

**STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR CHARLESTON COUNTY**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA (THE "COUNTY") AND AGRU/AMERICA, INC., A COMPANY PREVIOUSLY IDENTIFIED AS "PROJECT DAILY", ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE ACQUISITION, IMPROVEMENT AND EQUIPPING OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE PROJECT; (4) THE ALLOCATION OF FEES IN LIEU OF *AD VALOREM* TAXES RECEIVED FROM THE PROJECT; AND (5) 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 (the "Code"), and particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act", or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects 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 accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue 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 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 ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, Agru/America, Inc., a corporation qualified to do business in the State and previously identified as “Project Daily” (the “Company”), proposes to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities located in the County ( the “Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of approximately \$29,000,000 and create, or cause to be created, approximately 35 new jobs at the Project; and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on December 9, 2014 (the “Inducement Resolution”), whereby the County determined to provide certain negotiated FILOT, Special Source Credit, and Multi-County Park benefits with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project (the “FILOT Agreement”), the form of which is presented to this meeting, and which is to be dated as of December 8, 2015 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(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the FILOT Agreement, the terms and provisions of this Ordinance and the FILOT Agreement shall control. Capitalized terms used in **Sections 1** and **2** hereof and not otherwise defined herein shall have the meanings ascribed thereto in the FILOT Agreement. Additionally, based on information provided to the County by the Company, the County makes the following findings and determinations:

(a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and

(c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

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

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

Section 2.

(a) The County hereby agrees to enter into the FILOT Agreement, whereby the Company will agree to invest, or cause to be invested, not less than \$29,000,000 with respect to the Project and to create, or cause to be created, at the Project at least 35 new jobs, all within the approximately five-year “Investment Period”, as described in the Negotiated FILOT Act, and the County will agree to accept certain negotiated fee in lieu of taxes payments with respect to the Project (the “Negotiated FILOT”) as set forth in **Section 2(b)** hereof and in accordance with the terms of the FILOT Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate or millage rates allowed with respect to the Project under the Negotiated FILOT Act which the parties understand to be 263.4 mills, which millage rate or rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the FILOT Agreement.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year’s investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of twenty (20) years.

Section 3. As an additional inducement, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County does hereby agree that the Company shall be entitled to receive, and the County shall provide, Special Source Credits against each of the first and/or second Negotiated FILOT payments made with respect to the Project after the initial assets comprising the Project have been placed in service, in amounts equal to forty-six percent (46%) of each such Negotiated

FILOT payment; provided that, such Special Source Credits shall not, in the aggregate, exceed \$200,000 nor remain in effect beyond the first two Negotiated FILOT payments as described above. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

Section 4. The County will use its best efforts to insure that the Project will be included, if not already included, and will remain, within the boundaries of a Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the Constitution of the State on terms which provide the Company and the Project with any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and on terms which facilitate the Special Source Credits referenced in **Section 3** hereof.

The County will provide for 20 years that the annual allocation of FILOT payments generated by the Project within the boundaries of the Multi-County Park (the "MCP FILOT") will be distributed (after distribution of a portion of the FILOT payments to the partner county in accordance with the agreement establishing the Multi-County Park and to the economic development fund of the County), as follows:

- (i) To the County, for providing the Special Source Credits, an amount equal to the annual Special Source Credit provided in **Section 3** of this Ordinance and in the FILOT Agreement; and
- (ii) Except as may otherwise be provided by ordinance of the County Council from time to time, the balance of the MCP FILOT 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. The form, provisions, terms, and conditions of the FILOT Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the FILOT Agreement was set out in this Ordinance in its entirety. The County Administrator is hereby authorized, empowered, and directed to execute the FILOT Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the County Administrator is further authorized, empowered, and directed to deliver the FILOT Agreement to the Company. 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 official or officials of the County executing the same, upon the advice of legal counsel, 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 6. The Chairman of the Council, the County Administrator, 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 performance of all obligations of the County under and pursuant to the FILOT Agreement.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, 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, phases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 8<sup>th</sup> day of December, 2015.

CHARLESTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
J. Elliott Summey, Chairman, County Council,  
Charleston County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Beverly T. Craven, Clerk to County Council,  
Charleston County, South Carolina

First Reading: December 9, 2014  
Second Reading: September 29, 2015  
Public Hearing: December 8, 2015  
Third Reading: December 8, 2015