

February 19, 2015
Charleston, SC

A special meeting of County Council of Charleston County was held on the 19th day of February, 2015, in the Beverly T. Craven Council Chambers, Second Floor of the Lonnie Hamilton, III Public Services Building, located at 4045 Bridge View Drive, Charleston, South Carolina.

Present at the meeting were the following members of Council: J. Elliott Summey, Chairman, who presided; Colleen T. Condon; Henry E. Darby; Anna Johnson; Teddie E. Pryor, Sr.; Joseph K. Qualey; A. Victor Rawl; Herbert R. Sass, III; and Dickie Schweers.

Also present were County Administrator Kurt Taylor and County Attorney Joseph Dawson.

The Deputy Clerk reported that in compliance with the Freedom of Information Act, notice of meetings and agendas were furnished to all news media and persons requesting notification.

A report was furnished by the Finance Committee under date of February 19, 2015, that it considered the information furnished by County Administrator Kurt Taylor, Economic Development Director Steve Dykes, and County Attorney Joe Dawson, regarding financial incentives extended to Project Unicorn.

**Project
Unicorn
Financial
Incentives**

A) Request to
Approve
1. Inducement
Resolution
2. Financial
Incentives
Ordinance
B) Ordinance
1st Reading

Committee recommended that Council authorize and approve:

1. The Resolution inducing Charleston County Council to offer economic development incentives to the business enterprise identified as Project Unicorn for the purpose of attracting it to invest in industry and locate such in the County;
2. The Ordinance authorizing:
 - a. The execution of a fee-in-lieu of taxation and incentive agreement between the County and the business enterprise identified as Project Unicorn;
 - b. The grant of a special source revenue credit or in the alternative the issuance of special source revenue bonds to fund infrastructure improvements associated with the Project;
 - c. The benefit of a multi-county park made available to the Project;
 - d. The purchase of real property and subsequent sale of it to the company for use in connection with the Project; and
3. The County staff to initiate and engage in all financial, administrative and legal matters necessary for the issuance of the special source revenue bonds, and to extend the option to purchase the real property and deliver the earnest money amount identified in the Option Agreement for the Purchase of Real Property dated December 11, 2014.

Mr. Rawl moved approval of the Committee recommendation, seconded by Mr. Sass, and carried.

The Inducement Resolution is as follows:

**CHARLESTON COUNTY
RESOLUTION**

A RESOLUTION AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A BUSINESS ENTERPRISE TO BE IDENTIFIED INITIALLY AS "PROJECT UNICORN," ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE ACQUISITION, IMPROVEMENT AND EQUIPPING OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) THE GRANT OF SPECIAL SOURCE REVENUE CREDITS OR, IN THE ALTERNATIVE, THE ISSUANCE OF SPECIAL SOURCE REVENUE BONDS, IN EITHER CASE TO FUND CERTAIN INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE PROJECT; (4) THE PURCHASE OF CERTAIN PROPERTY AND THE SUBSEQUENT SALE OF SAID PROPERTY TO THE COMPANY FOR USE IN CONNECTION WITH THE PROJECT; AND (5) OTHER MATTERS RELATING THERETO.

WHEREAS, Charleston County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act", or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to accept certain fee in lieu of ad valorem tax ("FILOT") payments with respect to a project, including, without limitation, negotiated FILOT payments; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal

property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Infrastructure Improvements”) or, in the alternative, to issue special source revenue bonds (“Special Source Revenue Bonds”), payable solely from special source revenues from FILOT payments derived from a project or projects, to pay for such Infrastructure Improvements; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park (“Multi-County Park”) in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits or the issuance of Special Source Revenue Bonds; and

WHEREAS, a business enterprise identified initially as “Project Unicorn” (the “Company”) proposes to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities located in the County (the “Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of at least \$400,000,000, of which approximately \$15,000,000 is anticipated to consist of non-taxable pollution control equipment, and create or cause to be created at least 1,300 new jobs at the Project; and

WHEREAS, the County has the option to purchase a certain tract of land in the County deemed by the Company to be suitable or useful for the Project (the “Project Property”); and

