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OF COURT
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CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. 2017-1429

AN ORDINANCE

TO AUTHORIZE THE EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO THE FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BETWEEN LANCASTER COUNTY, SOUTH CAROLINA AND AKZO NOBEL COATINGS INC.

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

Section 1. Findings; Purpose.

(A) The Lancaster County Council finds that:

(1) Lancaster County, South Carolina (hereinafter referred to as the "County"), acting by and through its Council (the "Council"), is empowered under and pursuant to the provisions of the Fee in Lieu of Tax Simplification Act, codified as Chapter 44, Title 12 of the Code of Laws of South Carolina 1976, as amended (the "Act"), to enter into fee agreements with industries in connection with the acquisition, enlargement or improvement of industrial and commercial enterprises within the State of South Carolina (the "State");

(2) the County previously entered into a Fee in Lieu of Tax and Incentive Agreement with Akzo Nobel Coatings Inc. (the "Company"), dated as of December 12, 2011 (the "Fee Agreement"), for the purpose of, among other things, providing to the Company incentives in the form of a fee in lieu of tax arrangement and special source credits in connection with the "Project," as defined in the Fee Agreement;

(3) the scope of and timing for the implementation of the Project as envisioned by the terms of the Fee Agreement have changed; and

(4) the County and the Company have agreed to shorten the term of the fee in lieu of tax arrangement and to eliminate the special source credits.

(B) It is the purpose of this ordinance to approve an amendment to the Fee Agreement to provide for the (i) reduction of the number of years for which a Negotiated FILOT Payment is payable from thirty (30) to twenty (20) years, (ii) termination of the Special Source Credits, and (iii) repayment of certain Special Source Credits previously received by the Company.

Section 2. Statutory Findings.

Council makes the following additional findings:

(a) the Project will continue to constitute a “project” as said term is referred to and defined in Section 12-44-30(16) of the Act, and the First Amendment will promote the purposes enumerated in the Act, and in all respects conform to the provisions and requirements of the Act;

(b) the Project will continue to benefit the general public welfare of the County by providing or maintaining services, employment, recreation, and other public benefits not otherwise provided locally;

(c) neither the Project, the First Amendment, nor any documents or agreements entered into by the County in connection therewith will constitute or give rise to any pecuniary liability of the County or an incorporated municipality or a charge against its general credit or taxing power;

(d) the purposes to be accomplished by the Project and the First Amendment are proper governmental and public purposes; and

(e) the inducement of the expansion of the Project within the County and State is of paramount importance, and the benefits of the Project to the public will be greater than the costs.

Section 3. Approval and Execution of First Amendment.

The form, terms, and provisions of the First Amendment to the Fee in Lieu of Tax and Incentive Agreement (the “First Amendment”), attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the First Amendment was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the First Amendment in the name of and on behalf of the County, and thereupon to cause the Fee Agreement Amendment to be delivered to the Company. The First Amendment 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 attached to this ordinance.

Section 4. 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 and the performance of all obligations of the County under and pursuant to the First Amendment.

Section 5. 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 6. 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 7. Effective Date.

This ordinance is effective upon third reading.

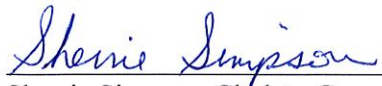
AND IT IS SO ORDAINED, this 27th day of MARCH, 2017.

LANCASTER COUNTY, SOUTH CAROLINA


Steve Harper, Chair, County Council


Larry Honeycutt, Secretary, County Council

ATTEST:


Sherrie Simpson, Clerk to Council

First Reading: February 27, 2017

Second Reading: March 13, 2017

Public Hearing: March 13, 2017

Third Reading: March 27, 2017

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Exhibit A to Ordinance No. 2017-1429

**First Amendment
to the
Fee in Lieu of Tax and Incentive Agreement
between
Lancaster County, South Carolina and Akzo Nobel Coatings Inc.**

This FIRST AMENDMENT TO THE FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (the "First Amendment") is dated as of March 27, 2017, by and between LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate, a political subdivision of South Carolina (the "County") and AKZO NOBEL COATINGS INC., a corporation organized and existing under the laws of Delaware and authorized to do business in the South Carolina (the "Company").

