

**NEWBERRY COUNTY COUNCIL  
COUNTY COUNCIL AGENDA**

**April 19, 2023**

**6:00 P.M.**

Call to order: Todd Johnson, Chairman  
Invocation and Pledge of Allegiance: Johnny Mack Scurry, Councilman

1. Adoption of Consent Agenda
  - a. Newberry County Council meeting minutes – April 5, 2023
2. Additions, Deletions & Adoption of the Agenda
3. Consideration of appointment to the Upper Savannah Workforce Development Board.
4. Proclamation recognizing April 30, 2023 as National Therapy Animal Day.
5. Proclamation recognizing National Small Business Week
6. Ordinance No. 03-01-23. Ordinance authorizing the execution and delivery of a fee agreement by and between Newberry County, South Carolina and *Project N* 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.
  - a. Public Hearing
  - b. Third and Final Reading

7. Public Comments Ordinance No. 04-02-2023 - Rezoning Adelaide Street
  
8. Ordinance No. 04-02-2023. Ordinance acting on a request to amend the official zoning map established pursuant to zoning ordinance No. 12-24-01 as revised and amended by Zoning Ordinance No. 06-11-16 and codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classification and districts so as to rezone one (1) real estate parcel totaling two and eighty-five hundredths (2.85) acres designated as TMS No. 399-25 from RS-single family residential to R2- rural.
  - a. First Reading
  
9. Public Comments Ordinance 04-03-2023 – Rezoning Tom Savage Road
  
10. Ordinance No. 04-03-2023. Ordinance acting on a request to amend the official zoning map established pursuant to zoning ordinance No. 12-24-01 as revised and amended by Zoning Ordinance No. 06-11-16 and codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classification and districts so as to rezone one (1) real estate parcel totaling twenty and fifty-nine hundredths (20.59) acres designated as TMS No. 589-1-1 from RS-single family residential to R2-rural.
  - a. First Reading
  
11. Public Comments Ordinance 04-04-2023 – Rezoning Mt. Bethel Garmany Road
  
12. Ordinance No. 04-04-2023. Ordinance acting on a request to amend the official zoning map established pursuant to zoning ordinance No. 12-24-01 as revised and amended by Zoning Ordinance No. 06-11-16 and codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classification and districts so as to rezone one (1) real estate parcel totaling sixty and fifty hundredths (60.50) acres designated as TMS No. 392-3 from R2-rural to RS- single family residential.
  - a. First Reading
  
13. Ordinance No. 04-05-2023. Ordinance to provide for the issuance and sale of general obligation bonds of Newberry County, South Carolina not exceeding \$2,000,000 in aggregate principal amount, to prescribe the purposes for which the proceeds of said bonds shall be extended, to provide for the payment of said bonds, and other matters relating thereto.
  - a. First Reading
  
14. Appointments
  
15. Public Comments

16. Executive Session

- a. Economic Development Matter(s): Discussion of matters related to *Project Rubicon* pursuant to SC Code of Laws Section 30-4-70(a)(5)

17. County Council may take action following executive session on matters discussed during executive session.

18. Comments/Requests from County Administrator

19. Comments/Requests from Council

20. Future meetings

- a. Public Safety Committee – April 24, 2023 at 6:00 p.m.
- b. County Council Work Session – April 26, 2023 at 5:00 p.m.
- c. County Council meeting – May 3, 2023 at 6:00 p.m.
- d. County Council meeting – May 17, 2023 at 6:00 p.m.
- e. Finance Committee meeting – May 22, 2023 at 6:00 p.m.

21. Adjournment

NEWBERRY COUNTY COUNCIL  
MINUTES  
APRIL 5, 2023

Newberry County Council met on Wednesday, April 5, 2023, 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)  
Karl Sease, Council Member (District 3)  
Johnny Mack Scurry, Council Member (District 6)  
Travis Reeder, Council Member (District 7)  
Jeff Shacker, County Administrator  
Karen Brehmer, Deputy County Administrator  
Joanie Winters, Interim County Attorney  
Debbie S. Cromer, Finance Director  
Susan C. Fellers, Clerk to Council

ABSENT: Robert N. Shealy, Council Member (District 4)

MEDIA: Andrew Wigger, Newberry Observer

Mr. Johnson called the meeting to order at 6:00 p.m. and determined a quorum to be present. He welcomed all visitors to the meeting.

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

**1. ADOPTION OF CONSENT AGENDA:**

**a. Newberry County Council Meeting Minutes – March 15, 2023**

Mr. Hipp moved to adopt the Consent Agenda consisting of the March 15, 2023 Minutes, as presented; seconded by Mrs. Arrowood. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.



## **2. ADDITIONS, DELETION AND ADOPTION OF THE AGENDA**

Mr. Johnson asked if someone on Council would consider making a motion to make an addition to the agenda for a matter concerning the opioid settlement that is coming up. There is a time frame coming up which requires action on our part tonight. Mrs. Arrowood so moved; seconded by Mr. Sease. Mr. Johnson stated it would also need to be added to Executive Session. Mrs. Arrowood amended her motion to include this matter in Executive Session and as Item 6(a) on the agenda; Mr. Sease amended his second accordingly. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

Mrs. Arrowood commented that this has been going on for a while and there is now a specific time frame that has to be met.

