

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

ORDINANCE NO. 17-08

**AN ORDINANCE AUTHORIZING PURSUANT TO TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT, BY AND BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA AND KION NORTH AMERICAN CORPORATION, AS SPONSOR, TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE AND CERTAIN SPECIAL SOURCE REVENUE CREDITS; TO AMEND AN EXISTING AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF JOINT COUNTY INDUSTRIAL PARK; AND OTHER RELATED MATTERS.**

WHEREAS, Dorchester County, South Carolina (the "County"), acting by and through its County Council (the "County Council") is authorized by Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"), and Article VIII, Section 13 of the South Carolina Constitution (i) to enter into agreements with qualifying companies to encourage investment in projects constituting economic development property through which the economic development of the State of South Carolina (the "State") will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; (ii) to covenant with such industry to accept certain fee payments in lieu of *ad valorem* taxes ("FILOT") with respect to such investment ("FILOT Payments"); (iii) to provide credits to qualifying companies to offset qualifying infrastructure related expenses pursuant to Section 4-1-175, 4-29-68, and 12-44-70 of the Code of Laws of South Carolina 1976 as amended ("Special Source Revenue Credit"); (iv) under Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended ("MCIP Act") to create multi-county industrial parks with one or more contiguous counties and include certain properties therein, and, in its discretion, include within the boundaries of these parks the property of qualifying industries, and under the authority provided in the MCIP Act, the County has previously created a multi-county park with Orangeburg County, South Carolina (the "Park") through that "Amended and Restated Agreement for Development of Joint County Industrial Park" as amended (the "Park Agreement") dated April 19, 2010; and (iv) to make and execute contracts of the type hereinafter described pursuant to Section 4-9-30 of the Code of Laws of South Carolina 1976, as amended; and

WHEREAS, KION North America Corporation, a Delaware corporation, along with any other existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities, as Sponsor (collectively, "Company"), contingent upon satisfaction of certain commitments made by and on behalf of the County, as set forth herein and to be further set forth in future agreements, and, to the extent allowed by law, plans to expand a manufacturing facility in the County through the acquisition, lease, construction, and purchase of certain land, including the Project Property (defined below), buildings, furnishings, fixtures, apparatuses, and equipment (the "Project"), which will result in approximately \$5,700,000 in new investment in real and personal property in the County ("Investment") and the creation of approximately 52 new jobs ("Jobs"); and

WHEREAS, by its Resolution adopted on December 5, 2016, the County identified the Project, as required by the Act; and

WHEREAS, the Project will comprise one or more parcels of real property or a portion thereof within such tax map parcels bearing Tax Map Numbers 129-00-00-070.000, 129-00-00-078.000, and 129-00-00-089.000 with improvements thereon, a description of which is set forth on the attached Exhibit A ("Project Property"); and

WHEREAS, to the best of the County's knowledge the Project Property currently is within a Multi-County Industrial Park, specifically that Park created through the "Amended and Restated Agreement for Development of Joint County Industrial Park" as amended (the "Park Agreement") dated April 19, 2010; however, out of an abundance of caution the County confirms the placement of the Project Property within the Park, ratifies all prior acts placing the Project Property in the Park, and will take any further action necessary to ensure the Project Property is and remains in the Park, and

WHEREAS, the County desires that the Project Property remain in the Park for no less than the duration of the Fee Agreement; and

WHEREAS, Section 3(H) of the Park Agreement provides, in part, that unless otherwise expressly set forth in the Park Agreement or an amendment or modification to the Park Agreement, the term during which property is to be included in the Park shall automatically end on December 31 of the tenth (10<sup>th</sup>) year after the initial year in which such property is included in the Park; and

WHEREAS, the County and Orangeburg County, having determined that an extended period of time, beyond the 10-year period described above, for inclusion of the Project Property in the Park, would promote economic development and thus provide additional employment and investment opportunities within said counties, have agreed to enter into an Amendment of the Amended and Restated Agreement for Development of Joint County Industrial Park (the "Amendment") to effect such matters, as set forth in greater detail in the form of the Amendment which is presented to this meeting, and which Amendment is to be dated as of such date as the County and Orangeburg County may agree; and

WHEREAS, in connection with the Project, the Company has requested the County to enter into incentive agreements, to the extent and subject to the conditions provided in those agreements, to establish the commitments of (i) the Company and any Sponsor Affiliate(s) to make the Investment; and (ii) the County to provide certain incentives; and

WHEREAS, the County has determined: (i) to offer a FILOT arrangement and enter into a fee-in-lieu of *ad valorem* taxes agreement with the Company and, as applicable, any Sponsor Affiliate(s), the form of which is attached as Exhibit B ("Fee Agreement"), but with the principal terms as follows: 20-year, 6.0% assessment ratio, and a fixed millage rate equal to that millage rate in effect at the Project Property, for all taxing entities, on June 30, 2016, which the parties hereto believe to be .331 for the entire term of the FILOT arrangement; (ii) to provide an annual credit for a five (5) year term of the Fee Agreement against those FILOT Payments made by the Company and any of the Sponsor Affiliates to the County for the Project in an amount equal to 10% of the amount of FILOT Payment that would otherwise be due under the Fee Agreement for property tax years one (1) through five (5) (a "Special Source Revenue Credit") and which may be increased and the term of which may be expanded upon additional Investment as set forth in the Fee Agreement attached to this Ordinance; and (iv) any other incentives further set forth in the Fee Agreement attached to this Ordinance (collectively, the "Incentives"); and

