

Adopted: 5/15/18

**CHARLESTON COUNTY
ORDINANCE NO. 2006**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND AMONG CHARLESTON COUNTY, SOUTH CAROLINA (THE "COUNTY"), FRONTIER LOGISTICS, LP, AND FLSC PROPERTIES, LLC, EACH ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE COMPANIES"), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANIES AND THE PROJECT; (3) PROVIDING FOR THE ALLOCATION OF FEES IN LIEU OF AD VALOREM TAXES PAID WITH RESPECT TO THE PROJECT; AND (4) 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 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" and together with the Negotiated FILOT Act, 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 covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, Frontier Logistics, LP ("Frontier"), a limited partnership organized and existing under the laws of the State of Illinois, and FLSC Properties, LLC ("FLSC"), a limited liability company organized and existing under the laws of the State of Texas (Frontier and FLSC each a "Company" and, collectively, the "Companies"), are considering the establishment and/or expansion of certain facilities at one or more locations in the County (the "Project"), and anticipates that, should their plans proceed as expected, they will invest, or cause to be invested, on a combined basis, at least \$30,000,000 in the Project; and

WHEREAS, FLSC has acquired the land on which a warehouse and distribution facility will be constructed by Frontier and Frontier will lease the real property from FLSC; and

WHEREAS, based on information provided to the County by the Companies, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Companies to locate the Project in the County, the Council adopted a Resolution on April 24, 2018 (the “Inducement Resolution”), whereby the County set forth its commitment to provide the benefits of a negotiated FILOT and a multi-county industrial or business park with respect to the Project; and

WHEREAS, the County and the Companies have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Companies with respect to the Project (the “Incentive Agreement”), the form of which is presented to this meeting, which Incentive Agreement is to be dated as of April 24, 2018, or such other date as the parties may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council, as follows:

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Companies with respect to the Project, the County makes the following findings and determinations:

- (a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and
- (b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and
- (c) 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 adequately provided locally; and
- (d) The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Companies will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the “Negotiated FILOT”), as set forth in Section 2(b) hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (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 believe to be, for the property anticipated to initially comprise the Negotiated FILOT Property portion of the Project, 291.1 mills, which millage rate shall be fixed in accordance with Section 12-44-50(A)(1)(b) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) such other terms and conditions as are or will be specified in the Incentive Agreement including, but not limited to, that the Companies and the Project shall be entitled to the maximum benefits allowable under the Negotiated FILOT Act with respect to the disposal and replacement of Project property.

(ii) The Negotiated FILOT shall be calculated as provided in this Section 2(b) for all Negotiated FILOT Property placed in service as part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of twenty (20) years.

Section 3. Subject to the consent of the City Council of the City of North Charleston, the County will use its commercially reasonable efforts to designate the Project and the Land as part of a multi-county industrial or business park, if not already so designated, and agrees to use its commercially reasonable efforts to maintain the Project and the Land within the boundaries of a multi-county industrial or business 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 for all jobs created at the Project from January 1, 2018 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.

Section 4. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to County Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the County Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to County Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the County Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Companies. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 5. The Chairman of the County Council, the County Administrator and the Clerk to County 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 the Incentive Agreement.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be

invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 7. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 15th day of May, 2018.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
A. Victor Rawl, Chairman, County Council,
Charleston County, South Carolina

[SEAL]

Attest:

By: _____
Kristen L. Salisbury, Clerk to County Council,
Charleston County, South Carolina

First Reading: April 24, 2018
Public Hearing: May 15, 2018
Second Reading: May 8, 2018
Third Reading: May 15, 2018