



**NEWBERRY COUNTY COUNCIL
COUNTY COUNCIL AGENDA
October 19, 2022
6:00 P.M.**

Call to order: Todd Johnson, Chairman
Invocation and Pledge of Allegiance: Nick Shealy, Councilman

1. Public Appearances
 - a. Michelle Long - Chamber of Commerce
2. Adoption of Consent Agenda
 - a. Newberry County Council Meeting – Minutes September 21, 2022
 - b. Newberry County Council Meeting – Minutes October 5, 2022
 - c. Finance Committee Meeting – Minutes September 12, 2022
 - d. Economic Development Meeting – Minutes August 15, 2022
3. Additions, Deletions & Adoption of the Agenda
4. Ordinance No. 09-21-2022 An Ordinance authorizing the execution and delivery of a fee agreement by and between Newberry County, South Carolina, and Newberry PV1, LLC providing for a payment of a fee in lieu of taxes, providing special source of revenue credits, and authorizing an amendment to the master agreement governing the Greenwood-Newberry Industrial Park to provide for the addition of property and other matters related thereto.
 - a. Public Hearing
5. Approval of test pump water tanks at Public Safety Facility – Tommy Long
6. Acceptance of vendor for “Closed Landfill Monitoring and Testing” – Crystal Waldrop
7. Appointments

8. Public Comments

9. Executive Session

Code Section §30-4-70 (a) of the Code of Laws of SC, as amended, 1976

- (1) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property – Pond Road. The receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

10. Comments/Request from County Administrator

11. Comments/Request from Council

12. Future Meetings

- a. Public Safety Committee - October 24, 2022, at 6 p.m.
- b. County Council - November 2, 2022, at 6 p.m.
- c. Delinquent Tax Sale - November 7, 2022, at 8:30 a.m.
- d. Council Retreat - November 14, 2022, at 8:30 a.m.
- e. County Council - November 16, 2022, at 6 p.m.

13. Adjournment

NEWBERRY COUNTY COUNCIL

MINUTES

September 21, 2022

The Newberry County Council met on Wednesday, September 21, 2022, at 6:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.

Notice of the meeting was duly advertised, as required by law.

PRESENT: Todd Johnson, Chair (District 1)
Les Hipp, Vice-Chair (District 5)
Mary Arrowood, Council Member (District 2)
Henry H. Livingston, III, Council Member (District 3)
Robert N. Shealy, Council Member (District 4)
Johnny Mack Scurry, Council Member (District 6)
Travis Reeder, Council Member (District 7)
Christopher Inglese, County Administrator
Karen Brehmer, Deputy County Administrator
Debbie S. Cromer, Finance Director
Crystal Waldrop, Purchasing Director
Jacquelyn R. Lawrence, Clerk to Council
Joanie Winters, Interim County Attorney

MEDIA: Andrew Wigger, Newberry Observer

Mr. Johnson called the meeting to order and determined a quorum to be present.

Mr. Hipp had the invocation followed by the Pledge of Allegiance.

1. Employee Recognition

Mr. Johnson recognized the employees listed below for their service to Newberry County with a certificate and pin.

- a. Samantha Navarette 5 years*
- b. Joshua Graham 5 years*
- c. Jessica Attaway 10 years*

2. Public Appearances

The Palmetto Trail – Furman Miller, Regional Coordinator for the Palmetto Trail

Mr. Miller stated the Palmetto Trail was established in 1994 with the vision of having an across state hiking and biking trail. He presented a promotional video showing the Palmetto Trail that included Lynches Woods Park and the work being done.

The Palmetto Trail is a 500-mile passage that stretches from Awendaw on the coast to the mountains of Walhalla. Currently 400 miles of the 500 is open. The trail was created in a series of passages. The passages vary from 2 miles to 48 miles. Newberry County has 4 passages. Newberry has become a common place for bikers and hikers to have a “zero” day.

The Palmetto Trail part of Lynches Woods Park is now 4.5-mile loop. Additional work is being done including a new bridge.

Mr. Miller thanked the county for allowing them to do this work to improve these areas to help bring in more money to the county.

Additionally, there is availability for scholarships through the programs that they bring to the county.

The Peak to Prosperity passage has a bridge that 75,000 people passed over last year.

Mr. Livingston asked if there were still any issues as to local landowners to be able to get in to harvest timber when it involves crossing the Trail?

Mr. Miller stated that the issue had been through Federal Court and had been taken care of. The Trail is responsible for leaving a 100-foot boundary on either side of the railroad. The railroad has the right to come back in at any time and resume operation.

Toni Warren – Newberry Soil and Water Conservation, Commissioner/Treasurer

Mrs. Warren presented information regarding events and projects that have been taking place with the district.

In May 2022 NSWC partnered with DNR, Quail Forever, SCFC, and RCS. A field day was held at Belfast Plantation, where landowners learned about managing their forest land.

In June 2022 Camp Conservation was held. 37 students participated in a weeklong camp to learn about nature, wildlife, soil, and they toured the water treatment facility. This was held at Wilson Farm in Silverstreet.

In August 2022, the Keep Newberry Beautiful Summer Fair was held. The fair lasted 4 days with approximately 10,000 in attendance.

In September 2022, the 4th Annual Lakeside Litter Sweep was held at Dreher Island State Park. Approximately 300 volunteers came to help clean three islands and land around Lake Murray. Dive teams brought in 900 pounds at Dreher Island Park. 29 volunteers collected 1140 pounds of litter and 30 pounds of recyclables.

The feral hog program with USDA monitors damage caused by hogs in the county. 580 hogs have been removed from 9561 acres in the county. There are only 25 owners in the county participating in this program. This program will last through September of 2023. Additional participants are welcome to join the program.

The Annual Banquet will be held November 17, 2022, at the Newberry Country Club. Invitations will be mailed very soon.

Mr. Hipp thanked NSWC for the great job with the Keep Newberry Beautiful Summer Fair.

3. Adoption of the Consent Agenda

Mr. Shealy moved to adopt the Consent Agenda, seconded by Mr. Scurry. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

4. Additions, Deletions and Adoption of the Agenda

Mr. Reeder moved to adopt the agenda as written; seconded by Mr. Hipp. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

5. Ordinance No. 07-20-2022 - An Ordinance for the purpose of leasing out certain county fairgrounds property.

Mr. Johnson shared a concern brought to him regarding the one cent sales tax placement of the fire station and additional costs to taxpayers. Mr. Johnson clarified through the County Administrator that allowing this would not affect the construction and/or placement of the fire station.

a. Public Hearing

Mr. Johnson declared the public hearing open. With no one present to speak for or against the Ordinance, Mr. Johnson declared the public hearing closed.

b. Third and Final Reading

Mr. Hipp moved to adopt the third and final reading, seconded by Mr. Reeder.

Mr. Shealy asked if it was possible to defer this matter until the County Administrator has had the meeting with the Fire Commission.

Mr. Inglese responded that MM Technics had requested a move in date of October 1st but if Council wishes to wait then that can be arranged.

Mr. Hipp stated that MM Technics agreed to move into one building and utilize the other building at a later date.

Mr. Inglese stated that the lease states that they would have access to the center and back wing of the front barn. Additionally, there is a wing on the back barn that can be made available to make up for the currently occupied space in the front of the front barn. The request from MM Technics has been October 1st all along. The electricians have been working and what needed to be cleaned out has been done.

Mr. Shealy asked if there was a Fair Ground Committee?

Staff responded that the Fair Grounds Committee is no longer in place.

Mr. Shealy stated that he would withdraw his request to defer.

With no further discussion, Mr. Johnson called for the vote. Voting for Third and Final Reading, Mr. Johnson, Mr. Hipp, Mrs. Arrowood, Mr. Livingston, Mr. Reeder, and Mr. Scurry. Voting against Third and Final Reading, Mr. Shealy

- 6. Ordinance No. 09-21-2022 An Ordinance authorizing the execution and delivery of a fee agreement by and between Newberry County, South Carolina, and Newberry PVI, LLC providing for a payment of a fee in lieu of taxes, providing special source of revenue credits, and authorizing an amendment to the master agreement governing the Greenwood-Newberry Industrial Park to provide for the addition of property and other matters related thereto.***

a. Second Reading

Mr. Shealy moved to adopt the second reading, seconded by Mrs. Arrowood.

Mr. Jones provided information regarding the changes to the Ordinance. The community benefits portion of the Ordinance needs to be reviewed again. There has also been a minimum payment placed into the Ordinance that would come from the company. It has also been requested that the auditor be notified each year of the number of megawatts used so that the billing will be correct.

With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

7. **Ordinance No. 09-22-2022 An Ordinance to amend the budget ordinance for the fiscal year 22-23. Ordinance number 4-7-22, to provide for an amendment to the copying fees at the Courthouse.**

a. First Reading

Mr. Reeder moved to adopt the first reading, seconded by Mr. Hipp.

Mr. Scurry asked why is there a change?

Mr. Inglese stated that this matter was brought to Finance Committee. Staff recommended no change; however, Committee requested the change to be brought before full Council.

Mr. Hipp reminded Council that the initial increase was due to the court documents being available online. Anyone that needed to have access could and the copy fee would not apply if the person was accessing anything online. The online program has had some issues and it has not gone live yet so people are still having to come into the Courthouse to get their copies.

