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2019 DEC 13 AM 11:28
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER) **ORDINANCE NO. 2019-1627**

AN ORDINANCE

TO AUTHORIZE THE EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO THE SPECIAL SOURCE REVENUE CREDIT AGREEMENT, BY AND AMONG LANCASTER COUNTY, SYNERGY STEEL HOLDINGS, INC., AND GOLDEN SPIKE, LLC.

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

Section 1. Findings.

The Council finds that:

(a) The County is authorized by Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended and Article VIII, Section 13(D) of the South Carolina Constitution (the "MCP Laws") and by Sections 4-1-175, 4-29-68 and 12-44-70, Code of Laws of South Carolina 1976, as amended (the "SSRC Law") (collectively, the MCP Laws and SSRC Law are referred to as the "Acts") to (i) create multi-county industrial parks with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County, which inclusion under the terms of the MCP Laws makes such property exempt from *ad valorem* property taxes, therefore changing the character of the annual receipts from such properties from *ad valorem* property taxes to fees-in-lieu of *ad valorem* property taxes; and (iii) grant an annual credit against such fee-in-lieu of tax receipts in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the property of any company located within such multi-county industrial parks or for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise located within such multi-county parks in order to enhance the economic development of the County;

(b) Pursuant to the Acts, the County, Synergy Steel Holdings, Inc., a South Carolina corporation (the "Company"), and Golden Spike, LLC, a South Carolina limited liability company ("Landlord") entered into a Special Source Revenue Credit Agreement, dated August 27, 2018 (the "SSRC Agreement"), as an incentive for the Company and Landlord to invest in the location of a facility in the County and to create new jobs (the "Project");

(c) The Company has requested that the County approve an amendment to the SSRC Agreement that adds Synergy Manufacturing, LLC, Synergy Construction, LLC, and Synergy Insulation, LLC, each a South Carolina single member limited liability company owned by the Company, as parties to the SSRC Agreement (the "Synergy Named Entities");

(d) The Company has furthermore requested the County approve an amendment to the SSRC Agreement that adds BMI Properties, LLC, a South Carolina limited liability company and an affiliated entity of the Company (“BMI”) as a party to the SSRC Agreement in anticipation of BMI purchasing the real estate owned by Landlord and continuing the lease of such real estate to the Company and/or the Synergy Named Entities.

(e) Section 9.4 of the SSRC Agreement provides that the SSRC Agreement may be amended, changed or modified with the written consent of the County and Company;

(f) Section 6.3 of the SSRC Agreement provides that the County’s consent is required for the transfer or assignment of the Company’s interest in the SSRC Agreement to entities other than affiliates of the Company; and

(g) The Company has caused to be prepared and presented to the Council the form of an amendment to the SSRC Agreement and it appears that the amendment, which is attached to this ordinance as Exhibit A, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended (the “First Amendment to SSRC Agreement”).

Section 2. Approval of Amendment.

Subject to the provisions of Section 4 of this ordinance, and, 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 or locate an industrial facility in the State, the First Amendment to SSRC Agreement is authorized, ratified, and approved.

Section 3. 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 Acts.

(b) The Project and the First Amendment to SSRC 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 and the First Amendment to SSRC 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 and the First Amendment to SSRC 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 and the First Amendment to SSRC Agreement to the public will be greater than the costs to the public.

Section 4. Approval and Execution of Amendment.

The form of the First Amendment to SSRC Agreement is approved, and all of the terms, provisions, and conditions thereof are approved and incorporated herein by reference as if the First Amendment to SSRC Agreement 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 to SSRC Agreement in the name of and on behalf of the County, and thereupon to cause the First Amendment to SSRC Agreement to be delivered to the Company. The First Amendment to SSRC 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 SSRC Agreement attached to this ordinance.

Section 5. Consent to Assignment or Transfer.

A. The County consents to the assignment or transfer of the Company's interest in the SSRC Agreement to the Synergy Named Entities.

B. The County consents to the assignment or transfer of the Landlord's interest in the SSRC Agreement to BMI.

Section 6. 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 SSRC Agreement and the performance of all obligations of the County under and pursuant to the First Amendment to SSRC Agreement.

Section 7. 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 8. 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 9th day of December, 2019.

LANCASTER COUNTY, SOUTH CAROLINA

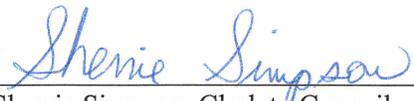


Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

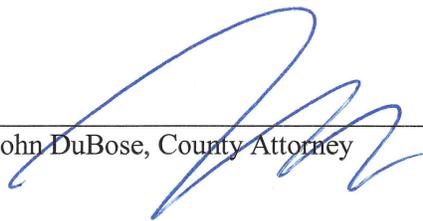
ATTEST:



Sherrie Simpson, Clerk to Council

First Reading: November 12, 2019
Second Reading: November 25, 2019
Public Hearing: December 9, 2019
Third Reading: December 9, 2019

Approved as to form:



John DuBose, County Attorney

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Exhibit A to Ordinance No. 2019-1627

First Amendment to SSRC Agreement

See attached.

