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STATE OF SOUTH CAROLINA

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ORDINANCE 2023-1866

COUNTY OF LANCASTER

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**AN ORDINANCE TO AUTHORIZE AND APPROVE THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BETWEEN LANCASTER COUNTY, SOUTH CAROLINA AND PROJECT E3 PROVIDING FOR THE PAYMENT OF A FEE-IN-LIEU OF TAXES AND THE PROVISION OF SPECIAL SOURCE REVENUE CREDITS; TO EXPRESS THE INTENTION OF COUNCIL TO PROVIDE MONIES TO THE ECONOMIC DEVELOPMENT FUND; TO APPROVE A PROPERTY CONVEYANCE AGREEMENT RELATING TO THE CONVEYANCE OF APPROXIMATELY 16.62 ACRES OF REAL PROPERTY OWNED BY LANCASTER COUNTY AND LOCATED IN THE LANCASTER BUSINESS PARK TO PROJECT E3 OR AN ENTITY TO BE DESIGNATED BY IT; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.**

Be it ordained by the Council of Lancaster County, South Carolina:

**Section 1. Findings and Determinations**

The Lancaster County Council finds that:

(a) 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 the Code of Laws of South Carolina 1976, as amended (the “Code”), and specifically Title 12, Chapter 44 of the Code (the “Fee in Lieu of Tax Simplification Act” or “FILOT Act”), to enter into agreements with business and industry, to offer certain privileges, benefits, and incentives as inducements for economic development within the County whereby the industry would pay fees in lieu of *ad valorem* taxes (“FILOT Payments”) with respect to qualified business and industrial 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 and expand 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 adequately provided locally; and

(b) The County, acting by and through its Council, is authorized and empowered to establish, in conjunction with one or more other counties, multicounty 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, as amended (the “MCP Act”) to further the investment of capital and the creation of jobs in the County, and to facilitate the provision of special source revenue credits; and

(c) Section 12-44-70 of the FILOT Act, 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 to the FILOT Act and 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 in order to enhance the economic development of the County; and

(d) a company, whose identity is confidential at this time, currently identified as “Project E3”, acting for itself, one or more affiliates, and/or other project sponsors (collectively, the “Company”), is considering the investment in a distribution facility in the County (the “Project”), and, provided that the County enters into certain incentive arrangements with the Company, the Company anticipates that, should plans proceed as expected, investment in the Project will equal or exceed \$14,335,000 within the County and at least fifteen (15) new full-time jobs will be created within the County; and

(e) the County owns a parcel of property, consisting of approximately 16.62 acres, located in the Lancaster Business Park and identified by Lancaster County Tax Map No.0061.00.104.00 (the “Property”), which it acquired with the goal of promoting economic development, capital investment, and job creation in the County; and

(f) the County proposes to convey the Property to the Company in order to facilitate the development of the Project; and

(g) the investment of funds and creation of jobs, as proposed by the Company, provide significant public benefits to the County in the form of an increased tax base that generates additional tax revenues, increases values for adjacent properties and provides needed additional employment opportunities for the County’s residents; and

(h) the public benefits to be received by the County in return for the conveyance of the Property to the Company are fair and reasonable compensation; and

(i) Pursuant to Resolution No. 1244-R2023, adopted on \_\_\_\_\_, 2023, the Council approved an Inducement Resolution providing for, among other things, the commitment of the County to enter into a fee-in-lieu of tax and incentive agreement with the Company, to provide the SSRCs to the Company, and to convey the Property to the Company under certain terms and conditions.

## **Section 2. Statutory Findings**

Council makes the following additional findings:

- (a) The Project will constitute a “project” as 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 Project and the FILOT Payments are beneficial to the County, and the County has evaluated the Project based on all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made.
- (c) 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.
- (d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.

- (e) The purposes to be accomplished by the Project, *i.e.*, economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs to the public.

