ORDINANCE NO. 06-2018/19

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

[AN ORDINANCE AUTHORIZING THE AMENDMENT OF A FEE AGREEMENT AMONG FLORENCE COUNTY, SOUTH CAROLINA, MONSTER WORLDWIDE SOUTH CAROLINA, INC., AND RED ROCK PEE DEE, LLC, AS SPONSOR AFFILIATE, TO REPLACE RED ROCK PEE DEE, LLC WITH AMERICAN NATIONAL INSURANCE COMPANY, AS SPONSOR AFFILIATE; AND AUTHORIZING THE AMENDMENT OF A MODIFICATION OF INDEUCEMENT AND MILLAGE RATE AGREEMENT AND MEMORANDUM OF UNDERSTANDING AMONG FLORENCE COUNTY, SOUTH CAROLINA, MONSTER WORLDWIDE SOUTH CAROLINA, INC., AND RED ROCK PEE DEE, LLC, AS SPONSOR AFFILIATE, TO REVISE THE PROVISIONS OF A SPECIAL SOURCE REVENUE CREDIT; AND OTHER RELATED MATTERS.]

WHEREAS:

1. Florence County, South Carolina ("County"), acting by and through its County Council ("County Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution ("Constitution"), the Code of Laws of South Carolina, 1976, as amended ("Code"), and the case law of the courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective and existing industries as inducements for economic development within the County; and

2. The County is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code ("Act") to enter into certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute "projects" as defined in the Act) and to accept any grants for such projects; and

3. Through employment of the powers granted by the Act, the County is empowered to promote the economic and industrial development of the State of South Carolina ("State") and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State and thus use 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, or other public benefits not otherwise adequately provided locally by providing for the exemption of such project from property taxes and for the payment of a fee in lieu of property taxes (as defined in the Act); and
4. As approved by County Ordinance No. 39-2007/08, the County, Monster Worldwide South Carolina, Inc. (the “Company”) and Red Rock Pee Dee, LLC, as Sponsor Affiliate (“Red Rock”), entered into that certain Fee Agreement, dated June 26, 2008 (the “Fee Agreement”), concerning a Project in the County (as defined in the Fee Agreement); and

5. The County, Monster, and Red Rock, as Sponsor Affiliate, desire to amend the Fee Agreement to replace Red Rock with American National insurance Company, as Sponsor Affiliate (“ANIC”), and ANIC desires to become a Sponsor Affiliate; and

6. As approved by County Resolution No. 28-2007/2008, the County, Monster, and Red Rock also entered into that certain Memorandum of Understanding, dated June 26, 2008 (“MOU”), and that certain Inducement and Millage Rate Agreement, dated June 26, 2008 (“Inducement Agreement”) concerning a Project (as further defined in these agreements); and

7. As approved by County Resolution No. 05-2013/2014, the MOU and Inducement Agreement were subsequently modified through a Modification of Inducement and Millage Rate Agreement and Memorandum of Understanding, dated July 23, 2013 (“Modification”); and

8. Under the Inducement Agreement, the County, Company, and Red Rock were granted a special source revenue credit pursuant to Section 12-44-70 of the Act (“SSRC”), and the Modification amended and revised the SSRC; and

9. The County, Company, Red Rock, and ANIC desire to amend the Modification to further revise the terms and conditions of the SSRC.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Florence County, South Carolina, in meeting duly assembled:

Section 1. Findings and Determinations. It is hereby declared that the facts set forth in the recitals to this Ordinance are true and correct in all respects. It further is found, determined, and declared by the County Council, based on information provided by the Company, that the amendment of the Fee Agreement and amendment to the Modification give rise to no pecuniary liability of the County or incorporated municipality or results in a charge against its general credit or taxing power.

Section 2. Approval of First Amendment to Fee Agreement and Amendment to Modification. The First Amendment to Fee Agreement and Amendment to Modification are approved as follows:

(a) The form, terms, and provisions of the First Amendment to Fee Agreement and Amendment to Modification presented to this meeting and attached to this Ordinance as Exhibit A, are approved and all of the terms, provisions, and conditions of the First Amendment to Fee Agreement and Amendment to Modification are incorporated by reference. The Chairman of the County Council (“Chairman”) is authorized, empowered, and directed to execute, acknowledge, and deliver the First Amendment to Fee Agreement and Amendment to Modification in the name of the County. The Chairman is further authorized, empowered, and directed to cause the First Amendment to Fee Agreement and Amendment to Modification to be delivered to the Company.
(b) The First Amendment to Fee Agreement and Amendment to Modification to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are approved by the County officials executing the First Amendment to Fee Agreement and Amendment to Modification. The County officials shall consult the attorney for the County ("County Attorney") with respect to any changes to the First Amendment to Fee Agreement and Amendment to Modification. The execution of the First Amendment to Fee Agreement and Amendment to Modification by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the First Amendment to Fee Agreement and Amendment to Modification now before this meeting.