Mr. Livingston stated that he did not agree with the increase from the beginning and that it was too high. \$.35 per copy seemed reasonable.

Mr. Hipp also stated that the Clerk of Court has done the research showing that Newberry County is in line with the surrounding counties. The surrounding counties being Saluda, Lexington, Greenwood, and Laurens.

Beth Folk, Clerk of Court, asked to speak regarding the delay in getting the documents online. The vendor that is handling this for the county has had some issues with transferring the documents and making them compatible with the needed software. This was an unforeseen issue that has delayed the "live" date. The vendor is hoping to have the issues resolved by the middle of October. Also, as far as the new fees that were put into place as of July 1st no one has complained to her office.

With no further discussion, Mr. Johnson called for the vote. Voting for first reading, Mr. Scurry, Mr. Johnson, Mr. Hipp, Mrs. Arrowood, Mr. Livingston, and Mr. Shealy. Voting against first reading, Mr. Reeder.

8. **Ordinance No. 09-23-2022 An Ordinance to amend the budget ordinance for the fiscal year 22-23, Ordinance number 04-07-22, to revise the fees collected by the building department.**

a. First Reading

Mr. Hipp moved to adopt the first reading, seconded by Mrs. Arrowood.

Mr. Hipp stated that is ordinance comes from the recent Finance Committee meeting. The current ICC, \$148 per square foot, standard is being used and this would allow a builder to bring a signed contract in and the permit fee be based on the contract, which may be less than the ICC standard. Additionally, the plan fee that has always been a part of the Ordinance but has just recently been implemented, should be reduced from 50% of the permit fee to 25% of the permit fee. Also, when a new home construction has heated and unheated square footage, the unheated should not be charged at the same rate as the heated. Finance Committee proposes that the unheated value be reduced to one half of the heated value.

Mr. Livingston stated that these changes make the permit fees much fairer for most new homeowners.

Mr. Johnson asked if the new Ordinance would have anything that would allow it to be retroactive to July 1, 2022?

With no further discussion Mr. Johnson called for the vote. The vote was unanimous.

9. Resolution No. 08-22 Resolution adopting criteria to be used in determining premium pay and authorizing payment pursuant to the American Rescue Plan Act of 2021.

Mr. Livingston moved to adopt the Resolution, seconded by Mr. Shealy. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

10. Resolution No. 09-22 For the location and dedication of the memorial honoring all first responders in Newberry County.

Mr. Livingston moved to adopt the Resolution, seconded by Mr. Hipp. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

11. Appointments

No appointments.

12. Discussion/Approval of RFQ for Grant Writer Services

Crystal Waldrop, 10 responses have been received regarding the services. The Committee consisted of the County Administrator, the Administrator's Assistant, Public Safety Director, and herself. 4 firms were chosen to contact for additional information. Based on the additional information staff recommends 2 firms being, Thomas and Hutton and GPFF. Each firm offers substantial services that would be beneficial to the County. Thomas and Hutton specialize in, but not limited to, infrastructure, economic development, roads and bridges, and public safety. The fee on an annual basis would be not to exceed, \$83,200. This fee would be billed in hours worked for Newberry County. GPFF focuses more Community Service, Technology and Parks and Recreation. There fee is based on an hourly rate at \$125 per hour.

Mr. Hipp stated based on the numbers given the Administrator's Office would need to monitor the hours used as to not exceed the budgeted amount of \$96,000.

Mr. Inglese agreed with that statement. Thomas and Hutton would probably start with most of the work.

Mrs. Waldrop stated that at this time the companies would only have a one-year contract.

Mr. Inglese stated that once this is approved the company will give rubric as to a plan for where the county should start. The planning work will take about 90 days. Staff would like to get started as there are many grant deadlines coming up.

Mr. Livingston asked as to where “community service” falls under?

Mrs. Waldrop stated that GPF can focus on grants for poverty areas, parks grants, or an afterschool program that could help within the community.

Thomas and Hutton would be focused on the larger grants to include Fire and Rescue that needs new equipment.

Being that the county is already 3 months into the fiscal year the \$83,200 would be for an annual contract so there should be funds leftover from this amount.

Mr. Livingston did not intend for this to be the direction for the county to go in from the budget voted on earlier in the year. However, as it has been presented, he is willing to go along for now.

Mr. Reeder would like to make sure that the original budgeted amount will not be exceeded.

Mr. Shealy mad a motion to approve the request, seconded by Mr. Hipp. With no further discussion Mr. Johnson called for the vote. The vote was unanimous.

13. Consideration of extending grocery store recruitment incentives policy.

Mr. Farmer presented that the previous policy had a sunset clause attached that has now expired. Staff is asking that the policy be extended so that they can continue to try to recruit a new grocery store.

The policy allows a grocery store an avenue to qualify for the Special Source Revenue Credits. It is a way that the county can work with a partner industry to reduce their tax burden over time. For example, if an industry invested \$1,000,000 the policy could reduce their taxes in half over the term of the agreement. This policy would only apply to the grocery store structure, physical property, and machinery equipment. There is a minimum of 10,000 square feet and a minimum \$1,000,000 investment.

The County of Newberry is working very hard with the City of Newberry to bring in a new grocery store investor.

Mr. Livingston moved to extend this policy, seconded by Mrs. Arrowood. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

14. Public Comments

No public comments.

15. Executive Session

Code Section §30-4-70 (a) of the Code of Laws of SC, as amended, 1976

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the*

appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting names of the other employees or clients whose records are submitted for use at the hearing.

- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.*
- (3) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.*

Mr. Shealy moved to go into Executive Session to discuss the matters as set forth above; seconded by Mrs. Arrowood. There being no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

EXECUTIVE SESSION
7:10 P.M. – 9:11 P.M.

Mr. Hipp moved to return to open session; seconded by Mr. Scurry. Mr. Johnson called for the vote. The vote was unanimous.

Mr. Johnson stated that no action was taken during Executive Session.

16. Comments/Request from County Administrator

114 employees have signed up for the ADP paperless paystubs.

17. Comments/Request from Council Members

Mr. Livingston would like to clarify that the Premium Pay will go to volunteers on October 21, 2022, and to regular staff on November 4, 2022. No other comments from Council.

18. Future Meetings

- a. Public Safety Committee - TBD
- b. County Council - October 5, 2022, at 6 p.m.
- c. Economic Development - October 10, 2022, at 6 p.m.
- d. Executive Committee - October 10, 2022, at 6 p.m.

- e. Work Session w/ Joint Planning and Zoning - October 12, 2022, at 5 p.m.
- f. Work Session County Council - October 12, 2022, at 6 p.m.
- g. County Council - October 19, 2022, at 6 p.m.

19. Adjournment

Mr. Shealy moved to adjourn the meeting, seconded by Mr. Livingston. Mr. Johnson called for the vote. Vote was unanimous. The meeting adjourned at 9:13 p.m.

Newberry County Council

Todd Johnson, Chairman

Jackie Lawrence, Clerk to Council

Minutes approved: _____

NEWBERRY COUNTY COUNCIL

MINUTES

October 5, 2022

The Newberry County Council met on Wednesday, October 5, 2022, at 6:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.

Notice of the meeting was duly advertised, as required by law.

PRESENT: Les Hipp, Vice-Chair (District 5)
Mary Arrowood, Council Member (District 2)
Henry H. Livingston, III, Council Member (District 3)
Robert N. Shealy, Council Member (District 4)
Johnny Mack Scurry, Council Member (District 6)
Travis Reeder, Council Member (District 7)
Karen Brehmer, Deputy County Administrator
Debbie S. Cromer, Finance Director
Crystal Waldrop, Purchasing Director
Jacquelyn R. Lawrence, Clerk to Council
Joanie Winters, Interim County Attorney

MEDIA: Andrew Wigger, Newberry Observer

BY ZOOM: Todd Johnson, Chair (District 1)
Christopher Inglese, County Administrator

Mr. Hipp called the meeting to order and determined a quorum to be present.

Mr. Hipp had the invocation followed by the Pledge of Allegiance.

1. Public Appearances

a. Leslie Jenkins, Operations Manager for Animal Control

Bonnie Shealy, Volunteer at the Humane Society

Mrs. Jenkins gave an update on the Humane Society. In 2011 the low cost spay and neuter program was started. In 2010 854 cats and dogs were euthanized. In 2021 only 56 cats and dogs were euthanized. The numbers have decreased significantly. She thanked Council for continuing to support that program.

Oktoberfest will be on October 15, 2022. Adoption will be done on a donation basis. That can be in monetary or supply form.

Lever Farms Fall Day will be October 21, 2022.

Whitmire's Trunk or Treat Festival will be October 29, 2022.

The Christmas Party for the animals will be in December. Adoptions will be free that day. Also, the animals will be participating in the Christmas Parade when it is scheduled.

