

STATE OF SOUTH CAROLINA

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COUNTY OF LANCASTER

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RESOLUTION 1244-R2023

A RESOLUTION

TO STATE THE COMMITMENT OF LANCASTER COUNTY TO ENTER INTO A FEE AGREEMENT WITH PROJECT E3 INCLUDING THE PROVISION OF SPECIAL SOURCE REVENUE CREDITS; TO EXPRESS THE WILLINGNESS OF LANCASTER COUNTY TO ENTER INTO A CONVEYANCE AGREEMENT WITH PROJECT E3 FOR THE CONVEYANCE TO PROJECT E3 OF CERTAIN PROPERTY; TO PROVIDE THE GENERAL TERMS OF THE FEE AGREEMENT; AND TO PROVIDE THAT THIS RESOLUTION IS AN INDUCEMENT RESOLUTION FOR PURPOSES OF THE FEE IN LIEU OF TAX SIMPLIFICATION ACT; AND TO STATE THE COMMITMENT OF LANCASTER COUNTY TO PLACE PROPERTY OWNED OR LEASED BY PROJECT E3 IN A MULTI-COUNTY PARK.

WHEREAS, Lancaster County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered, under and pursuant to the provisions of Title 12, Chapter 44 (the "Fee in Lieu of Tax Simplification Act" or "FILOT Act"), Code of Laws of South Carolina 1976, as amended (the "Code"), to enter into agreements with business and commercial enterprises, to offer certain privileges, benefits and incentives as inducements for economic development within the County; to acquire, or cause to be acquired, properties as may be defined as "projects" in the FILOT Act and to enter into agreements with business and commercial enterprises to facilitate the construction, operation, maintenance and improvement of such projects; to enter into or allow financing agreements with respect to such projects; and to accept any grants for such projects, whereby the business or commercial enterprise would pay fees-in-lieu-of taxes ("FILOT") with respect to qualified business or commercial projects; through all such powers, the business and commercial development of the State of South Carolina (the "State") will be promoted and trade developed by inducing business and commercial enterprises to locate or remain in the State and thus utilize and employ the workforce, 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;

WHEREAS, the County, acting by and through its Council, is authorized and empowered to establish multicounty industrial or business parks (each, an "MCP") pursuant to Article VIII, Section 13(D) of the Constitution of South Carolina, and Sections 4-1-170, 4-1-172, and 4-1-175 of the Code (the "MCP Act") to further the investment of capital and the creation of jobs in the County;

WHEREAS, Section 4-1-175 of the MCP Act, and Section 4-29-68 of the Code authorizes the Council to provide special source revenue credits ("SSRCs") that are applied against FILOT payments made pursuant MCP Act to reimburse a project for the costs of designing, acquiring, constructing, improving or expanding, among other things (i) infrastructure serving the project, or (ii) improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise;

WHEREAS, a company, whose identity is confidential at this time but will be referred to in this Resolution as Project E3, and one or more affiliates (collectively, the "Company"), is considering the acquisition, construction and installation of a project upon certain property within the County (the "Project"), *provided, that*, the County enters into certain incentive arrangements with the Company as set forth herein including an agreement to convey to the Company the land on which the Project will be located;

WHEREAS, the Project is expected to result in the aggregate investment in real and personal property of at least \$14,335,000 and to result in the creation of at least fifteen (15) new full-time jobs in the Project in the County;

WHEREAS, the Company has requested that the County (i) enter into an agreement for the Project, thereby providing for certain FILOT incentives with respect to the Project (“Fee Agreement”), (ii) provide SSRCS with respect to the Project, (iii) include the location of the Project in an MCP established pursuant to the MCP Act, and (iv) enter into an agreement with it to convey certain property within the County for the Project (the “Conveyance Agreement”);

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

WHEREAS, the Council intends by this Resolution to commit to the Company to (i) enter into a Fee Agreement for the Project that provides FILOT and SSRC incentives, (ii) include the Project property in an MCP established pursuant to the MCP Act, and (iii) express to Project E3 the County’s willingness to enter into a Conveyance Agreement that provides for the conveyance of certain property within the County for the Project.

NOW, THEREFORE, BE IT RESOLVED by the Council of Lancaster County, South Carolina:

1. The adoption of this resolution is an official action by the Council to identify, reflect and induce the Project under the FILOT Act. For purposes of the FILOT Act, this Resolution is an “Inducement Resolution.” For purposes of Section 12-44-110 of the FILOT Act, this Resolution constitutes preliminary approval by the County prior to the execution of a Fee Agreement.

2. Council commits to enter into negotiated FILOT and SSRC arrangements for the Project, the terms of which shall be set forth in a Fee Agreement in form and manner satisfactory to the County and the Company containing substantially the following terms:

- a. an initial Investment Period, as defined in the FILOT Act, which shall end on December 31 of the sixth year after the first year in which any portion of the Project is first placed in service;
- b. the Company’s commitment to invest, or cause investment of, at least \$14,335,000, in the aggregate, by itself and/or any sponsor or sponsor affiliates (as defined in the FILOT Act) in the Project not later than the end of the initial Investment Period (the “Minimum Contractual Investment Requirement”); provided, (i) failure to invest the minimum investment requirement under the FILOT Act (the “Minimum Statutory Investment Requirement”) by December 31 of the fifth year after the first year in which any portion of the Project is first placed in service shall result in the termination of the negotiated FILOT retroactively and prospectively, and the Company, and any sponsor affiliate who previously received the benefit of any negotiated FILOT, shall pay to the County the difference between the negotiated FILOT payments actually paid on behalf of Project property, and the amount that would have been paid on behalf of such property in the absence of the negotiated FILOT, together with interest thereon at the rate calculated in the manner as provided in Section 12-54-25 of the Code, or any successor Code provision, (ii)

failure to invest the Minimum Contractual Investment Requirement by the end of the initial Investment Period shall result in the termination of the Fee Agreement effective at the end of the Investment Period except for those matters intended to survive termination of the Fee Agreement, and (iii) failure to maintain the Minimum Statutory Investment Requirement for the term of the Fee Agreement shall result in the termination of the negotiated FILOT prospectively, but not retroactively;

