

ORDINANCE NO. BL2014- 953

An ordinance authorizing the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to Highwoods Realty Limited Partnership (the Project Developer), Bridgestone Americas, Inc. and certain affiliates of Bridgestone Americas, Inc.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (hereafter referred to as "Metropolitan Government") is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area's capabilities for growth and development; and,

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and,

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101 through 316 (such act, as heretofore or hereafter amended, the "Act"), the General Assembly of the State of Tennessee (the "General Assembly") has authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the State of Tennessee (the "State"); and,

WHEREAS, the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the "Board") has been duly organized and incorporated in compliance with the Act; and,

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and,

WHEREAS, the Supreme Court of Tennessee (the "Supreme Court") has found that the Board is an agency or instrumentality of the Metropolitan Government; and,

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and,

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and,

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade and commerce by inducing manufacturing, industrial, financial, service and commercial enterprises to locate or remain in the State; and,

WHEREAS, the Supreme Court has held that the purposes of the Act include the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and,

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, "projects" (as defined in the Act), and to lease such projects to others; and,

WHEREAS, Bridgestone Corporation, a publicly traded corporation ("Bridgestone"), is the world's largest manufacturer of tires and rubber products; and,

WHEREAS, Bridgestone Americas, Inc. (the "Company") is a subsidiary of Bridgestone and the parent entity for certain of Bridgestone's operations, including Bridgestone's North American, South American and Central American tire operations; and,

WHEREAS, the Company and certain of its subsidiaries currently maintain their headquarters in Nashville, Tennessee; and,

WHEREAS, after conducting a multi-state site selection process for a new headquarters facility, the Company has announced its decision to relocate its headquarters and the headquarters of certain of its subsidiaries to a facility (the "Project") to be (i) developed by Highwoods Realty Limited Partnership (the "Project Developer"), and (ii) located in Nashville, Tennessee; and,

WHEREAS, in addition to relocating the headquarters of the Company and its Nashville-based subsidiaries to the Project, the Company has announced that the headquarters of certain non-Nashville, non-Tennessee Company subsidiaries will be relocated to the Project, including, but not limited to, the headquarters of Bridgestone Americas Retail Operations, LLC (currently headquartered in Bloomingdale, Illinois), the headquarters of Firestone Industrial Products Company, LLC (currently headquartered in Carmel, Indiana) and the headquarters of Firestone Building Products Company, LLC (currently headquartered in Carmel, Indiana); and

WHEREAS, in its initial scope and configuration, the Project will consist of (i) an approximately .9845 acre parcel of land located at 200 Fourth Avenue, South, Nashville, Tennessee, (ii) an office building and related common areas currently estimated to contain approximately 514,000 rentable square feet of space (excluding common areas) to be constructed on such land (of which approximately 7,600 rentable square feet of space will be used for retail, restaurant or other uses that are typical for an office facility of the size, nature and quality of the Project, such space being referred to herein as the "Retail Space"), and (iii) a multi-deck parking facility that will contain approximately 1,125 parking space (the "Parking Garage") and other improvements to be constructed on such land; and

WHEREAS, the Company and the Project Developer have advised the Metropolitan Government that the Project Developer intends to enter into a lease agreement with the Board (the "PILOT

Lease”) pursuant to which (a) the Board will issue one or more series of its industrial development revenue bonds (the “Bonds”) in order to finance the cost of the acquisition, construction and equipping of the Project, (b) the Board will appoint the Project Developer as the Board’s agent to acquire, construct and equip the Project, (c) title to the Project will be conveyed to the Board, (d) the Board will lease the Project to the Project Developer, and (e) the Board will grant the Project Developer the right to purchase the Project; and,

WHEREAS, the Company and the Project Developer also have advised the Metropolitan Government that pursuant to a Lease Agreement, dated as of October 23, 2014, between the Project Developer and the Company (the “Company Sublease”), the Project Developer will sublease approximately 506,000 rentable square feet of office space within the Office Building and all of the parking spaces in the Parking Garage to the Company and provide the Company with access to and use of the common areas; and,

WHEREAS, the Project Developer anticipates that the acquisition, construction and development of the Land, the Office Building and the Parking Garage, in their initial scope and configuration, will cost approximately \$200,000,000 and will be completed in 2017; and,