Bonnie Shealy spoke regarding the work that is done for all unwanted, neglected, or lost animals. She introduced many of the current residents of the Humane Society. She also stated that there is no way that the shelter could make it without the volunteers. There is walking to be done more than once each day, the kennels must be cleaned, and these animals need love. Additionally, since the shelter is at capacity, foster homes are needed. Volunteers help with transportation, sponsor adoption events, bathe dogs, poop patrol, donate supplies, etc. Volunteers sponsored the cost for staff and volunteers to attend the Heartworm Project. Volunteers have created "dating cards" for the animals as a way of advertisement to help get them adopted. They also post on Facebook, NextDoor, monthly flyers, and The Newberry Observer. Facebook has recorded 91,000 reads of the shelter page. The page is called The Shelter Volunteer Network for Newberry County. All shelters across the State have declared a state of emergency due to the rising numbers of surrenders. The rise in number of surrenders is requiring the number of euthanized to rise. The volunteers are asking that when the shelters are full that the county impose a moratorium to say no surrenders for a specific amount of time to allow the shelter time to free up kennel space. The staff at the shelter are stretched too thin, they are dealing with dangerous situations and having to euthanize the animals is hard on everyone. Thank you for your time and for listening to the needs of the shelter.

Mr. Hipp thanked the staff and the volunteers for their hard work and stated that the County is currently reviewing classification and compensation for all departments of the County.

Mr. Livingston, Mrs. Arrowood, Mr. Reeder, and Mr. Shealy thanked everyone involved for their hard work and dedication.

b. Parents Overseeding Planted Seeds

Minister Mark Hill spoke regarding their request to have the County help support the cost of a full day of activities, entertainment, food, and general camaraderie during the Proclamation of Peace. The program is geared to help stop violence in the area. The event would be in connection with the city as well if permission is granted. The group is also asking for permission to use a local park located in the Wise Street Community.

Staff and Council agreed that this request needs to be reviewed by legal counsel and the requestors need to contact the city to see if they are willing to support as the Wise Street Community is in the city limits.

Mr. Hipp stated that he appreciated Mr. and Mrs. Hill coming to the meeting and their program sounded great.

2. Adoption of the Consent Agenda

Item number 2 was removed from the agenda.

3. Additions, Deletions and Adoption of the Agenda

Mr. Shealy moved to adopt the agenda as written; seconded by Mrs. Arrowood. With no further discussion, Mr. Hipp called for the vote. The vote was unanimous.

4. Ordinance No. 09-22-2022 An Ordinance to amend the budget ordinance for the fiscal year 22-23. Ordinance number 4-7-22, to provide for an amendment to the copying fees at the Courthouse.

a. Second Reading

Mr. Reeder moved to adopt the second reading, seconded by Mr. Livingston. With no further discussion Mr. Hipp called for the vote. The vote was unanimous.

5. Ordinance No. 09-23-2022 An Ordinance to amend the budget ordinance for the fiscal year 22-23, Ordinance number 04-07-22, to revise the fees collected by the building department

a. Second Reading

Mr. Reeder moved to adopt the second reading, seconded by Mrs. Arrowood.

Mr. Livingston asked that language be added to address dilapidated mobile homes and overgrown areas be addressed at the time one comes to obtain a permit.

With no further discussion, Mr. Hipp called for the vote. The vote was unanimous.

- 6. Resolution No. 10-22 Match Resolution committing Newberry County to provide a local cash match for a community development block grant from the South Carolina Department of Commerce to construct a sidewalk along Subertown Road and Gary Street in the Town of Whitmire.**

Mr. Greg Sprouse, Director, Researcher, Planning and Development with Central Midlands Council of Government, spoke regarding what the "CMCOG" is. The CMCOG is a regional planning agency. There are 9 other agencies in the state. They handle a wide range of programs that benefit the 4-county region. Such as Workforce Development to Aging Services under the Elders Americans Act to transportation planning. Mr. Sprouse's main areas are Economic Development, Community Development, and Planning and Local Government Services.

This Resolution provides a local cash match of \$47,500 towards the minimum ten-percent local match required by South Carolina Department of Commerce (SCDOC), to support the County's application to SCDOC for a \$475,000 Community Development Block Grant (CDBG) to construct a sidewalk along Subertown Road and Gary Street in the Town of Whitmire. The CDBG is a Federal Program from the Department of Housing and Urban Development, administered through the SC Department of Commerce. It aids communities with focus on low- and moderate-income populations.

There are two primary program areas.

Community infrastructure program that cycles in the spring. It allows for water, sewer, and drainage improvements and has a minimum \$50,000 and a maximum \$750,000.

Community enrichment program that cycles in the fall. It allows for sidewalks, demolition/clearance, brownfield remediation, and library improvements with a minimum \$50,000 and maximum \$500,000. This program also allows for a maximum \$750,000 for streetscape projects.

The CDBG project would provide pedestrian connectivity between the apartment complexes along Subertown Road the Whitmire central business district. The project would take approximately 25 months.

Mr. Scurry asked why a sidewalk needed to be placed there when each of the complexes has their own sidewalk that connect to one another?

It was stated that it is unsafe for residents to walk the road to get from point A to point B. Mr. Johnson stated that he is very familiar with the area, and it is very dangerous.

Mr. Shealy moved to adopt the Resolution, seconded by Mrs. Arrowood. With no further discussion, Mr. Hipp called for the vote. Voting for the Resolution were Mr. Hipp, Mr. Reeder, Mr. Johnson, Mrs. Arrowood, Mr. Livingston, and Mr. Shealy. Voting against the Resolution was Mr. Scurry.

7. Appointments

No appointments.

8. Consideration/Approval of Christmas bonuses.

Mr. Inglese reported that there is a line item in the budget to cover a \$50 net bonus to an employee. This requires an approval by Council.

Mr. Johnson moved to approve the Christmas bonuses, seconded by Mr. Shealy.

Mrs. Arrowood asked with each person having a different tax rate, how would that be handled.

Mr. Brehmer stated that when you “gross up” to net you are required to deduct FICA, SS/Medicare, and retirement. It would be the same 7.65% for each person, plus depending on if the employee is in the SERS, it would be 9% and if they are in the PORS it would 9.75%. The gross would vary only for the different retirement system an employee may be in. This is the same process as any other stipend that is given. Mrs. Brehmer also asked if Council wanted this to be a separate check?

Council agreed to a separate check.

Mrs. Brehmer asked when Council would like the checks delivered.

Council agreed to the earliest of December.

Mr. Livingston pointed out that we would be paying more for this route as compared to the gift cards.

With no further discussion, Mr. Hipp called for the vote. The vote was unanimous.

9. Consideration/Approval of Christmas Holiday Schedule.

Mr. Inglese stated requested approval of the Holiday dates for this year as the actual Holidays fall on weekends. The proposed dates would be December 23, 26, 27, 2022, and January 2, 2023.

Mr. Shealy moved to approve the stated Holiday dates, seconded by Mrs. Arrowood.

With no further discussion, Mr. Hipp called for the vote. The vote was unanimous.

10. Public Comments

No public comments.

11. Executive Session

Code Section §30-4-70 (a) of the Code of Laws of SC, as amended, 1976

- (1) *Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.*

Mrs. Arrowood moved to go into Executive Session to discuss the matters as set forth above; seconded by Mr. Shealy. There being no further discussion, Mr. Hipp called for the vote. The vote was unanimous.

EXECUTIVE SESSION

7:06 P.M. – 7:51 P.M.

Mr. Reeder moved to return to open session; seconded by Mr. Scurry. Mr. Hipp called for the vote. The vote was unanimous.

Mr. Hipp reported that no action was taken during Executive Session.

12. Comments/Request from County Administrator

Mr. Inglese thanked Council for allowing him to appear virtually and that he is learning a lot in Lake City at his conference.

13. Comments/Request from Council Members

Mr. Livingston stated that he was very disappointed that after information given at a previous meeting it has come to light that the information given by the County Administrator and the County Attorney was incorrect.

Mr. Hipp reminded everyone about Oktoberfest and that he was glad the animal shelter will be involved.

No other comments from other Council members.

14. Future Meetings

- a. Executive Committee – October 11, 2022, at 6 p.m.
- b. Work Session w/ Joint Planning and Zoning – October 12, 2022, at 5 p.m.
- c. Work Session County Council – October 12, 2022, at 6 p.m.
- d. County Council – October 19, 2022, at 6 p.m.
- e. Public Safety Committee – October 24, 2022, at 6 p.m.

15. Adjournment

Mr. Reeder moved to adjourn the meeting, seconded by Mrs. Arrowood. Mr. Hipp called for the vote. Vote was unanimous. The meeting adjourned at 7:56 p.m.

Newberry County Council

Les Hipp, Vice-Chairman

Jackie Lawrence, Clerk to Council

Minutes approved: _____

NEWBERRY COUNTY COUNCIL
FINANCE COMMITTEE MINUTES

September 12, 2022

The Newberry County Council Finance Committee met on Monday, September 12, 2022, at 6:00 p.m. in Council Chamber at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.

Notice of the meeting was duly advertised, as required by law.

PRESENT: Les Hipp, Committee Member
Henry H. Livingston, III, Committee Member
Christopher Inglese, County Administrator
Karen Brehmer, Deputy County Administrator
Jacquelyn R. Lawrence, Clerk to Council
Debbie S. Cromer, Finance Director

ABSENT: Mary Arrowood, Committee Chairwoman

Mr. Hipp called the meeting to order and determined a quorum to be present.

Mr. Hipp had the invocation followed by the Pledge of Allegiance.

