

ORDINANCE

AMENDING AN ORDINANCE ENTITLED “ORDINANCE AUTHORIZING 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” FOR THE PURPOSE OF CORRECTING CERTAIN SCRIVENER ERRORS.

WHEREAS, Charleston County, South Carolina (the “County”), acting by and through its County Council (the “County Council”), pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “FILOT Act”), enacted on December 8, 2020, an ordinance (the “Original Ordinance”) entitled “Ordinance Authorizing 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,” in order to provide certain economic development incentives for a project known as “Project Temp;” and

WHEREAS, Project Temp was mistakenly identified as NOCS South Atlantic Cold Storage & Warehouse, Inc, a South Carolina corporation and designated Sponsor Affiliates, which intended 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 actual and correct owner of the Project is NOCS South Atlantic Cold Storage and Warehouse, LLC, a Delaware limited liability company the (“Company”); and

WHEREAS, the Fee-in-Lieu of Tax Agreement, dated December 1, 2020 authorized and executed pursuant to the Original Ordinance (the “Original FILOT Agreement”) was to be

effective December 31, 2020, but, through a scrivener's error, both the Original Ordinance and the Original FILOT Agreement incorrectly listed the effective date as December 1, 2020; and

WHEREAS, the Company has requested the County to correct these errors in the Original Ordinance and Original FILOT Agreement by amending the Original Ordinance and Original FILOT Agreement; 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. Amendment of Original Ordinance. The Original Ordinance is hereby amended by replacing each reference to "NOCS South Atlantic Cold Storage & Warehouse, Inc" with "NOCS South Atlantic Cold Storage and Warehouse, LLC, a Delaware limited liability company" and by replacing each reference to a "December 1, 2020" effective date of the Original FILOT Agreement to "December 31, 2020."

Section 2. Confirmation of the Evaluation of the Project. The evaluation of the Project in the Original Ordinance is hereby confirmed in its entirety.

Section 3. Confirmation of Findings by County Council. Findings made by the County Council in the Original Ordinance are hereby confirmed in their entirety

Section 4. Amendment of the Original FILOT Agreement. The Original FILOT Agreement is hereby authorized and directed to be amended in accordance with the terms of an Amended and Restated Fee-in-Lieu of Tax Agreement between the County and the Company (the "Amended and Restated FILOT Agreement"). The Amended FILOT Agreement shall be a "Fee Agreement" within the meaning of Section 12-44-30(10) of the FILOT Act. The Amended and Restated FILOT Agreement shall be effective as of December 31, 2020.

Section 5. Confirmation of Extension of Investment Period. The County's extension of Investment Period to December 31, 2026 as provided in the Original Ordinance is hereby confirmed in its entirety.

Section 6. Confirmation of Multi-County Park Incentive.

(A) The County Council hereby confirms that 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, the County 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 7 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 7. Confirmation of Special Source Revenue Credits.

The County Council hereby confirms that 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.

Section 8. Execution of the Amended and Restated FILOT Agreement. The form, terms, and provisions of the Amended and Restated 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 Amended and Restated 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 Amended and Restated FILOT Agreement in the name and on behalf of the County, and thereupon to cause the Amended and Restated FILOT Agreement to be delivered to the Company. The Amended and Restated 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 Amended and Restated FILOT Agreement presented to said meeting.

Section 9. 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 authorised 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: March 25, 2021
Second Reading: April 13, 2021
Public Hearing: April 27 2021
Third Hearing: April 27 2021