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2020 SEP 15 PM 3:50
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER) **ORDINANCE NO. 2020-1683**

AN ORDINANCE

TO AUTHORIZE AND APPROVE THE EXTENSION OF THE INVESTMENT PERIOD AS SET FORTH IN THE FEE AGREEMENT BETWEEN LANCASTER COUNTY, SOUTH CAROLINA AND SILGAN CONTAINERS MANUFACTURING CORPORATION; AND TO AUTHORIZE AND APPROVE THE EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO THE FEE AGREEMENT BETWEEN LANCASTER COUNTY, SOUTH CAROLINA AND SILGAN CONTAINERS MANUFACTURING CORPORATION, SO AS TO PROVIDE SPECIAL SOURCE REVENUE CREDITS FOR AN EXPANSION OF THE PROJECT.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Findings; Purpose.

A. The Council finds that:

1. Silgan Containers Manufacturing Corporation (the “Company”) and the County previously entered into a fee in lieu of tax agreement dated February 9, 2015 (the “Fee Agreement”) pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Act”) in order to provide for the payment of a fee in lieu of taxes with respect to that certain project described therein (the “Project”);
2. the Company is considering an expansion of the Project that is anticipated to result in an investment of approximately \$9,700,000 and the creation of approximately 16 new, full-time jobs in the County (the “Expansion”);
3. the “Investment Period” was defined and set in the Fee Agreement to expire on December 31, 2019;
4. Section 12-44-30(13) of the Act provides that the Company may apply for, and the County may agree to provide, an extension of the Investment Period for an additional period of up to five years, if the Company applies to the County for an extension prior to the end of the Investment Period;
5. the Company seeks to extend the Investment Period so that the Expansion will be subject to the Fee Agreement and seeks to have the County provide special source revenue credits pursuant to the Act for the Expansion;
6. the Company has applied to the County prior to the end of the Investment Period for an extension of the Investment Period; and

7. Section 12-44-70 of the Act authorizes the County to grant an annual special source revenue credit (SSRCs) against fee-in-lieu of tax payments made pursuant to a fee agreement in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the property of the company or for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise, all in order to enhance the economic development of the County.

B. It is the purpose of this ordinance to provide for an extension of the Investment Period and to provide SSRCs for fee in lieu of tax payments attributable to the Expansion.

Section 2. Statutory Findings.

Council makes the following additional findings:

(a) 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, the Expansion, the extension of the Investment Period, and the First Amendment to Fee Agreement are anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.

(c) The Project, the Expansion, the extension of the Investment Period, and the First Amendment to Fee Agreement give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.

(d) The purposes to be accomplished by the Project, the Expansion, the extension of the Investment Period, and the First Amendment to Fee Agreement, *i.e.*, economic development and addition to the tax base of the County, are proper governmental and public purposes.

(e) The inducement of the location, expansion and retention of the Project within the County and State is of paramount importance.

(f) The benefits of the Project, the Expansion, the extension of the Investment Period, and the First Amendment to Fee Agreement to the public will be greater than the costs to the public.

Section 3. Investment Period Extension Approved; Delivery of Ordinance.

A. Pursuant to the Act and the provisions in the Fee Agreement, Council approves an extension of the Investment Period, as set in the Fee Agreement, by five years to December 31, 2024.

B. Council authorizes and directs the County Administrator, or the County Administrator's designee, to deliver a copy of this ordinance to the South Carolina Department of Revenue within thirty days of the date this ordinance is adopted.

Section 4. Approval of Amendment.

In order to promote industry, develop trade, and utilize and employ the workforce, products, and natural resources of the State by assisting the Company to expand an industrial facility in the County, the First Amendment to Fee Agreement, which is attached to this ordinance as Exhibit A and is incorporated herein by reference as if the First Amendment to Fee Agreement was set out in this ordinance in its entirety, is authorized, ratified, and approved (the "First Amendment to Fee Agreement"). The form of the First

Amendment to Fee Agreement is approved, and all of the terms, provisions, and conditions thereof are approved. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the First Amendment to Fee Agreement in the name of and on behalf of the County, and thereupon to cause the First Amendment to Fee Agreement to be delivered to the Company. The First Amendment to Fee Agreement is to be in substantially the form as attached to this ordinance 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 officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the First Amendment to Fee Agreement attached to this ordinance.

Section 5. Authority to Act.

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed to do any and all things necessary to effect the execution and delivery of the First Amendment to Fee Agreement and the performance of all obligations of the County under and pursuant to the First Amendment to Fee Agreement.

Section 6. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 7. Controlling Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 9. Effective Date.

This ordinance is effective upon Third Reading.

SIGNATURES FOLLOW ON NEXT PAGE.

AND IT IS SO ORDAINED

Dated this 14th day of September, 2020.

