

**AN ORDINANCE**

PROVIDING FOR INFRASTRUCTURE OR SPECIAL SOURCE REVENUE CREDITS TO AN INDUSTRY CURRENTLY KNOWN TO THE COUNTY AS “PROJECT HERMAN;” AUTHORIZING AN INFRASTRUCTURE CREDIT AGREEMENT BETWEEN CHARLESTON COUNTY AND PROJECT HERMAN; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR DEVELOPMENT FOR A JOINT COUNTY INDUSTRIAL PARK WITH COLLETON COUNTY; 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 4, Chapter 1 (the “MCIP Act”) of the Code of Laws of South Carolina 1976, as amended (the “Code”) 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 pursuant to Sections 12-44-70, 4-1-175, and 4-29-68 of the Code (the “SSRC Act”) to permit investors to claim infrastructure or special source revenue credits against their PILOT Payments to reimburse such investors for expenditures for infrastructure serving Charleston County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of a 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 infrastructure or special source revenue credits; and

WHEREAS, in order to promote the economic welfare of the citizens of the County and Colleton County (“the Partner County” and collectively with the County, the “Counties”) by providing employment and other benefits to the citizens of the Counties, the Counties entered into an Agreement for Development for a Joint County Industrial Park effective as of September 1, 1995 (the “Original Agreement”), to develop jointly an industrial and business park (the “Park”), as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with the MCIP Act; and

WHEREAS, the Original Agreement was initially approved by Charleston County Council Ordinance 972, adopted September 19, 1995; was further amended from time-to-time to add or remove property to the Park; and, in particular, was substantively amended by (i) that First Modification to Agreement for Development for Joint County Industrial Park, effective December 31, 2006 (the “First Modification”), which First Modification was approved by Charleston County Council Ordinance 1475, enacted December 5, 2006; and by Colleton County Council Ordinance 06-O-20 enacted January 2, 2007; and (ii) the Second Modification to Agreement for Development of Joint Industrial Park, dated as of December 31, 2014 (the “Second Modification”), which Second Modification was approved by Charleston County Council Ordinance 1828, enacted on September 9, 2014, and by Colleton County Ordinance 14-O-13, enacted on December 11, 2014; and

WHEREAS, the Original Agreement, as amended, is referred to herein as the “MCIP

Agreement,” and

WHEREAS, the MCIP Agreement contemplates the inclusion and removal of additional parcels within the Park from time to time; and

WHEREAS, the Counties desire to amend the MCIP Agreement to include certain additional parcels in order to fulfil commitments made to companies which are considering expansion or location decisions; and

WHEREAS, an industry currently known to the County as “Project Herman” (the “Company”), proposes to lease and to make improvements to real property located in the City of North Charleston, South Carolina (the “Project Site”), and install therein machinery and equipment for use as an automotive upfitting facility for Mercedes Benz vehicles (the “Project”); and

WHEREAS, the Project when completed will represent an anticipated capital investment by the Company in the aggregate not less than \$1,315,000 consisting of not less than \$225,000 in real property improvements and \$1,090,000 in new machinery and equipment to be located at the Project Site; and

WHEREAS, the County has been advised that within five (5) years of the completion of the Project, the Project is anticipated to employ approximately 63 full-time employees; and

WHEREAS, the Project is located entirely within Charleston County and within the corporate limits of the City of North Charleston (the “Municipality”) and will be included in and subject to the multi-county park arrangement 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, improve, upfit, 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 MCIP Act and the SSRC Act that the County Council provide final approval for qualifying the Project under the MCIP Act and SSRC 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 necessary, County Council hereby find that:

- (a) the Project will be located entirely within Charleston County and the Municipality;
- (b) 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;
- (c) the Project gives rise to neither a pecuniary liability of the County or the Municipality nor a charge against the general credit or taxing power of the County or the Municipality;
- (d) the Infrastructure Improvements to be financed or reimbursed from the SSRCs (as defined below) consist of infrastructure serving Charleston County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of Charleston County; and
- (e) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (f) the inducement of the location of the Project is of paramount importance; and
- (g) the benefits of the Project to the public are greater than the cost to the public.