RECITALS

WHEREAS, pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"), the County and the Company entered into a Fee in Lieu of Tax and Incentive Agreement dated as of December 12, 2011 (the "Fee Agreement"), for the purpose of, among other things, providing to the Company incentives in the form of a fee in lieu of tax arrangement and special source credits in connection with the "Project," as defined in the Fee Agreement;

WHEREAS, the scope of and timing for the implementation of the Project as envisioned by the terms of the Fee Agreement have changed;

WHEREAS, the County and the Company have agreed to shorten the term of the fee in lieu of tax arrangement and to eliminate the special source credits;

WHEREAS, pursuant to Ordinance No. 2017-1429, and at the request of the Company, the County approved this First Amendment to the Fee Agreement for the purpose of (i) reducing the number of years for which a Negotiated FILOT Payment is payable from thirty (30) to twenty (20) years, (ii) terminating the Special Source Credits, and (iii) providing for the repayment of certain Special Source Credits previously received by the Company; and

WHEREAS, the County and Company now desire to enter into this First Amendment for the purposes stated above.

FIRST AMENDMENT

NOW, THEREFORE, in consideration of the above recitals and other lawful consideration duly paid and received, the parties agree that the Fee Agreement is amended as follows:

Section 1. *Incorporation of Recitals.* The above recitals are incorporated into this First Amendment as if the recitals were set out in this First Amendment in their entirety.

Section 2. *Amendment of Recapitulation.* Item 4 of the Recapitulation of Contents of Fee in Lieu of Tax and Incentive Agreement is amended to read:

“Length and Term of the Agreement – 20 years for each annual increment of investment in the Expansion Project placed in service during the Investment Period”

Section 3. *Amendment of Special Source Credits.* Section 3.02(a) of the Fee Agreement, relating to Special Source Credits, is amended to read:

“The County, as an additional incentive to induce the Company to locate the Expansion Project within the County and as reimbursement for investment in certain Special Source Improvements, and subject to the requirements of the Special Source Act, does hereby agree that the Company and each Co-Investor (each a “Claiming Entity”) shall each be entitled to receive, and the County shall provide, Special Source Credits against each annual FILOT Payment made by each Claiming Entity with respect to the Expansion Project, in an amount equal to fifty percent (50%) of each such FILOT Payment, for a period commencing with the year for which the initial annual Negotiated FILOT Payment is due hereunder and ending with the year for which the annual Negotiated FILOT Payment is due to be paid without penalty on or before January 15, 2017. In accordance with the Special Source Act and subject to Section 4.03 hereof, 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 Expansion Project.”

Section 4. *Amendment of Compliance Requirements.* Section 4.04 of the Fee Agreement, relating to Failure to Comply with Minimum Contractual Investment Requirement and/or Minimum Jobs Requirement, is amended to read:

“(a) County and Company agree that neither the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement were satisfied under this Agreement.

(b) Because of the failure to satisfy the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement, Company agrees to reimburse the County for any Special Source Credits received prior to January 16, 2017, and the amount of the reimbursement shall be calculated according to the following formula:

The highest degree of compliance reached by the end of the Investment Period (but not to exceed the investment and job creation levels contained in the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement) shall be measured against the Minimum Contractual Investment Requirement and the Minimum Jobs Requirement, and shall be weighted 50% Jobs/50% Investment times the aggregate Special Source Credits.

As an example, assuming investment in the Expansion Project totaled \$5,000,000 and job creation totaled 25 jobs by the end of the Investment Period and the Company had received, or will receive, in the aggregate, \$200,000 in Special Source Credits, the reimbursement would be:

$$((30-25)/30)=[16.666\%]$$

$$((\$7,500,000-\$5,000,000)/\$7,500,000)[33.333\%]$$

$$16.66\%+33.333\%/2=24.999\%$$

$$= 24.999\% \times \$200,000$$

The Company would owe \$49,998.

As an additional example, assuming investment in the Expansion Project totaled \$10,000,000 and job creation totaled 25 new jobs by the end of the Compliance Period and the Company had received, or will receive, in the aggregate \$200,000 in Special Source Credits, the reimbursement would be:

$$((30-25)/30)=[16.666\%]$$

$$((\$7,500,000-\$7,500,000)/\$7,500,000)=[(0\%)]$$

$$16.666\%+(0\%)/2=(8.3\%)$$

The Company would owe \$16,600.

Notwithstanding the provisions of Section 5.01(g) of this Agreement, the amount due the County pursuant to this Section 4.04(b) shall be paid not later than December 29, 2017 and shall be collected and enforced in accordance with Section 12-44-90 of the Negotiated FILOT Act.