Additions, Deletions & Adoption of the Agenda

Mr. Livingston moved to adopt the agenda, seconded by Mr. Hipp. With no further discussion Mr. Hipp called for the vote. The vote was unanimous.

Discussion of ARPA Funds – Premium pay, Comp/Class implementation, Capital Purchases, Other

Premium Pay

Mr. Inglese stated that staff did some research regarding volunteer pay. NACO clarified that as a County that brings in ten thousand dollars or less, that County would be allowed to use ARPA Funds for premium pay. He also asked if the dates would remain the same being, April 2020 through April 2021, and that in order to receive the increase the employee must be an existing employee.

Mr. Livingston stated that to do better with trying to keep, recruit, and maintain volunteers he would like to raise the increase from one thousand dollars to one thousand five hundred dollars. He also stated that the funds for the increases would not affect taxpayers dollars.

Mr. Hipp agrees with Mr. Livingston's statement and asked if there needed to be any additional adjustments to the other premium pays.

Committee agreed to raise each category five hundred dollars and asked that the funds be made available as soon as possible.

Mr. Livingston made a motion to bring this matter before full Council, seconded by Mr. Hipp. With no further discussion, Mr. Hipp called for the vote. The vote was unanimous.

Compensation/Classification Implementation

Mr. Inglese gave an update stating that the comp and class is continuing to move forward. The data needed has taken quite some time to obtain to be able to put into a usable format. The next step is for interviews and surveys. The consultants will be present for two days, Friday, September 30th and Monday, October 3rd to complete additional interviews. The hope is to be wrapping this project up by the end of 2022. The consultants have promised to have a cost of implementation in advance of our Executive Committee Meeting on October 11, 2022. There is not a budgeted amount for the implementation and ARPA Funds could be a good source to cover this cost for this year and the next until it could potentially be worked into the annual budget possibly from future FILOT revenues.

Committee discussed that the South Carolina Association of Counties already produces a similar manual and that would be a good starting reference. Committee requests that the manual be provided to full Council for review and comparison.

Staff stated that this manual does have some differences as far as job titles and sections that may not apply to our county but that it would be a good reference.

Capital Purchases

Mr. Inglese stated that ARPA Funds were used for some capital purchases this year that allowed the County to retire some debt and some lease-purchase promissory notes. Tommy Long will give a report at the upcoming Public Safety meeting about the age of the rolling stock. The ARPA Funds may allow an opportunity to do some catch up on the rolling stock.

Other

Mr. Inglese stated that at the upcoming Executive Committee meeting issues regarding some of the facilities will be discussed. ARPA Funds could potentially help with potential shifting and/or renovations regarding the county's current facilities.

Mr. Livingston remarked that he would like to see as much as possible being done for fire and rescue by using potentially FILOT monies so that the taxpayers are not affected by the purchases. ISO regulations require that when a vehicle hits the 10-year mark it must be removed and/or replaced no matter what the shape of the vehicle. This is frustrating as many of the County's vehicles do not need to be replaced after ten years.

Mr. Hipp agreed with Mr. Inglese that maybe the money should not be spent until after the referendum in November as the results from that could have substantial consequences to the budget moving forward.

Committee would like a rolling stock report from Tommy Long with Public Safety and see if the needs may be deferrable until after the referendum.

Mr. Inglese added that Economic Development's road project at MCCP1 will finish up later this year. There have been previous discussions about timbering work. There is going to be a need for some revenue to get the pad sites ready. Staff will be making a recommendation of a certain amount to commit to getting those sites ready.

Mr. Livingston agree that to make the sites available to serious investors the sites need to be completely cleared.

Mr. Hipp agreed.

Discussion of Building Permit Fees

Ron Powell, Director of Building and Inspections reported that after checking with other neighboring counties, they are using the same ICC evaluation calculation that Newberry is using. Some are using a current value, and some are using values from a year or two ago. The ICC changes the values twice a year, February and August.

Mr. Hipp stated that when evaluating the square footage of a home, that the unheated porch space should not be calculated the same as heated space.

Mr. Powell explained that there are many levels to how these are evaluated.

Mr. Livingston reiterated that he is in disagreement with the permit fee and plan review process. The fees are too high.

Mr. Powell explained that the purpose of the plan review has great benefits as it catches potential problems, code violations, etc. before the project is built. The hope is to save the builder/homeowner additional money later. The plan review has a lot of value to it.

Mr. Hipp agrees that there should be a standard to use but that standard should have a ration. The standard should be more in line with what the construction costs are. The standard should be charged for the space built. There needs to be enough flexibility to reflect the value of the construction.

Mr. Powell stated that can easily be accomplished with a signed contract between a contractor and the owner. With that the permit would be calculated from that contract. However, getting those contracts in has been very difficult. They are not something the contractor or the owners want to share.

Mr. Livingston would like to see it done with the contracts as it will be fairer to the person paying for the permits.

Mr. Inglese stated that staff is not recommending a change but is giving information regarding several possible ways to resolve the issue of the building permits.

1. Do nothing and leave the costs and continue to implement the fees as written.
2. Provide an option to base the evaluation on a signed contract or from the ICC recommendation.
3. Use the ICC evaluation to heated space and for unheated space use half of the evaluation.
4. Use a multiplier that would be applied to the total permit fee.
5. Reduce the plan review fee. This is not recommended by staff.

Mr. Powell stated he does not want to see any changes made as there are many needs in the department that will need to be funded.

Mr. Inglese stated that since the building department is a fee for service department that the fees should be used to fund the department.

Mr. Hipp likes the idea of having a choice in how to calculate the fees, reducing the heated space 50%, and reducing the plan review fee by 50%. These changes will need to be allowed to be retroactive to July 1, 2022.

Staff requested that these changes only apply to residential permits.

Mr. Hipp made a motion to take these changes to full council by way of an ordinance, seconded by Mr. Livingston. The vote was unanimous.

Mr. Livingston asked if the documents that were supposed go online have been made available. The copying fees need to be reduced back to where they were. Committee is recommending that this matter be brought to full council to review having the copy fees reduced.

Mr. Livingston made a motion to have the copy fees reduced and to include any change in costs after the implementation of the software, seconded by Mr. Hipp. Vote was unanimous.

Discussion of Multi Factor Authentication

Dustin Tucker, VC3, spoke regarding multifactor authentication. The County needs to move forward with cyber security. The number of cyber-attacks is growing and is closer than you would think. The hackers are going after businesses and people.

MFA (Multi-factor authentication) is a method verifying users' identities before granting them access to a system. The system uses two or more factors such as.

1. Something you know: password, PIN, security questions
2. Something you are: facial/voice recognition, fingerprint
3. Something you have: SMS/text, phone app, token/smartcard

Due to the following statistics, Newberry County should consider MFA.

1. 60% of phishing messages target Office 365 credentials

2. An average of 57 confidential records are lost every second. Totaling 5 million per day.
3. 90% of all successful cyberattacks start in email.
4. The average cost of a data breach is \$4.24 million.
5. The average breach is not detected until about 200 days after it happens.
6. The average ransom payment rose in 2021 to \$570,000.

Cyber insurance is requiring MFA to cover businesses.

The systems that should take priority would be.

1. Any internet-facing service: Office 365, VPN's, hosted platforms
2. Systems housing sensitive data: Financial info, CJIS, HIPPA
3. Critical Infrastructure: Firewalls, servers
4. Administrative accounts: IT admins
5. Workstations: Individual user PCs

MFA is a native feature inside Office 365 with the Microsoft Authenticator App or text messaging.

Employees would be asked to receive an initial text when logging into their email and every month or two months after that. This would be asked of the employee even if they do not have a county phone. Each employee agreeing to this option would potentially save the county around \$70,000.

Mr. Livingston has concerns about using personal phones, however, the cost of putting a county phone in everyone's hand is a huge expense. FOIA is something that employees would have to deal with should they use their personal phone for any County business.

Mr. Tucker responded that the only thing the employee would receive on their phone is a text that has a five number access code to be able to log into their email account. There would not be any County data transferred to the personal phone.

Staff recommends that no county business be conducted on an employee's personal cellphone.

Committee would like a legal opinion regarding the matter. Also, that this matter needs to be taken to full Council for further discussion.

Staff suggested that possibly legal council could come up with a waiver for personnel to be able to use their personal phones.

Public Comments

No Public Comments were made.

Adjournment

Mr. Livingston moved to adjourn the meeting, seconded by Mr. Hipp. The meeting adjourned at 8:28 p.m.

Finance Committee

Les Hipp, Committee Member

Jackie Lawrence, Clerk to Council

Minutes approved: _____

NEWBERRY COUNTY COUNCIL
ECONOMIC DEVELOPMENT COMMITTEE MINUTES
AUGUST 15, 2022

The Newberry County Council Executive Committee met on Monday, August 15, 2022, at 6:00 p.m. in Council Chamber at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.

Notice of the meeting was duly advertised, as required by law.

PRESENT: Henry H. Livingston, III, Committee Chairman
Travis Reeder, Committee Member
Robert N. Shealy, Committee Member
Les Hipp, County Council Member
Christopher Inglese, County Administrator
Rick Farmer, Economic Development Director
Jacquelyn R. Lawrence, Clerk to Council

Mr. Livingston called the meeting to order and determined a quorum to be present.

