

**ORDINANCE**

AUTHORISING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND AMONG CHARLESTON COUNTY AND T-MOBILE PCS HOLDINGS LLC, WHEREBY CHARLESTON COUNTY WILL ENTER INTO THE FEE-IN-LIEU OF TAXES AGREEMENT WITH T-MOBILE PCS HOLDINGS LLC WITH RESPECT TO AN INVESTMENT; PROVIDING FOR PAYMENT BY T-MOBILE PCS HOLDINGS LLC OF CERTAIN FEES- IN-LIEU OF *AD VALOREM* TAXES WITH RESPECT TO THE INVESTMENT; PROVIDING FOR INFRASTRUCTURE OR SPECIAL SOURCE REVENUE CREDITS; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES UNDER THE AGREEMENT FOR BUSINESS/INDUSTRIAL 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 (the “FILOT Act”) of the Code of Laws of South Carolina 1976, as amended (the “Code”), 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 revenue 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, 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 Joint County Industrial Park effective as of September 1, 1995, as amended (the “MCIP 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, T-Mobile PCS Holdings LLC, a limited liability company under the laws of the State of Delaware (the “Company”) intends to make an additional capital investment in Charleston County in the amount of approximately \$9,200,000 which expansion consists of approximately \$6,050,000 of real property expansion of the Company’s original facility (the

“Original Facility,” and as so expanded, the “Facility”) and \$3,150,000 of additional business tangible personal property (the “FILOT Project,” and with the real property expansion, the “Expansion Project”); and

WHEREAS, the County entered into a Fee-in-lieu of Tax Agreement, dated as of November 14, 2017 (the “2017 FILOT Agreement”), with the Company, to designate certain real and tangible personal property as “economic development property” and to provide an arrangement for negotiated fee-in-lieu of tax payments and special source revenue credits (the “2017 Negotiated FILOT Incentives”) with respect to the Company’s original investment of approximately \$14,900,000 in the Original Facility, which Original Facility currently provides employment for approximately 800 full-time employees; and

WHEREAS, the County has been advised that within three (3) years of the completion of the Expansion Project, the Project is anticipated to employ an additional approximately 540 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 and the SSRC Act that the County Council provide final approval for qualifying the Expansion Project under the FILOT Act and the 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 Expansion Project on the following criteria based upon any advice and assistance of the South Carolina Department of Revenue (“DOR”) 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 DOR and the Revenue and Fiscal Affairs Office, as necessary, County Council hereby find that:

- (a) the FILOT Project constitutes a “project” as that term is defined in the FILOT Act;

- (b) the FILOT Project will serve the purposes of the FILOT Act and the Expansion Project will serve the purposes of the SSRC Act;
- (c) the Investment by the Company in the FILOT Project will be approximately \$3,150,000, all to be invested within the “investment period” of the Original FILOT Agreement; and
- (d) the Company will employ an additional 540 new full-time employees at the Project within three (3) years of the completion of the Expansion Project;
- (e) the Expansion Project will be located entirely within Charleston County and is anticipated to be located in the multi-county business and industrial park created pursuant to the MCIP Act;
- (f) the FILOT 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) neither the FILOT Project nor any of the Expansion Project gives rise to a pecuniary liability of the County or a charge against its general credit or taxing power;
- (h) the purposes to be accomplished by the FILOT Project and the Expansion Project are proper governmental and public purposes;
- (i) the inducement of the location of the FILOT Project is of paramount importance; and
- (j) the benefits of the FILOT Project and 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 FILOT Project is designated as “economic development property” under the FILOT Act and there is hereby authorized a Fee-in-lieu of Tax Agreement (the “FILOT Agreement”) which will provide Negotiated FILOT Payments to be made with respect to the FILOT Project based upon (a) a 6% assessment ratio and (b) the millage rate of 297.2 mils, such rate to be fixed for the term of the FILOT Agreement, all as more fully set forth in 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. 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 FILOT Agreement, the County shall provide to the Company an annual SSRC against the PILOT Payments attributable to the Expansion Project, including Negotiated FILOT Payments (the “Expansion Project PILOT Payments”), equal to sixty-five percent (65%) of the Expansion Project PILOT Payments paid for such year, beginning in the first property tax year in which the Company files for the SSRCs provided by this paragraph (i) in accordance with the terms of the FILOT Agreement; provided that the cumulative total of all SSRCs provided by this paragraph (i) shall not exceed \$700,000 over the five-year period for the SSRCs.

(ii) In the event that DOR should terminate or otherwise disallow the Negotiated FILOT Incentives provided to the Company under the terms of the 2017 FILOT Agreement, the County will agree in the FILOT Agreement to extend an additional SSRC (the “2017 Project SSRCs”) to the Company against PILOT Payments made with respect to the 2017 Project (the

“2017 Project PILOT Payments”) in an amount equivalent to the remaining 2017 Negotiated FILOT Incentives originally authorized under the 2017 FILOT Agreement for a term equal to the intended term of the 2017 Negotiated FILOT Incentives, all as more fully provided in the FILOT Agreement.

(b) The Company shall agree to invest at least \$9,200,000 in the Expansion Project and to create at least 540 new full-time jobs at the Project within three (3) years; all as more fully set forth in the FILOT 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.

(c) 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 5. 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 6. Allocation of PILOT Payments and FILOT Payments.

The County will provide for 20 years that the annual allocation of the Expansion Project PILOT Payments and the 2017 Project PILOT Payments will be distributed (after distribution of a portion of the Expansion Project PILOT Payments and the 2017 Project PILOT Payments to the Partner County in accordance with the MCIP Agreement) as follows:

- (i) To the County an amount equal to the annual SSRCs provided in Section 4 of this Ordinance and in the FILOT Agreement; and
- (ii) Except as may otherwise be provided by ordinance of the County Council from time to time, the balance of the PILOT Payments, including Negotiated FILOT Payments, to the County and the other overlapping taxing entities, in the same relative percentages as the relative millage rates imposed by such taxing entities for the applicable tax year.

Section 7. 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: February 16, 2021  
Second Reading: March 9, 2021  
Public Hearing: March 23, 2021  
Third Reading: April 27, 2021