Mr. Hipp moved to adopt the Agenda, as amended; seconded by Mr. Reeder. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

## **3. RESOLUTION #04-23: DESIGNATION OF THE MONTH OF APRIL 2023 AS FAIR HOUSING MONTH WITHIN THE COUNTY OF NEWBERRY.**

Mr. Reeder moved to adopt the Resolution; seconded by Mrs. Arrowood. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

## **4. DISCUSSION OF REALLOCATION OF FEDERAL AND STATE GRANT FUNDS AND PREVIOUSLY APPROPRIATED LOCAL MATCH FUNDS FOR THE NEWBERRY COUNTY AIRPORT AND A REQUEST FOR AUTHORIZATION TO PROCEED WITH THE DESIGN AND ENGINEERING OF THE REHABILITATION OF THE TAXIWAY PAVEMENT – MIKE PISANO, PUBLIC WORKS DIRECTOR.**

Mr. Pisano stated that \$280,000 had been budgeted for an airport layout plan. After the money was approved in the budget and after discussions with the FAA, they asked us to move forward with a taxiway rehabilitation design. This was based on a pavement study conducted by South Carolina Aeronautics. This bumps the airport layout plan back a year. The total for this project is \$195,700 with Newberry County's share being \$9,785. This change is being made at the recommendation of the FAA. Funds are already allocated. This is the design phase only.

Mr. Hipp asked if Newberry County now had the documented number of planes in our airport to get an allotment. Mr. Pisano advised we did and the County was in good standing with that. We have had more than is required since 2019.

Mr. Hipp moved to shift the funds currently budgeted for the airport layout plan over to the taxiway rehabilitation design and engineering; seconded by Mrs. Arrowood. There being no further discussion, Mr. Johnson called for the vote. Vote was unanimous.

**5. EXECUTIVE SESSION:**

- a. Legal Matter(s): Discussion of proposed legal settlement relating to the construction of Mid-Carolina Park Expansion Phases IIA and III of the Mid-Carolina Commerce Park pursuant to SC Code of Laws, Section 30-4-70(a)(2).**
- b. Economic Development Matter(s):**
  - i. Discussion of matters related to Project N pursuant to SC Code of Laws, Section 30-4-70(a)(5)**
  - ii. Discussion of matters related to Project Cavalier pursuant to SC Code of Laws, Section 30-4-70(a)(5)**
- c. Legal Matter(s): Discussion of pending opioid settlement.**

Mr. Sease moved to go into Executive Session for the above-stated reasons; seconded by Mr. Reeder. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

**EXECUTIVE SESSION  
6:12 P.M. – 6:57 P.M.**

Mr. Sease moved to return to open session; seconded by Mr. Reeder. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

**6. COUNTY COUNCIL MAY TAKE ACTION FOLLOWING EXECUTIVE SESSION ON MATTERS DISCUSSED DURING EXECUTIVE SESSION.**

Mr. Hipp moved that pursuant to the proposed legal settlement relating to the construction of Mid-Carolina Park Expansion, Phases IIA and III, that the County Administrator be authorized to approve and make that final settlement; seconded by Mrs. Arrowood. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

**6(a).PENDING OPIOID SETTLEMENT**



Due to five new participants in the opioid legal issue affecting the County, Mr. Hipp moved to authorize the County Administrator to sign the legal documentation necessary to include Newberry County in the settlement; seconded by Mrs. Arrowood. There being no discussion, Mr. Johnson called for the vote. Vote was unanimous.

Mr. Hipp commented that after action is taken in open session as a result of discussions during Executive Session, it is always public information. Eventually everything will be very clear.

**7. ORDINANCE #03-01-23: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND PROJECT N 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.**

**a. Second Reading**

Mr. Scurry moved to approve second reading; seconded by Mr. Reeder.

Mr. Hipp requested that due to discussions with our legal advisor on this, if not adequately included in the current wording on that, that we include performance bonding and the ability to re-evaluate the cost of decommissioning to make sure that the County and/or any individual is covered through those concerns of decommissioning costs. He requested that Ms. Winters put that wording in the document.

Mr. Johnson responded we want to protect the County and the property owner.

There being no further discussion, Mr. Johnson called for the vote. Vote was unanimous.

**8. RESOLUTION #05-23: A RESOLUTION TO NEGOTIATE A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT CAVALIER; IDENTIFYING THE PROJECT; AND OTHER MATTERS RELATED THERETO.**

Mr. Johnson stated that this item was not ready to be considered based on the Board of Zoning Appeals meeting.

**9. APPOINTMENTS**

Due to the resignation of Bryon Jeffcoat from the Newberry County Disabilities and Special Needs Board, Mrs. Arrowood nominated Debra Kelly to finish out this term which will expire on June 30, 2025; seconded by Mr. Sease. Vote was unanimous.

