

AN ORDINANCE AUTHORIZING AND ESTABLISHING AN ECONOMIC DEVELOPMENT INCENTIVE PROGRAM TO ENCOURAGE PRIVATE INVESTMENT IN THE CERTAIN AREAS OF THE CITY OF AIKEN; AND OTHER MATTERS RELATED THERETO.

The City Council of the City of Aiken (the “*Council*”), the governing body of the City of Aiken, South Carolina (the “*City*”), hereby makes the following findings of fact:

(A) The City is a municipal corporation of the State of South Carolina (the “*State*”), and as such the City is duly empowered to enact ordinances consistent with the Constitution of the State of South Carolina, 1895, as amended, and the laws of the State exercising the City’s powers related to the expenditure of public funds for public purposes and those other powers incident to the City’s authorization to impose and collect certain fees.

(B) The Council has adopted the 2017 City of Aiken Comprehensive Plan (the “*Comprehensive Plan*”) that sets forth certain guiding principles to direct the development of strategic policies of the City. As a matter of policy, the Council has adopted the following specific strategies: (i) adopt and utilize economic incentives and other policies to help focus development and redevelopment activity into areas of the City that are primed for transformation; (ii) adopt policies and incentives to encourage downtown business growth in sectors that will contribute to its vibrancy, with a particular focus on extending the period of activity downtown later into the evening; (iii) develop incentives for the reuse and repurposing of legacy commercial sites and shopping centers along the City’s major road corridors; and (iv) continue to develop policy to encourage and enhance economic opportunity in North Aiken.

(C) In order to implement the strategies discussed above and to better allow the City to promote the expansion of economic opportunity within the City and guide the City’s growth and redevelopment, the Council has determined that it is necessary to develop a program (as further defined in Section 1 of this Ordinance, the “*Program*”) under which financial economic development incentives (as further defined in the Program, the “*Incentives*”) may be provided to private entities in a consistent manner. The goals (the “*Goals*”) of the City in offering these Incentives are as follows: (i) to promote the construction of new buildings or the rehabilitation of existing buildings within the City; (ii) support the establishment of the categories of new businesses within the City that the Council determines will significantly increase the overall commercial activity within the City; and (iii) increase employment opportunities within the City.

(D) The Council recognizes that the Incentives will benefit the private entities receiving them (the “*Recipient*”), however the Council has determined that through the achievement of the Goals set forth above, the City and its citizens will realize some or all of the following tangible and intangible benefits (the “*Benefits*”): (i) increased property values within the area in which the

incentives are offered and the City as a whole; (ii) increased revenues from property taxes, business license fees, permit fees, utility revenues, and other fees imposed by the City; (iii) greater amenities for the benefit of the City’s citizens; and (iv) increased tourism and commercial activity within the City as a whole.

(E) In general, the Program has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of the citizens of the City. With respect to each area of the City where Incentives are offered the Council makes the following findings in connection with the public purpose of the Program: (i) the Program is structured in such a way that the aggregate value of the tangible and intangible Benefits received by the City and its citizens shall be greater than the value of the Incentives to the Recipients thereof, thereby making the City and its citizens the primary beneficiaries of the Program; (ii) the Program shall be further structured such that the Incentives shall only be provided to the Recipients thereof when certain investment or job creation benchmarks have been met, thereby mitigating the speculative nature of any project for which Incentives are provided; and (iii) given the structure of the Incentives offered and the timing with which Incentives are to be provided to the Recipients thereof, there is a high probability that a public purpose shall be served through the advancement of the City’s Goals and the realization of the anticipated Benefits.

NOW, THEREFORE, BEING DULY ASSEMBLED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AIKEN THAT:

Section 1. There is hereby enacted by the City, for the purposes discussed above, the City of Aiken Economic Project Incentive Program (the “**Program**”). The Program shall be codified in the Aiken City Code. By and through the enactment of this ordinance, the Aiken City Code is hereby amended by adding a Chapter ____, Article ____, Sections ____ - ____, which shall read in their entirety as follows:

Sec. XXX – 01 – Title.

This ordinance shall be titled the “City of Aiken Economic Project Incentive Program,” and is referred to herein as the “Program.”

Sec. XXX – 02 – Findings.

The City Council hereby affirms the findings made in Ordinance No. ____, dated _____, 2018, and incorporates such findings as if set forth fully herein.

Sec. XXX – 03 – Definitions.

