certain property comprising the FILOT Project would be a “project” and “economic development property” as such terms are defined in the FILOT Act, and that the FILOT Project would serve the purposes of the FILOT Act; and

WHEREAS, the County has agreed to, among other things, enter into a Fee in Lieu of Tax Agreement with the Company (the “*Fee Agreement*”) with respect to the economic development property comprising the FILOT Project, whereby the County would provide therein for a payment of a fee-in-lieu-of taxes by the Company with respect to the FILOT Project; and

WHEREAS, the County, acting by and through County Council, is authorized and empowered under and pursuant to the provisions of Title 4 of the Code of Laws of South Carolina 1976, as amended,

including sections 4-1-170, 4-1-175, and 4-29-68 thereof (the “*Infrastructure Credit Act*”), and Article VIII, Section 13 of the South Carolina Constitution (i) to provide special source revenue credits (“*SSRC*”) for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise, all to enhance the economic development of the County (“*Infrastructure*”); and (ii) to create, in conjunction with one or more other counties, a joint county industrial or business park (“*MCIP*”) in order to facilitate the grant of such special source revenue credits; and

WHEREAS, the Company previously committed to invest \$14,000,000 and create 279 new, full-time jobs and to acquire by construction, lease and purchase certain land, buildings, furnishings, fixtures, apparatus, and equipment for the purpose of expanding a manufacturing facility in the County (“*Credit Project*”) and the County committed to grant an SSRC equal to thirty percent (30%) of the amount of each fee-in-lieu-of *ad valorem* tax payment (“*Fee Payment*”) due on the property for ten (10) years as reflected in that certain infrastructure credit agreement between the County and the Company (“*Credit Agreement*”).

WHEREAS, the Credit Project is located in the MCIP established by that “*Agreement for Development of Joint County Industrial and Business Park*” between the County and Pickens County dated January 4, 1996, as amended (the “*Park*”);

WHEREAS, in accordance with Article VIII, Section 13 of the South Carolina Constitution, real and personal property having a *situs* in the Park are exempt from all *ad valorem* taxation, however, the owners or lessees of such real and personal property are obligated to make, or cause to be made, payments in lieu of taxes to the County in the total amount equivalent to the *ad valorem* property taxes or other fee-in-lieu-of-taxes payments that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within the Park (each, a “*Fee Payment*”)

WHEREAS, the Company has also represented that the Credit Project will be expanded, resulting in an additional investment of approximately \$24,000,000 and the creation of an additional 102 new, full-time jobs in the County (the “*Expansion*” and, together with the Credit Project, the “*Expanded Credit Project*”); and

WHEREAS, in order to reimburse the Company for certain eligible Infrastructure expenses incurred with respect to the Expansion and to revise the terms of the Credit Agreement, the County and the Company desire to amend the Credit Agreement to reflect the Expansion, to provide for a supplemental SSRC to the Company in an amount equal to five percent (5%) of each Fee Payment due, to extend the credit period from ten (10) years to fifteen (15) years, and to eliminate the clawback provisions in the Original Agreement (the “*Amended and Restated Infrastructure Credit Agreement*”); and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the Fee Agreement and the Amended and Restated Infrastructure Credit Agreement which the County proposes to execute and deliver; and

WHEREAS, it appears that the documents above referred to, which are now before this meeting, are in appropriate form and are appropriate instruments to be executed and delivered or approved by the County for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED, by the County Council as follows:

Section 1. Based on information supplied by the Company, it is hereby found, determined and

declared by the County Council, as follows:

(a) The FILOT Project will constitute a “project” and “economic development property” as said terms are referred to and defined in the FILOT Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;

(b) The FILOT Project and the Expanded Credit Project are anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

(c) The FILOT Project and the Expanded Credit Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;

(d) The purposes to be accomplished by the FILOT Project and the Expanded Credit Project, i.e., economic development, creation of jobs and addition to the tax base of the County, are proper governmental and public purposes; and

(e) The benefits of the FILOT Project and the Expanded Credit Project are anticipated to be greater than the costs.

Section 2. The County Council agrees to use its best efforts to ensure that the Expanded Credit Project remains located in the Park for no less than the term of the Amended and Restated Infrastructure Credit Agreement.

Section 3. The form, terms and provisions of the Fee Agreement and the Amended and Restated Infrastructure Credit Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Fee Agreement and the Amended and Restated Infrastructure Credit Agreement were set out in this Ordinance in their entirety. The Chairman of County Council and/or the County Administrator are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement and the Amended and Restated Infrastructure Credit Agreement in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the Fee Agreement and the Amended and Restated Infrastructure Credit Agreement to be delivered to the Company and cause a copy of the same to be delivered to the Greenville County Auditor, Assessor and Treasurer. The Fee Agreement and the Amended and Restated Infrastructure Credit Agreement are to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Administrator, upon advice of counsel, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the forms of Fee Agreement and Amended and Restated Infrastructure Credit Agreement now before this meeting.

Section 4. The Chairman of County Council, the County Administrator and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County thereunder.

Section 5. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions 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 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 by the County Council.

ENACTED in meeting duly assembled this __ day of _____, 20__.

GREENVILLE COUNTY, SOUTH CAROLINA

Chairman of County Council

County Administrator

Attest:

Clerk to County Council

First Reading: December 6, 2016
Second Reading: _____, 2017
Third Reading: _____, 2017
Public Hearing: _____, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

I, the undersigned Clerk to County Council of Greenville County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received unanimous approval, by the County Council at its meetings of December 6, 2016, _____, 2017, and _____, 2017, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

Clerk to County Council,
Greenville County, South Carolina

Dated: _____, 2017