## 10. PUBLIC COMMENTS

**Steven Knapp, Newberry County Museum**, updated Council on events at the museum:

- Next month he will have been with the Newberry County Museum for a full year.
- In 2022, there were two temporary exhibits: “She Said Yes” (wedding exhibit) and “Coming Home to Newberry” (about Newberry College).
- 4,260 visitors during 2022, which is a 45% increase in visitors to the Museum since 2021.
- Of that total, there were 800 visitors from Newberry County; 850 visitors from other South Carolina Counties, 2,083 visitors from other states, which shows the word is getting out about the Newberry County Museum, and visitors from 13 foreign countries.
- The Museum is currently working on an exhibit of all of the Masonic lodges in the county. Plans are for it to open next week.
- He is working with different county organizations to help preserve Newberry County history.

**Jim Heilman** addressed Council regarding the following issues:

- Economic Development and what it means to Newberry County.
- Infrastructure.
- Lineman Training Program.
- What is best for Newberry County - solar farms or P\protection of the trees and vegetation.

## 11. COMMENTS/REQUESTS FROM COUNTY ADMINISTRATOR

Mr. Shacker reported as follows:

- He thanked Council for the opportunity to serve everyone in the almost one month he has been here.
- The budget process is underway with Debbie Cromer, Karen Brehmer, and department heads working with him. We should be able to maintain the schedule adopted by Council the first of the year. The first budget work session is next week.
- Last Wednesday an informative public meeting was held at the Joanna Elementary School about the Laurens/Newberry County line. Once the decision is final a 60 day appeal time will begin. After the 60 day appeal time expires, the boundary will be certified. Then at



the next Legislative Session, they will adopt it in terms of a new description of current boundaries.

- The class and comp study process is underway. Preliminary data is being reviewed. Meetings are being conducted with all department heads to make sure the analysis is as thorough as possible. The consultant will join us in a few weeks to meet with department heads.
- He is in the process of reviewing the Economic Development study in between budget and other matters.

Mr. Johnson added that the county line meeting was a great history lesson. The change will cost Newberry County about a \$21,000 loss in property taxes. We are losing several residences in Mr. Scurry's district, one from his district, and we are picking up more national forest land.

Mr. Shacker advised that 16 properties will be moved from Newberry County to Laurens County. Newberry County will pick up 5 parcels owned by the US Government, consisting of about 278 acres.

## **12. COMMENTS/REQUESTS FROM COUNCIL**

Mr. Sease attended the county line meeting. They went into great detail explaining how they came up with this and proved why it needed to be moved.

Mrs. Arrowood was familiar with the geo survey, and there is a problem in that area.

Mr. Scurry (inaudible).

Mr. Reeder expressed appreciation to everybody for what they are doing and looked forward to the end of budget season. He wished everyone a happy Resurrection day.

Mr. Hipp thanked both Mr. Knapp for the museum update and Mr. Heilman for his comments. The budget work session begins at 6:00 p.m. on April 12 and felt it might need to be a little earlier depending on how lengthy that meeting could be. After discussion, it was the consensus of Council to begin that meeting at 5:00 p.m.

Mr. Johnson stated that Mr. Shealy was absent tonight because of work commitments with his employer, Newberry Electric Cooperative.

## **13. FUTURE MEETINGS:**

- a. Budget Work Session-April 12, 2023 @ 5:00 p.m.
- b. County Council Meeting-April 19, 2023 @ 6:00 p.m.
- c. Public Safety Committee-April 24, 2023 @ 6:00 p.m.

**14. ADJOURNMENT**

There being no further business, Mr. Sease moved to adjourn; seconded by Mr. Reeder. Vote was unanimous.

**NEWBERRY COUNTY COUNCIL**

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**Todd Johnson, Chair**

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**Susan C. Fellers  
Clerk to Council**

**Minutes Approved:** \_\_\_\_\_

COUNTY OF NEWBERRY            )  
  )  
STATE OF SOUTH CAROLINA    )    **PROCLAMATION  
  )    RECOGNIZING  
  )    NATIONAL THERAPY ANIMAL DAY**

There are thousands of Pet Partners therapy animal teams serving in communities across the United States; and

**WHEREAS**, Pet Partners has designated April 30 as National Therapy Animal Day; and

**WHEREAS**, Pet Partners therapy animal teams in Newberry County play an essential role in improving human health and well-being through the human-animal bond; and

**WHEREAS**, Pet Partners therapy animal teams make millions of visits per year in settings such as hospitals, nursing homes, schools and hospice; and

**WHEREAS**, Pet Partners therapy animal teams interact with a variety of people in our community including veterans, seniors, patients, students facing literacy challenges, and those approaching end of life; and

**WHEREAS**, these exceptional therapy animals who partner with their human companions bring comfort and healing to those in need.

**NOW, THEREFORE**, Newberry County Council does hereby proclaim April 30, 2023, as *National Therapy Animal Day* in Newberry County, and encourages our citizens to celebrate therapy animals and their human handlers. Further, Newberry County Council publicly salutes the service of therapy animal teams in our community and in communities across the nation.