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October 30, 2019

FIRST AMENDMENT TO SSRC AGREEMENT

This FIRST AMENDMENT TO SSRC AGREEMENT (this "Amendment") is dated this 9th day of December, 2019, by and among LANCASTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and political subdivision of the State of South Carolina (the "State"), acting by and through its County Council (the "County Council") as governing body of the County, SYNERGY STEEL HOLDINGS, INC., a South Carolina corporation ("Synergy Holdings"), GOLDEN SPIKE, LLC, a South Carolina limited liability company ("Landlord"), SYNERGY MANUFACTURING, LLC, a South Carolina limited liability company ("Manufacturing LLC"), SYNERGY CONSTRUCTION, LLC, a South Carolina limited liability company ("Construction LLC"), SYNERGY INSULATION, LLC, a South Carolina limited liability company ("Insulation LLC"), and BMI PROPERTIES, LLC, a South Carolina limited liability company ("BMI").

WITNESSETH:

WHEREAS, the County is authorized by Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended and Article VIII, Section 13(D) of the South Carolina Constitution (the "MCP Laws") and by Sections 4-1-175, 4-29-68 and 12-44-70, Code of Laws of South Carolina 1976, as amended (the "SSRC Law") (collectively, the MCP Laws and SSRC Law are referred to as the "Acts") to (i) create multi-county industrial parks with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County, which inclusion under the terms of the MCP Laws makes such property exempt from *ad valorem* property taxes, therefore changing the character of the annual receipts from such properties from *ad valorem* property taxes to fees-in-lieu of *ad valorem* property taxes; and (iii) grant an annual credit against such fee-in-lieu of tax receipts in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the property of any company located within such multi-county industrial parks or for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise located within such multi-county parks in order to enhance the economic development of the County;

WHEREAS, County, Synergy Holdings and Landlord entered into a Special Source Revenue Credit Agreement, dated August 27, 2018 (the "SSRC Agreement"), as an incentive for the Synergy Holdings and Landlord to invest in the location of a facility in the County and to create new jobs (the "Project");

WHEREAS, Synergy Holdings has requested that County approve an amendment to the SSRC Agreement that adds Manufacturing LLC, Construction LLC, and Insulation LLC, as parties to the SSRC Agreement (the "Synergy Named Entities");

WHEREAS, Synergy Holdings has furthermore requested the County approve an amendment to the SSRC Agreement that adds BMI as a party to the SSRC Agreement in

anticipation of BMI purchasing the real estate owned by Landlord and continuing the lease of such real estate to Synergy Holdings and/or the Synergy Named Entities;

WHEREAS, Section 9.4 of the SSRC Agreement provides that the SSRC Agreement may be amended, changed or modified with the written consent of the County and Synergy Holdings and Section 6.3 of the SSRC Agreement provides that the County's consent is required for the transfer or assignment of Synergy Holdings interest in the SSRC Agreement to entities other than affiliates of Synergy Holdings; and

WHEREAS, by enactment of Ordinance No. 2019-1627, the County Council has authorized the County to enter into this Amendment.

NOW, THEREFORE, in view of the respective agreements contained in this Amendment and other consideration, the parties hereby agree as follows:

SECTION 1. ADDITION OF PARTIES.

Effective with property tax year 2019 (the tax year in which fee-in-lieu of *ad valorem* property tax payments are due without penalty by January 15, 2020), Manufacturing LLC, Construction LLC, Insulation LLC, and BMI are, each, added as a party to the SSRC Agreement. Each of the Synergy Named Entities and BMI is entitled to the benefits of the SSRC Agreement and each of the Synergy Named Entities and BMI is responsible for the burdens of the SSRC Agreement.

SECTION 2. CONSENT TO ASSIGNMENT OR TRANSFER.

County acknowledges that County Council, by passage of Section 5 of Ordinance No. 2019-1627, consented to the assignment or transfer of Synergy Holding's interest in the SSRC Agreement to the Synergy Named Entities and consented to the assignment or transfer of Landlord's interest in the SSRC Agreement to BMI.

SECTION 3. DEFINITIONS.

The definitions in Section 1.2 of the SSRC Agreement for "Company" and "Landlord" are amended to read:

"'Company' means Synergy Steel Holdings, Inc., a South Carolina corporation, and its successors and assigns Synergy Manufacturing, LLC, a South Carolina limited liability company, Synergy Construction, LLC, a South Carolina limited liability company, and Synergy Insulation, LLC, a South Carolina limited liability company, and their successors and assigns."