In addition to those capitalized terms defined elsewhere in this Chapter ____, Article ____, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“Benefits” means those tangible benefits, such as increased revenues for the City from property taxes and other sources, and those intangible benefits to the City and its citizens of providing the Incentives, which generally include: (a) increased property values within the area in which the incentives are offered and the City as a whole; (b) increased revenues from property taxes, business license fees, permit fees, utility revenues, and other fees imposed by the City from other properties within the area in which incentives are offered; (c) greater amenities for the benefit of the City’s citizens; and (d) increased tourism and commercial activity within the area in which the incentives are offered and the City as a whole.

“Goals” means the objectives of the City in offering the Incentives, which generally are: (a) to promote the construction of new buildings or the rehabilitation of existing buildings within specific areas of the City; (b) to support the establishment of the categories of new businesses within these areas that the Council determines will significantly increase the overall commercial activity within specific areas of the City; and (c) to increase employment opportunities within the City.

“Incentive” shall mean a grant of any inducement having monetary value by the City that is offered to a person, firm, or corporation to pursue a Project that encourages private investment and/or the creation/retention of Jobs. The Incentive may also include grants from other entities that the City may be able to obtain.

“Job” shall mean each new (a) full-time position or (b) each full-time equivalent position that is created as a direct result of the ongoing operation of a Project. For the purposes of calculating the number of Jobs created by a Project, only those employed at businesses located within the Project and those who are to permanently be employed within the applicable Incentive Zone shall be considered.

“Project” shall mean the development of real property to the extent of adding value to the tax base through the improvement of real property and the creation of employment opportunities.

“Project Sponsor” means the private party or parties responsible for the development of a Project.

“Recipient” means the private party or parties to whom an Incentive shall be paid, which, unless otherwise expressly agreed to by the City, shall be the party or parties who paid the fee that is to be refunded or reimbursed.

Sec. XXX – 04 – Authorization to Enter into Incentive Agreements.

(a) Agreement Provisions. The Council, at its discretion and on a case-by-case basis, but subject to the Eligibility Criteria provided for in Sec. XXX – 06(a) hereof, may enter into an agreement with a Project Sponsor that intends to develop a Project within the City (an “*Incentive Agreement*”). Incentives shall only be provided to a Recipient after an Incentive Agreement has been entered into between the City and the Project Sponsor, which shall set forth the following: (i) the particulars of the Project; (ii) the Incentives to be provided; and (iii) sufficient assurances that the Benefits will accrue to the City and the Goals will be advanced by the Project.

(b) Negotiation and Approval. Pending the approval by the Council of any Incentive Agreement and subject to the provisions of Sec. XXX – 08 hereof, the City Manager of the City is authorized to discuss the provisions of this Program, aid in the completion of any Proposal (as defined herein) and, subject to the final approval by the Council, negotiate with the potential Project Sponsor on behalf of the City. Each Incentive Agreement shall be approved by the Council by ordinance which shall include those findings of the Council set forth in Section XXX – 06(a) of this Ordinance. Council may provide Incentives in any amounts and for any period of time within the thresholds provided for herein or within the time periods and thresholds provided for in any applicable statutory authorization.

Sec. XXX – 05 – Authorized Incentives.

(a) Multiple Incentives. The Council may offer any combination of Incentives provided for herein; provided, however, that the total amount of Incentives given in connection with an individual Project must be in keeping with the Goals and the value of the Benefits must be greater than the financial value of the Incentives.

(b) Incentive Recipient. Where the Project Sponsor is the developer of a Project, but does not own and/or operate the business or businesses located therein that are responsible for the payment of any fee that is to be refunded or reimbursed as an Incentive, the Recipient of the Incentive shall be the payor of such fee unless otherwise expressly agreed to by the City; provided, however, that with respect to Connection Fees and Permit Fees (as each are defined herein) payment of such fees to the City by the contractor of the Project shall be considered payment by the Project Sponsor and any refund or reimbursement of any such fee shall be made to the Project Sponsor.

