

AN ORDINANCE NO.: 1265

AUTHORIZING: (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA, AND MTU DRIVE SHAFTS, LLC, CHARLESTON COUNTY TO COVENANT IN SUCH AGREEMENT TO ACCEPT CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; (2) SPECIAL SOURCE CREDITS TO REIMBURSE MTU DRIVE SHAFTS, LLC FOR A PORTION OF THE COSTS OF CERTAIN INFRASTRUCTURE OR REAL PROPERTY COSTS INCURRED IN CONNECTION WITH A MANUFACTURING OR COMMERCIAL ENTERPRISE SERVING THE ECONOMIC DEVELOPMENT OF CHARLESTON COUNTY; (3) THE BENEFITS OF A MULTI-COUNTY PARK TO BE MADE AVAILABLE TO MTU DRIVE SHAFTS, LLC; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Charleston 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 through the date hereof (the "Code"), particularly Title 12, Chapter 44 (the "FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, the "Special Source Act") (collectively, the "Act"):

(i) to acquire, or cause to be acquired, certain industrial and commercial properties and to enter into agreements, with certain investors to construct, operate, maintain, and improve such properties through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State;

(ii) to covenant with such investors to accept certain payments in lieu of *ad valorem* taxes with respect to such properties (a "FILOT");

(iii) to permit investors to claim special source credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate used in the operation of manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and

(iv) to create, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors and facilitate the grant of Special Source Credits; and

WHEREAS, MTU DRIVE SHAFTS, LLC, a Delaware limited liability company, (the "Company") proposes to acquire certain machinery, equipment, leasehold improvements and other property (the "Project") for use in conjunction with certain real property leased from American LaFrance Corporation ("ALF"), an affiliate of the Company, which Project and other leased property are to be used by the Company primarily to manufacture automotive components; and

WHEREAS, on the basis of the information supplied to it by the Company the County has determined that the Project would subserve the purposes of the Act; and WHEREAS, the County, pursuant to certain negotiations heretofore undertaken with the Company with respect to the Project, has entered into an Inducement Agreement (the "Inducement Agreement") with the Company, whereby the County agreed:

(I) to enter into a Fee in Lieu of Tax Agreement (the "FILOT Agreement") with the Company and the Company has agreed to pay a fee in lieu of taxes ("FILOT") to the County;

(ii) to permit the Company to claim Special Source Credits to reimburse the Company for a portion of the costs of Special Source Improvements made in connection with the Project; and

(iii) to designate and maintain the Project site as part of a multi-county industrial park (the "Multi-County Park"); and

WHEREAS, the County and the Company have agreed to the specific terms and conditions of such arrangements as set forth in that certain Fee in Lieu of Tax Agreement between the County and the Company (the "FILOT Agreement"), which FILOT Agreement is to be dated as of June 1, 2003, or such other date as the parties may agree; and

WHEREAS, it appears that the FILOT Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

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

Section 1. As contemplated by Section 12-44-40(H) and (I) of the Code, it is hereby found, determined, and declared as follows:

(a) the purposes to be accomplished by the Project are proper governmental and public purposes; and

(b) the anticipated cost of the Project is \$20,000,000 or more; and

(c) the Project will benefit the general public welfare of the State, and the County in particular, by undertaking an anticipated investment of \$20,000,000 or more and by creating an anticipated 150 to 200 jobs with a resulting alleviation of unemployment and

a substantial increase in payrolls and other public benefits incident to the conduct of such businesses not otherwise provided locally; and

(d) the Project gives rise to no pecuniary liability of the County or to any charge against the County's general credit or taxing power; and

(e) the FILOT Agreement requires that the Company maintain the Project and carry all proper insurance with respect thereto; and

(f) the benefits of the Project are greater than the costs to the public.

Section 2. The County hereby agrees to enter into the FILOT Agreement with the Company, whereby the Company will agree to make negotiated FILOT payments with respect to such Project in accordance with the terms thereof. The FILOT Agreement will provide, *inter alia*, the following:

(a) Because the Company does not anticipate completing the Project within the five-year period specified in the FILOT Act, the County approves an extension of such period for completion for an additional five years as provided in the FILOT Act (such ten-year period herein referred to as the "Investment Period"); provided, however, that the Company must invest not less than \$5,000,000 in the Project prior to the end of the statutory five year period as required by the FILOT Act.

(b) The Company shall pay a FILOT (the "Negotiated FILOT") for all property placed in service by the Company as part of the Project during the Investment Period. The Negotiated FILOT will be calculated in accordance with the standard FILOT calculation described in Section 12-44-50(A)(1)(b)(I) of the FILOT Act, using:

(1) an assessment ratio of 6.0%,

(2) a millage rate of 272.8 mills (which is the millage rate levied for the tax year 2001 in Charleston County tax district 4-3), which shall be fixed for the entire term of the FILOT Agreement, and

(3) the fair market value of the Project, determined in accordance with Section 12-44-50(A)(1)(C) of the FILOT Act.

Section 3. As reimbursement for the Company's documented investment in Special Source Improvements, the County agrees that the Company shall be entitled to claim Special Source Credits against its FILOT payments pursuant to the Special Source Act in amounts equal to 35% of the aggregate FILOT payments derived from the Project for the first twenty years for each annual increment of investment, net of 6.75% of such payments allocable to Multi-County Park Fees and deposits to the County's Economic Development Fund compressed into a six-year period and weighted as provided in the FILOT Agreement; provided, however, that the aggregate amount of the Special Source Credits shall not exceed the aggregate cost of the Special Source Improvements associated with the Project which have been paid for by the Company. The use of such

Special Source Credits will subserve the purposes and in all respects conform with the provisions of and requirements of the Special Source Act and the Multi-County Park Act.

Section 4. The County will diligently take all reasonable acts to insure that the Project will be included, and will remain, within the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act on terms which provide the maximum jobs tax credits afforded by the laws of the State for all jobs created by the Company in the County during the Investment Period and which facilitate the Special Source Credits described in Section 3 hereof.

Section 5. The form, provisions, terms, and conditions of the FILOT Agreement presented to this meeting and filed with the Clerk to Council be and they are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the FILOT Agreement were set out in this Ordinance in its entirety.

Section 6. The form, terms and provisions of the Inducement Agreement heretofore entered into by the County and the Company are hereby ratified and approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Inducement Agreement were set out in this Ordinance in its entirety.

Section 7. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and 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 FILOT Agreement now before this meeting.

Section 8. The Chairman of the Council and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the execution and delivery of the Inducement Agreement and the FILOT Agreement, the performance of all obligations of the County under and pursuant to the Inducement Agreement and the FILOT Agreement, and to carry out the transactions contemplated thereby and by this Ordinance.

Section 9. 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 10. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.