**PROCLAIMED AND APPROVED** this 19th day of April 2023.

**NEWBERRY COUNTY COUNCIL**

By: \_\_\_\_\_  
**Todd Johnson, Chairman**

Attest:

\_\_\_\_\_  
**Susan C. Fellers, Clerk to Council**

COUNTY OF NEWBERRY )  
 )  
STATE OF SOUTH CAROLINA )

**PROCLAMATION  
RECOGNIZING  
SMALL BUSINESS WEEK**

**WHEREAS**, America’s economic growth has been driven for centuries by the resilience of our small businesses that, despite a world-wide pandemic, continue to pioneer innovative solutions to our country’s greatest challenges and create opportunities for families and workers; and

**WHEREAS**, in 1963 President John F. Kennedy signed a proclamation declaring the first observance of National Small Business Week; since then, with the sponsorship of the U.S. Small Business Administration, the critical contributions of America’s entrepreneurs and small business owners have been recognized national every year since; and

**WHEREAS**, the U.S. Small Business Administration proclaims April 30 through May 6, 2023 to be National Small Business Week; and

**WHEREAS**, from the storefront shops that anchor Main Street to the high-tech startups that keep America on the cutting edge to the small manufacturers driving our competitiveness on the global stage, small businesses are the backbone of our economy and the cornerstones of our nation’s promise; and

**WHEREAS**, because this country’s 32.5 million small businesses create nearly two out of every three jobs in our economy, we cannot resolve ourselves to create jobs and spur economic growth in America without discussing ways to support our entrepreneurs; and

**WHEREAS**, more than half of Americans either own or work for a small business; and

**WHEREAS**, when we support small business, jobs are created, and local communities preserve their unique culture; and

**WHEREAS**, Newberry County supports and joins in this national effort to help America’s small businesses do what they do best – grow their businesses, create jobs, and ensure that our local communities remain as vibrant tomorrow as they are today.

**NOW, THEREFORE**, Newberry County Council does hereby proclaim April 30 through May 6, 2023 as *National Small Business Week* in Newberry County, and encourages the residents of this county to support our small businesses. Further, Newberry County Council does hereby express its gratitude to area small businesses for their many positive contributions to our community and local economy.

**PROCLAIMED AND APPROVED** this 19th day of April 2023.

**NEWBERRY COUNTY COUNCIL**

**Attest:**

**By:** \_\_\_\_\_  
**Todd Johnson, Chairman**

\_\_\_\_\_  
**Susan C. Fellers, Clerk to Council**





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 March 15, 2023, 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 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 supplied by the Company, 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. The Chair, the acting County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park ("Park Agreement"), the expansion of the Park's boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of this Ordinance to the Clerk to County Council of Greenwood County, South Carolina.

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.

Passed and approved this 19th day of April, 2023.

**NEWBERRY COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF NEWBERRY        )

I, the undersigned, Clerk to County Council of Newberry County, South Carolina (“County Council”), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct, and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on March 15, 2023, April 5, 2023, and April 19, 2023. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on April 19, 2023, and notice of the public hearing was published in the Newberry Observer on March 29, 2023. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws, 1976, in connection with said meetings of County Council.