Section 3. Special Source Revenue Credits. (a) The County will provide to the Company infrastructure or special source revenue credits ("SSRCs") under the SSRC Act, on the conditions described below, as follows:

- (i) Subject to the provisions of the Infrastructure Credit Agreement between the County and the Company (the "Infrastructure Credit Agreement"), the County shall provide to the Company an annual SSRC against the PILOT Payments attributable to the Project (the "Project PILOT Payments"), equal to sixty percent (60%) of the Project PILOT Payments for three (3) years, beginning in the first property tax year in which the Project is placed in service and subject to PILOT Payments (expected to be calendar year 2017, payment for which is due on or about January 15, 2019) and continuing through the two (2) following property tax years; provided that the cumulative total of all SSRCs shall not exceed \$32,500 over the 3-year period for the SSRCs; and

- (ii) The Company shall agree to invest at least \$1,315,000, including the tenant improvements, in the Project and to create at least sixty-three (63) new full-time jobs at the Project with five (5) years of completion of the Project;

all as more fully set forth in the Infrastructure Credit Agreement; provided, however, that such SSRCs shall not, in the aggregate, exceed the aggregate cost of the Infrastructure Improvements funded from time to time by the Company.

- (b) The documents providing for the SSRCs shall include customary terms providing:
  - (i) for the recovery by the County, on a pro rata basis, of certain moneys if certain thresholds are not achieved (a “clawback” provision);
  - (ii) that the Company will pay the County’s administrative expenses associated with the approval and administration of the SSRCs;
  - (iii) that under certain terms and conditions, the County will have access to certain information of the Company; and
  - (iv) that the Company will indemnify and hold the County harmless for claims, losses, and damages with respect to the Project.

Section 4. Execution of the Infrastructure Credit Agreement. The form, terms, and provisions of the Infrastructure Credit Agreement presented to the meeting at which this Ordinance received third reading 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 Infrastructure Credit 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 and directed to execute and deliver the Infrastructure Credit Agreement in the name and on behalf of the County, and thereupon to cause the Infrastructure Credit Agreement to be delivered to the Company. The Infrastructure Credit Agreement is to be in substantially the form before the meeting of County Council at which this Ordinance received third reading and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder, upon the advice of legal counsel, by 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 Infrastructure Credit Agreement presented to said meeting.

Section 5. Allocation of MCIP PILOT Revenues. (a) By separate ordinance (the “MCIP Ordinance”) of the County Council, the County, in cooperation with the Partner County, designated 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 the MCIP Agreement. In the Infrastructure Credit Agreement, the County will agree to maintain such designation for a term of at least 20 years to fund the SSRCs, subject to earlier termination as provided therein.

(b) Pursuant to the terms of the MCIP Act and the MCIP Agreement, the County hereby provides that for the term of the Infrastructure Credit Agreement, commencing with the first tax year in which the Project PILOT Payments are generated by the Project and payable to the County, Project PILOT Payments will be distributed in accordance with the terms of the MCIP Agreement as follows:

- (i) After deducting any amounts distributed to the Partner County in accordance with the MCIP Agreement, to the County an amount equal to the total SSRCs to be provided in such year pursuant to Section 3 hereof; and

(ii) After making the allocations under paragraph (i) of this subsection (b), the balance is to be distributed among the taxing districts in Charleston County in accordance with the applicable provisions of Section 9 of the MCIP Agreement.

Section 6. 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

First Reading: \_\_\_\_\_, 2017  
Second Reading: \_\_\_\_\_, 2017  
Public Hearing: \_\_\_\_\_, 2017  
Third Reading: \_\_\_\_\_, 2017