

DORCHESTER COUNTY
ORDINANCE NO. 14-17

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF (A) A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA (THE "COUNTY") AND SPEC-CON, LLC, ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), 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 (COLLECTIVELY, THE "PROJECT") AND (B) A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND BETWEEN THE COUNTY AND THE COMPANY WITH RESPECT TO CERTAIN EXISTING PROPERTY IN THE COUNTY (THE "EXISTING PROPERTY PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY, THE PROJECT, AND THE EXISTING PROPERTY PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT AND THE EXISTING PROPERTY PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Dorchester 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"), 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 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; (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 ("Special Source Improvements"); and (iv) 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 to facilitate the grant of Special Source Credits; and

WHEREAS, Spec-Con, LLC, a limited liability company organized and existing under the laws of the State of Kansas, acting for itself or one or more affiliates or other project sponsors (the “Company”) proposes to establish and/or expand certain facilities at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$2,500,000 in the Project and will create, or cause to be created, at least 50 new, full-time jobs within the County; and

WHEREAS, in connection with the Project, the Company has heretofore acquired certain land located in the County together with all real property improvements and certain personal property located thereon and has made, or is considering making, additional investment in further real property improvements located thereon (such land, together with all such existing improvements and personal property, and potential additional improvements, the “Existing Property Project”); and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on September 2, 2014 (the “Inducement Resolution”), whereby the County agreed to provide (a) the benefits of a negotiated FILOT, a multi-county industrial or business park, and certain Special Source Credits with respect to the Project (b) the benefits of a multi-county industrial or business park and certain additional Special Source Credits with respect to the Existing Property Project; and

WHEREAS, the County and the Company have agreed to the specific terms and conditions of such arrangements as set forth herein, in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project (the “Incentive Agreement”) and a Special Source Revenue Credit Agreement by and between the County and the Company with respect to the Existing Property Project (the “Special Source Credit Agreement”), the forms of which Incentive Agreement and Special Source Credit Agreement are presented to this meeting, and both of which are to be dated as of October 6, 2014 or such other date as the parties may agree; and

WHEREAS, it appears that the Incentive Agreement and the Special Source Credit Agreement now before this meeting are in appropriate forms and are an appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the 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, the Incentive Agreement, and the Special Source Credit Agreement, the terms and provisions of this Ordinance, the Incentive Agreement, and the Special Source Credit Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement or the Special Source Credit Agreement, as the case may be. Additionally, based on information provided to the County by the Company 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 provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; 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 Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods 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 allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, as set forth in greater detail in the Incentive Agreement, 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, as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as will be specified in the Incentive Agreement.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service 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. As an additional incentive to induce the Company to undertake the Project in the County, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County does hereby agree that the Company shall be entitled to receive, and the County shall provide, Special Source Credits (a) against each

Negotiated FILOT payment due with respect to the Project for a period of five (5) consecutive tax years in an amount equal to ten percent (10%) of each such Negotiated FILOT payment, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project under the Incentive Agreement, as is set forth in greater detail in the Incentive Agreement, and (b) against each FILOT payment due with respect to the Existing Property Project for a period of twenty (20) consecutive tax years, commencing with the initial tax year for which such a FILOT payment is due from the Company, in an amount sufficient to reduce the amount of each such FILOT payment due for each such tax year, after reduction of such payment arising from any manufacturing exemption received by the Company with respect to the Existing Property Project pursuant to Section 12-37-220(A)(7) of the Code for such tax year, so that the resulting net FILOT payment due equals the amount of such payment if calculated using an assessment ratio of 6% and a fixed millage rate equal to 351.4 mills, as is set forth in greater detail in the Special Source Credit Agreement. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project and the Existing Property Project.

Section 4. The County will use its best efforts to insure that the Project and the Existing Property Project will be included, if not already included, and will remain, 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 the Company, the Project, and the Existing Property 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 on terms which facilitate the Special Source Credits referenced in Section 3 hereof.

Section 5. The form, provisions, terms, and conditions of the Incentive Agreement and the Special Source Credit Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement and the Special Source Credit Agreement were set out in this Ordinance in their entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement and the Special Source Credit Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement and the Special Source Credit Agreement to the Company. The Incentive Agreement and the Special Source Credit Agreement are to be in substantially the forms 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 and the Special Source Credit Agreement now before this meeting.

Section 6. The Chairman of the Council, the County Administrator of the County, and the Clerk to the 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 Incentive Agreement and the Special Source Credit Agreement.

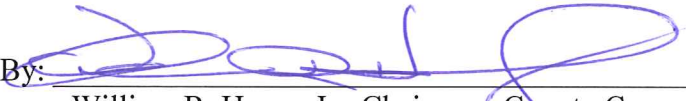
Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 8. 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]

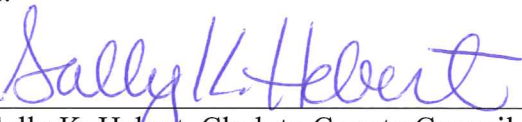
Enacted and approved, in meeting duly assembled, this 6th day of October, 2014.

DORCHESTER COUNTY, SOUTH CAROLINA

By: 
William R. Hearn, Jr., Chairman, County Council of
Dorchester County, South Carolina

[SEAL]

Attest:

By: 
Sally K. Hebert, Clerk to County Council,
Dorchester County, South Carolina

First Reading: September 2, 2014
Second Reading: September 15, 2014
Public Hearing: October 6, 2014
Third Reading: October 6, 2014