Additions, Deletions & Adoption of the Agenda

Mr. Shealy moved to adopt the agenda, seconded by Mr. Reeder. With no further discussion Mr. Livingston called for the vote. The vote was unanimous.

Public Comments

No public comments.

Staff Report – Rick Farmer, Economic Development Director

Mr. Farmer reported that the project activity remains fair to strong with five new projects last quarter and several potential projects in the works.

Product development for MCCP Expansion – *Construction is back on track after resolving an issue with the contractor. Those delays have pushed the completion to some time in the fall. Upon completion this will open eight to ten new sites. Some of these sites are already being pitched to potential prospects.*

Product Development for MCCP II – Daeyoung construction continues. The company has received partial Temporary Certificate of Occupancy (TCO). Installation and testing of machinery has begun. Construction is expected to be final by the end of November. This will be a \$51,000,000 or more project and should open up 224 jobs to the area. The road issue has been up and down but seems to be coming under control.

Mawsons Way Extension – An outside attorney is now working with the three landowners that own the land needed for the road construction. It is estimated to cost \$2,800,000 to build the road. Currently, there are commitments for \$3,600,000 in funding for this project. The breakdown of the funds committed are, \$2,000,000 from the Coordination Council for Economic Development based on Samsung's growth above its guarantees, County Transportation Committee has committed \$1,500,000 over the next three years, Newberry Electric Cooperative has given a check for \$167,000 in Utility Tax Credits instead of paying taxes to the state.

Mawsons Way Repairs and Resurfacing – Staff originally identified the need to fix the existing road in 2017 while recruiting Samsung. A study was performed in 2019 to evaluate the existing road and to obtain recommendations for the necessary repairs. The recommended repairs were full depth reclamation and overlay. The repair was estimated to cost \$1,600,000. The Department of Public Works received an estimate for around \$700,000. With the cost of the new road at \$2,800,000 and the repairs at \$700,000, the department should have enough funds to cover the costs with the \$3,667,000 in committed grants. It may be beneficial to hire an outside source to do a detailed report regarding this project.

Prospect Development – Grocery Store incentives – Staff is working closely with the City of Newberry to recruit grocery stores. There is currently a policy in affect that will expire in September 2022. Staff asked for a renewal of the incentive policy.

Mr. Reeder agreed that the incentive policy should be renewed. Staff suggested that the policy be amended or revised as there are some ways that the policy could be improved. Mr. Livingston also agreed that the policy needs to be enhanced, if possible, to make it more appealing.

Staff has learned that the grocery stores that have shown interest in Newberry are seeking to be placed near the Wal-Mart and not at the interstate.

Korea Mission - Staff will be traveling to Korea in October 2022. It will include five days of meetings. Daeyoung that is building a \$50,000,000 project in Newberry County was part of the Mission meeting from 2020. Staff will reach out to Samsung during the travel time to check in with them and see how things are going for them.

Economic Development Strategic Planning – The Committee has had its first meeting with about 25 people in attendance. Whitmire, Pomaria, and Prosperity have their meetings soon. Little Mountain is being added to the list of meetings also. Chappells is also requesting a meeting, however finding a facility to hold the meeting there is posing a problem. Once that is worked out staff will advise. County Council will have a session August 23, 2022, at 1852 Wilson Road. Staff hopes that all of Council will be able to attend. There will hopefully be a

Zoom option if anyone is unable to attend. The Economic Development Strategic Plan Task Force is made up of 10 very strong members from the Newberry Community.

Discussion of Capital Fund – Staff believes that this may be the time to capture some of the revenue streams from Daeyoung and Ecoplexis that have come into Newberry. The idea, with respect to Daeyoung, is to get the County’s return on the investment repaid first. If that revenue is captured first, it will take about three years for the investment to be repaid. Otherwise, it will take about twelve years. Regarding Ecoplexis, it has the potential for additional revenue. Pluses regarding revenue from a solar company is there is no school tax or emergency services tax that would have to split up.

Mr. Inglese proposed that a specific portion of the revenue proceeds be divided up and used for specific projects. This would commit a specific amount of the FILOT revenues to the Capital Fund should there be a large drop in the current flow of revenue. The hope would be that the County does not struggle to make the financial obligations it has yearly with this money set aside. The existing MCIP would need an amendment. For example, MCCPI and MCCPII are in a multicounty industrial park, an amendment could be done to state that 50% of the revenue from this park will go to the Capital Fund. Within that Capital Fund monies could be specified to be designated to certain projects or needs. The question to committee is what would be the amount to take to full council to be designated?

Committee members stated that coming up with an exact streaming amount is unclear. Also, that the stream may need to be designated just for Economic Development. Without a decent surplus the County would not be able to help bring in additional businesses to Newberry. This matter should remain up for discussion before being brought to full council.

Discussion of recent changes in State Law on FILOTS – Staff reports that the recent changes will lower manufacturing assessments from 10% to 6%, the same is for commercial assessments. There will be no impact on any companies operating under FILOTS. The change is good for older and smaller manufacturers that are unlikely to operate under a FILOT deal. The State will be reimbursing counties for lost taxes.

Committee would like to potentially do a “workshop” regarding the current FILOTS and BONDS so that Council would be aware of which ones are expiring, the ones that no revenue is being collected, etc. This would probably be scheduled for some time in September or October.

Existing Fee Agreements that will be expiring soon –

Komatsu - \$20,000,000, 225 jobs, 2001 deal was set to expire in 2021, Council added an additional 10 years in 2018 making the new expiration 2031.

Pioneer Frozen Foods - \$32,500,000, 143 jobs, expires in 12/2022, 257 mills

Kraft - \$10,000,000, expires 10/2022, 257 mills

Consideration of dedication to former County Administrator – Staff noted that at the request of Council a couple of ideas for a possible dedication could be the extension of Commerce Park

Avenue that is in MCCPI. The road name could be Wayne Adams Way or Wayne Adams Lane. The other option would be in MCCPII that the park itself be dedicated to Wayne Adams.

Committee is in favor of the options presented and the proposal being taken before full Council.

Councilman Hipp expressed his opposition to the proposal.

Mr. Reeder made a motion to move forward with presenting the proposal to full Council, seconded by Mr. Shealy. With no further discussion Mr. Livingston called for the vote. The vote was unanimous.

Recent Existing Industry Contacts - *Staff has made contact with the following: Maclean, Sea Pro Boats, Komatsu, Samsung, Trucast, Kiswire, MM Technics, KRA, Trane, Creative Liquid Coatings, Metal Masters, West Fraser.*

Upcoming Existing Industry Meetings – *Staff will be meeting with the following soon: Comfort Care, West Fraser, Carolina Pet Beds/ KT MFG.*

Executive Session

Code Section §30-4-70 (a)(2) and (a)(5) of the Code of Laws of SC, as amended, 1976

(1) Discussion of matters incident to proposed contractual arrangements, and related to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other business in the area served by the public body, including Projects Eco, Viking, Motion, Osema, Singularity, Scout, and others.

Mr. Shealy moved to go into Executive Session to discuss the matters as set forth above; seconded by Mr. Reeder. Mr. Livingston called for the vote. The vote was unanimous.

Executive Session

6:53 P.M. - 8:15 P.M.

Mr. Reeder moved to return from Executive Session, seconded by Mr. Shealy. Mr. Livingston called for the vote. The vote was unanimous.

Mr. Reeder stated no action was taken in Executive Session.

Adjournment

Mr. Reeder moved to adjourn the meeting, seconded by Mr. Shealy. Mr. Livingston called for the vote. The vote was unanimous. Meeting adjourned at 8:17 p.m.

Newberry County Council

Henry Livingston, Chairman

Jackie Lawrence, Clerk to Council

Minutes approved: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 09-21-2022

ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND NEWBERRY PV1, LLC PROVIDING FOR A PAYMENT OF A FEE IN LIEU OF TAXES, PROVIDING SPECIAL SOURCE REVENUE CREDITS, AND AUTHORIZING AN AMENDMENT TO THE MASTER AGREEMENT GOVERNING THE GREENWOOD-NEWBERRY INDUSTRIAL PARK TO PROVIDE FOR THE ADDITION OF PROPERTY AND OTHER MATTERS RELATED THERETO.