(c) Incentives of the City. All direct Incentives of the City shall be grants which shall be in the form of reimbursements and refunds of fees that have been duly paid to the City. No upfront abatements of fees shall be permitted. Where Incentives continue for a period of more than one year, such Incentives may be graduated to increase or decrease year-to-year as

the Council sees fit, but subject to monitoring by the City to ensure compliance with the terms of any Incentive Agreement. The Council may offer Incentives in connection with the following fees up to the percentages indicated with respect to each:

(i) up to 50% of utility connection fees collected by the City (“**Connection Fees**”), to be reimbursed to the Recipient 12 months following the issuance of a certificate of occupancy for the Project;

(ii) up to 50% of building permit fees collected by the City (“**Permit Fees**”), to be reimbursed to the Recipient 12 months following the issuance of a certificate of occupancy for the Project;

(iii) up to 50% of business license fees collected by the City (“**Business License Fees**”) for as many as 5 years, to be reimbursed to the payor of the Business License Fees at the annual anniversary of the issuance of a certificate of occupancy for the project for which a business license has been issued, provided the Recipient has continued to operate the business for which the Business License Fees were paid for the entirety of such year;

(vi) such other Incentives that the Council, at its discretion on a case-by-case basis, determines are appropriate given the amount or type of investment made by the Project Sponsor.

(d) State Incentive Programs. The Council may include within any package of Incentives or as a stand-alone Incentive for in-City Project any incentive authorized by statute (“**State Incentive Programs**”).

Sec. XXX – 06 – Eligibility Criteria.

(a) General Eligibility Criteria. Except for those incentives authorized under a State Incentive Program, in order for a Project to be eligible to receive Incentives, the Council shall determine and make specific findings in the ordinance approving any Incentive Agreement that the Project meets, or upon completion will meet, each of the following criteria:

(i) the Project is consistent with the City of Aiken Comprehensive Plan (as it may be amended and updated from time to time, the “**Comprehensive Plan**”)

(ii) the manner in which the Project will advance the Goals of the City;

(iii) the Project, upon completion and continued operation for the term of the Incentives authorized, will result in the realization of Benefits to the City and its citizens that exceed the value of the Incentives provided, including a description of the tangible and

intangible Benefits that are expected to accrue to the City and its citizens as a result of a Project;

(iv) absent the provision of Incentives, the Project would be unlikely to occur or unlikely to occur at the level or scale contemplated by the proposed Project Sponsor; and

(v) the Project consists of a business or businesses that are substantially devoted to one or more of the following uses: (1) retail uses; (2) tourism-related business or activities; (3) corporate headquarters; (4) research and development; (5) high technology growth businesses; and (6) other uses, as may be determined by the Council, that are consistent with the Goals and the Comprehensive Plan. Where the Project includes multiple businesses or uses, at least 50% of the commercial space comprising the Project must be occupied by one or more of the above listed uses.

(b) Additional Criteria. The Council may, in its discretion and on a case-by-case basis, include within an Incentive Agreement any other eligibility criteria, including, without limitation, capital investment and job creation benchmarks, that must be met upon completion of a Project in order to ensure that the Goals are met and that the Project provides Benefits to the City and its citizens that exceed the value of the Incentives provided.

Sec. XXX – 08 – Administration and Terms of Delivery.

(a) Incentive Proposal. A proposed Project Sponsor must submit to the City Manager a proposal (a “**Proposal**”). A form of the Proposal is attached hereto as Exhibit A. The Proposal must include a sufficient description of the Project, to include, without limitation, the following information:

(i) identification of the property or properties on which the Project is to be located (the “**Subject Property**”), any acquisition costs of the Subject Property, and the then-current value of the Subject Property;

(ii) a general description of the improvements that are to be made to the Subject Property as part of the Project, including a good-faith estimate of the costs of such improvements, the estimated start date and completion date for any improvements to the Subject Property, and a good-faith estimate of the value of the Subject Property upon completion of such improvements;

(iii) a good-faith estimate of the number of Jobs that are to be created in connection with the Project, including a projected date or dates upon which the estimated number of Jobs will have been created;

(iv) a good-faith estimate of the property taxes and new revenue from other sources that will be generated for the City as a direct result of the Project; and

(v) any other additional information that the Project Sponsor or the City Manager deems may be necessary and helpful for the Council to evaluate and give due consideration to the Proposal.

(b) Determination of Incentive Amounts. The amount of Incentives granted to a Project shall be based upon the amount of the capital investment in the Project, the amount of new revenue for the City directly created by the Project, and the number of new Jobs that will be directly created by the Project. The amount of Incentives granted to a Project shall in no case exceed the value of the tangible and intangible Benefits of the Project to the City and its citizens.

(c) Certification, Commencement and Continuation of Incentives.