- c. the Company's commitment to create at least fifteen (15) new full-time jobs at the Project in the County (the "Minimum Contractual Jobs Requirement"); provided, (i) failure to create such jobs by the end of the initial Investment Period shall result in the termination of the negotiated FILOT retroactively and prospectively, and the Company and any sponsor affiliate shall pay to the County the difference between the negotiated FILOT payments actually paid on behalf of the Project property, and the amount that would have been paid on behalf of such property in the absence of the negotiated FILOT, together with interest thereon at the rate calculated in the manner as provided in Section 12-54-25 of the Code, or any successor provision, and (ii) failure to maintain such jobs following the Investment Period shall result in the termination of the negotiated FILOT prospectively, but not retroactively;
- d. calculation of negotiated FILOT payments using (i) an assessment ratio of six percent (6%), and (ii) a millage rate of 342.9 mills, plus 50 mills for City of Lancaster Water and Sewer, which such millage rates shall be fixed for the entire term of the Fee Agreement;
- e. a term of twenty (20) years for each phase or year's investment in economic development property during the Investment Period under the Fee Agreement;
- f. for negotiated FILOT payments due with respect to the Project, an SSRC of 12% for the first ten (10) years of such negotiated FILOT payments, excluding the 50 mills for the City of Lancaster Water and Sewer; provided, in the event either (i) the Minimum Contractual Investment Requirement is not satisfied at the end of the initial Investment Period (prior to any extension thereof) or is not maintained for each year thereafter in which the Company and any sponsor affiliate would otherwise be entitled to receive an SSRC, or (ii) the Minimum Contractual Jobs Requirement is not achieved during the initial Investment Period or maintained for each year in which the Company and any sponsor affiliate would otherwise be entitled to receive an SSRC, the SSRC applicable to each FILOT payment shall be terminated on a retroactive and prospective basis. To the extent that the SSRC is retroactively terminated, the Company, and any sponsor affiliate who previously received the benefit of any SSRC, shall pay to the County the difference between the FILOT payments actually paid taking into account any SSRC that did apply, and the FILOT payments that would have been paid in the absence of any SSRC, together with interest on such difference calculated in the manner as provided in Section 12-54-25 of the Code, or any successor Code provision;
- g. provisions requiring the Company and any sponsor affiliate to provide documentation to the County Economic Development Director to prove compliance by the Company and any sponsor affiliate with the Minimum Contractual Jobs Requirement. The documentation may include providing completed South Carolina Department of Revenue job tax credit forms, such as form TC-4, and completed South Carolina Department of Employment and Workforce quarterly contribution and wage reports, such as form CUE-

120. In lieu of providing any of the forms specifically identified in this item 2.g., the Company and the County Economic Development Director may agree on an alternative method for the Company and any sponsor affiliate to demonstrate compliance with the Minimum Contractual Jobs Requirement;

- h. to the extent the County levies additional millage for the specific purpose of providing either fire or EMS services, or both, after the date of the Fee Agreement, for an additional fee payment to be paid to the County equivalent to the amount that would be generated by such additional millage;
- i. the commitment of the Company to reimburse the County for its administrative expenses associated with the review, negotiation and preparation of all documentation and authorizing proceedings, including attorney's fees, related to the Fee Agreement, the location of the Project and the land on which the Project is now, or hereafter to be located, within the boundaries of a MCP, the conveyance of certain property to the Company for the Project, and for the County's administrative expenses associated with the annual computation of the negotiated FILOT payments.

3. Council shall use its best efforts to include the land on which the Project is now, or hereafter to be, located in an MCP, if not already included in an MCP. The period of time for inclusion of the land in an MCP shall be for a period at least as long as the period the Fee Agreement is effective.

4. Council expresses its willingness to enter into a Conveyance Agreement providing for the conveyance to the Company of certain property within the County for the Project, under such terms and conditions as may be mutually agreed upon by the County and the Company.

5. Council shall approve the Fee Agreement, the Conveyance Agreement, and any other agreement or document contemplated by this Resolution, in accordance with South Carolina law and the rules and procedures of the Council.

6. Council finds that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally, (ii) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against the general credit or taxing power of either the County or any incorporated municipality, (iii) the purposes to be accomplished by the Project are proper governmental and public purposes, and (iv) the benefits of the Project to the public are greater than the costs to the public.

7. To the extent this Resolution contains provisions that conflict with other orders, resolutions, and parts thereof, the provisions contained in this Resolution supersede all other orders, resolutions and parts thereof and this Resolution is controlling.

8. This Resolution takes effect upon its adoption.

[Signatures follow on next page]

AND IT IS SO RESOLVED

Dated this 11th day of September, 2023.

LANCASTER COUNTY, SOUTH CAROLINA

[SEAL]

Steve Harper, Chair, County Council

Billy Mosteller, Secretary, County Council

Attest:

Sherrie Simpson, Clerk to Council

Approved as to form:

Ginny L. Merck-Dupont, County Attorney

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