### **Section 3. Approval of Fee In Lieu of Tax and Incentive Agreement**

The form, terms, and provisions of the Fee In Lieu of Tax and Incentive Agreement (the “Fee Agreement”), attached to this ordinance as Exhibit A, are authorized, ratified and approved, and all the provisions, terms, and conditions thereof are authorized, ratified and approved and incorporated herein by reference as if the Fee Agreement were set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company and performed by the County. The Fee Agreement is to be in substantially the form as attached to this ordinance and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel to the County, each such official’s execution thereof to constitute conclusive evidence of such official’s approval of any and all changes or revisions therein from the form of the Fee Agreement attached to this ordinance.

### **Section 4. Approval of Contract and Conveyance of Property.**

(A) The County Administrator is authorized, empowered and directed, in the name of and on behalf of the County, to execute, acknowledge, and deliver the Conveyance of Property Agreement by and between the Company and the County, providing for the conveyance of the Property to the Company in connection with the Project (the “Conveyance Agreement”). The form of the Conveyance Agreement is attached hereto as Exhibit B and all terms, provisions and conditions of the Conveyance Agreement are incorporated herein by reference as if the Conveyance Agreement were set out in this ordinance in its entirety. By enactment of this ordinance, County Council approves the Conveyance Agreement and all of its terms, provisions and conditions. The Conveyance Agreement is to be in substantially the form as attached to this ordinance and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Conveyance Agreement attached to this ordinance. The County Administrator is also authorized, empowered and directed to execute, acknowledge and deliver, on behalf of the County, a recordable memorandum evidencing the Company’s right to purchase the Property.

(B) County Council authorizes and approves the conveyance of the Property to the Company.

### **Section 5. Economic Development Fund**

(a) Council finds that (i) by passage of Ordinance No. 2014-1260, Council created an Economic Development Fund with the intent to make monies available to fund from new revenues to the County derived from new and expanded businesses and industry, and (ii) the ability to make monies available to the Economic Development Fund can be difficult because of complexities and legalities applicable to fee-in-lieu of tax arrangements and MCPs.

(b) It is the intent of Council, in the annual County budget, to appropriate monies to the Economic Development Fund based on the new revenue that the County receives pursuant to the Fee Agreement. Specifically, it is Council's intent to appropriate from the General Fund of the County an amount based on the following formula: Seven percent (7%) times the amount of money received pursuant to the Fee Agreement by the County after distribution to other taxing entities in the most recently completed tax year.

**Section 6. Authority to Act**

The Council Chair, Council Secretary, Clerk to County, County Administrator, County Attorney and all other appropriate officials of the County are (and each acting individually is) hereby authorized, empowered, and directed to take such actions and to execute such agreements, certificates, or other documents as may be necessary to effectuate the purposes of this ordinance, and the performance of all obligations of the County under and pursuant to the Fee Agreement and the Conveyance Agreement.

**Section 7. Severability**

If a section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, the invalid or unconstitutional portion is deemed a separate, distinct, and independent provision, and the holding shall not affect the validity of the remaining portions of this ordinance.

**Section 8. Conflicting Provisions**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances and resolutions, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

**Section 9. Effective Date**

This ordinance is effective upon third reading.

[Signatures follow on next page]

**AND IT IS SO ORDAINED**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

**LANCASTER COUNTY, SOUTH CAROLINA**

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Steve Harper, Chair, County Council

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Billy Mosteller, Secretary, County Council

ATTEST:

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Sherrie Simpson, Clerk to Council

First Reading: September 11, 2023

Second Reading: September 25, 2023

Third Reading: October 9, 2023

Public Hearing: October 9, 2023

Approved as to form:

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Ginny L. Merck-Dupont, County Attorney

**Exhibit A to Ordinance 2023-1866**

**FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

See attached.

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**Exhibit B to Ordinance 2023-1866**

**CONVEYANCE OF PROPERTY AGREEMENT**

See attached.

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