

AN ORDINANCE

AUTHORISING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN CHARLESTON COUNTY AND NOCS SOUTH ATLANTIC COLD STORAGE & WAREHOUSE, INC., WHEREBY CHARLESTON COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAXES ARRANGEMENT WITH NOCS SOUTH ATLANTIC COLD STORAGE & WAREHOUSE, INC. AND DESIGNATED SPONSOR AFFILIATES; PROVIDING FOR PAYMENT BY NOCS SOUTH ATLANTIC COLD STORAGE & WAREHOUSE, INC., AND DESIGNATED SPONSOR AFFILIATES, OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; PROVIDING FOR CERTAIN SPECIAL SOURCE REVENUE OR INFRASTRUCTURE CREDITS; PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAXES PAID BY NOCS SOUTH ATLANTIC COLD STORAGE & WAREHOUSE, INC., AND DESIGNATED SPONSOR AFFILIATES, UNDER THE AGREEMENT FOR ESTABLISHMENT OF 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 payment 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 authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code (the "MCIP Act"), to provide for payments in lieu of taxes ("PILOT Payments") with respect to property situated or having a situs in a multi-county business or industrial park created under the MCIP Act, and pursuant to Section 4-1-175 and 4-29-68 of the Code (the "SSRC Act"), to permit investors to claim infrastructure or special source credits against their PILOT Payments (including any Negotiated FILOT 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"), to facilitate the grant of infrastructure or special source revenue credits, and to provide certain enhanced tax credits to such investors; and

WHEREAS, NOCS South Atlantic Cold Storage & Warehouse, Inc, a South Carolina corporation and designated Sponsor Affiliates (collectively, the "Company"), intend to acquire, furnish, and equip land and an existing approximately 158,000 square foot building for use as a cold storage warehouse facility (the "Project"); the Project is to be located at 1091 Remount Road in the City of North Charleston (the "Project Site"); and

WHEREAS, the Project when completed will represent an anticipated "investment" (as defined in the FILOT Act) (the "Investment") over the next six (6) years by the Company in the aggregate not less than \$16,500,000 to be located at the Project Site; and

WHEREAS, the County has been advised that the Company currently employs approximately 56 full-time employees, which employment will be maintained by the Company upon completion of its acquisition of the Project and during the investment period; and

WHEREAS, the County, with the consent of the City of North Charleston (the "Municipality"), is authorized to include the Project Site within a multi-county industrial and business park pursuant to the MCIP Act and to provide special source revenue or infrastructure credits pursuant to the SSRC Act; and

WHEREAS, the Project is located entirely within Charleston County and within the incorporated limits of the Municipality and 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, furnish, 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, the SSRC Act, and the MCIP Act that the County Council provide final approval for qualifying the Project under the FILOT Act, the SSRC Act, and the MCIP 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 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 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 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 Project constitutes a "project" as that term is defined in the FILOT Act;
- (b) the Project will serve the purposes of the FILOT Act, the SSRC Act, and the MCIP Act;
- (c) the Investment by the Company in the Project will be approximately \$16,500,000, all to be invested within the "investment period" (as defined in the FILOT Act) as extended to the end of calendar year 2026; and the Company will maintain 56 full-time employees at the Project through such extended investment period;
- (d) the Project will be located within Charleston County and the Municipality and is anticipated to be located in the Park created pursuant to the MCIP Act;
- (e) the Infrastructure Improvements to be financed or reimbursed from the SSRCs 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
- (f) the Project is anticipated to benefit the general welfare of Charleston County and the Municipality by providing services, employment, or other public benefits not otherwise adequately provided locally;
- (g) the Project gives rise to neither a pecuniary liability of the County or the Municipality nor a charge against its general credit or taxing power;
- (h) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (i) the inducement of the location of the Project is of paramount importance; and
- (j) the benefits of the 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 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 with the millage rate which is the lower of (a) the

cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the year preceding the calendar year in which the FILOT Agreement (as defined below) is executed or (b) the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the calendar year in which the FILOT Agreement is executed, 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 Fee-in-lieu of Tax Agreement between the County and the Company (the "FILOT Agreement"). The FILOT Agreement 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 Project within five (5) years of the last day of the property tax year during which economic development property is first placed in service (the "Investment Period"). 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 Investment Period to December 31, 2026; 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. Multi-County Park Incentive.

(A) By separate ordinance (the "MCIP Ordinance") of the County Council, the County, in cooperation with Colleton County (the "Partner County") and with consent of the Municipality, will designate the Project Site as a multi-county business park pursuant to Article VIII, Section 13 of the South Carolina Constitution, the MCIP Act, and the terms of the Park Agreement (as defined in paragraph (B) below).

(B) 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 5 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 6. Special Source Revenue Credits.

(A) After the identification of qualifying public infrastructure located solely within Charleston County and the costs thereof to the satisfaction of the County, the County will provide to the Company an annual infrastructure or special source revenue incentive (the "Special Source Revenue Credits") against the first ten (10) annual PILOT Payments (including Negotiated FILOT payments) made with respect to the Project under the FILOT Agreement in an amount that annually reduces the PILOT Payment (including the Negotiated FILOT payment) to \$100,000.

(B) The documents providing for the Special Source Revenue Credits shall include terms providing: (i) for termination of the Special Source Credits under certain circumstances; (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; and (iv) that the Company will indemnify and hold the County harmless for claims, losses, and damages with respect to the Project.

Section 7. Execution of the FILOT Agreement. The form, terms, and provisions of the FILOT 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 FILOT 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 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 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 FILOT Agreement presented to said meeting.

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