

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND AMONG CHARLESTON COUNTY, SOUTH CAROLINA; CUMMINS, INC. D/B/A HOLSET ENGINEERING COMPANY, AND MDG CHARLESTON, LP; AND OTHER MATTERS RELATING THERETO, INCLUDING, WITHOUT LIMITATION, PAYMENT OF A FEE IN LIEU OF TAXES

WHEREAS, Charleston 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 Code of Laws of South Carolina, 1976, as amended (the "Act"), to acquire, or cause to be acquired, properties (which such properties constitute "projects" as defined in the Act) and to enter into agreements with any industry to construct, operate, maintain and improve such projects; to enter into or allow financing agreements with respect to such projects; and, to accept any grants for such projects through which powers the industrial development of the State of South Carolina (the "State") and 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 and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, the County is authorized by the Act to execute a fee in lieu of tax agreement, as defined in the Act, with respect to such project; and

WHEREAS, Cummins, Inc., a Corporation organized and existing under the laws of the State of Indiana, D/B/A Holset Engineering Company ("Holset") and MDG Charleston, LP, a limited partnership organized and existing under the laws of the State of Texas or its assignee ("MDG" and together with Holset, the "Sponsors"), have requested the County to participate in executing a Fee in Lieu of Tax Agreement (Cummins, Inc. Project) pursuant to the Act, and to that end, the County Council by its Resolution adopted on August 23, 2005, authorized the execution of an Inducement Agreement and Millage Rate Agreement containing a fee-in-lieu of tax agreement, for the purpose of authorizing and of acquiring, by construction and purchase, certain land, a building or buildings, and machinery, apparati, and equipment, for the purpose of a turbocharger manufacturing facility (the "Project"), all as more fully set forth in the Fee in Lieu of Tax Agreement attached hereto; and

WHEREAS, the County has determined that the Project would benefit the general public welfare of the County by providing service, employment,

recreation or other public benefits not otherwise provided locally; and, that the Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either; and, that 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; and, that the inducement of

the location or expansion of the Project within the County and State is of paramount importance; and, that the benefits of the Project will be greater than the costs; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Sponsors that the Project would be a “project” as that term is defined in the Act and that the Project would subserve the purposes of the Act; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the Fee in Lieu of Tax Agreement by and between the County and the Sponsors which includes the Agreement for payment of a payment-in-lieu of tax; and

WHEREAS, it appears that the instrument above referred to, which is 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 County Council of Charleston County, South Carolina, as follows:

Section 1. In order to promote industry, develop trade and utilize and employ the manpower, agricultural products and natural resources of the State by assisting the Sponsors to locate an industrial facility in the State and the acquisition by the Sponsors of land, a building or buildings, and various machinery, apparati, and equipment, all as a part of the Project to be utilized for the purpose of a turbocharger manufacturing facility, is hereby authorized, ratified and approved.

Section 2. It is hereby found, determined and declared by the County Council, as follows:

(a) Based solely upon representation of the Sponsors, the Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act;

(b) The Project and the payments in lieu of taxes set forth herein are

beneficial to the County;

(c) The Project will benefit the general public welfare of the County by providing service, employment, recreation or other public benefits not otherwise provided locally;

(d) The Project gives rise to no pecuniary liability of the County or 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 or expansion of the Project within the County and State is of paramount importance; and,

(g) The benefits of the Project will be greater than the costs.

Section 3. The Fee in Lieu of Tax Agreement shall contain a provision requiring the Sponsors to make payments in lieu of taxes. Pursuant to the Act, such payments shall continue for a period of up to twenty (20) years from the date of the Fee in Lieu of Tax Agreement, the annual capital investments made under the Fee in Lieu of Tax Agreement for the first five years, and any amendments or supplements to the Fee in Lieu of Tax Agreement to the extent permitted by law. The amounts of such payments shall be determined by using an assessment ratio of 6%, a millage rate of 286.5, which millage rate shall be a fixed rate for the duration of the Fee Agreement, and the fair market value (which value is not subject to reassessment as provided in the Act) as determined by using original cost for any real property and original cost less allowable depreciation for any personal property in accordance with Title 12, Chapter 37, Code of Laws of South Carolina 1976, as amended.

The form, terms and provisions of the Fee in Lieu of Tax Agreement presented to this meeting and filed with the Clerk of the County Council be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee in Lieu of Tax Agreement was set out in this Ordinance in its entirety. The Chairman of the County Council is and he is hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee in Lieu of Tax Agreement in the name of and on behalf of the County, and thereupon to cause the Fee in Lieu of Tax Agreement to be delivered to the Sponsors. The Fee in Lieu of Tax Agreement is 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 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 Fee in Lieu of Tax Agreement now before this meeting.

Section 4. The Chairman of the County Council and the County Administrator, 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 in Lieu of Tax Agreement and the performance of all obligations of the County under and pursuant to the Fee in Lieu of Tax Agreement.

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 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 in full force from and after its passage and approval.

CHARLESTON COUNTY COUNCIL  
Leon E. Stavrinakis, Chairman