"'Landlord' means Golden Spike, LLC, a South Carolina limited liability company, that is the owner of the Real Property, and its successors and assigns BMI Properties, LLC, a South Carolina limited liability company, and its successors and assigns."

SECTION 4. MINIMUM JOBS COMMITMENT

Section 4.3(a) of the SSRC Agreement is amended by adding at the end:

“For purposes of determining if the Jobs Commitment, as set forth above, has been met, all Qualified Full-Time Jobs paying an hourly wage rate not less than the Wage Requirement of the Company and its successors and assigns and Landlord and its successors and assigns shall be included.”

SECTION 5. NOTICE ADDRESSES

Section 9.1 of the SSRC Agreement, relating to Notices, is amended to read:

“All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 9.1:

If to the Company:

Synergy Steel Holdings, Inc.
1312 Camp Creek Road
Lancaster, SC 29720

Synergy Manufacturing, LLC
1312 Camp Creek Road
Lancaster, SC 29720

Synergy Construction, LLC
1312 Camp Creek Road
Lancaster, SC 29720

Synergy Insulation, LLC
1312 Camp Creek Road
Lancaster, SC 29720

With a copy to:

Nelson Mullins Riley & Scarborough, LLP
Attn: Edward Kluiters
1320 Main Street, 17th Floor
Columbia, SC 29211

If to Landlord:

Golden Spike, LLC
c/o Fab Fours
2213 Industrial Park Road
Lancaster, SC 29720

BMI Properties, LLC
1312 Camp Creek Road
Lancaster, SC 29720

To the County:

County of Lancaster, South Carolina
ATTN: Steve Willis, County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721-1809)
Lancaster, South Carolina
Phone: (803) 416-9300
Email: swillis@lancastercountysc.net

With a copy to (which shall not constitute notice):

Mr. Jamie Gilbert
Economic Development Director, Lancaster County
P.O. Box 1809
Lancaster, South Carolina 29721
Telephone: (803) 286-3633
Fax: (803) 416-9497
Email: jgilbert@lancastercountysc.net

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; or (2) by certified mail, three (3) business days after delivery to the U.S. Postal authorities by the party serving notice.”

SECTION 6. PERSONAL PROPERTY

Pursuant to Section 1.2 of the SSRC Agreement, definition of “Infrastructure Improvements,” the Synergy Named Entities are electing to include the personal property, including Equipment as defined in the SSRC Agreement, in the definition of “Infrastructure Improvements.” County acknowledges and agrees that this Section 6 constitutes written notice of the election to include the personal property and Equipment in the definition of “Infrastructure Improvements.”

SECTION 7. COUNTY AND COMPANY REPRESENTATIONS.

A. The County represents that it has approved this Amendment by adoption of Ordinance No. 2019-1627 and in accordance with the procedural requirements of the County Council and any other applicable law.

B. Synergy Holdings, Manufacturing LLC, Construction LLC, and Insulation LLC, each, represent that (i) it is a corporation or limited liability company organized, validly existing, and in good standing under the laws of the State, (ii) it has the power to enter into this Amendment, (iii) it has by proper action approved this Amendment, and (iv) it has authorized its officials to execute and deliver this Amendment.

C. Landlord and BMI, each, represent that (i) it is a limited liability company organized, validly existing, and in good standing under the laws of the State, (ii) it has the power to enter into this Amendment, (iii) it has by proper action approved this Amendment, and (iv) it has authorized its officials to execute and deliver this Amendment. Landlord and BMI, each, represent and covenant that it will pass on any savings resulting from the Agreement and this Amendment to the Company, it being agreed by the Landlord and BMI that the incentives provided for in the SSRC Agreement and this Amendment are in consideration for the Company investing in the County.

SECTION 8. COUNTERPARTS.

This 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 9. COST REIMBURSEMENT.

Company agrees to reimburse the County its administrative expenses related to this 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 Amendment. The written request shall include a description of the nature of the administrative expenses.

SECTION 10. EFFECTIVE DATE.

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

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

LANCASTER COUNTY, SOUTH CAROLINA

By: _____
Steve Harper, Chair, County Council

By: _____
Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

COMPANY AND LANDLORD SIGNATURES FOLLOW ON NEXT PAGE.

SYNERGY STEEL HOLDINGS, INC.

By: _____

Name: _____

Title: _____

SYNERGY MANUFACTURING, LLC

By: _____

Name: _____

Title: _____

SYNERGY CONSTRUCTION, LLC

By: _____

Name: _____

Title: _____

SYNERGY INSULATION, LLC

By: _____

Name: _____

Title: _____

LANDLORD SIGNATURES FOLLOW ON NEXT PAGE.

BMI PROPERTIES, LLC

By: _____

Name: _____

Title: _____

GOLDEN SPIKE, LLC

By: _____

Name: _____

Title: _____