WHEREAS, the Project Developer and the Company expect that the development and location of the Project within the County will result in significant employment and other commercial opportunities for area citizens, develop trade and commerce in and adjacent to the County, contribute to the general welfare, and alleviate conditions of unemployment; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the "Council") has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and,

WHEREAS, the benefits to the Metropolitan Government of the development and location of the Project within the boundaries of the Metropolitan Government will provide an opportunity for the Board to exercise its powers, as enumerated above, to (a) acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Project, (b) lease the Project to the Project Developer pursuant to the PILOT Lease, and (c) enter into an agreement with the Company and the Project Developer to accept payments in lieu of ad valorem taxes with respect to the Project; and,

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and,

WHEREAS, it is in the interest and welfare of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment in lieu of tax agreement with the Company and the Project Developer pursuant to which the Board will accept payments in lieu of tax with respect to the Project from the Project Developer.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Council of the Metropolitan Government finds that (a) the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above; and (b) the Board's acquisition, construction and development of the Project and its leasing of the Project under the PILOT Lease as contemplated by this Ordinance will develop trade and commerce in and adjacent to the County, will contribute to the general welfare and will alleviate conditions of unemployment. The Metropolitan Government acknowledges that in connection with the financing of the Project, the Board may, at the request of the Project Developer, grant a mortgage on the Project, subordinate its interest in the Project to any mortgage granted by the Project Developer, and create or approve a condominium regime for the Project.

Section 2: The Metropolitan Government hereby delegates to the Board the authority to enter into a Payment in Lieu of Tax Agreement ("PILOT Agreement") with respect to the Project (which shall be in substantially the form as attached in Exhibit B) and to negotiate and accept payments in lieu of all ad valorem real property taxes with respect to the Project for the period during the Term of such PILOT Agreement. The Term of the PILOT Agreement will begin as of the effective date of the PILOT Lease, which shall be the same day as the Board first acquires title to the Project land, and will end on the date that the Project Developer or its assignee takes legal title to all of the Project by the exercise of its purchase option under the PILOT Lease.

Section 3: (a) Subject to the adjustments described in the form of the PILOT Agreement attached hereto as Exhibit B, the amount of the payments in lieu of tax with respect to the Project (the "PILOT Payments") that shall be required for each calendar year during the Term of the PILOT Agreement shall be as follows:

(i) *Pre-Company Occupancy Date PILOT Payments.* With respect to the period beginning on the date of the PILOT Lease and ending on (but excluding) the date on which the Company's right to occupy the Project commences under the Company Sublease (such date, the "Company Occupancy Date"), the amount of the PILOT Payments shall be one hundred percent (100%) of the Standard Tax (as defined below) for the entire Project applicable to such period.

(ii) *Non-Company Office Building Space PILOT Payments.* With respect to the period beginning on the Company Occupancy Date and ending on (but excluding) the twentieth (20th) anniversary of the Company Occupancy Date, the amount of the PILOT Payment with respect to the Non-Company Office Building Space (as defined below) shall be one hundred percent (100%) of the Standard Tax for the Non-Company Office Building Space applicable to such period.

(iii) *Company Office Building Space PILOT Payments.*

(A) With respect to the period beginning on the Company Occupancy Date and ending on (and including) December 31, 2018, the amount of the PILOT Payment with respect to the Company Office Building Space (as defined below) shall be zero percent (0%) of the Standard Tax for the Company Office Building Space applicable to such period.

(B) With respect to each year during the period beginning on January 1, 2019 and ending on (but excluding) the twentieth (20th) anniversary of the Company Occupancy Date, the amount of the PILOT Payment with respect to the Company Office Building Space shall be zero percent (0%) of the Standard Tax for the Company Office Building Space applicable to such year. Notwithstanding the foregoing, if there are fewer than 1,375 Company Positions (as defined below) as of the December 31 preceding a year during the period contemplated by this clause (iii)(B), the PILOT Payment with respect to the Company Office Building Space for such year will be the lesser of (1) two percent (2%) of the Standard Tax for the Company Office Building Space applicable to such year for each ten (10) Company Positions less than 1,375 Company Positions that existed as of the December 31 of the immediately preceding year, and (2) one hundred percent (100%) of the Standard Tax for the Company Office Building Space applicable to such year. Therefore, for example, (x) if there are 1,375 or more Company Positions as of December 31, 2020, the PILOT Payment with respect to the Company Office Building Space applicable to the year 2021 would be zero percent (0%) of the Standard Tax applicable to the Company Office Building Space for the year 2021, and (y) if there are 1,200 Company Positions as of December 31, 2020, the PILOT Payment with respect to the Company Office Building Space applicable to the year 2021 would be thirty-four percent (34%) of the Standard Tax applicable to the Company Office Building Space for the year 2021.