LANCASTER COUNTY, SOUTH CAROLINA

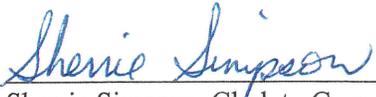


Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

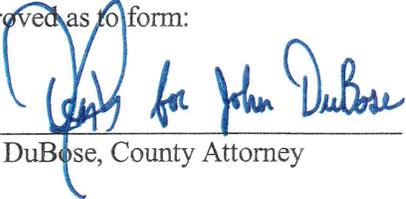
ATTEST:



Sherrie Simpson, Clerk to Council

First Reading: August 10, 2020
Second Reading: August 24, 2020
Public Hearing: September 14, 2020
Third Reading: September 14, 2020

Approved as to form:



John DuBose, County Attorney

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Exhibit A to Ordinance No. 2020-1683

First Amendment to Fee Agreement

See attached.

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NOW, THEREFORE, for value received, the Parties agree as follows:

Section 1. The definition of “Investment Period” and “Termination Date” in Section 1.1 of the Fee Agreement are amended to read:

/"Investment Period" shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending ten years from the last day of the property tax year in which economic development property is first placed in service. Based on the fiscal year in use by the Company as of the date of this Agreement, Company and County agree that the Investment Period ends on December 31, 2024, unless the Company changes its fiscal year prior to that date.

"Termination Date" shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 29th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 29th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 30 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination./

Section 2. Section 1.1 of the Fee Agreement is amended by adding:

/"Expansion" means the investment in the Project of approximately \$9,700,000 in real and personal property during the Expansion Period and the creation of approximately sixteen (16) new, full-time jobs in the County.

"Expansion Credit" shall mean the annual credit provided to the Company pursuant to Section 12-44-70 of the Act, Sections 4-1-175 and 4-29-68 of the Code of Laws of South Carolina 1976, as amended, and Section 4.1(c)(2) hereof, with respect to the Infrastructure.

"Expansion Jobs Commitment" means the following:

1. For the twelve (12) month period ending December 31, 2021, December 31, 2022, and December 31, 2023, the Company must have employed an average for the twelve (12) month period of at least fifty-four (54) Qualifying Employees in the County.

2. For the twelve (12) month period ending December 31, 2024, December 31, 2025, December 31, 2026, and December 31, 2027, the Company must have employed an average for the twelve (12) month period of at least seventy (70) Qualifying Employees in the County.

“Expansion Period” means the period beginning January 1, 2020 and ending December 31, 2024.

“Expansion Wage Requirement” means, for all periods ending on or before December 31, 2023, an hourly wage rate not less than \$14.00, and for all periods ending after December 31, 2023, an hourly wage rate not less than \$14.86.

“Qualifying Employees” means full-time employees (*i.e.*, at least thirty (30) hours per week), with health care benefits paying an hourly wage rate not less than the Expansion Wage Requirement./

Section 3. Steps (2) and (3) of Section 4.1(a) of the Fee Agreement are amended to read:

/Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 29 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments if approved by the County.

Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2014, which is 282.4 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the first twenty (20) years of the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the first twenty (20) years of the Exemption Period on the payment dates that the County prescribes for such payments. The millage rate fixed for years twenty-one (21) through thirty (30) of the Exemption Period shall be the lower of either 428.85 mills or the then current millage rate in effect on June 30 in year twenty-one (21) of the Exemption Period, but in no event lower than 282.4 mills./

Section 4. Section 4.1(c) of the Fee Agreement is amended to read:

/(c)(1) The County agrees that all qualifying capital expenses of the Company made on or before December 31, 2019, shall qualify for an Infrastructure Credit over five (5) years (commencing at the Company’s option) equal to fifty percent (50%) of the FILOT payments attributable to the Project. The County also agrees to provide an additional Infrastructure Credit for the period ending on December 31, 2019, equal to fifty percent (50%) of any increase in the payments in lieu of taxes on the Project’s real property that is not included in the Fee Agreement. The Infrastructure Credit shall be applied as a setoff against the FILOT owed for the then current year and shall apply against the entire FILOT payment due, including any portions that may be allocable to any municipality or school district. In order to provide the Infrastructure Credit as described herein, the County agrees to include the Real Property in a multi-county business park created pursuant to Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-29-68, 4-1-170 and 4-1-175 of the Code of Laws of South Carolina, 1976, as amended (if not already included in a multi-county

business park), and to keep the Real Property in a multi-county business park for at least the duration of the Infrastructure Credit. The Company acknowledges and agrees that the designation of multi-county park status for the Property requires approval of a partnering county which is a discretionary decision for the partnering county.

(2) The County agrees that all qualifying capital expenses of the Company placed in service during the Expansion Period shall qualify for an Expansion Credit equal to fifty-eight percent (58%) of the FILOT payments attributable to capital investments in the Project made during the Expansion Period for property tax years 2022 through 2028. The Expansion Credits shall be applied as a setoff against the FILOT owed for the then current year and shall apply against the entire FILOT payment due, including any portions that may be allocable to any municipality or school district. In order to facilitate the administration of the Expansion Credits, the Company shall file a separate Schedule S with its annual PT-300 filing (or successor form) listing only capital investments made during the Expansion Period. The separate Schedule S shall be labeled as "2015 FILOT Expansion." The Company shall deliver the separate Schedule S to the County Economic Development Director, the County Auditor, the County Assessor, and the County Treasurer together with the Company's annual property tax filings as required by Section 3.3(a) of this Fee Agreement./

Section 5. Section 4.2(c) of the Fee Agreement is amended to read:

/(c) Notwithstanding any other provision of this Fee Agreement, the Company acknowledges and agrees that County's obligation to provide the FILOT incentive, the Infrastructure Credits and the Expansion Credits ends, and this Fee Agreement is terminated, if the Company ceases operations. For purposes of this Section 4.2(c), "ceases operations" means permanent closure of the facility. The Company agrees that if this Fee Agreement is terminated pursuant to this subsection, that under no circumstance shall the County be required to refund or pay any monies to the Company./

Section 6. Section 4.2(d) of the Fee Agreement is amended to read:

/(d)(1) RESERVED.

