

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ADDITION OF PROJECT MOUNTAINTOP, THE CODE NAME FOR A SOUTH CAROLINA LIMITED LIABILITY COMPAY, AS A SPONSOR TO AN EXISTING FEE IN LIEU OF TAX AGREEMENT WITH GREENVILLE COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND THE AMENDMENT OF AN EXISTING FEE IN LIEU OF TAX AGREEMENT TO ADDRESS THE INCLUSION OF PROJECT MOUNTAINTOP AS A SPONSOR; AND OTHER MATTERS RELATING TO THE FOREGOING.

WHEREAS, Greenville 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 the Code of Laws of the State of South Carolina, 1976, as amended (the “Code”), including, without limitation, Chapter 44 of Title 12 of the Code (the “Act”), and the caselaw of the Courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to commercial enterprises as inducements for economic development within the County; to acquire, or cause to be acquired, properties (which such properties constitute “projects” as defined in the Act) and to enter into agreements with any business to construct, operate, maintain and improve such projects; to enter into or allow financing agreements with respect to such projects; and, to accept any grants for such projects through which powers the industrial and business development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and thus utilize and employ the manpower, agricultural products and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, tourism or other public benefits not otherwise provided locally; and

WHEREAS, the County is authorized by the Act to execute one or more fee-in-lieu of tax agreements (each, a “fee agreement”), as provided for in the Act, with respect to such projects; and

WHEREAS, under the Act, “sponsor” means one or more entities which sign the fee agreement with the County and makes the minimum investment, each of which makes the minimum investment in the project as required under the Act; except, however, if a project consists of manufacturing, research and development, corporate office or distribution facility, each sponsor is not required to invest the minimum investment if the total investment at the project exceeds \$5,000,000; and

WHEREAS, Milliken & Company, a Delaware corporation (the “Company”), which company was previously identified as “Project Advantage”, entered into that certain Fee in Lieu of Tax Agreement between the County and Company (the “Fee Agreement”) dated as of December 6, 2016; and

WHEREAS, Project Mountaintop is an affiliate of the Company and has a plant located in the Greenville County;

WHEREAS, the Project Mountaintop desires to acquire and make additional investment of at least \$2,500,00 in new equipment and other personal property in its plant located in Greenville County and be a “sponsor” as defined under the Act and a party to the Fee Agreement; and

WHEREAS, it appears that the draft Amended and Restated Fee in Lieu of Tax Agreement (the “Amended Fee Agreement”) 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;

NOW, THEREFORE, BE IT ORDAINED by Greenville County, South Carolina, as follows:

Section 1. The form, terms, and provisions of the Amended Fee Agreement presented to this meeting and filed with the Clerk to County Council be and they are hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Amended Fee Agreement were set out in this Ordinance in its entirety. The Chairman of County Council, the Administrator of the County and the Clerk to County Council be and hereby are authorized, empowered, and directed to execute, acknowledge, and deliver the Amended Fee Agreement in the name and on behalf of the County, and thereupon to cause the Amended Fee Agreement to be delivered to the Company. The Amended Fee Agreement is 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 counsel to the County, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Amended Fee Agreement now before this meeting.

Section 2. 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 Amended Fee Agreement, or in any other documents or agreements in connection with the fee in lieu of tax arrangement between the County, the Company and Project Mountaintop. The Company and Project Mountaintop shall file a copy of the amended South Carolina Department of Revenue form PT-443 with the County after the execution of the Amended Fee Agreement by the County, the Company and Project Mountaintop, as required by the Act.

Section 3. The Chairman of County Council, the County Administrator and the Clerk to the County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary or proper to effect the execution and delivery of the Amended Fee Agreement, and the performance of all obligations of the County under and pursuant to the Amended Fee Agreement. The Chairman of County Council, the County Administrator and the Clerk to County Council, and any other proper officer of County, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and to cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance.

Section 4. 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 5. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict only, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

WITNESS our hands and seals this _____ day of _____, 2017.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
H.G. (Butch) Kirven, Jr., Chairman of
County Council, Greenville County,
South Carolina

By: _____
Joseph M. Kernell, County Administrator
Greenville County, South Carolina

ATTEST:

By: _____
Theresa B. Kizer, Clerk to County Council
Greenville County, South Carolina

First Reading: _____, 2017
Second Reading: _____, 2017
Third Reading: _____, 2017
Public Hearing: _____, 2017

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