(c) If under the First Amendment to Fee Agreement, the Amendment to Modification, or the Act any future actions of the Company (including, without limitation, the supplementation of the exhibits thereto and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the Chairman or the Florence County Administrator ("County Administrator") upon affirmative resolution of the County Council to the extent permitted by law. The County officials shall consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

Section 3. Execution of Documents. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things reasonably necessary to effect the execution and delivery of the First Amendment to Fee Agreement and Amendment to Modification and the County’s performance of its obligations under the First Amendment to Fee Agreement and Amendment to Modification.

Section 4. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 5. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

ATTEST:

Connie Y. Haselden
Clerk to Council

Approved as to Form & Content
D. Malloy McEachin, Jr., County Attorney

SIGNED:

Kent C. Caudle, Chairman
Florence County Council

COUNCIL VOTE: approved

OPPOSED: P. J. Schofield

ABSENT:
Carolina Publishing

Advertising Affidavit

310 South Dargan Street
Florence, SC 29506
(843) 317-6397

MCNAIR LAW FIRM
1221 MAIN STREET
SUITE 1800
COLUMBIA, SC 29201-3326

Date Category Description Ad Size Total Cost
08/06/2018 Legal Notices NOTICE OF PUBLIC HEARING BEFORE FLORENC 1 x 50 L 240.50

NOTICE OF PUBLIC HEARING BEFORE FLORENCE COUNTY COUNCIL

Notice is hereby given pursuant to Section 4-9-130 Code of Laws of South Carolina 1976, that on Thursday, August 16, 2018, at 5:00 p.m., or as soon as practicable thereafter, a public hearing will be held by the County Council of Florence County, South Carolina, in the County Complex, 180 N. Irby St, Room 803, Florence, SC 29501 or at such other location as proper notice on the main entrance to said building might specify.

The purpose of the public hearing is to consider an ordinance entitled "AN ORDINANCE AUTHORIZING THE AMENDMENT OF A FEE AGREEMENT AMONG FLORENCE COUNTY, SOUTH CAROLINA, MONSTER WORLDWIDE SOUTH CAROLINA, INC., AND RED ROCK PEE DEE, LLC, AS SPONSOR AFFILIATE, TO REPLACE RED ROCK PEE DEE, LLC WITH AMERICAN NATIONAL INSURANCE COMPANY, AS SPONSOR AFFILIATE; AND AUTHORIZING THE AMENDMENT OF A MODIFICATION OF INDEMNIFICATION AND MILLAGE RATE AGREEMENT AND MEMORANDUM OF UNDERSTANDING AMONG FLORENCE COUNTY, SOUTH CAROLINA, MONSTER WORLDWIDE SOUTH CAROLINA, INC., AND RED ROCK PEE DEE, LLC, AS SPONSOR AFFILIATE, TO REVISE THE PROVISIONS OF A SPECIAL SOURCE REVENUE CREDIT; AND OTHER RELATED MATTERS."

At the public hearing all taxpayers, residents of Florence County, and any other interested persons who appear will be given an opportunity to express their views for or against the Ordinance. Further information and a copy of the proposed ordinance for inspection is available in the Clerk to County Council's office, 180 N. Irby St., Florence, SC 29501, during its regular business hours.

COUNTY COUNCIL
OF FLORENCE COUNTY, SOUTH CAROLINA

Kent C. Caudle, Chairman

Publisher of the
Morning News

This is to certify that the attached NOTICE OF PUBLIC HEARING was published in the Morning News in the City of Florence, state of South Carolina on the following dates:

07/31/2018

The First insertion being given ... 07/31/2018

Newspaper reference: 0001108944

Sworn to and subscribed before me this 8/2/18

[Signature]
Notary Public

Supervising Notary

State of South Carolina
My Commission expires 8/2/20

THIS IS NOT A BILL. PLEASE PAY FROM INVOICE. THANK YOU
Exhibit A
Form of First Amendment to Fee Agreement
Form of Amendment to Modification
FIRST AMENDMENT TO FEE AGREEMENT
AND
AMENDMENT TO MODIFICATION OF INDEUCEMENT AND MILLAGE RATE AGREEMENT AND MEMORANDUM OF UNDERSTANDING

THIS FIRST AMENDMENT TO FEE AGREEMENT AND AMENDMENT TO MODIFICATION OF INDEUCEMENT AND MILLAGE RATE AGREEMENT AND MEMORANDUM OF UNDERSTANDING (collectively, the “Amendment”) is made and entered into effective as of September 13, 2018 (the “Effective Date”) by and among FLORENCE COUNTY, SOUTH CAROLINA, (the “County”), MONSTER WORLDWIDE SOUTH CAROLINA, INC. (the “Company”), RED ROCK PEE DEE, LLC (“Red Rock”), and AMERICAN NATIONAL INSURANCE COMPANY (“ANIC”). The County, Company, Red Rock, and ANIC are sometimes jointly referred to in this Amendment as the “parties,” or severally referred to as a “party.”

