

**AN ORDINANCE**

**AUTHORISING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO A FEE-IN-LIEU OF TAX AGREEMENT BY AND AMONG CHARLESTON COUNTY AND MILLARD REFRIGERATED SERVICES, LLC, AND DESIGNATED SPONSOR AFFILIATES, WHEREBY CHARLESTON COUNTY WILL AMEND THE FEE-IN-LIEU OF TAXES AGREEMENT WITH MILLARD REFRIGERATED SERVICES, LLC, WITH RESPECT TO AN ADDITIONAL INVESTMENT; PROVIDING FOR PAYMENT BY MILLARD REFRIGERATED SERVICES, LLC, AND DESIGNATED SPONSOR AFFILIATES, OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO THE ADDITIONAL INVESTMENT; 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 payment in lieu of taxes ("Negotiated FILOT Payments") for a project qualifying under the FILOT Act; and

WHEREAS, the County entered into a Fee-in-lieu of Tax Agreement, dated as of December 31, 2014 (the "Original FILOT Agreement"), with Millard Refrigerated Services, LLC ("Company"), to designate certain real and tangible personal property as "economic development property" and to provide an arrangement for Negotiated FILOT Payments with respect to the Company's original investment of approximately \$38,000,000 in its warehousing, distribution, and food processing facility (the "Original Facility") located in the Palmetto Commerce Park in the City of North Charleston, which Original Facility currently provides employment for approximately 77 full-time employees; and

WHEREAS, the Company and designated Sponsor Affiliates (as defined in the FILOT Act), intend to make an additional capital investment in Charleston County in the amount of approximately \$34,000,000, which expansion consists of approximately \$29,000,000 of real property expansion of the Original Facility (the Original Facility, as so expanded, is referred to herein as the "Facility") and \$5,000,000 of additional business tangible personal property (collectively, the "Expansion Project"); and

WHEREAS, the County has been advised that upon the completion of the Expansion Project, the Project is anticipated to employ an additional approximately 36 full-time employees at the Facility; and

WHEREAS, the Expansion Project is located entirely within Charleston County and will be included in and subject to the 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 expand the Facility (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 that the County Council provide final approval for qualifying the Expansion Project under the FILOT 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 Expansion Project on the following criteria based upon any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary:

- (a) the purposes to be accomplished by the Expansion 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 Expansion Project, including the criteria described in Section 1 above, and any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary, County Council hereby find that:

- (a) the Expansion Project constitutes a "project" as that term is defined in the FILOT Act;
- (b) the Expansion Project will serve the purposes of the FILOT Act;
- (c) the Investment by the Company in the Expansion Project will be approximately \$34,000,000, all to be invested within the "investment period" (as defined in the FILOT Act) as extended by an additional five (5) years, for an investment period of ten (10) years in total; and
- (d) the Company and designated Sponsor Affiliates will employ 36 new full-time employees at the Project within the investment period, as extended to ten (10) years;
- (e) the Expansion Project will be located entirely within Charleston County and is anticipated to be located in the Park created pursuant to the MCIP Act;
- (f) the Expansion Project is anticipated to benefit the general welfare of Charleston County by providing services, employment, or other public benefits not otherwise adequately provided locally;
- (g) the Expansion Project gives rise to neither a pecuniary liability of the County nor a charge against its general credit or taxing power;
- (h) the purposes to be accomplished by the Expansion Project are proper governmental and public purposes;
- (i) the inducement of the location of the Expansion Project is of paramount importance; and
- (j) the benefits of the Expansion Project to the public are greater than the cost to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Expansion Project is designated as "economic development property" under the FILOT Act and there is hereby authorized an Amendment to the Original FILOT Agreement (the "Amendment") which will provide Negotiated FILOT Payments to be made with respect to the Expansion Project based upon a 6% assessment ratio with the millage rate of 274.3 mils, such rate to be fixed for the entire 20-year term of the fee-in-lieu of taxes, all as more fully set forth in the Amendment to the Fee-in-lieu of Tax Agreement among the County and the Company. The Original FILOT Agreement as amended by the Amendment shall be a "Fee Agreement" within the meaning of Section 12-44-30(10) of the FILOT Act.

Section 4. Extension of Investment Period. The Company has represented to the County that it does not anticipate completing the Expansion Project within the Original Investment Period provided in the Original FILOT Agreement. Accordingly, the Company has applied to the County for an extension of time to complete the Project pursuant to Section 12-44-30(13) of the FILOT Act. The

County hereby extends the Original Investment Period from five (5) years to ten (10) years; provided however that there is no extension of the period for meeting the minimum statutory investment requirement as specified in Section 12-44-30(13) of the FILOT Act.

Section 5. Execution of the Amendment. The form, terms, and provisions of the Amendment 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 Amendment 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 Amendment in the name and on behalf of the County, and thereupon to cause the Amendment to be delivered to the Company. The Amendment 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 Amendment presented to said meeting.

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:

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Clerk to County Council  
Charleston County, South Carolina

First Reading: November 10, 2020  
Second Reading: November 19, 2020  
Public Hearing: December 8, 2020  
Third Reading: December 8, 2020