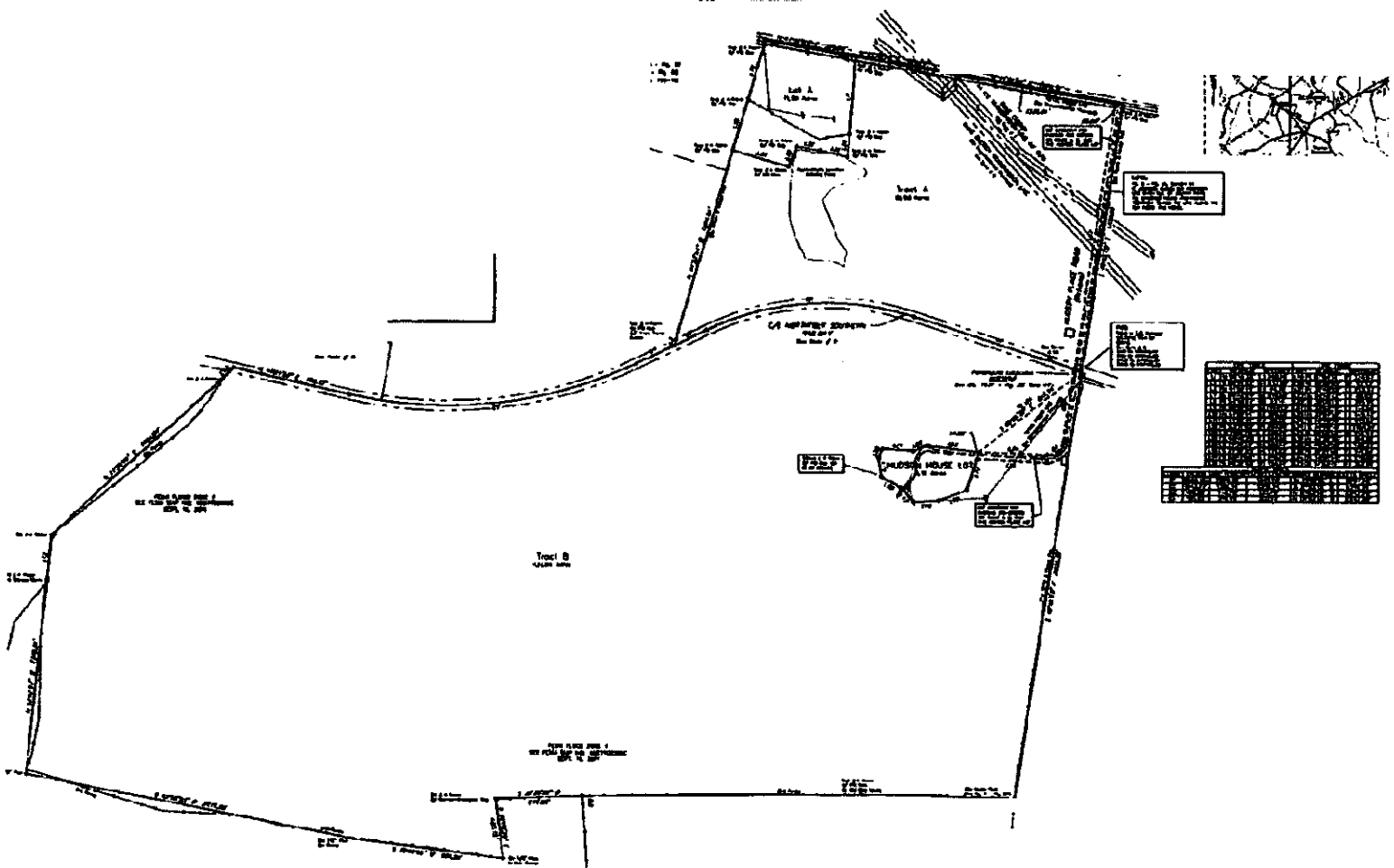
The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Newberry County Council, South Carolina, as of this 19th day of April, 2023.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk to County Council

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Newberry, listed and shown by the Newberry County Assessor's Office as Parcel No. 239-1, excluding the areas identified as Lot A (approximately 11 acres) and the Hudson House Lot (approximately 4.15 acres) on the attached survey by Piedmont Surveying, Inc., dated April 25, 2018.



FEE AGREEMENT

Between

NEWBERRY COUNTY, SOUTH CAROLINA

and

DUKE ENERGY CAROLINAS, LLC

Dated as of April 19, 2023

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 April 19, 2023 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 DUKE ENERGY CAROLINAS, LLC a North 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.

“Company” shall mean Duke Energy Carolinas, LLC, a North 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 \$70,000,000 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 2023 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 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 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 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 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.

(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.

(d) The millage rate in Section 4.1 hereof is the lowest millage rate permissible under the Act, which the parties understand to be 366.0 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2022, as provided under Section 12-44-50(A)(1)(d) of the Act.

(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, is duly authorized to transact business in the State, 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.

### 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-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 29 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, 2022, which is 366.0 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 pay shall equal \$205,030 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.<sup>1</sup> The FILOT Payments shall be in lieu of all *ad valorem* tax payments 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 has a 70.7 MWac capacity rating and that the Company will pay \$2,900 per MW. If the capacity rating of the Project changes to either lesser or greater than 70.7 MWac, which change shall be measured as of the last day of the prior fiscal year, the Company shall notify the County, and the Net FILOT Payment shall be adjusted by the same proportion subject to the floor established in this paragraph. For example, and by way of example only, if the Project's capacity rating is increased to 77.77 MW, the Net FILOT Payment shall be increased by 10%. In no event shall the Net FILOT Payment equal less than \$184,527 (90% of the expected \$205,030).

(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 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.

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<sup>1</sup> 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.



(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;

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

(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;

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

(e) Failure by the Company to execute and deliver this Agreement to the County within 30 days of the date of adoption of the Fee Ordinance;

(f) 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 6 months or more; or

(g) 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 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 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:**

Duke Energy Carolinas, LLC  
Property Tax Department  
Attn: Cooper Monroe  
525 South Tryon St. (DEP-15 TAX)  
Charlotte, NC 28202

**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

and

Joanie Winters  
Winters Law Firm  
105 Main Street  
Chester, SC 29706

Section 6.2 Binding 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 6.3 Counterparts. 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 6.4 Governing 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 6.5 Headings. 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 6.6 Amendments. 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 6.7 Further 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 6.8 Invalidity; 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 6.9 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 6.10 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 6.11 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 6.12 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 6.13 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 6.14 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.

Section 7.2 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.