WHEREAS, the state of South Carolina, through its Coordinating Council for Economic Development ("CCED"), has or is expected to approve a monetary grant in the amount of \$50,000 for the benefit of the Project in the County ("State Grant"), the funds of which would be received and administered by the County, as grantee, for the benefit of the Project; and

WHEREAS, County Council has determined (i) to enter into any necessary agreements with the CCED or the Company, including but not limited to a grant award agreement and a performance agreement ("State Grant Agreements"); and (ii) to accept, receive, and administer the State Grant for the benefit of the Project in the County; and

WHEREAS, the parties recognize and acknowledge that the Company would not otherwise locate the Project in the County but for the delivery of the Incentives.

**NOW, THEREFORE, BE IT ORDAINED BY THE DORCHESTER COUNTY COUNCIL DULY ASSEMBLED THAT:**

**Section 1. Findings.** The County hereby finds and affirms, based on information provided by the Company: (i) the Project will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project to the public are greater than the costs to the public; and (v) the Project will provide a substantial public benefit to the County.

**Section 2. Authorization to Execute and Deliver Fee Agreement.** The form, terms, and provisions of the Fee Agreement (which includes the provision of Special Source Revenue Credits) presented to this meeting and filed with the Clerk to County Council are hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council be and they are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement 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 officials of the County executing the same upon the advice of the County Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

**Section 3. Authorization to Receive and Administer the State Grant and Execute and Deliver Agreements Related Thereto.** The County Council authorizes the Chair of the County Council, the County Administrator, other County staff, and the County Attorney, along with any designees and agents who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an "Authorized Individual"), to take whatever further actions, and enter into whatever further agreements, including the State Grant Agreements, as any Authorized Individual deems to be reasonably necessary and prudent to accept and receive the State Grant and to thereafter administer the funds of the State Grant for the benefit of the Project in the County.

**Section 4. Confirm Inclusion and Maintenance of Project in the Park.** The confirmation of the inclusion of the Project Property within the Park boundaries and ratification of prior acts placing the

Project Property in the Park is hereby authorized. The County Council shall ensure that the Project is incorporated into and will remain in the Park (or a successor multi-county industrial park) for no less than the term of the Fee Agreement. The County Council Chairman is hereby authorized to execute and deliver on behalf of the County an amendment to the Park Agreement in substantially the form attached hereto as **Exhibit C**.

**Section 5. *No Recapitulation Required.*** Pursuant to Section 12-44-55(B) of the Act, the County hereby agrees that no recapitulation information, as set forth in Section 12-44-55(A) of the Act is required to be provided by the Company in the Fee Agreement, or in any other documents or agreements in connection with the fee-in-lieu of tax arrangement between the Company and the County, so long as the Company shall file a copy of the South Carolina Department of Revenue form PT-443, and any subsequent amendments thereto, and all filings required by the Act with the County after the execution of the Fee Agreement by the County and the Company.

**Section 6. *Further Acts.*** The County Council authorizes the County Administrator, other County staff, and the County Attorney, along with any designees and agents who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an "Authorized Individual"), to take whatever further actions, and enter into whatever further agreements, as any Authorized Individual deems to be reasonably necessary and prudent to effect the intent of this Ordinance and induce the Company to locate the Project in the County.

**Section 7. *General Repealer.*** All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 8. *Severability.*** Should any part, provision, or term of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding or determination shall not affect the rest and remainder of the Ordinance or any part, provision or term thereof, all of which is hereby deemed separable.

This Ordinance takes effect and is in full force only after the County Council has approved this Ordinance following three readings and a public hearing.

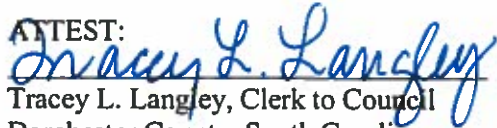
DORCHESTER COUNTY,  
SOUTH CAROLINA

  
James Lex Byars, III, Chairman  
Dorchester County Council



(SEAL)

ATTEST:

  
Tracey L. Langley, Clerk to Council  
Dorchester County, South Carolina

First Reading:	December 5, 2016
Second Reading:	January 3, 2017
Third Reading:	February 6, 2017
Public Hearing:	February 6, 2017

**EXHIBIT A**

**PROJECT PROPERTY LEGAL DESCRIPTION**

All or a portion of Dorchester County Tax Map Number 129-00-00-070.000, a parcel totaling approximately 17.76 acres; all or a portion of Dorchester County Tax Map Number 129-00-00-078.000, a parcel totaling approximately 30.24 acres; and all or a portion of Dorchester County Tax Map Number 129-00-00-089.000, a parcel totaling approximately 11.63 acres.

**EXHIBIT B**  
**FEE AGREEMENT**  
[Attached]

**EXHIBIT C**

**AMENDMENT TO PARK AGREEMENT**

**[Attached]**