

SOUTH CAROLINA)
)
DORCHESTER COUNTY)

ORDINANCE NUMBER 19-03

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN DIATOM US, INC. (THE "COMPANY") AND DORCHESTER COUNTY, SOUTH CAROLINA, WHEREBY THE COUNTY WILL ENTER INTO A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT WITH THE COMPANY PROVIDING FOR PAYMENT BY THE COMPANY OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH SUCH AGREEMENT; PROVIDING FOR THE LOCATION OF THE PROPERTY AND THE ALLOCATION OF FEES IN LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Dorchester County, South Carolina (the "County") desires to enter into a Fee-in-Lieu of Tax Agreement with Diatom US, Inc. (the "Company") (such agreement, the "FILOT Agreement"), as the Company has expressed its intent to the County to make a capital investment in the County;

WHEREAS, as a result of the Company's desire to undertake such investment, the Company has asked the County to enter into a FILOT Agreement by and between the Company and the County, in order to encompass the terms of the project;

WHEREAS, 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 payments-in-lieu of taxes ("Negotiated FILOT Payments") for a project qualifying under the FILOT Act;

WHEREAS, the County, acting by and through the County Council, is further authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the "MCIP Act") to provide for payments-in-lieu of taxes ("FILOT Payments") with respect to property located in a multi-county business or industrial park created under the MCIP Act; and to create, in conjunction with one or more other counties, a multi-county park in order to afford certain enhanced tax credits to such investors;

WHEREAS, the Company proposes to develop a project in the County by acquiring, constructing, equipping and furnishing machinery, equipment and other real and personal property (the "Negotiated FILOT Project"), which the Company has represented will consist of a capital investment of at least Two Million Five Hundred Thousand Dollars (\$2,500,000.00);

WHEREAS, the Negotiated FILOT Project is located entirely within the County and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein;

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 acquire and equip the Negotiated FILOT 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 and the MCIP Act that the County Council provide approval for qualifying the Negotiated FILOT Project under the FILOT Act and the entire Negotiated FILOT Project under the MCIP Act for the Incentives;

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

Section 1. Evaluation of the Negotiated FILOT Project. County Council has evaluated the Negotiated FILOT Project on the following criteria based upon the advice and assistance of the South Carolina Revenue and Fiscal Affairs Office and the South Carolina Department of Revenue:

- (a) whether the purposes to be accomplished by the Negotiated FILOT 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 Negotiated FILOT Project, including the criteria described in Section 1 above, and the advice and assistance of the South Carolina Revenue and Fiscal Affairs Office and the South Carolina Department of Revenue, as required, County Council hereby find that:

- (a) the Negotiated FILOT Project constitutes a "project" as that term is defined in the FILOT Act;
- (b) the Negotiated FILOT Project will serve the purposes of the FILOT Act;
- (c) the investment by the Company in the Negotiated FILOT Project is anticipated to be at least Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within ten (10) years from the end of the property tax year in which the initial portion of the Negotiated FILOT Project is placed in service under the FILOT Agreement;
- (d) the Negotiated FILOT Project will be located entirely within the County;
- (e) the Negotiated FILOT Project will benefit the general public welfare of the

County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally;

- (f) the Negotiated FILOT Project will not give rise to a pecuniary liability of the County or any municipality nor a charge against its general credit or taxing power of the County or any municipality;
- (g) the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes;
- (h) the inducement of the location of the Negotiated FILOT Project is of paramount importance; and
- (i) the benefits of the Negotiated FILOT Project to the public are greater than the costs to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Negotiated FILOT Project is designated as “economic development property” under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company, which will provide Negotiated FILOT Payments to be made with respect to the Company’s portion of the Negotiated FILOT Project based upon a 6% assessment ratio and a millage rate which shall be fixed for the full term of the FILOT Agreement and shall be the lower of the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is to be located on either (1) the June 30 preceding the year in which the FILOT Agreement is executed, or (2) the June 30 of the year in which the FILOT Agreement is executed, for a term of thirty (30) years or longer as provided by the FILOT Act, and including Special Source Revenue Credits in the amount of 20% in years 1-5 following each increment of investment during the investment period under the FILOT Agreement, all as more fully set forth in FILOT Agreement by and among the County and the Company.

Section 4. Execution of the FILOT Agreement. The form, terms and provisions of the FILOT Agreement presented to this meeting 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 FILOT Agreement were set out in this Ordinance in its entirety. The Chair of the County Council and the Clerk of the County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the County Attorney and 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 FILOT Agreement now before this meeting.

Section 5. Miscellaneous.


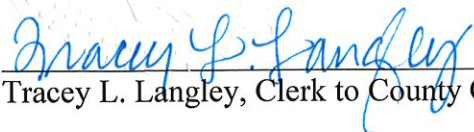
- (a) The Chair of County Council and all other appropriate officials of the County are hereby authorized to execute, deliver and receive any other agreements and documents as may be required by the County in order to carry out, give effect to and consummate the transactions authorized by this Ordinance;
- (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; and
- (e) All ordinances, resolutions and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

[Signature Page to Follow]

DORCHESTER COUNTY, SOUTH CAROLINA

By: 
George H. Bailey, Sr., Chairman of County Council

ATTEST:



Tracey L. Langley, Clerk to County Council

First Reading: November 19, 2018
Second Reading: December 3, 2018
Public Hearing: January 7, 2019
Third Reading: January 7, 2019