(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:

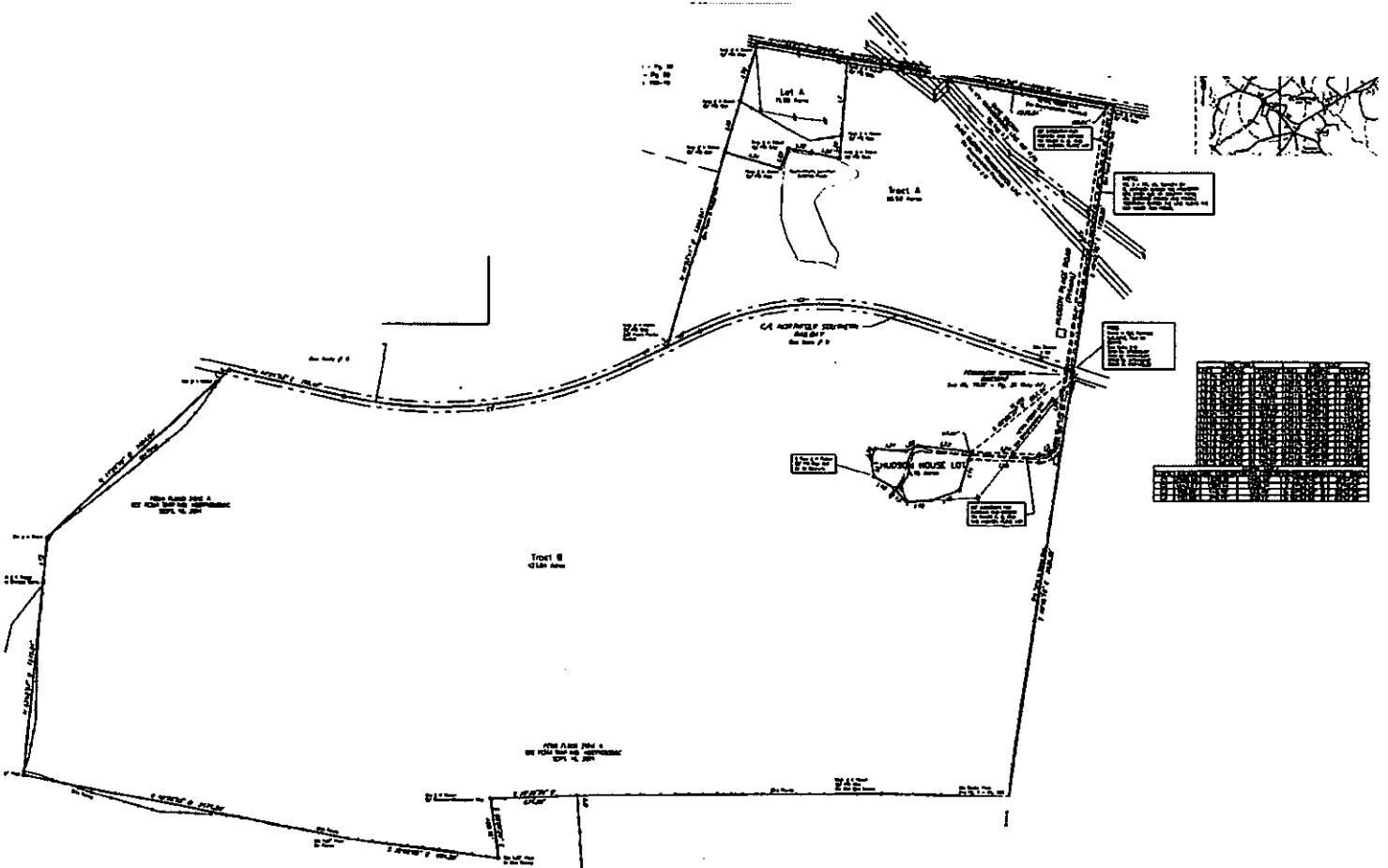
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk to County Council

**DUKE ENERGY CAROLINAS, LLC**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Newberry, listed and shown by the Newberry County Assessor's Office as Parcel No. 239-1, excluding the areas identified as Lot A (approximately 11 acres) and the Hudson House Lot (approximately 4.15 acres) on the attached survey by Piedmont Surveying, Inc., dated April 25, 2018.



**EXHIBIT B**  
**JOINDER AGREEMENT**

Reference is hereby made to (i) that certain Fee Agreement effective April 19, 2023 (“Fee Agreement”), between Newberry County, South Carolina (the “County”) and Duke Energy Carolinas, LLC (the “Company”).

**1. Joinder to Fee Agreement.**

The undersigned hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement except the following: \_\_\_\_\_; (b) acknowledges and agrees that (i) in accordance the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project and such designation has been consented to by the County in accordance with the Act (as defined in the Fee Agreement); (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act; and (iii) the undersigned shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Fee Agreement.

The Sponsor Affiliate acknowledges that all references in the Fee Agreement to rights and obligations of the Company in the Fee Agreement apply to the Sponsor Affiliate with respect to its investment in the Project.

The Company (a) agrees to be responsible for all repayment obligations that arise pursuant to the Fee Agreement, unless otherwise agreed to through a separate agreement in writing by and between the Company and the Sponsor Affiliate (including any lease agreements that have been or will be assigned to the Company in connection with the Project); and (b) agrees to indemnify the Sponsor Affiliate against all claims brought against it arising from the Fee Agreement, provided that such repayment obligation is not an obligation of the Sponsor Affiliate under a separate agreement in writing as set forth above or the claim is not a result of Sponsor Affiliate’s own negligence, bad faith, fraud, deceit, or willful misconduct.

