

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA AND SPARTAN MOTORS USA, INC. (FORMERLY KNOWN AS "PROJECT KIRK"), PROVIDING FOR THE PAYMENT OF A SPECIAL SOURCE REVENUE CREDIT; TO EXPRESS THE COMMITMENT OF CHARLESTON COUNTY TO MAINTAIN THE PROJECT PROPERTY IN A MULTI-COUNTY PARK; PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAX PAYMENTS PAYABLE UNDER THE AGREEMENT FOR DEVELOPMENT FOR A JOINT COUNTY INDUSTRIAL BUSINESS PARK; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

Be it ordained by the County Council of Charleston County, South Carolina:

Section 1. Findings.

The Charleston County Council finds that:

(a) Charleston County, South Carolina (the "County") acting by and through its County Council (the "Council") is authorized and empowered by Sections 4-1-175, 4-1-170, 4-1-172 and 4-29-68 of the Code of Laws of South Carolina 1976, as amended (collectively, the "Act"), to (i) provide special source revenue credits against payments in lieu of taxes derived by the County pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise and other infrastructure in order to enhance the economic development of the County, through which powers the industrial development of the State of South Carolina (the "State") and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally;

(b) The County, acting by and through its 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 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;

(c) Spartan Motors USA, Inc. (formerly known as "Project Kirk") (the "Company"), proposes to locate a facility upon certain land in the County (the "Land") and is proposing investment in machinery, equipment and certain real estate improvements located in the County, the cost of which is estimated to be approximately One Million Dollars (\$1,000,000.00) over five (5) years (the "Project") and to create (or cause to be created) three hundred (300) new, full-time jobs. The Project is located entirely within the County and is included in and subject to a multi-county park arrangement pursuant to the MCIP Act (the "Park Agreement");

(d) The Company has caused to be prepared and presented to the Council the form of the Special Source Revenue Credit Agreement by and between the County and the Company (the "Agreement"), which

provides for special source revenue credits for a period of three (3) years for the Project or each component thereof placed in service during an initial five-year investment period and any investment period extension to which the County and the Company agree, in amounts equal to sixty percent (60%) of annual fee payments due by the Company for certain infrastructure investments pursuant to the terms of the Park Agreement, but not to exceed the cumulative amount of Fifty Thousand Dollars (\$50,000.00);

(e) It appears that the Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

Section 2. Approval of Agreement.

Subject to the provisions of Section 5 of this ordinance, and, in order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State by assisting the Company to expand or locate an industrial facility in the State, the Agreement is hereby authorized, ratified, and approved.

Section 3. Multi-County Park.

The County agrees to use commercially reasonable efforts to designate the Project and the Land as part of a multi-county industrial or business park, if not already so designated, and agrees to use commercially reasonable efforts to maintain the Project and the Land within the boundaries of a multi-county industrial or business park pursuant to the provisions of the MCIP Act and Article VIII, Section 13(D) of the State Constitution on terms, and for a duration, which facilitate the special source revenue credits set forth in Section 1 hereof.

Section 4. Statutory Findings.

Based on information provided by the Company, Council makes the following additional findings:

(a) The County's actions herein will serve the purposes and in all respects conform to the provisions and requirements of the Act.

(b) The Project and the special source revenue credits set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made.

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

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

(e) The purposes to be accomplished by the Project, *i.e.*, economic development and addition to the tax base of the County, are proper governmental and public purposes.

(f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.

(g) The benefits of the Project to the public will be greater than the costs to the public.

(h) The infrastructure improvements to be financed or reimbursed from the special source revenue credits authorized hereby 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.

Section 5. Approval and Execution of Agreement.

The form, terms, and provisions of the Agreement, attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Agreement was set out in this ordinance in its entirety. The Chair of County Council and Clerk to Council are authorized, empowered, and directed to execute and acknowledge the Agreement in the name of and on behalf of the County, and thereupon to cause the Agreement to be delivered to the Company. The Agreement is to be in substantially the form as attached to this ordinance and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the Agreement attached to this ordinance.

The Agreement 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 special source revenue credits; (iii) that under certain terms and conditions, the County will have access to certain information of the Company; (iv) that the amount of the special source credits shall be reduced or subject to clawback by the amount of any abatement received by the Company pursuant to Section 3(g) of the State Constitution; and (v) that the Company will indemnify and hold the County harmless for claims, losses, and damages with respect to the Project.

Section 6. Authority to Act.

The Chair of County Council, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed, for and on behalf of the County, to do any and all things necessary to effect the execution and delivery of the Agreement and the performance of all obligations of the County under and pursuant to the Agreement.

Section 7. Allocation of MCP FILOT Revenues.

(a) By separate ordinance (the "MCIP Ordinance") of the County Council, the County, in cooperation with Colleton 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 Park Agreement. In the Agreement, the County will agree to maintain such designation for a term of at least 20 years to fund the special source revenue credits, subject to earlier termination as provided therein.

(b) Pursuant to the terms of the MCIP Act and the Park Agreement, the County hereby provides that for the term of the Agreement, commencing with the first tax year in which the fee payments are generated by the Project and payable to the County, fee 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 credits to be provided in such year pursuant to the Agreement; 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 Park Agreement.

Section 8. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 9. Controlling Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Charleston County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 10. Effective Date.

This ordinance is effective upon its approval following third reading.

SIGNATURES FOLLOW ON NEXT PAGE.

AND IT IS SO ORDAINED, this _____ day of _____, 2019.

CHARLESTON COUNTY, SOUTH CAROLINA

J. Elliott Summey, Chair of County Council

ATTEST:

Kristen Salisbury, Clerk to County Council

First Reading:	July 30, 2019
Second Reading:	August 20, 2019
Public Hearing:	September 24, 2019
Third Reading:	October 8, 2019

Exhibit A to Ordinance ____

**Special Source Revenue Credit Agreement
Charleston County and Project Kirk**

[See attached.]

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