(iv) *Parking Garage PILOT Payments.*

(A) With respect to the period beginning on the Company Occupancy Date and ending on (and including) December 31, 2018, the amount of the PILOT Payment with respect to the Parking Garage shall be zero percent (0%) of the Standard Tax for the Parking Garage applicable to such period.

(B) With respect to each year during the period beginning on January 1, 2019 and ending on (but excluding) the twentieth (20th) anniversary of the Company Occupancy Date, the amount of the PILOT Payment with respect to the Parking Garage shall be zero percent (0%) of the Standard Tax for the Parking Garage applicable to such year. Notwithstanding the foregoing, if there are fewer than 1,375 Company Positions as of the December 31 preceding a year during the period contemplated by this clause (iv)(B), the PILOT Payment with respect to the Parking Garage for such year will be the lesser of (1) two percent (2%) of the Standard Tax for the Parking Garage applicable to such year for each ten (10) Company Positions less than 1,375 Company Positions that existed as of the December 31 of the immediately preceding year, and (2) one hundred percent (100%) of the Standard Tax for the Parking Garage applicable to such year. Therefore, for example, (x) if there are 1,375 or more Company Positions as of December 31, 2020, the PILOT Payment with respect to the Parking Garage applicable to the year 2021 would be zero percent (0%) of the Standard Tax applicable to the Parking Garage for the year 2021, and (y) if there are 1,200 Company Positions as of December 31, 2020, the PILOT Payment with respect to the Parking Garage applicable to the year 2021 would be thirty-four percent (34%) of the Standard Tax applicable to the Parking Garage for the year 2021.

(v) *Post-Company Sublease PILOT Payments.* With respect to any period on or after the twentieth (20th) anniversary of the Company Occupancy Date, the amount of the PILOT Payment shall be one hundred percent (100%) of the Standard Tax for the entire Project applicable to such period.

(b) The Project is located in a Central Business Improvement District. As provided in the PILOT Agreement attached hereto as Exhibit B, notwithstanding the PILOT Agreement or the Board's ownership of the Project, all Central Business Improvement District assessments must be paid in full.

(c) The following terms shall have the following meanings:

(i) The term "Company Entity" shall mean (A) the Company, (B) any successor to the Company, including, without limitation, any corporation, partnership, limited liability company or other entity that (1) acquires, directly or indirectly, a controlling interest in the Company (whether through merger, purchase of stock, partnership interests or other ownership interests, swap of stock, partnership interests or other ownership interests, or otherwise), (2) merges or consolidates with the Company or (3) acquires substantially all of the assets of the Company and/or (C) any corporation, partnership, limited liability company or other entity that directly or indirectly controls, is controlled by, or is under common control with, any of the foregoing.

(ii) The term "Company Office Building Space" means the portion of the Office Building rented to the Company pursuant to the Company Sublease. With respect to common areas in the Office Building, the Company will be deemed to have rented the percentage of such common areas equal to the number of rentable square feet of the Office Building rented to the Company pursuant to the Company Sublease divided by the total number of rentable square feet of the entire Office Building.

(iii) For purposes of determining the number of "Company Positions" under as of any given date:

(A) There will be one "Company Position" for each of the following positions as of such date: (1) each full-time Project-based employee position of any Company Entity; and (2) each full-time Project-based person who performs services for a Company Entity through employment outsourcing or similar arrangement ("Outsourced Personnel") and who (in the case of Outsourced Personnel) is paid in excess of the most recently published average wage for "All Occupations" in the Nashville - Davidson County - Murfreesboro - Franklin, Tennessee metropolitan statistical area according to the U.S. Bureau of Labor Statistics. For purposes of this clause (iii)(A), a Project-based employee or Outsourced Personnel position of a Company Entity will be considered a "full-time" position if the position is filled by an employee or Outsourced Personnel individual who regularly (i.e., 26 weeks or more per 12-month period) works on average 32 or more hours per week for the Company Entity.