**2. Capitalized Terms.**

All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Fee Agreement.

**3. Governing Law.**

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.

**4. Notice.**

Notices under Section 6.1 of the Fee Agreement shall be sent to:



[ ]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below, and the Company hereby agrees to the terms set forth herein

\_\_\_\_\_  
Date Name of Sponsor Affiliate

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

COMPANY:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Newberry County Council, as required by law, for consideration of its actions by Newberry County Council.

**WHEREAS**, Newberry County Council is familiar with the site and the existing uses of the property located off Adelaide Street.

**NOW, THEREFORE**, Newberry County Council makes the following findings of fact and law as to the merits of the rezoning request concerning Tax Map No. 399-25, totaling two and eighty-five hundredths (2.85) acres located off Adelaide Street, Newberry, as more particularly shown on the plat accompanying the submitted "Official Zoning Map Amendment Application" included in the submitted Planning Commission report attached hereto, R2-Rural from RS-Single Family Residential:

A. That the proposed map amendment does not promote the implementation of the Comprehensive Plan in the area.

B. This amendment is needed because the proposed development cannot be accomplished by the owner under the existing zoning district regulations.

C. That traffic patterns in the neighborhood will not be adversely affected by the change in zoning.

**NOW, THEREFORE, BE IT ORDAINED that:**

Newberry County Council hereby determines, based on the findings set forth above, that the attached rezoning request for a map amendment for TMS No. 399-25 totaling two and eighty-five hundredths (2.85) acres real estate parcel as acted on by the Planning Commission, be:

\_\_\_\_\_ disapproved;

\_\_\_\_\_ approved; or

\_\_\_\_\_ approved with the following modifications: \_\_\_\_\_

\_\_\_\_\_

**AND IT IS SO ORDAINED** by Newberry County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023 in meeting duly assembled at Newberry, South Carolina.

**NEWBERRY COUNTY COUNCIL**

**(SEAL)**

**By:** \_\_\_\_\_  
Todd Johnson, Chairman

**Attest:**

\_\_\_\_\_  
Susan Fellers, Clerk to Council

1<sup>st</sup> reading: \_\_\_\_\_  
2<sup>nd</sup> reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
3<sup>rd</sup> reading: \_\_\_\_\_

Reviewed and approved as to form:  
\_\_\_\_\_  
Attorney

\_\_\_\_\_  
County Administrator



## Newberry County

# Planning Commission Staff Report

**Request:** Rezoning request MA01-03-21-23 by Barry Koon. This request is to rezone one (1) property totaling two and eighty-five hundredths (2.85) acres located on Adelaide Street from RS-Single Family Residential to R2-Rural.

**Application Number:** MA01-03-21-23

**Applicant:** Barry Koon

**Property Owner(s):** Kathy Javier

**Location Address:** Adelaide Street

**Tax Map Number(s):** 399-25

**Lot Size:** 2.85 acres

**Current Land Use:** Vacant

**Proposed Land Use:** Commercial Personal Storage

**Current Zoning District:** RS-Single Family Residential

**Proposed Zoning District:** R2-Rural

**Comprehensive Plan Designation:** Economic Development



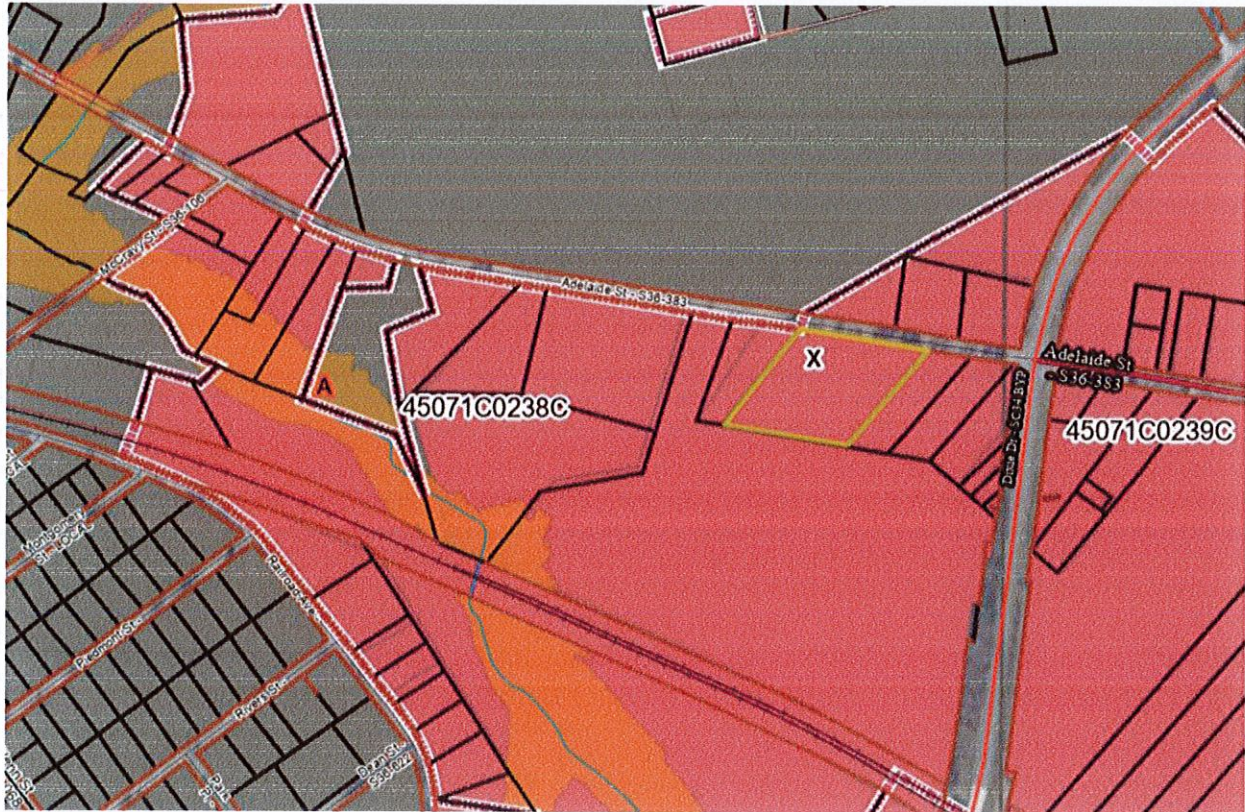
**Zoning Map:****Current Zoning District**