WHEREAS, Newberry County, South Carolina (the “County”) acting by and through its County Council (the “County Council”) is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the “State”) and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally; and

WHEREAS, pursuant to Title 4, Section 1 of the Code of Laws of South Carolina, 1976, as amended (“Park Act”), the County and Greenwood County entered into that certain Master Agreement Governing the Greenwood-Newberry Industrial Park, effective December 31, 2012 (as amended, modified, and supplemented, collectively, the “Park Agreement”) whereby the County and Greenwood County agreed to develop a joint county industrial or business park eligible to include property located in either the County or Greenwood County (“Park”); and

WHEREAS, Section 1.01(a) of the Park Agreement establishes the procedure or enlargement of the boundaries of the Park to include additional property; and

WHEREAS, Newberry PV1, LLC, a South Carolina limited liability company (the “Company”) has committed to investing in the establishment of a solar ~~engery~~energy facility through the acquisition of land, a building, and improvements thereon (the “Land and Building”); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, which would constitute a project within the meaning of the Act and which are eligible for inclusion as economic development property, the cost of which is estimated to be approximately \$89,000,000 over five years (the “Project”), all as more fully set forth in the Fee Agreement attached hereto, and provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, at the request of the Company, the County, having determined that an enlargement of the boundaries of the Park would promote economic development and thus provide additional employment and investment opportunities within said County and Greenwood County, desires to enlarge the boundaries of the Park to include therein certain property, as described in greater detail on the attached **Exhibit A** located in Newberry County; and

WHEREAS, pursuant to an Inducement Resolution dated as of September 7, 2022 the County authorized the negotiation of an agreement providing for fee in lieu of tax payments; and

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Fee Agreement by and between the County and the Company (the “Fee Agreement”), which provides for fee in lieu of tax payments utilizing a 6% assessment ratio for a period of ~~40~~ 30 years for the Project or each component thereof placed in service during the initial investment period and any investment period extension to which the County and the Company agree and the issuance special source revenue credits as further described therein; and

WHEREAS, it appears that the Fee Agreement, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. Based solely on information provided by the Company to the County, it is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.

- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The enlargement of the boundaries of the Park, and the granting of an extended period of time for inclusion of the property as described in **Exhibit A** in the Park, is hereby authorized and approved.

Section 5. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 6. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 7. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

EXHIBIT A
DESCRIPTION OF NEWBERRY PV1, LLC PROPERTY

All of that property subject to the Deed to Real Estate from TCA International, Inc. to TCA Timberlands, Inc. dated March 4, 1998, and as more fully described below.

EXHIBIT A TO DEED OF
TCA INTERNATIONAL, INC.
TO
TCA TIMBERLANDS, INC.

PARCEL 1: All that piece, parcel or tract of land, with the improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 800 acres, more or less, according to a plat of "Property of the Burton Heirs" by Walton B. Halfacre recorded in Plat Book "I", at pages 133-134, which is incorporated herein by reference. According to the plat the tract is bounded on the north by a road (now known as Highway 48, "Island Ford Road"); on the east by a tract of 564 acres according to the plat designated "M.B.R."; on the south by Little River; and on the west by Little River and property of Schumpert. This is a portion of property conveyed to the grantor by deed of Anna Louise Spigener recorded May 3, 1995 in the office of the Clerk of Court for Newberry County in Deed Book 414, at page 94. TMS 109-6

PARCEL 2: All that piece, parcel or tract of land, with all improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 320.78 acres according to a survey and plat by Martyn Cavanaugh dated January 1972, recorded in the office of the Clerk of Court for Newberry County in Plat Book "AF", at page 161, on which it is designated as Section "B". According to the plat, which is incorporated herein by reference, the tract is bounded on the north by lands of J. Foster Senn and lands of U. S. Plywood-Champion Papers Inc.; on the east by Section "C" as shown on the plat; on the south by Little River; and on the west by undesignated property, the same being a tract of 800 acres as shown on plat of "Property of Burton Heirs" by Walton B. Halfacre from a survey in the winter of 1943 and 1944, recorded in Plat Book "I", at page 133 and 134; and on the northwest by S. C. Highway 48. This is the same property conveyed to the grantor by deed of The Taylor Foundation recorded February 27, 1997 in Deed Book 454, at page 110. TMS 110-2

PARCEL 3: All that piece, parcel or lot of land situate, lying and being in Newberry County, South Carolina, containing one (1) acre, more or less, being partially shown as .67 of an acre on a plat prepared by Thomas B. Abraham, September 19, 1984, said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book AF-2, at page 174, and being partially shown as .2572 of an acre on a plat prepared by Claude E. Johnson, February 6, 1981, said plat being recorded in the office of the clerk of Court for Newberry County in Plat Book AX, at page 92. This property was conveyed to

| [Parker Poe, 9.9.22](#)

FEE AGREEMENT

Between

NEWBERRY COUNTY, SOUTH CAROLINA

and

NEWBERRY PV1, LLC

Dated as of October __, 2022

| [Parker Poe, 9.9.22](#)

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into as of October _____, 2022 by and between NEWBERRY COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Newberry County Council (the "County Council") as the governing body of the County, and NEWBERRY PV1, LLC, a ~~FL~~ South Carolina limited liability company (the "Company").

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act") authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(I)(1) of the Act and based solely on information provided to the County by the Company, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted contemporaneously with the date of this Fee Agreement (the "Fee Ordinance") authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this section defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company and any Sponsors and Sponsor Affiliates of property within the Investment Period, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement. The Commencement Date is expected to be December 31, 2024.

“Community Commitments” shall mean the matters described on Exhibit C hereto.

“Company” shall mean Newberry PV1, LLC, a South Carolina limited liability company and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“Contract Minimum Investment Requirement” shall mean an investment of at least \$89,000,000 by the Company and any Sponsor Affiliates of Economic Development Property within the Investment Period.

“County” shall mean Newberry County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Newberry County Council, the governing body of the County.

“Decommissioning Obligations” shall mean the removal and proper disposal of all Equipment, stabilization and rehabilitation of the Real Property, and restoration of the Real Property to its original state.

“Department” or “SCDOR” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under

the Act, selected and identified by the Company or a Sponsor Affiliate in their annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company or any Sponsor Affiliate for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements and except as otherwise permitted by Section 12-44-110 of the Act.

“Industrial Development Park” shall mean an industrial or business park created pursuant to the MCIP Act.

“Infrastructure” shall mean infrastructure serving the Project, including the Improvements, to the extent that the MCIP Act permits, provided that Infrastructure shall first be deemed to include real property and infrastructure improvements prior to including any personal property, notwithstanding any presumptions to the contrary in the Act or otherwise.

“Infrastructure Credit” shall mean the annual infrastructure credit provided to the Company pursuant to the MCIP Act and Section 4.1(c) hereof, with respect to the Infrastructure.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act. The Investment Period is expected to end on December 31, 2027.

“MCIP Act” shall mean Article VIII, Section 13(D) of the Constitution of the State of South Carolina, Sections 4-1-170, 4-1-172, and 4-1-175 of the Code of Laws of South Carolina, 1976, as amended, and Section 4-29-68 of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property in the County that the Company or any Sponsor Affiliate determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2022 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation, except as expressly permitted by Section 12-44-110 of the Act.

“Real Property” shall mean real property that the Company or any Sponsor Affiliate uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consisting of the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto, and any improvements located thereon, together with such additional real property in the County as may be designed by the County or Sponsor Affiliate by filing a revised Exhibit A with the County.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor Affiliate” shall mean an entity that joins with or is an affiliate of, the Company, that participates in the investment in, or financing of, the Project, that meets the requirements under the Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, and that executes and delivers to the County a Joinder Agreement in the form attached hereto as Exhibit B.

“Streamlined FILOT Act” shall mean Title 4, Chapter 12 of the Code of Laws of South Carolina, 1976, as amended.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the ~~39th-29th~~ year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the ~~39th-29th~~ year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least ~~40-30~~ annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Section 1.2 Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.3 The term “investment” or “invest” as used herein shall include not only investments made by the Company or a Sponsor Affiliate, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. ~~The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder.~~ The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based solely upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, ~~and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.~~

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property ~~and is thereby exempt from ad valorem taxation in South Carolina.~~

(d) The millage rate in Section 4.1 hereof is the lowest millage rate permissible under the Act, which the parties understand to be ~~233.01367~~ mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2021, as provided under Section 12-44-50(A)(1)(d) of the Act.

~~(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.~~

~~(e)~~ The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State ~~of South Carolina~~, is duly authorized to transact business in the State ~~of South Carolina~~, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to develop, install, or operate the Project, to conduct other legal activities and functions with respect thereto, and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its total capital investment will equal or exceed the Contract Minimum Investment Requirement.

~~(d) The Company will use commercially reasonable efforts to fulfill the Community Commitments on or before December 31, 2024.~~

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Contract Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal

property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsor Affiliates under any form of lease, then such property shall, at the election of the Company, be subject to FILOT Payments to the same extent as the Company's assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Administrator after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Fee Agreement, including removal, replacement, and termination, and such Sponsor Affiliate shall be deemed to be a party to this Fee Agreement.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in an Industrial Development Park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company and any Sponsor Affiliates are required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company and any Sponsor Affiliates anticipate an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under the Act, the parties have negotiated the amount of the FILOT Payments in accordance therewith. The Company and any Sponsor Affiliates shall make FILOT Payments on all Economic Development Property which comprises the Project and is placed in service during the Exemption Period, or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property placed in service during the Investment Period, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company or any Sponsor Affiliate obtains by construction or purchase in an ~~arms-arm's~~ length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company or any Sponsor Affiliate if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 39 years thereafter or such longer period of years in which the Act permits the Company or any Sponsor Affiliates to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the lowest millage rate permissible under the Act, which the parties mutually understand to be the millage rate in effect on June 30, ~~2021~~2022, which is ~~233.0-367.0~~ mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the

payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company or any Sponsor Affiliates to make annual fee payments.