(i) No Incentive shall commence or be given until 12 months after the Project has been issued a certificate of occupancy and/or a business license and the Project Sponsor has provided sufficient proof that all terms and benchmarks included within the applicable Incentive Agreement, including without limitation benchmarks for capital investment, property valuation, and Job creation, have been fully achieved or otherwise completed.

(ii) Where benchmarks, such as the number of Jobs created or the continuous operation of a business, are to be met continuously over a period of time, the Project Sponsor shall provide to the City, on an annual basis, sufficient proof that the Project has continuously achieved or otherwise complied with such requirements upon the anniversary of the issuance of a certificate of occupancy.

(iii) If, at any time after completion of a Project or at any time within the period of time during which a Project is granted Incentives, a Project fails to achieve or otherwise comply with any benchmark or other requirement, the Council may, at its discretion and on a case-by-case basis: (1) declare the Incentive Agreement null and void and refuse to grant any future Incentives; or (2) decrease the amount of Incentives based upon the actual direct and indirect Benefits of the Project to the City and its citizens.

(d) Administration of Program. The administration of the application process, specifically including the drafting of any Proposal, and continuous monitoring of Projects pursuant to applicable Incentive Agreements shall be the responsibility of the City Manager and any person designated to oversee such process by the City Manager.

Section 2. If any section, subsection, sentence, clause or phrase of the Economic Development Incentive Program or this Ordinance is, for any reason, held or determined to be invalid, such decision shall not affect the validity of the remaining portions of the Economic Project Incentive Program or this Ordinance.

Section 3. Nothing in this Ordinance or in the Economic Development Incentive Program hereby enacted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of causes 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 4. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this ordinance are hereby repealed to the extent of the conflict or inconsistency. This Ordinance and the provisions of the Economic Development Incentive Program shall take effect immediately upon its enactment by the Council.

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DONE AND ORDAINED IN COUNCIL ASSEMBLED, this 13th day of August, 2018.

CITY OF AIKEN, SOUTH CAROLINA

(SEAL)

By: 
Rick Osbon, Mayor

Attest:

By: 
City Clerk
City of Aiken, South Carolina

First Reading: May 14, 2018

Public Hearing: August 13, 2018

Second Reading: August 13, 2018

EXHIBIT A

Form of Proposal

EXHIBIT A

CITY OF AIKEN

**PROPOSAL FOR ECONOMIC DEVELOPMENT
INCENTIVES**

The City of Aiken, South Carolina (the "City") has enacted its Economic Development Incentive Program, which is codified in Chapter XX – Article XX of the City's Code of Ordinances (the "Program"). Pursuant to the Program, all requests for Incentives shall be made using this form. This form shall be signed and submitted, either: in person at the City's Administration Building, located at 135 Laurens Street, SW, Aiken, S.C., or by mail to the City of Aiken, Attn: City Manager, P.O. Box 1177, Aiken, SC 29802. Terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Program.

NAME: _____ **DATE OF REQUEST:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

PHONE NUMBER: _____ **EMAIL:** _____

DESCRIPTION OF THE PROPERTY (please include tax identification number(s) and any current or expected acquisition costs - be as specific as possible and attach additional pages if needed): _____

ESTIMATED START DATE FOR DEVELOPMENT _____

DESCRIPTION OF DEVELOPMENT (please include a good faith estimate of expected costs, being as specific as possible; attach additional pages if needed): _____

JOB CREATION (please include good faith estimate of Jobs created and expected dates of implementation): _____

ESTIMATES AS TO BENEFITS TO THE CITY FROM THE DEVELOPMENT (may include, but not limited to business license fees, property taxes, improvements to City-owned infrastructure or utilities - be as specific as possible and attach additional pages if needed): _____

OTHER PERTINENT INFORMATION (please attach additional pages if needed): _____

I, the undersigned, submit the above information to the City and certify that, to the best of my knowledge, the information supplied hereinabove is factually correct and contains no material misstatements or other misrepresentations. Additionally, I affirm and certify that, based on the acquisition costs of the property described above, the costs of the proposed improvements and the expected Jobs to be created or retained, the development shall meet or exceed the Minimum Investment requirements set forth in the Program.

SIGNATURE: _____ **DATE:** _____

FOR CITY USE ONLY

DEPARTMENT SUBJECT TO REQUEST: _____ **RECEIVED BY:** _____
REQUEST ASSIGNED TO: _____ **DATE OF COMPLETION:** _____
DATE OF ASSIGNMENT: _____ **DATE RESPONSE DUE:** _____