WHEREAS, on the basis of the information supplied to it by the Company, the County has determined, *inter alia*, that (i) the Project will subserve the purposes of the Act; (ii) due to the anticipated investment and job creation resulting from the Project, the Project will directly and substantially benefit the County, the taxing entities of the County and the citizens and residents of the County by contributing to the tax base and the economic welfare of the County, and its citizens; and (iii) given these anticipated benefits, the County wishes to induce the Company to undertake the Project by offering the Company: (a) negotiated FILOT benefits with respect to the Project; Special Source Credit benefits or, in the alternative, proceeds from the issuance of Special Source Revenue Bonds, to pay for Infrastructure Improvements associated with the Project; and Multi-County Park benefits to support the Project, and (b) the Project Property, which the County will acquire for re-sale to the Company, all as set forth herein and as shall be further documented in a Fee in Lieu of Tax and Incentive Agreement to be entered into by and between the County and the Company (the “Incentive Agreement”), which Incentive Agreement shall contain provisions approved by counsel to the County and acceptable to the Company relating to indemnification of the County against legal fees, costs and other liabilities associated with the Project and the Incentive Agreement, remedies if the Company fails to proceed with the Project or falls short of the minimum anticipated investment, job creation and wage levels and such other provisions as counsel to the County recommends and the Company approves.

NOW, THEREFORE, BE IT RESOLVED by the Council, as follows:

1.1 As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, and based on information provided the County by the Company, the County makes the following findings and determinations:

1.1.1 The Project will constitute a “project” within the meaning of the Negotiated FILOT Act;

1.1.2 The Infrastructure Improvements to be financed with the Special Source Credits or, in the alternative, by the Special Source Revenue Bonds, will constitute improved and unimproved real estate used in the operation of a manufacturing enterprise and will subserve the purposes of the Special Source Act;

1.1.3 The Project, and the County's actions herein, will subserve the purposes of the Act;

1.1.4 The Project will be located entirely within the County;

1.1.5 The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise provided locally;

1.1.6 Neither the Project, the Special Source Credits or, if applicable, the Special Source Revenue Bonds, nor any documents or agreements to be entered into by the County in connection therewith will constitute or give rise to a pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

1.1.7 The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

1.2

1.2.1 The County hereby agrees, under certain conditions, to enter into the Incentive Agreement with the Company, whereby the Company will agree to invest, or cause to be invested, not less than \$400,000,000 with respect to the Project and to create, or caused to be created, at the Project at least 1,300 new jobs, all within the approximately eight-year "Investment Period" for enhanced investment, as described in the Negotiated FILOT Act, and the County, under certain conditions to be set forth in the Incentive Agreement, will agree to accept negotiated fee in lieu of *ad valorem* tax ("Negotiated FILOT") payments with respect to the Project. For each annual increment of investment in the Project, the annual Negotiated FILOT payments shall initially be payable for a payment period of thirty (30) years.

1.2.2 The Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%, (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act which the parties understand to be 276.1 mills and, which millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; (3) the fair market value of the Project, determined in accordance with the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the Incentive Agreement, including, without limitation, that the Company, in its sole discretion, may dispose of property and replace property subject to Negotiated FILOT payments to the maximum extent permitted by the Negotiated FILOT Act.

1.3 As an additional incentive to induce the Company to undertake the Project and in order to provide funds to reimburse the Company for the costs of Infrastructure Improvements related to the Project, the County hereby agrees to permit the Company to claim Special Source Credits and/or to issue Special Source Revenue Bonds as follows:

1.3.1 The County shall permit the Company to claim Special Source Credits against each FILOT payment due from the Company with respect to the Project for a period of twenty (20) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due under the Incentive Agreement (anticipated to be the FILOT payment due in January 2018), in an amount equal to fifty percent (50%) of each such FILOT payment (the "Pledged Revenues").

1.3.2 As an alternative to the Special Source Credits described in (a) above and at the Company's election, the County will utilize the Pledged Revenues to pay debt service on Special Source Revenue Bonds to be issued by the County in one or more series, in such amounts, payable at such times and based upon such terms as may be appropriate under then existing market conditions. Based upon the Company's projected investment, the County anticipates that it will make available to the Company not less than \$13,100,000 from the proceeds of the Special Source Revenue Bonds to pay for the Infrastructure Improvements associated with the Project. Any such Special Source Revenue Bonds shall be limited obligations of the County, payable solely from the Pledged Revenues, and shall not be general obligations of the County or a charge against the general credit or taxing power of the County.