(b) The FILOT Payment calculated in Section 4.1(a) above shall be referred to as the “Base FILOT Payment.” Subject to the terms and conditions of this Fee Agreement, the Base FILOT Payment shall be adjusted each year to produce the “Net FILOT Payment” due. The Net FILOT Payment that the Company or any Sponsor Affiliate shall be required to equal \$216,050 during each year of the term of the Fee Agreement. In years in which the Net FILOT Payment is lower than the Base FILOT Payment, an Infrastructure Credit shall be applied to the Base FILOT Payment and shall equal the difference between the Base FILOT Payment and the Net FILOT Payment for such year. In years in which the Net FILOT Payment is higher than the Base FILOT Payment, the Base FILOT Payment shall be increased to equal the Net FILOT Payment.¹ The FILOT Payments shall be in lieu of all *ad valorem* tax payments ~~and any other charges~~ that would have appeared on the property tax bills otherwise generated by the County in the absence of this Fee Agreement. The FILOT Payments shall not be in lieu of any statutorily authorized fee or charge imposed by the County to support its operations.

The amount of the Net FILOT Payment is based upon the assumption that the Project will generate 74.5 MW of photovoltaic generation and will pay \$2900 per MW generated. If the power generation of the Project is either lesser or greater than 74.5 MW, the Net FILOT Payment shall be adjusted by the same proportion subject to the floor established in the last sentence of this paragraph. For example, and by way of example only, if the Project generates 81.95 MW of power, the Net FILOT Payment shall be increased by 10%. Power generation shall be measured as of the last day of the prior fiscal year for purposes of determining the Net FILOT Payment for each property tax year. In no event shall the Net FILOT Payment equal less than \$216,050 194,445 (90% of the expected 216,050).

(c) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum FILOT Payment applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

Subject to Section 6.8 hereof, in the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent hereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the

¹ If it is determined that the Company and County may not simply agree upon a higher payment than the Base FILOT Payment, the assessment ratio for any year in which the Net FILOT Payment is higher than the Base FILOT Payment shall be adjusted to an assessment ratio that causes the Base FILOT Payment to equal the Net FILOT Payment.

Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the “Additional Payment”) pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require and shall be paid to the County within 90 days of the County’s submission of a written request therefore.

(b) The remedies stated herein shall be the County’s sole remedies for the Company’s failure to meet any required investment or job creation level.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the

Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project. However, the Company will not be required to make any retroactive payments.

Section 4.5 Place of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Economic Development Property. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Project is damaged by fire, explosion, or any other casualty, the Company may elect to terminate this Fee Agreement.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) Partial Taking. In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company; or (iii) to treat the portions of the Project so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the

County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. If Section 12-44-120 of the Act or any successor provision requires consent to an assignment, the Company may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to Sponsor Affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor Affiliate shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor Affiliate be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses. The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorneys' fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence. As used in this section, "Administration

Expenses” shall include the reasonable and necessary out-of-pocket expenses, including attorneys’ fees, incurred by the County with respect to: (i) this Fee Agreement; (ii) all other documents related to this Fee Agreement and any related documents; and (iii) the fulfillment of its obligations under this Fee Agreement and any related documents and the implementation and administration of the terms and provisions of the documents after the date of execution thereof, but only as a result of a request by the Company for a modification, assignment, or a termination of such documents by the Company, or as a result of a bankruptcy of the Company or a default by the Company under the terms of such documents. The Company acknowledges that Administration Expenses incurred in connection with the execution and delivery of this Fee Agreement shall equal \$10,000 and shall be due and payable upon execution of this Fee Agreement.

Section 4.13 Execution of Lease. The parties acknowledge that the intent of this Fee Agreement is to afford the Company the benefits of the FILOT Payments in consideration of the Company’s decision to locate the Project within the County and that this Fee Agreement has been entered into in reliance upon the validity and enforceability of the Act. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or that this Fee Agreement or agreements similar in nature to this Fee Agreement are invalid or unenforceable in any material respect, or should the parties determine that there is a reasonable doubt as to the validity or enforceability of this Fee Agreement in any material respect, then the County, upon the provision by the Company of evidence acceptable to the County that the Project is free from environmental contamination and the conveyance of title to the Project to the County at the expense of the Company, agrees to lease the Project to the Company pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company receives the benefits of the FILOT arrangement as contemplated by this Fee Agreement.

Section 4.14 Waiver of Benefits of Future Legislation. The Company and any Sponsor Affiliates agree to waive the benefits of any future legislative enactment that reduces property taxes available to solar farm property. If the Company or any Sponsor Affiliate claims any such benefits in addition to the benefits provided in this Fee Agreement, such action shall constitute an early termination of this Fee Agreement by the Company or the Sponsor Affiliate, as applicable.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however,* that the Company shall be entitled to all redemption rights granted by applicable statutes; ~~or~~

(b) A representation or warranty made by the Company which is ~~deemed~~ materially incorrect when ~~deemed~~-made; ~~or~~

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; ~~or~~

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; ~~or~~

(e) Failure by the Company to complete the Community Commitments by December 31, 2024;

(f) Failure by the Company to execute and deliver this Agreement to the County by November 1, 2022;

(g) The Cessation of operations at the Project. "Cessation of operations" shall mean (a) a publicly announced closure of the Project by the Company, (b) total suspension of energy production at the Project for a period of 180 days or more, or (c) reduction of energy production at the facility to less than 30 MW of photovoltaic generation for a period of 90 days or more; or

(~~e~~)h Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

(i) terminate the Fee Agreement, upon ~~60~~-30 days' notice to the Company and any Sponsor Affiliate; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

- (ii) terminate the Fee Agreement, upon 30 days' notice to County;
- (iii) withhold so much of the payment as is in dispute with the County until such dispute is fully and finally resolved; or
- (iv) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

ARTICLE VI

MISCELLANEOUS

~~Section 6.1 — Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.~~

~~Section 6.2~~ Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Newberry PV1, LLC
600 Park Offices, Suite 285
Durham, NC 27709

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

IF TO THE COUNTY:

Newberry County, South Carolina
Attn: County Administrator
1309 College Street
P.O. Box 156
Newberry, SC 29108

WITH COPIES TO:

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100
Columbia, SC 29201

Section 6.3Section 6.2Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.4Section 6.3Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.5Section 6.4Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.6Section 6.5Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.7Section 6.6Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.8Section 6.7Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.9Section 6.8Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate

most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, with a view toward providing the Company with the benefits of such change in the Act or South Carolina laws.

The County agrees that in case the FILOT incentive described herein is found to be invalid or otherwise does not provide the Company with the economic benefit it is intended to receive from the County as an inducement to locate in the County, the savings lost as a result of such invalidity will be considered a special source revenue credit or infrastructure improvement credit to the Company (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, and the County will provide a special source revenue credit or infrastructure improvement credit against all FILOT payments or fee payments made or to be made by the Company equal to the amount that the Company would have saved if the FILOT had been valid, to the maximum extent permitted by law.

~~Section 6.10~~Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

~~Section 6.11~~Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with written notice of termination, and such termination shall be effective as of the date determined by the Company; *provided, however,* that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination, shall survive such termination. In the year following the effective date of termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this Fee Agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the effective date of such termination pursuant to this section.

~~Section 6.12~~Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other with respect to its subject matter, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

~~Section 6.13~~Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

~~Section 6.14~~ Section 6.13 **Business Day.** In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

~~Section 6.15~~ Section 6.14 **Limitation of Liability.** Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 6.15 Decommissioning the Project. The Company shall perform all Decommissioning Obligations under this Agreement. In order to ensure performance of the Company's Decommissioning Obligations, the Company shall provide the County with the performance guarantee required for conditional permitting of solar farms under Section 153.124(I)(3) of the County Zoning Code. The parties agree, and expressly intend, that provision of the performance guarantee for conditional permitting pursuant to Section 153.124 of the County Zoning Code satisfies Company's financial guarantee of the Company's Decommissioning Obligations under this Section 4.15.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "***Indemnified Party***") harmless against and from all liability or claims arising from the County's execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any such documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company's expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the

Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

~~(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement. Section 7.2 Section 8.4. No Liability of County Personnel.~~ All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 7.3 Survival. The obligations of the Company pursuant to Sections 7.1 and 7.2 of this Agreement shall survive termination of this Agreement.

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(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator or County Council Chairman and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**NEWBERRY COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: _____
Title: _____

ATTEST:

Signature: _____
Name: _____
Title: Clerk to County Council

NEWBERRY PV1, LLC

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

All of that property subject to the Deed to Real Estate from TCA International, Inc. to TCA Timberlands, Inc. dated March 4, 1998, and as more fully described below.

EXHIBIT A TO DEED OF
TCA INTERNATIONAL, INC.
TO
TCA TIMBERLANDS, INC.

