

AN ORDINANCE

AUTHORISING THE AMENDMENT OF A FEE AGREEMENT AMONG CHARLESTON COUNTY, SOUTH CAROLINA, CUMMINS INC., PATILLO LUMBER COMPANY, AND PALMETTO PROPERTY, LLC (COLLECTIVELY, THE “PARTIES”), AND THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED FEE AGREEMENT BY AND AMONG THE PARTIES, TO INCLUDE AN ADDITIONAL SITE UNDER THE FILOT AGREEMENT AND TO PROVIDE FOR CERTAIN SPECIAL SOURCE REVENUE OR INFRASTRUCTURE CREDITS; 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 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, Cummins Inc., an Indiana corporation (the “Company”), Patillo Lumber Company, and Palmetto Property, LLC (collectively, the “Parties”) have previously entered into a Fee Agreement, dated as of December 1, 2013 (the “Original Fee Agreement”), with the County in connection with an investment of approximately \$19,500,00 for the purpose of acquiring, constructing, and equipping a distribution facility to serve its then current manufacturing facility (the “Existing Facility”); and

WHEREAS, the Company intends to expand its Existing Facility (the “Expansion Project;” the Existing Facility and the Expansion Project are collectively referred to herein as the “Project”) to be located at 7770 Palmetto Commerce Parkway, North Charleston (the “Expansion Project Site”); and

WHEREAS, the Project when completed will represent an anticipated “investment” (as defined in the FILOT Act) (the “Investment”) by the Company in the aggregate not less than \$5,750,000 in tangible business personal property (new machinery and equipment) to be located at the Project Site; and

WHEREAS, the County has been advised that upon the completion of the Expansion Project, the Company is anticipated to employ an additional approximately 252 full-time employees; 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 expand 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 Expansion 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 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, the SSRC Act, and the MCIP Act;
- (c) the Investment by the Company in the Expansion Project will be approximately \$5,750,000, all to be invested within the "investment period" (as defined in the FILOT Act); and the Company will employ 252 new full-time employees as a result of the Expansion Project;
- (d) the Expansion Project will be located entirely 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 Expansion 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 Expansion 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 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. Amendment of 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 authorised a fee-in-lieu of taxes arrangement with the Company which

will provide Negotiated FILOT Payments to be made with respect to the Expansion Project as currently provided in the Original Fee Agreement and more fully set forth in the Original Fee Agreement. The Original Fee Agreement shall be amended and restated to add the Expansion Project Site to the Original Fee Agreement (the Original Fee Agreement as so amended and restated is referred to herein as the "Amended and Restated Fee Agreement"). The Amended and Restated FILOT Agreement shall be a "Fee Agreement" within the meaning of Section 12-44-30(10) of the FILOT Act.

Section 4. 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 Agreement for the Establishment of Multi-County Industrial/Business Park for Properties Located in a Redevelopment Project Area between the County and Colleton County, South Carolina, effective as of December 6, 2016.

(B) Pursuant to the terms of the MCIP Act and the MCIP 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 Expansion Project and payable to the County, Negotiated FILOT payments will be distributed in accordance with the terms of the MCIP Agreement as follows:

(i) After deducting any amounts distributed to the partner county in accordance with the MCIP Agreement, to the County an amount equal to the total SSRCs 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 7(B) of the MCIP Agreement.

Section 5. 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 infrastructure or special source revenue incentive (the "SSRCs") in the amount of 65% of the annual PILOT Payments and Negotiated FILOT payments due with respect to the Expansion Project in property tax years one (1) through eight (8) of the term of the Amended and Restated FILOT Agreement, but not to exceed a cumulative total SSRCs for all years of \$500,000.

(B) 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 SSRC; (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 6. 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 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:

Clerk to County Council
Charleston County, South Carolina

First Reading: June 22, 2021
Second Reading: July 27, 2021
Public Hearing: June 7, 2022
Third Reading: June 7, 2022