(2) For each year beginning after December 31, 2021 in which the Company receives the Expansion Credit, the Company shall certify to the County Economic Development Director and County Auditor on or before May 31 of the following year that the Company has complied with the Expansion Jobs Commitment./

Section 7. Section 4.2 of the Fee Agreement is amended by adding at the end:

/(e) For property tax years 2022 through 2028, if the Company fails to maintain an average during the applicable period of at least fifty-four (54) Qualifying Employees, in each case as of the prior December 31, the Company is

ineligible for the Expansion Credit for such year, and Section 4.2(g) is inapplicable for such year. For example, for property tax year 2023 (the period January 1, 2023 through December 31, 2023), the Company must have maintained an average of at least fifty-four (54) Qualifying Employees, for the twelve (12) month period ending December 31, 2022 in order to receive the Expansion Credit for Property Tax Year 2022.

(f) (1) For property tax year 2022, if the Company has failed to invest and maintain at least \$4,000,000 in the Expansion Project as of December 31, 2021, the Company is ineligible for the Expansion Credit for such year.

(2) For property tax years 2023 through 2028, if the Company has failed to invest and maintain at least \$5,000,000 in the Expansion Project as of the prior December 31, the Company is ineligible for the Expansion Credit for such year.

(3) For purposes of this Section 4.2(f), investments shall be measured by gross cost, without reduction for depreciation, as reported by the Company on its applicable PT-300 Schedule S filing (or successor form).

(g) For property tax years 2025 through 2028, if the Company has satisfied the investment requirement contained in Section 4.2(f) but fails to meet the Expansion Jobs Commitment, the Expansion Credit shall be reduced as follows:

Reduction Factor = $[70 - \text{Number of Qualified Employees actually achieved}] / 16$

Reduced Expansion Credit = $58\% \times [100\% - \text{Reduction Factor}]$

For example, if the Company had sixty-five (65) Qualifying Employees for the applicable period, then the Reduced Expansion Credit would be set at 38.875% for the applicable period, calculated as follows:

Reduction Factor = $[70 - 65] / 16 = 5 / 16 = 31.25\%$

Reduced Expansion Credit = $58\% \times [100\% - 31.25\%] = 58\% \times 68.75\% = 39.875\%$

Section 8. The dates and time periods set forth in this First Amendment are based on the assumption that the Company will first report investments in the Expansion Project as placed in service during its fiscal year ending December 31, 2021. If the Company initially reports such investments as placed in service in an earlier year or not later than two (2) years than assumed, the relevant dates and time periods set in this First Amendment are automatically adjusted to reflect the actual date and time period for the first reported investments in the Expansion Period. For example and by way of example only, if the Company does not initially report investments in the Expansion Project as placed in service until its fiscal year ending December 31, 2022, the Expansion Credits would run from 2023 through 2029, and the applicable investment and job creation requirements would likewise be adjusted by one year.

Section 9. Except as amended by this First Amendment, the Fee Agreement otherwise remains in full force and effect.

Section 10. A. The County represents that (i) it is a body politic and corporate and a political subdivision of South Carolina, (ii) it is authorized by the Act to enter into this First Amendment, (iii) it has approved this First Amendment in accordance with the procedural requirements of the Act, the County Council and other applicable law, and (iv) it has authorized its officials to execute and deliver this First Amendment by adoption of Ordinance No. 2020-1683.

B. Company represents that (i) it is a corporation organized, validly existing, and in good standing under the laws of the state of organization or incorporation, (ii) it is authorized to transact business in South Carolina, (iii) it has the power to enter into this First Amendment, (iv) it has by proper action approved this First Amendment, and (v) it has authorized its officials to execute and deliver this First Amendment.

Section 11. This First Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

Section 12. Company agrees to reimburse the County its administrative expenses related to this First Amendment promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County; *provided, however,* that in no event shall Company be responsible for reimbursing the County in excess of \$2500 for any administrative expenses incurred in the form of attorneys' fees or otherwise with respect to any matter relating in any way to the preparation, review, approval and execution of this First Amendment. The written request shall include a description of the nature of the administrative expenses.

Section 13. This First Amendment is effective as of the date first above written.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the Company and the County have caused this First Amendment to be executed respectively by the duly authorized officers of the Company and the County as of the date first written above.

SILGAN CONTAINERS MANUFACTURING CORPORATION

Signature: _____

Name: _____

Title: _____

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council