

## AN ORDINANCE AUTHORIZING:

- (1) *THE EXECUTION AND DELIVERY OF (A) A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN THE COUNTY AND T-MOBILE, PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY;*
- (2) *THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY IN CONNECTION THE FOREGOING FACILITIES; AND*
- (3) *PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAXES PAID BY THE COMPANY UNDER THE AGREEMENT FOR ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK;*
- (4) *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**”), 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**”) (collectively, the “**Act**”) and by Article VIII, Section 13(D) of the South Carolina Constitution to:

- (i) 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) Covenant with such investors to accept a certain fee in lieu of otherwise appertaining *ad valorem* tax (“**FILOT**”) payments, including, but not limited to, 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 Revenue Credits**”) pursuant to Section 4-1-175 of Title 4, Chapter 1 of the Code (the “**Special Source Act**”), in order to reimburse such investors for expenditures in connection with infrastructure serving the County or 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; and

- (iv) Create, in conjunction with one or more other counties, a multi-county industrial or business park; and

WHEREAS, T-Mobile, a corporation organized and existing under the laws of the State of Delaware, acting for itself or one or more affiliates or other project sponsors (the “**Company**”) proposes to establish and/or expand certain facilities at one or more locations in the County (the “**Project**”), and anticipates that, should its plans proceed as expected, the Company will invest, or cause to be invested, at least Fourteen Million Nine Hundred Thousand Dollars (\$14,900,000.00) in the Project and will create, or cause to be created, at least four hundred (400) new, full-time jobs within the County (and, in addition, to relocate an additional eight hundred (800) jobs thereto); 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 July 18, 2017 (the “**Inducement Resolution**”), whereby the County agreed, under certain circumstances, to provide the benefits of a negotiated FILOT, authorized the Special Source Revenue Credits, and a multi-county industrial or business park with respect to the Project; and

WHEREAS, the County and the Company have agreed to the specific terms and conditions of such arrangements, as set forth in that certain Fee in Lieu of Tax Agreement by and between the County and the Company with respect to the Project (the “**FILOT Agreement**”), which is presented to this meeting and is to be dated as of August 22, 2017, 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 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 with respect to the Project, 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 serve 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 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, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County, under certain conditions to be set forth in the FILOT Agreement, will agree to accept a negotiated fee in lieu of *ad valorem* tax payments with respect to the Project (the “**Negotiated FILOT**”), as set forth in Section 2(b), immediately below, and otherwise in accordance with the terms of the FILOT Agreement.

(b) The Negotiated FILOT shall be determined using:

- (1) An assessment ratio of six percent (6%);
- (2) The lowest millage rate allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, as set forth in greater detail in the FILOT Agreement, which millage rate 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 the Project, as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and
- (4) Such other terms and conditions are specified in the FILOT Agreement.

(c) The Negotiated FILOT shall be calculated as provided in the foregoing Section 2(b) for all Negotiated FILOT Property placed in service 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.

(d) In addition, pursuant to the Special Source Act, the County hereby agrees that the FILOT Agreement shall require the County to provide, under certain conditions to be set forth in the FILOT Agreement, Special Source Revenue Credits against each Negotiated FILOT payment due from each credit eligible entity with respect to the Project

for a period of five (5) consecutive tax years in an amount equal to sixty-five percent (65%) of each such Negotiated FILOT payment (*provided, however, that* such Special Source Revenue Credits shall not exceed the cumulative amount of Seven Hundred Thousand Dollars (\$700,000.00)), commencing with the tax year for which the initial Negotiated FILOT payment is due from any such credit eligible entity; *provided, however, that* in accordance with the Special Source Act, the Special Source Revenue Credits shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other sponsors or sponsor affiliates.

Section 3. 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 industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution 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. Pursuant to the terms of the Multi-County Park Act and the 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**"), the County hereby provides that for the term of the FILOT Agreement, commencing with the first tax year in which the Negotiated FILOT payments are generated by the Project and payable to the County, Negotiated FILOT payments will be distributed in accordance with the terms of the Park Agreement 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 Special Source Revenue Credits to be provided in such year pursuant to Section 2(d) hereof; and
- ii. After making the allocations under paragraph (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 4. The form, provisions, terms, and conditions of the FILOT Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the FILOT Agreement were set out in this Ordinance in their entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the FILOT Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council 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 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 5. The Chairman of the Council, the County Administrator of the County, and the Clerk to the 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 and this Ordinance.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, 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, phrases, and provisions hereunder.

Section 7. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall become effective immediately upon approval following third reading by the County Council.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 12<sup>th</sup> day of September 2017.

CHARLESTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
A. Victor Rawl, Chairman, County Council of  
Charleston County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Kristen Salisbury, Clerk to County Council,  
Charleston County, South Carolina

First Reading: September 19, 2017  
Second Reading: September 26, 2017  
Public Hearing: November 14, 2017  
Third Reading: November 14, 2017