

ORDINANCE 4439

APPROVING THE EXECUTION AND DELIVERY OF AN INCENTIVE AGREEMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the City Council of the City of Hartsville, South Carolina, in a meeting duly assembled:

Section 1. Findings of Fact

The City Council of the City of Hartsville (the “**Council**”), the governing body of the City of Hartsville, South Carolina (the “**City**”), has made the following findings of fact:

(A) The City is a municipal corporation of the State of South Carolina (the “**State**”) located in Darlington County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State to such public entities.

(B) Mr. B’s Frozen Foods LLC, a limited liability company incorporated in the State of South Carolina (the “**Company**”), that makes frozen foods, particularly home-style biscuits and macaroni and cheese, is planning to expand a portion of its food processing operations (the “**Project**”) and move into a new facility located in the City, particularly 1015 W. Bobo Newson Hwy., Hartsville, SC 29069 (TMS No. 036-00-03-012) (the “**Property**”).

(C) While the Property is not located in the Incentive Area as such term is defined and described in the “Economic Development Incentive Program”, codified at Chapter 2, Article VI of the City’s code of ordinance, the Project is advantageous to the City as it is anticipated to create 50 new jobs, and revitalize a previously underutilized warehouse within the City.

(D) In consideration of and as an incentive for the Project being developed, the City has determined to offer certain incentives to the Company, particularly, the reimbursement of all costs of designing, developing, acquiring, constructing and installing a “Liberty Deep Duplex Pump Station” necessary for public sanitary sewer to serve the Project (collectively, the “**Incentives**”).

(E) The City is mindful of and has considered the requirements of *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986) and *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000) (the “**Byrd Test**”), wherein public purpose of the proposed incentives is determined by the following four-part test: (1) what is the ultimate goal or benefit to the public intended by the project; (2) are public parties or private parties the primary beneficiaries; (3) is the benefit to the public speculative; and (4) what is the probability that public interest shall be served and to what degree.

(F) The Council, after performing its initial due diligence, has determined that: (i) the Project is anticipated to benefit the general public welfare of the City by providing services, employment, and other public benefits not otherwise adequately provided locally; (ii) the revitalization and redevelopment of the Property is a significant priority; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; (iv) the ability to

further develop the City's tax base through expansion is of paramount importance and the benefits of the Project to the public are greater than the cost of the Incentives; and (v) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the City, and all other criteria prescribed by law.

(G) The City desires to execute an Incentive Agreement with the Company (the "*Incentive Agreement*"), the form of which is attached hereto as Exhibit A, to establish the parties' intentions with respect to the conditions for the implementation of the Incentives.

(H) The Council hereby finds and determines that the Incentive Agreement, as negotiated by the City Manager, shall be in the best interest of the public, the parties and the consumers to be served.

Section 2. Ratification of Findings

(A) The City reaffirms the criteria set forth by the South Carolina Supreme Court when it established the Byrd Test. The City, in offering the Incentives under the Incentive Agreement, complies with the objective provisions of the Byrd Test as described in Section 2(B) below.

(B) With regard to the Byrd Test, the City believes that:

(1) the development of the Project is integral to the growth of the City and the Project shall serve as a catalyst for future development in the area;

(2) although some benefits inure to the Company, the City is the primary beneficiary because the Project shall provide a direct economic impact to the City through increased tax levies, growth in property valuations, the creation of jobs, removal of blight and reduction in criminal activities and shall provide indirect economic impacts by attracting businesses, investment and patronage into the area and enhancing quality of life and enjoyment for City residents by developing blighted or vacant areas in the community, increasing property tax revenues within the areas surrounding the Project and increased demand in property and property values in the vicinity of the Project;

(3) while the development of the Project, like all developments, involves a degree of risk and the potential to not be successful, the City's confidence in the success of the Project is burnished by the Company's proven ability to develop other successful projects in the City and throughout the southeastern United States; and

(4) the public interest shall be greatly served, as the Project is expected to generate investment within the City and create jobs. The direct investment of capital and the potential creation of jobs are beneficial to the success of the City and its general welfare.

Section 3. Approval of the Incentive Agreement

(A) The City has negotiated the Incentives with the Company and such Incentives shall be supplied to the Company in accordance with the provisions of the Incentive Agreement.

(B) The Incentive Agreement, the form of which is attached to this Ordinance at **Exhibit A**, shall be executed and delivered on behalf of the City by the City Manager, including the Interim City Manager (the “*City Manager*”). Upon such execution, the Council shall be timely informed of the execution of the Incentive Agreement and informed as to any material deviation of terms in the current draft. The consummation of the transactions and undertakings described in the Incentive Agreement, and such additional transactions and undertakings as may be determined by the City Manager, in consultation with legal counsel to be necessary or advisable in connection therewith, are hereby approved.

Section 4. Other Documents; Ratification of Prior Actions; Limitation

In connection with the development of the Project and the provision of the Incentives, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as he shall deem necessary or advisable. Any actions previously undertaken by the City Manager, Council or City staff in connection with the Project prior to the enactment of this Ordinance are ratified and confirmed.

Section 5. Severability

If any one or more of the provisions of this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 6. Repealer

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 7. Inconsistency

All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 8. Effect

This Ordinance shall be enacted upon second reading by the Council.

DONE AND ORDAINED IN COUNCIL ASSEMBLED, this ___ day of _____ 2022.

**CITY OF HARTSVILLE,
SOUTH CAROLINA**

(SEAL)

Casey Hancock, Mayor

ATTEST

Sherron L. Skipper, City Clerk

First Reading: May 17, 2022
Public Hearing: _____, 2022
Second Reading: _____, 2022

EXHIBIT A

FORM OF THE INCENTIVE AGREEMENT