WITNESSETH:

WHEREAS, Florence County, South Carolina (“County”), acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution (“Constitution”), the Code of Laws of South Carolina, 1976, as amended (“Code”), and the case law of the courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective and existing industries as inducements for economic development within the County;

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code (“Act”) to enter into certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute “projects” as defined in the Act) and to accept any grants for such projects;

WHEREAS, through employment of the powers granted by the Act, the County is empowered to promote the economic and industrial development of the State of South Carolina (“State”) and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State and thus use 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, or other public benefits not otherwise adequately provided locally by providing for the exemption of such project from property taxes and for the payment of a fee in lieu of property taxes (as defined in the Act);

WHEREAS, as approved by County Ordinance No. 39-2007/08, the County, Company, and Red Rock, as Sponsor Affiliate, entered into that certain Fee Agreement, dated June 26, 2008 (the “Fee Agreement”), concerning a Project in the County (as defined in the Fee Agreement);

WHEREAS, the County, Monster, and Red Rock, as Sponsor Affiliate, desire to amend the Fee Agreement to replace Red Rock with ANIC, as Sponsor Affiliate, and ANIC desires to become a Sponsor Affiliate;
WHEREAS, as approved by County Resolution No. 28-2007/2008, the County, Monster, and Red Rock also entered into that certain Memorandum of Understanding, dated June 26, 2008 ("MOU"), and that certain Inducement and Millage Rate Agreement, dated June 26, 2008 ("Inducement Agreement") concerning a Project (as further defined in these agreements);

WHEREAS, as approved by County Resolution No. 05-2013/2014, the MOU and Inducement Agreement were subsequently modified through a Modification of Inducement and Millage Rate Agreement and Memorandum of Understanding, dated July 23, 2013 ("Modification");

WHEREAS, under the Inducement Agreement, the County, Company, and Red Rock were granted a special source revenue credit pursuant to Section 12-44-70 of the Act ("SSRC"), and the Modification amended and revised the SSRC; and

WHEREAS, the County, Company, Red Rock, and ANIC desire to amend the Modification to further revise the terms and conditions of the SSRC.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained and the mutual benefits to be derived by the parties, the receipt and adequacy of which are acknowledged, the parties hereto agree as follows:

1. All capitalized terms not specifically defined herein shall have the meaning as defined in the Fee Agreement, the Inducement Agreement, the MOU, and the Modification (collectively, the "Agreements"), and if not defined therein shall have the meaning as defined in the Act.

2. The parties acknowledge that the Company and Red Rock have satisfied their investment obligations under the Fee Agreement. The Fee Agreement shall be amended to replace Red Rock with ANIC in every instance as Sponsor Affiliate. Red Rock shall have no further obligations or duties under the Fee Agreement arising after the date hereof, provided that Red Rock shall remain responsible for any obligations or duties arising prior the date hereof, including the liability for payment of 2018 FILOT Payments which are based upon ownership of assets as of the close of the 2017 tax year.

3. Section 1.c of the Modification shall be deleted in its entirety and replaced with the following:

   Section 2.1 of the Inducement Agreement shall be deleted in its entirety and replaced with the following language:

   "Section 2.1 Special Source Revenue Credits. The Company and the Sponsor Affiliate shall receive a special source revenue or infrastructure improvement credit against their applicable FILOT Payments of ninety (90) percent for tax years 2009 through 2013 and thirty-five (35) percent for the tax years 2014 through 2017 pursuant to Section 12-44-70 of the Act (the "SSRC"). Notwithstanding any language to the contrary in this Inducement Agreement or any other related agreements, no SSRCs shall be provided after the 2017 tax year."
4. The Company agrees to reimburse the County for administrative expenses, including but not limited to reasonable attorneys’ fees, incurred in connection with the preparation, negotiation, and implementation of this Amendment and any and all documents related thereto.

5. All other terms and provisions of the Agreements shall otherwise remain in full force and effect, except as specifically amended herein.

6. This 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.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

FLORENCE COUNTY COUNCIL

By: ____________________________

Kent C. Caudle, Chairman of County Council, Florence County, South Carolina

Attest this ______ day of ______, 2018

Connie Haselden, Clerk to Council, Florence County, South Carolina

MONSTER WORLDWIDE SOUTH CAROLINA, INC.

By: ____________________________

Name: ___________________________

Title: ____________________________

RED ROCK PEE DEE, LLC

By: ____________________________

Name: ___________________________

Title: ____________________________

AMERICAN NATIONAL INSURANCE COMPANY

By: ____________________________

Name: ___________________________

Title: ____________________________
STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  

I, the undersigned, Clerk to County Council of Florence County ("County Council"), DO HEREBY CERTIFY:  

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on three separate days. At least one day passed between first and second reading and at least seven days between second and third reading. At each meeting, a quorum of the County Council was present and remained present throughout the meeting.  

To the best of my knowledge, the County Council has not taken any action to repeal the Ordinance.  

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Florence County Council, South Carolina, as of this 13th day of September, 2018.  

Connie Y. Haselden, Clerk to Council  
Florence County, South Carolina