

**ORDINANCE NO. 533**

AUTHORIZING THE TRANSFER OF ALL RIGHT, TITLE AND INTEREST IN, AND ALL RIGHTS AND OBLIGATIONS UNDER, THE INDUCEMENT AGREEMENT AND THE LEASE AGREEMENT BETWEEN FAIRFIELD COUNTY, AS LESSOR, AND MC SQUARED FINISHING SOLUTIONS, LLC, AS LESSEE, AUTHORIZING AMONG OTHER MATTERS, THE PAYMENT OF A FEE IN LIEU OF TAX TO FAIRFIELD COUNTY.

WHEREAS, Fairfield County, South Carolina ("County"), acting by and through its County Council ("County Council"), is empowered by the provisions of the South Carolina Constitution ("Constitution"), the South Carolina Code of Laws, 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 industries as inducements for economic development within the County; and

WHEREAS, the County is authorized and empowered by the provisions of Title 4, Chapter 12 of the Code ("Act"), in conjunction with other portions and provisions of Title 4 of the Code, including, but not limited to, Chapters 9 and 29, to acquire or cause to be acquired properties constituting a 'project' as defined in the Act; and

WHEREAS, the County is empowered by the Act and the Code to enter into agreements with any industry to construct, operate, maintain, and improve such project, to enter into or allow financing agreements for such project, and to accept any grants for such project; and

WHEREAS, through employment of the powers granted by the Act, the County will 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, where they will use and employ the manpower, agricultural products, and natural resources of the State and, further, will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

WHEREAS, the County is authorized by the Act to execute a lease agreement with respect to such project; and

WHEREAS, in the exercise of the foregoing powers, the County and MC Squared Finishing Solutions Holdings, LLC, a South Carolina limited liability company, entered into a Lease Agreement dated as of July 6, 2004, and into an Inducement Agreement and Millage Rate Agreement, also dated as of July 6, 2004 (collectively, "Agreements"), providing for certain incentives, including, without limitation, payment of a fee in lieu of taxes; and

WHEREAS, with the consent of the County, MC Squared Finishing Solutions Holdings, LLC transferred all its right, title, and interest in, and all its rights, responsibilities and obligations under, the Agreements and in the Project to MC Squared Finishing Solutions, LLC, a South Carolina limited liability company ("Assignor"), on October 18, 2006; and

WHEREAS, certain assets of Assignor, including all its right, title, and interest in, and all its rights, responsibilities and obligations under, the Agreements and in the Project are now being assigned to Prime Metal Coatings, LLC, a limited liability company organized and existing under the laws of the State of Georgia ("Assignee"), or its affiliate as authorized by Section 9.01 of the Lease Agreement and § 4-12-30

(M) of the Code, and Assignee assumes all such rights, responsibilities and obligations ("Transfer"); and

WHEREAS, Assignor and Assignee have requested the consent of the County to the Transfer as required pursuant to Section 9.01 of the Lease Agreement and § 4-12-30 (M) of the Code; and

WHEREAS, the County has determined that the Project will continue to directly and substantially benefit the general public welfare of Fairfield County by increasing the *ad valorem* tax base and by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

WHEREAS, the County has determined, on the basis of the information supplied to it by the companies, that the Project will continue to be a 'project' as that term is defined in the Act and that the Project will continue to subserve the purposes of the Act; and

WHEREAS, Section 3(c) of Ordinance No. 479 enacted on May 10, 2004 authorizes the required County approval for transfers of this nature to be given on behalf of the County by the Chairman of the County Council upon affirmative resolution of the County Council after consultations with the County Attorney with respect to such approval.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Fairfield County, South Carolina, as follows:

Section 1. Approval of Transfer. The County approves the transfer of all assets and liabilities relating to the Project, as that term is defined in the Lease Agreement, including the assignment of all right, title, and interest in, and all rights and obligations under, the Agreements from Assignor to Assignee.

Section 2. Default Under Agreements. Based on representations of the Assignor and Assignee, the County affirms, as of the date of the approving Ordinance, to the best of its knowledge, the Agreements are not in default, and the County is unaware of any condition, event or act which, with the passage of time, would result in any default under the Agreements, including any default caused by (a) the assignment and assumption of Agreements to Assignee; (b) the failure by Assignor to timely file property tax returns and to pay any associated *ad valorem* or fee-in-lieu of property taxes; (c) any untrue material misrepresentation or warranty made by Assignor in connection with the Agreements, including any statement or certificate delivered in connection with the execution and delivery of the Agreements; (d) any knowing violation or breach of the Agreements by Assignor; (e) the abandonment of the Project by Assignor; or (f) the filing of a petition in bankruptcy against Assignor or Assignor's insolvency; provided, however, that nothing prevents the County from filing, and continuing to pursue payment of, a claim against Assignor in a bankruptcy case for any unpaid *ad valorem* or fee-in-lieu-of property tax payments.

Section 3. Execution of Documents. The Chairman of the County Council is authorized and directed to execute and deliver to Assignor and to Assignee written evidence of the approval contained herein after consultation with the County Attorney and after they and the County Attorney have verified the satisfaction of the statements contained in Section 2 hereof. Before the execution and delivery of any documents, said documents shall be approved by the County Attorney as to their form, provided however, that the execution and delivery by the Chairman of the County Council shall constitute conclusive evidence as to the satisfaction of condition and as to the approval by the County Attorney.

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. This Ordinance shall take effect upon the date of enactment.

Enacted this 13<sup>th</sup> day of August, 2007.

FAIRFIELD COUNTY, SOUTH CAROLINA

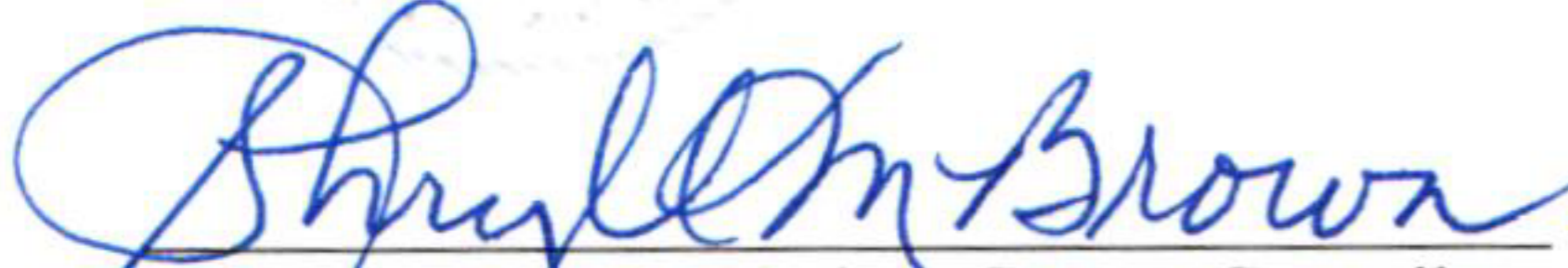


David L. Ferguson, Sr., Chairman of County Council  
Fairfield County, South Carolina



(SEAL)

ATTEST:



Shryll M. Brown, Clerk to County Council  
Fairfield County, South Carolina

READINGS:

First Reading:	July 9, 2007
Second Reading:	July 23, 2007
Public Hearing:	August 13, 2007
Third Reading:	August 13, 2007