(B) With respect to employees and Outsourced Personnel of Company Entities, the parties agree that employees and Outsourced Personnel who reside in the County and perform some or all of their services for Company Entities from their homes or other off-site locations within the County will be included in the determination of Company Positions if such persons report to Project-based employees or Outsourced Personnel or if their work is coordinated, directed or supervised by Project-based employees or Outsourced Personnel of a Company Entity.

(iv) The term "Non-Company Office Building Space" means the portion of the Office Building not rented to the Company pursuant to the Company Sublease. With respect to the common areas in the Office Building, the Non-Company Office Building Space will be deemed to include the percentage of such common areas equal to the number of rentable square feet of the Office Building not rented to the Company pursuant to the Company Sublease divided by the total number of rentable square feet of the entire Office Building. The parties agree that the Retail Space will always be considered Non-Company Building Space unless the Company leases the Retail Space and uses such space as Company office space.

(v) "Standard Tax" means, with respect to any period, the amount of ad valorem real property taxes and tax assessments which, but for the PILOT Agreement and the PILOT Lease, the Project Developer, if it were the holder of legal title to the Project, otherwise would be assessed by the Metropolitan Government and be required to pay to the Metropolitan Government with respect to the Project for the applicable period in accordance with the then applicable rates, laws, regulations and assessment and valuation methods and procedures uniformly applied throughout the County with respect to the types of property which comprise the Project (or the applicable portion thereof). In determining the Standard Tax, the Project Developer shall be entitled to any and all exemptions, credits, etc., to which it otherwise would be entitled were it the actual owner of the Project (or the applicable portion thereof). Central Business Improvement District assessments shall not be included in the calculation of "Standard Tax."

(d) The Project Developer, the Company and/or any Company Entities that occupy a portion of the Office Building shall be permitted to challenge the assessment of any property that is then subject to the PILOT Lease in the same manner as if such entity owned such property.

(e) The Project Developer will make PILOT Payments on an annual basis, with each annual PILOT Payment being based on the applicable calendar year during the Term of the PILOT Agreement authorized hereby. PILOT Payments will be due on or before the last day of February following the calendar year to which a PILOT Payment applies. The final version of the PILOT Agreement authorized by this Ordinance will include appropriate provisions for the proration of the Standard Tax, the PILOT Deduction and the PILOT Payment applicable to a given year under appropriate circumstances, including, without limitation, for periods of less than a full calendar year for which a PILOT Payment is payable with respect to the Project (or any portion of the Project).

Section 4: The PILOT Agreement authorized by this Ordinance shall apply to the Land, all real property comprising a portion of, or used at or in connection with facilities located on the Land, including all easements or other property rights, buildings, improvements, fixtures, trade fixtures, construction in progress, and other properties of any nature comprising a portion of, or used in connection with, facilities located on the Land that are treated as real property for ad valorem tax purposes. The PILOT Agreement shall apply to such facilities and properties in their current scope and configuration and to all replacements, enhancements, additions, expansions and improvements to such properties and facilities.

Section 5: The Project Developer will produce and manage a diversified business enterprise program to assist small, minority owned, and women owned business enterprises ("DBEs") with respect to their participation in the construction of the Project. Such program will be designed with a DBE participation target of not less than 20% of the Project's hard construction costs and shall be subject to the reasonable approval of, the Metropolitan Government, and will provide for quarterly reporting to the Metropolitan Council and the Minority Caucus of the status of DBE participation in the construction of the Project. The program will include a process to document all (i) good faith efforts with prospective bidders to reach out to DBE companies, (ii) joint venture or partnership participation by DBE companies, (iii) DBE participation by subcontractors, suppliers or joint ventures proposed by each bidder, (iv) any increases or decreases from an anticipated DBE participation by successful bidders, and (v) the level of payments to DBE's of the Project's hard construction costs.

Section 6: The final version of the PILOT Agreement authorized by this Ordinance must be approved as to legality by the Metropolitan Government Department of Law prior to being executed by the Board.

Section 7: All ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 8: This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED:

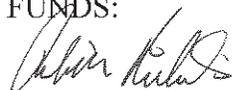


Matthew A. Wiltshire
Director of the Mayor's Office
Economic and Community Development

INTRODUCED BY:



APPROVED AS TO AVAILABILITY
OF FUNDS:



Richard M. Riebeling
Finance Director

Member(s) of Council

APPROVED AS TO FORM AND
LEGALITY:

A handwritten signature in cursive script that reads "Saul Solomon". The signature is written in dark ink and is positioned above a horizontal line.

Saul Solomon
Director of Law