

**AN ORDINANCE**

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN CHARLESTON COUNTY AND MILLARD REFRIGERATED SERVICES, INC., WHEREBY CHARLESTON COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAXES ARRANGEMENT WITH MILLARD REFRIGERATED SERVICES, INC.; PROVIDING FOR PAYMENT BY MILLARD REFRIGERATION, LLC OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; AND OTHER MATTERS RELATING THERETO.**

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 of the Code of Laws of South Carolina 1976, as amended (the "FILOT Act"), to designate real and tangible personal property as "economic development property" and to enter into an arrangement which provides for payment in lieu of taxes ("Negotiated FILOT Payments") for a project qualifying under the FILOT Act; and

WHEREAS, the County, acting by and through the County Council, is further authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the "MCIP Act") to provide for payments in lieu of taxes ("PILOT Payments") with respect to property located in a multi-county business or industrial park created under the MCIP Act and to create, in conjunction with one or more other counties, a multi-county park in order to afford certain enhanced tax credits to such investors; and

WHEREAS, Millard Refrigerated Services, Inc., a Georgia corporation (the "Company"), proposes to locate its operations in Charleston County by acquiring, constructing, equipping, and furnishing a warehousing, distribution, and food processing facility (the "Project"); and

WHEREAS, the Project when completed will represent an anticipated "investment" (as defined in the FILOT Act) (the "Investment") of approximately \$42,200,000, which is expected to occur by December 31, 2017; and

WHEREAS, the County has been advised that upon the completion of the Project, the Company is anticipated to employ approximately 87 full-time employees at the Project; and

WHEREAS, the Project is located entirely within Charleston County and within the boundaries of the City of North Charleston, and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein; and

WHEREAS, the County has made specific proposals, including proposals to offer certain economic development incentives set forth herein, for the purpose of inducing the Company to invest its funds to acquire, construct, and equip the Project (the "Incentives"); and

WHEREAS, it is in the public interest, for the public benefit, and in furtherance of the public purposes of the FILOT Act and the MCIP Act that the County Council provide final approval for qualifying the Project under the FILOT Act and the MCIP Act for the Incentives;

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

Section 1. Evaluation of the Project. County Council have evaluated the Project on the following criteria based upon the advice and assistance of the South Carolina Department of Revenue and the Board of Economic Advisors:

- (a) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (b) the anticipated dollar amount and nature of the investment to be made; and
- (c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based upon information provided by and representations of the Company, County Council's investigation of the Project, including the criteria described in Section 1 above, and the advice and assistance of the South Carolina Department of Revenue and the Board of Economic Advisors, as required, County Council hereby find that:

- (a) the Project constitutes a "project" as that term is defined in the FILOT Act;
- (b) the Project will serve the purposes of the FILOT Act;
- (c) the Investment by the Company in the Project is anticipated to be approximately \$42,200,000, all to be invested within the "investment period" (as defined in the FILOT Act); and the Company will employ 87 full-time employees as a result of the Project;
- (d) the Project will be located entirely within Charleston County;
- (e) the Project is anticipated to benefit the general public welfare of Charleston County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;
- (f) the Project gives rise to neither a pecuniary liability of the County nor a charge against its general credit or taxing power;
- (g) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (h) the inducement of the location of the Project is of paramount importance; and
- (i) the benefits of the Project to the public are greater than the cost to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Project is designated as "economic development property" under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT Payments to be made with respect to the Project based upon a 6% assessment ratio with the millage rate which is the lower of (a) the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the year preceding the calendar year in which the FILOT Agreement (as defined in Section 6 hereof) is executed or (b) the cumulative property tax millage rate levied on behalf of all taxing entities

within which the Project is located on June 30 of the calendar year in which the FILOT Agreement is executed, such rate to be fixed for the entire 20-year term of the fee-in-lieu of taxes, all as more fully set forth in the FILOT Agreement.

#### Section 4. Multi-County Park Incentive.

(a) By separate ordinance (the "MCIP Ordinance") of the County Council, the County, in cooperation with Colleton County and with the consent of the City of North Charleston, will designate the site of the Project as a multi-county business park pursuant to Article VIII, Section 13 of the South Carolina Constitution, the MCIP Act, and the terms of the Agreement for Establishment of Multi-County Business/Industrial Park (the "MCIP Agreement").

(b) The County will provide for 10 years that the annual allocation of the fee-in-lieu of ad valorem taxes revenue generated by the Project within the boundaries of the Multi-County Park (the "MCP FILOT") will be distributed as follows:

- (i) To the County, for providing the SSRCs (as defined in Section 5 hereof), an amount equal to the annual SSRC provided in Section 5 of this Ordinance and in the FILOT Agreement; and
- (ii) To the County and the other overlapping taxing entities, in the same relative percentages as the relative millage rates imposed by such taxing entities for the applicable tax year.

#### Section 5. Special Source Revenue Credits.

(a) After the identification of infrastructure serving Charleston County or improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise (the "Infrastructure") located solely within Charleston County and the costs thereof to the satisfaction of the County, the County will provide to the Company an infrastructure improvement or special source revenue incentive (the "Special Source Revenue Incentive") under Section 4-1-175 of the MCIP Act in the form of special source revenue credits ("SSRCs") in the amount of \$100,000 per year for the first five years of the term of the FILOT Agreement (not to exceed an aggregate of \$500,000). The Company shall be entitled to claim SSRCs against each of the annual MCIP FILOT payments made with respect to the Project for five (5) years in an amount equal to \$100,000 each year; provided, however, that such SSRCs shall not, in the aggregate, exceed the aggregate cost of the Infrastructure funded from time to time by the Company.

(b) The documents providing for the Special Source Revenue Incentive shall include customary terms providing: (i) that the Company will pay the County's reasonable administrative expenses associated with the approval and implementation of the Special Source Revenue Incentive; and (ii) that the Company will indemnify and hold the County harmless for claims, losses and damages with respect to the Project.

Section 6. Execution of the FILOT Agreement. The form, terms, and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk of the County Council be and hereby are approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement were set out in this Ordinance in

its entirety. The Chairman of the County Council and the Clerk of the County Council be and they are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the County Attorney and the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of all changes therein from the form of FILOT Agreement now before this meeting.

Section 7. Miscellaneous.

(a) The Chairman and all other appropriate officials of the County are hereby authorized to execute, deliver, and receive any other agreements and documents as may be required by the County in order to carry out, give effect to, and consummate the transactions authorized by this Ordinance.

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council.

(d) The provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

(e) All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

CHARLESTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman, County Council of  
Charleston County, South Carolina

ATTEST:

\_\_\_\_\_  
Clerk to County Council  
Charleston County, South Carolina