

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND AMONG FF-NC, LLC, FIREFLY DISTILLERY, LLC (THE “COMPANIES”) AND CHARLESTON COUNTY, WHEREBY CHARLESTON COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH THE COMPANIES AND PROVIDING FOR PAYMENT BY THE COMPANIES OF CERTAIN FEES-IN-LIEU OF *AD VALOREM* TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE OR INFRASTRUCTURE IMPROVEMENT CREDITS; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; 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 payments-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 (collectively, the “the MCIP Act”) to provide for payments-in-lieu of taxes (“FILOT Payments”) with respect to property located in a multi-county business or industrial park created under the MCIP Act and to permit investors to claim special source credits against their FILOT Payments (including Negotiated FILOT Payments) to reimburse such investors for expenditures for infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of manufacturing or commercial enterprise in order to enhance the economic development of Charleston County (“Infrastructure Improvements”); 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 facilitate the grant of special source or infrastructure improvement credits; and

WHEREAS, Firefly Distillery, LLC and its affiliate, FF-NC, LLC (collectively referred to herein as the “Company”), propose to develop a manufacturing facility in Charleston County by acquiring, constructing, equipping and furnishing machinery, equipment and other real and personal property (the “Project”) which the Company has represented will likely consist of a capital investment of at least Six Million Seven Hundred Twenty Thousand Dollars (\$6,720,000.00) and the creation of at least twenty (20) new jobs; and

WHEREAS, the County desires to enter into a Fee-in-Lieu of Tax Agreement with the Company, as the Company has expressed its intent to the County to make a capital investment in the County (i.e., the Project);

WHEREAS, the Project is located entirely within Charleston County and, with the consent of the City of North Charleston, 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 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 approval for qualifying the Project under the FILOT Act and the entire Project under the MCIP Act for the Incentives;

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

Section 1. Evaluation of the Project. The County Council has evaluated the Project on the following criteria based upon the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue:

- (a) whether 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 Commerce and the South Carolina Department of Revenue, as required, County Council hereby find that:

- (a) the Project continues to constitute a “project” as that term is defined in the FILOT Act;
- (b) the Project will continue to serve the purposes of the FILOT Act;
- (c) the Company anticipates an investment of at least Six Million Seven Hundred Twenty Thousand Dollars (\$6,720,000.00) and the creation of at least twenty (20) new jobs within five (5) years from the end of the property tax year in which the Company and the County execute the FILOT Agreement (as defined herein);
- (d) the Project will be located entirely within the County;
- (e) the Project will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately

provided locally;

- (f) the Project will not give rise to a pecuniary liability of the County or any municipality nor a charge against its general credit or taxing power of the County or any municipality;
- (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 costs 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 and a millage rate which shall be fixed for the full term of the FILOT Agreement and shall be the lower of the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is to be located on either (1) the June 30 preceding the year in which the FILOT Agreement is executed, or (2) the June 30 of the year in which the FILOT Agreement is executed, all as more fully set forth in the Fee-in-Lieu of Tax Agreement by and between the County and the Company (the “FILOT Agreement”).

Section 4. Special Source Revenue Credits. After the identification of qualifying Infrastructure Improvements located solely within the County and the costs thereof to the satisfaction of the County, the County will provide to the Company special source revenue or infrastructure improvement credits (“SSRCs”) under the MCIP Act in the amount of 78% of fee-in-lieu payments made under the FILOT Agreement not exceeding a period of five years but subject to a cumulative cap of Three Hundred Fifty Thousand Dollars (\$350,000.00).

Section 5. Execution of the Fee 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 Chair 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 6. Multi-County Park.

- (a) By separate ordinance of the County Council, the County, in cooperation with an

adjacent county and with the consent of the City of North Charleston, shall use its best efforts to designate the site of the Project as a multi-county park pursuant to Article VIII, Section 13 of the Constitution of South Carolina, the MCIP Act, and the terms of Agreement for the Establishment of a Multi-County Industrial/Business Park between the County and Colleton County, South Carolina, dated as of September 1, 1995, as amended (the "Park Agreement"). In the FILOT Agreement, the County will agree to use its best efforts to maintain such designation at all times during the term of the FILOT Agreement, but not less than twenty (20) years.

- (b) Pursuant to the terms of the MCIP Act and the Park Agreement, the County hereby provides that for the term of the FILOT Agreement commencing with the first tax year in which the Negotiated PILOT Payments are generated by the Project and payable to the County in accordance with the terms of the Park Agreement will be distributed as follows:
 - i. After deducting any amounts distributed to the partner county in accordance with the Park Agreement, to the County an amount equal to the total SSRCs to be provided in such year pursuant to Section 4 hereof; and
 - ii. After making the allocations under paragraph (b)(i) of this Section, the balance is to be distributed among the taxing districts in Charleston County in accordance with the applicable provisions of Section 9 of the Park Agreement.

Section 7. Miscellaneous.

- (a) The Chair 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.

Adopted this 6th day of June, 2017.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
A. Victor Rawl, Chair of County Council

ATTEST:

Kristen L. Salisbury
Deputy Clerk to County Council

First Reading: **May 9, 2017**
Second Reading: **May 23, 2017**
Public Hearing: **June 6, 2017**
Third Reading: **June 6, 2017**