

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 11-27-17

ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND PIONEER FROZEN FOODS SOUTH CAROLINA, LLC PROVIDING FOR A PAYMENT OF A FEE IN LIEU OF TAXES, A SPECIAL SOURCE REVENUE CREDIT AND OTHER MATTERS RELATED THERETO.

WHEREAS, Newberry 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 Section 4-1-175 and 4-29-68 and Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act"), to enter into a fee in lieu of tax agreement (the "Fee Agreement") with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, and to provide special source revenue financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving Newberry County, for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of Newberry County, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, Pioneer Frozen Foods South Carolina, LLC, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company"), desires to acquire property and to invest capital in the County in order to expand its a manufacturing facility in the County (the "Project"); and

WHEREAS, the Project is anticipated to make an investment in the County of approximately \$6,000,000 over the next five years; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement for the Company's new investment providing for an assessment rate of 6%; and

WHEREAS, the Company entered into a certain Fee Agreement with Newberry County dated as of December 11, 2002, the investment period of which was extended by Amendment dated as of December 19, 2007 (collectively, the 2002 Fee Agreement"); and

WHEREAS, the Company has requested that the County provide an infrastructure and/or special source revenue credit ("SSRC") with respect to the Project, such SSRC to be in the

amount of 25% of the *ad valorem* tax payments due for investments made by the Company during the years 2013-2016 and not covered under a fee in lieu of tax transaction; and

WHEREAS, based solely on information provided by the Company, the County has determined that the Project would be a “project” and “economic development property” as such terms are defined in the Act and that the Project would serve the purposes of the Act; and

WHEREAS, as provided in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended and Article VIII, Section 13 of the South Carolina Constitution, the real property on which the Project is located and more specifically described in Exhibit A attached hereto has been included in a multi-county industrial and business park established by the County (the “Park”) pursuant to a qualifying agreement with Lexington County, South Carolina (the “Park Agreement”); and

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Fee Agreement by and between the County and the Company (the “Fee Agreement”), which is attached as Exhibit B, the terms of which provide for the fee in lieu of tax payments utilizing a 6% assessment ratio for a period of 20 years for the Project or each component thereof placed in service during the initial investment period and any investment period extension to which the County and the Company agree and an SSRC in the amount of 25% to be applied against those investments of the Company not covered under a FILOT transaction; and

WHEREAS, it appears that the Fee Agreement, which is 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; and

THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. Based solely on information provided by the Company, it is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.

- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, 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, phrases, and provisions hereunder.

Section 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

*[Remainder of Page Intentionally Left Blank
Signature Page Follows.]*

Passed and approved this 6th day of December, 2017.

NEWBERRY COUNTY COUNCIL

Henry H. Livingston, III Chairman
Newberry County, South Carolina

ATTEST

Laurie Renwick, Clerk to Council
Newberry County, South Carolina

First Reading: November 1, 2017
Second Reading: November 15, 2017
Public Hearing: November 15, 2017
Third Reading: December 6, 2017

EXHIBIT A
PROPERTY

EXHIBIT A

PARCEL A

All that certain piece, parcel or lot of land lying and situated in Newberry County, near Prosperity, State of South Carolina, shown as Parcel A, 43.61 acres, on plat prepared for CHG Holdings, Inc. by Collingwood Surveying, Inc. dated April 9, 2002, recorded in the ROD Office for Newberry County, South Carolina, in Plat Book _____ at page _____, and according to said plat having the following measurements:

Beginning at an iron pin (the POINT OF BEGINNING), noted as P.O.B. 'A', located on the northern right-of-way of U.S. Hwy. 76, approximately 84' west of the centerline of Road S-36-82, thence running N41-39-57W 186.49' to an iron pin; thence continuing along the right-of-way of U. S. Hwy. 76 curving left with a radius of 8753.06', length of curve of 413.75' and chord of N43-06-12W 413.71' to an iron pin; thence continuing along the right-of-way of U.S. Hwy. 76 curving left with a radius of 5912.27', length of curve 1181.82', and chord of N50-29-46W 1179.85' to an iron pin; thence turning and running along lands now or formerly McKechnie Vehicle Components N28-13-46E 1278.26' to an iron pin; thence turning and running along lands now or formerly Kayser-Roth Corporation (Parcel B) S 44-42-28E 1471.69' to an iron pin located on the western right-of-way of Road S-36-82 (Bachman Chapel Road); thence turning and running along the right-of-way of Road S-36-82 S11-41-55W 544.00' to an iron pin; thence continuing along the right-of-way of Road S-36-82 curving left with a radius of 5764.83', length of curve of 149.17', and a chord of S10-58-28W 149.17' to an iron pin; thence continuing along the right-of-way of Road S-36-82 S10-13-13W 541.07' to an iron pin; thence continuing along the right-of-way of Road S-36-82 curving right with a radius of 171.78' length of curve of 64.13', and a chord of S20-56-44W 63.76' to an iron pin; thence continuing along the right-of-way of Road S-36-82 S89-05-56W 65.43' to the POINT OF BEGINNING, all measurements being a little more or less.

Portion of TMS 459-12, 459-12/1 and 460-26

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EXHIBIT A

PARCEL B

All that certain piece, parcel or lot of land lying and situated in Newberry County, near Prosperity, State of South Carolina, shown as Parcel B, 41.16 acres, on plat prepared for CHG Holdings, Inc. by Collingwood Surveying, Inc. dated April 9, 2002, recorded in the ROD Office for Newberry County, South Carolina, in Plat Book _____ at page _____, and according to said plat having the following measurements:

Beginning at an iron pin (the POINT OF BEGINNING), noted as P.O.B. 'B', located on the western right-of-way of Road S-36-82, approximately 1418' north of the centerline of U.S. Highway No. 76, thence running along lands now or formerly CHG Holdings, Inc., N44-42-28W 1471.69' to an iron pin; thence turning and running along lands now or formerly McKechnie Vehicle Components, N28-13-46E 1123.40' to an iron pin; thence turning and running along lands now or formerly Amick, N87-15-11E 175.23' to an iron pin; thence continuing along Amick lands S31-24-58E 758.47' to an iron pin; thence continuing along Amick lands S59-58-58E 227.78' to an iron pin; thence continuing along Amick lands N01-42-45W 230.25' to an iron pin; thence continuing along Amick lands N05-14-50W, 99.38' to an iron pin; thence turning and running along lands now or formerly Cockrell S65-50-13E 809.07' to an iron pin on the western right-of-way of Road S-36-82; thence turning and running along the right-of-way of S-36-82 S39-59-05W 368.30' to an iron pin; thence turning and running along lands now or formerly of Newberry County N41-16-13W 450.10' to an iron pin; thence continuing along Newberry County lands S32-15-06W 309.87' to an iron pin; thence continuing along Newberry County lands S39-51-40E 399.90' to an iron pin on the western right-of-way of Road S-36-82; thence turning and running along the right-of-way of Road S-36-82 S43-16-39W 468.91' to an iron pin; thence continuing along the right-of-way of Road S-36-82 curving left with a radius of 883.98', length of curve 486.87', and chord of S27-28-40W 480.74' to the POINT OF BEGINNING, all measurements being a little more or less.

Portion of TMS 459-12, 459-12/1 and 460-26

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**EXHIBIT B
FEE AGREEMENT**