1.3.3 The provisions, terms and conditions of any Special Source Revenue Bonds shall be approved by subsequent ordinance of Council. Upon the request of the Company, the County shall file with the State Budget and Control Board, or any successor agency to the State Budget and Control Board, such petition or petitions for approval of the issuance of Special Source Revenue Bonds, as may be required under the Special Source Act.

1.3.4 To the extent that any portion of the Special Source Revenue Bonds shall bear interest which is excluded from gross income for federal tax purposes ("Tax Exempt Bonds"), this Resolution shall constitute a declaration of official intent under United States Department of the Treasury Regulation Section 1.150-2 that all or part of the proceeds of such Tax Exempt Bonds will be used to reimburse the County and/or the Company for costs incurred prior to the issuance of such Tax Exempt Bonds to pay for Infrastructure Improvements related to the Project. In connection with such declaration, the County hereby states that any such Tax Exempt Bonds will be issued in an amount not to exceed \$20,000,000 and the proceeds thereof shall be used to pay the cost of Infrastructure Improvements associated with the Project and any costs of issuance, capitalized interest and reserve funds related to the issuance of such tax exempt bonds.

1.3.5 If taxable investment in the Project exceeds the anticipated \$375 million in taxable property upon which any Special Source Revenue Bonds issued pursuant to (b)-(d) above are dependent, then, in addition to the Special

Source Revenue Bond proceeds to be applied to the costs of Infrastructure Improvements, the Company shall be entitled to claim Special Source Credits, as described in (a) above, with respect to such excess investment.

1.3.6 In accordance with the Special Source Act, the aggregate amount of Special Source Credits and principal amount of any Special Source Revenue Bonds authorized herein shall not exceed cost of Infrastructure Improvements funded from time to time in connection with the Project.

1.4 The County will use its best efforts to insure that the Project will be included, if not already included, and will remain, within the boundaries of a Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide the Company and the Project with any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits and/or Special Source Revenue Bonds authorized herein.

1.5 The County hereby agrees to proceed to purchase the Project Property and resell the Project Property to the Company or, in the alternative and at the option of the Company, to assign to the Company the County's option to purchase the Project Property.

1.6 The provisions, terms, and conditions of the Incentive Agreement shall be subject to approval by subsequent Ordinance of the Council. The Incentive Agreement is to be in substantially the form customarily used the County for similar transactions with such changes therein as shall be approved by said Ordinance.

1.7 The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to this Resolution.

1.8 The execution and delivery of the Incentive Agreement is subject to the enactment by the Council of an ordinance authorizing the same and, in conjunction therewith, compliance with the provisions of the Home Rule Act regarding the procedural requirements for enacting ordinances.

1.9 All orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Resolution shall take effect and be in full force upon adoption by the Council.

Done in meeting duly assembled February 19, 2015

CHARLESTON COUNTY, SOUTH CAROLINA

By:

J. Elliott Summey, Chairman, County Council,
Charleston County, South Carolina

An ordinance approving financial incentives for Project Unicorn was given first reading by title only.

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A BUSINESS ENTERPRISE TO BE IDENTIFIED INITIALLY AS "PROJECT UNICORN," ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE ACQUISITION, IMPROVEMENT AND EQUIPPING OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY "THE PROJECT"); (2) THE GRANT OF SPECIAL SOURCE REVENUE CREDITS OR, IN THE ALTERNATIVE, THE ISSUANCE OF SPECIAL SOURCE REVENUE BONDS, IN EITHER CASE TO FUND CERTAIN INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE PROJECT; (4) THE PURCHASE OF CERTAIN PROPERTY AND THE SUBSEQUENT SALE OF SAID PROPERTY TO THE COMPANY FOR USE IN CONNECTION WITH THE PROJECT; AND (5) OTHER MATTERS RELATING THERETO.

The ordinance in its entirety will appear in the Minutes of Charleston County Council at the time of third reading.

There being no further business to come before the Body, the Chairman declared the meeting to be adjourned.

Kristen L. Salisbury
Deputy Clerk to County Council