(c) For property tax years beginning after December 31, 2016, Company agrees to maintain not less than seventy-seven (77) full-time jobs at the Expansion Project ("Jobs Maintenance Commitment"). If the number of full-time jobs falls below the number set forth in the Jobs Maintenance Commitment, then the Company agrees that the Company forfeits the benefit of the Negotiated FILOT Payment provided in Section 5.01(b) of this Agreement for the property tax year immediately following the property tax year in which the Jobs Maintenance Commitment is not maintained and the Company shall pay a fee-in-lieu of tax to the County computed in the same manner and amount as *ad valorem* property taxes would be computed. Beginning in calendar year 2017, the Company shall certify to the County Auditor on or before May 31 of each year following the end of a property tax year that the Company has complied with the Jobs Maintenance Requirement as of the end of such property tax year. If the certification is not made on or before May 31 of the applicable year, the Company agrees that the benefit of the Negotiated FILOT Payment provided in Section 5.01(b) of this Agreement are forfeited for the applicable property tax year and the Company shall pay a fee-in-lieu of tax to the County computed in the same manner and amount as *ad valorem* property taxes would be computed. Company agrees that this Agreement is terminated prospectively if the number of full-time jobs is below the number set forth in the Jobs Maintenance Commitment for three (3) consecutive years.

(d) Notwithstanding any other provision of this Agreement, the Company acknowledges and agrees that County's obligation to provide the Negotiated FILOT benefits end if the Company closes its facilities in the County (including, without limitation, the Expansion Project) or otherwise ceases operations in the County and this Agreement shall terminate prospectively beginning with the FILOT Payment due with respect to the year in which the Company, closes its facilities or otherwise ceases operations."

Section 5. *Amendment of Number of Negotiated FILOT Payments.* Section 5.01(b)(i) of the Fee Agreement, relating to number of annual Negotiated FILOT Payments, is amended to read:

"For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall be payable for a 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 period of twenty (20) years."

Section 6. *Amendment of Remedy.* Section 5.01(f)(iii) of the Fee Agreement is amended to read:

“(iii) Reserved.”

Section 7. *Amendment of Notice Addresses.* Items (b) and (c) of Section 9.03, relating to Notices; Demands; Requests, is amended to read:

“(b) with a copy (which shall not constitute notice) to:

Lancaster County Attorney
Administration Building
101 N. Main Street, 2nd Floor (29720)
P.O. Box 1809 (29721-1809)
Lancaster, SC
Phone: 803-416-9426
Fax: 803-285-3361
Email: jweaver@lancastercountysc.net

(c) with a copy (which shall not constitute notice) to:

Lancaster County Department of Economic Development
Attn: Director
1033 W. Meeting Street (29720)
P.O. Box 1809 (29721)
Lancaster, SC
Phone: 803 286-3633
Email: jgilbert@lancastercountysc.net”

Section 8. *Payment of Expenses.* Upon submission of appropriate documentation of the expenditure, Company agrees to reimburse the County, not later than March 31, 2017, for the County’s reasonable unreimbursed actual costs incurred related to this First Amendment. The cost reimbursement is limited to County payments to third-party vendors, including, but not limited to, payments for attorney’s fees.

Section 9. *Representations and Warranties.* (A) Company represents and warrants, as the basis for the undertakings on its part contained in this First Amendment, that it (i) is a corporation organized and existing and in good standing under the laws of Delaware, (ii) is authorized to do business in South Carolina, (iii) has all requisite power to enter into this First Amendment, and (iv) by proper action has been duly authorized to execute and deliver this First Amendment.

(B) County represents and warrants, as the basis for the undertakings on its part contained in this First Amendment, that it (i) is a body politic and corporate and a political subdivision of the State, (ii) is authorized by the Act to enter into this First Amendment, (iii) has approved this First Amendment in accordance with the procedural requirements of the Act and any other applicable state law, and (iv) has authorized its officials to execute and deliver this First Amendment.

Section 10. *Multiple Counterparts.* This First Amendment may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 11. *Fee Agreement.* Except as specifically provided in this First Amendment, the Fee Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this First Amendment to be effective as of the date first written above.

LANCASTER COUNTY, SOUTH CAROLINA




Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

[SEAL]

ATTEST:

By: 

Sherrie Simpson, Clerk to County Council

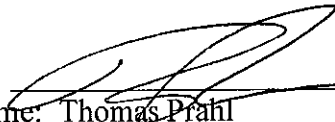
AKZO NOBEL COATINGS INC.

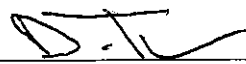
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AKZO NOBEL COATINGS INC.

By: 
Name: Thomas Prahl
Title: Vice President -Tax

By: 
Name: David Turner
Title: Vice President and Treasurer

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