PARCEL 1: All that piece, parcel or tract of land, with the improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 800 acres, more or less, according to a plat of "Property of the Burton Heirs" by Walton B. Halfacre recorded in Plat Book "I", at pages 133-134, which is incorporated herein by reference. According to the plat the tract is bounded on the north by a road (now known as Highway 48, "Island Ford Road"); on the east by a tract of 564 acres according to the plat designated "M.B.R."; on the south by Little River; and on the west by Little River and property of Schumpert. This is a portion of property conveyed to the grantor by deed of Anna Louise Spigener recorded May 3, 1995 in the office of the Clerk of Court for Newberry County in Deed Book 414, at page 94. TMS 109-6

PARCEL 2: All that piece, parcel or tract of land, with all improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 320.78 acres according to a survey and plat by Martyn Cavanaugh dated January 1972, recorded in the office of the Clerk of Court for Newberry County in Plat Book "AF", at page 161, on which it is designated as Section "B". According to the plat, which is incorporated herein by reference, the tract is bounded on the north by lands of J. Foeter Senn and lands of U. S. Plywood-Champion Papers Inc.; on the east by Section "C" as shown on the plat; on the south by Little River; and on the west by undesignated property, the same being a tract of 800 acres as shown on plat of "Property of Burton Heirs" by Walton B. Halfacre from a survey in the winter of 1943 and 1944, recorded in Plat Book "I", at page 133 and 134; and on the northwest by S. C. Highway 48. This is the same property conveyed to the grantor by deed of The Tayler Foundation recorded February 27, 1997 in Deed Book 454, at page 110. TMS 110-2

PARCEL 3: All that piece, parcel or lot of land situate, lying and being in Newberry County, South Carolina, containing one (1) acre, more or less, being partially shown as .67 of an acre on a plat prepared by Thomas B. Abraham, September 19, 1984, said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book AF-2, at page 174, and being partially shown as .2572 of an acre on a plat prepared by Claude E. Johnson, February 6, 1981, said plat being recorded in the office of the clerk of Court for Newberry County in Plat Book AX, at page 92. This property was conveyed to

EXHIBIT A TO DEED OF
TCA INTERNATIONAL, INC.
TO
TCA TIMBERLANDS, INC.

PARCEL 1: All that piece, parcel or tract of land, with the improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 800 acres, more or less, according to a plat of "Property of the Burton Heirs" by Walton B. Halfacre recorded in Plat Book "I", at pages 133-134, which is incorporated herein by reference. According to the plat the tract is bounded on the north by a road (now known as Highway 48, "Island Ford Road"); on the east by a tract of 564 acres according to the plat designated "M.B.R."; on the south by Little River; and on the west by Little River and property of Schumpert. This is a portion of property conveyed to the grantor by deed of Anna Louise Spigener recorded May 3, 1995 in the office of the Clerk of Court for Newberry County in Deed Book 414, at page 94. TMS 109-6

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Date

Name of Sponsor Affiliate

Signature: _____
Name: _____
Title: _____
Address: _____

COMPANY:

Signature: _____
Name: _____
Title: _____

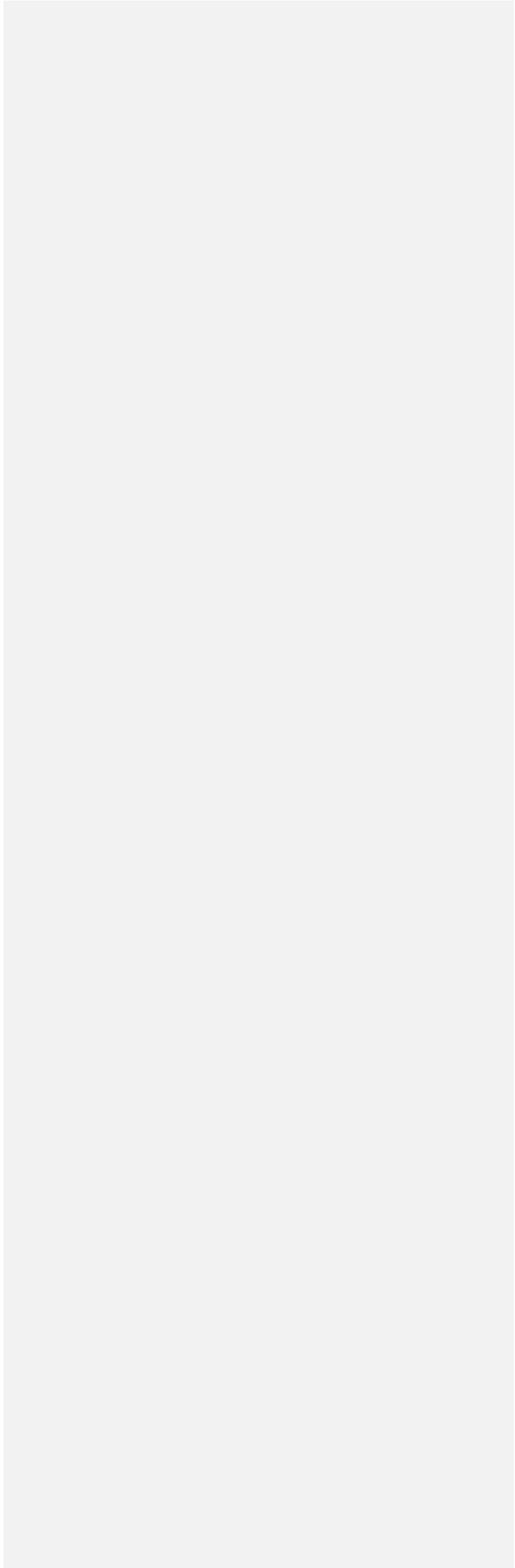


EXHIBIT C
COMMUNITY COMMITMENTS

In consideration of the incentives provided by the County pursuant to this Agreement, the Company shall abide by the following restrictions and complete the following projects:

1. Establish a 100 foot vegetative buffer along the road frontage of the Project, the details of which shall be set forth in plan to be approved by the County.

2. Install a fully functioning solar panel roof and accompanying equipment to provide operational electricity to the County Fire Station Building located at [address for Hwy 39 fire station].

3. Install a fully functioning solar panel roof and accompanying equipment to provide operational electricity to the County Fire Station Building located at [address for the Silver Street fire station on Hwy 34].

**Newberry County
Administration**

1309 College Street
P.O. Box 156
Newberry, SC 29108
803-321-2100



Agenda Item Briefing

Subject: Closed Landfill Monitoring and

Prepared By: Crystal Waldrop

Department/Division: Purchasing

Legal Review: _____

Finance Review: _____

Administrator Review: _____

Requested meeting: Committee County Council

Title: Request for Qualification 2022-10

Date Prepared: 10/18/2022

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Meeting Date: Wednesday, October 19, 2022

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget? Yes No

If NO, is a budget amendment necessary? Yes No

STAFF’S RECOMMENDED ACTION: The evaluation committee recommends the highest ranked response, Rogers & Callcott

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: The amount budgeted for these services is \$50,000 annually. The cost proposal submitted by the highest ranked firm is \$55,000.

SUMMARY DISCUSSION: The cost proposal is for monthly OM&M visits to ensure the wells are operating properly, semi-annual groundwater and surface water sampling, quarterly methane monitoring reports and semi-annual groundwater monitoring reports, as well as required laboratory analyses.

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Evaluation sheets from Committee Members, which consisted of Karen Brehmer, Mike Pisano, Ron Powell, and Crystal Waldrop.

2022

2020-10 RFQ for Closed Landfill Monitoring and Testing

Evaluation Form

	Related experience on similar projects (15 points)	Past performance (30 points)	Ability to meet budget requirements (25 points)	Understanding of scope of work (20 points)	Proximity of firm to Newberry County (10 points)	Total Points (100)
Alliance Consulting Engineers	15	23	15	20	7	80
Roger & Callcott	15	30	25	20	9	99
Smith & Gardner	15	23	20	20	8	86
S&ME	15	25	15	20	10	85
Synterra	14	26	18	20	6	84
Evaluation Committee Member: 						

2022

2020-10 RFQ for Closed Landfill Monitoring and Testing

Evaluation Form

	Related experience on similar projects (15 points)	Past performance (30 points)	Ability to meet budget requirements (25 points)	Understanding of scope of work (20 points)	Proximity of firm to Newberry County (10 points)	Total Points (100)
Alliance Consulting Engineers	15	22	20	17	10	84
Roger & Callcott	15	30	23	20	5	93
Smith & Gardner	15	25	23	17	10	90
S&ME	12	25	18	15	10	80
Synterra	12	28	23	17	5	85
Evaluation Committee Member: 						
MICHAEL PRADO						

2022

2020-10 RFQ for Closed Landfill Monitoring and Testing

Evaluation Form

	Related experience on similar projects (15 points)	Past performance (30 points)	Ability to meet budget requirements (25 points)	Understanding of scope of work (20 points)	Proximity of firm to Newberry County (10 points)	Total Points (100)
Alliance Consulting Engineers	15	30	15	20	10	90
Roger & Callcott	15	30	24	20	10	99
Smith & Gardner	15	27	15	20	7	84
S&ME	15	27	15	20	7	84
Synterra	15	27	20	20	5	87

Evaluation Committee Member: Ron Powell

2022

2020-10 RFQ for Closed Landfill Monitoring and Testing

Evaluation Form

	Related experience on similar projects (15 points)	Past performance (30 points)	Ability to meet budget requirements (25 points)	Understanding of scope of work (20 points)	Proximity of firm to Newberry County (10 points)	Total Points (100)
Alliance Consulting Engineers	15	25	20	17	10	87
Roger & Callcott	15	30	25	20	8	98
Smith & Gardner	15	25	20	15	5	80
S&ME	13	28	23	18	10	92
Synterra	14	25	20	18	5	82
Evaluation Committee Member: <i>Crystal L. ...</i>						



