

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA AND CUMMINS, INC.; 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. or its assignee (the "Company") has requested the County to participate in executing a fee in lieu of tax agreement (the "Fee Agreement") pursuant to the Act related to the Company's acquisition by purchase, lease and construction certain real and personal property for the purpose of a research and development facility in the County which involves an investment of approximately Twenty-Five Million Dollars (\$25,000,000) and the creation of approximately 43 new jobs (the "Project"), and to that end, the County Council by its Resolution adopted on August 16, 2011 gave preliminary approval thereto; and

WHEREAS, the County has determined on the basis of the information provided to by the Company 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 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 Agreement by and between the County and the Company 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 Company to locate a research and development facility in the State and the acquisition by the Company of real and personal property related thereto, 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 Company, 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 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 Agreement shall contain a provision requiring the Company 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 each of the annual capital investments made under the Fee Agreement for the first five years and any extension of the investment period. The amounts of such payments shall be determined by using an assessment ratio of 6%, a millage rate of 273.8, which millage rate shall be a fixed rate for the duration of the Fee Agreement, and the fair market value as determined pursuant to the Act and Title 12, Chapter 37, Code of Laws of South Carolina 1976, as amended.

The form, terms and provisions of the Fee 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 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 Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Sponsors. The Fee 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 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 Agreement and the performance of all obligations of the County under and pursuant to the Fee 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.

Passed and approved this 6th day of December, 2011.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
Chairman of County Council

ATTEST:

By: _____
Clerk to County Council

First Reading: August 16, 2011
Second Reading: September 13, 2011
Public Hearing: December 6, 2011
Third Reading: December 6, 2011