RS – Single Family Residential: The RS district is intended to be residential with single-family, site-built dwellings and low population densities. Compatible uses such as home occupations, K-12 education, limited recreation, and religious uses are also allowed. Manufactured homes and businesses are not permitted.

**Proposed Zoning District**

R2-Rural: The R2-Rural district is intended to be rural in nature, allowing low density residential uses including manufactured housing on individual properties, as well as home occupations, family day care, agriculture, forestry, hunting, and religious uses, but also accommodating complementary and associated uses such as recreation, government services, and appropriate service, commercial and industrial uses.



**Future Land Use Map:****Future Land Use Definition**

Economic Development – Land areas that either are or have the potential to be economic development centers and include uses such as commercial, industrial, higher density residential, public and institutional, and related infrastructure. Commercial uses include businesses, trade activities, administrative activities, professional activities or services, or personal services. Industrial uses include the manufacturing, assembly, processing, fabrication, storage (warehousing), and transportation of goods. Public and institutional uses include city, county, state and federal offices; schools; churches; hospitals; congregate care facilities (nursing homes); utility offices and facilities; postsecondary institutions; communication towers; community non-profit organizations; cemeteries; and libraries.



**Analysis:**

This is a request by Barry Koon to rezone one (1) parcel of land totaling two and eighty-five hundredths (2.85) acres located on Adelaide Street from RS-Single Family Residential to R2-Rural. Currently the lot is vacant. Interested buyer is wanting to use the property as storage for his business. He will be fencing in the property so that no storage will be seen from Adelaide Street.

Surrounding land uses include industrial uses, residential, and City of Newberry zoned properties.

The Comprehensive Plan identifies this property and the surrounding area as Economic Development. Economic Development land is identified as land that has commercial uses.

When considering a rezoning, per Title 6, Chapter 29 of the Code of Laws of South Carolina, the decision of the Planning Commission serves as a recommendation and is forwarded to County Council for review and approval.

**Recommendations:**

**Staff:** Recommends approval of the request from RS-Single Family Residential to R2-Rural as it is supported by the Comprehensive Plan.

**Planning Commission:** Recommended approval of the request from RS-Single Family Residential to R2-Rural.

**County Council:**

STATE OF SOUTH CAROLINA )  
NEWBERRY COUNTY )

ORDINANCE NO. 04-03-2023

**AN ORDINANCE ACTING ON A REQUEST TO AMEND THE OFFICIAL ZONING MAP ESTABLISHED PURSUANT TO ZONING ORDINANCE NO. 12-24-01 AS REVISED AND AMENDED BY ZONING ORDINANCE NO. 6-11-16 AND CODIFIED IN CHAPTER 153 OF THE NEWBERRY COUNTY CODE OF ORDINANCES, ESTABLISHES ZONING CLASSIFICATION AND DISTRICTS SO AS TO REZONE ONE (1) REAL ESTATE PARCEL TOTALING TWENTY AND FIFTY-NINE HUNDREDTHS (20.59) ACRES DESIGNATED AS TMS NO. 589-1-1 FROM RS-SINGLE FAMILY RESIDENTIAL TO R2-RURAL.**

WHEREAS, Zoning Ordinance, codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classifications and districts, as well as an Official Zoning Map; and

WHEREAS, said Zoning Ordinance provides procedures for the amendment of both the text of the Ordinance and the district boundaries shown on the Official Zoning Map; and

WHEREAS, pursuant to the procedures established by the Zoning Ordinance, application was made for a map amendment to rezone one (1) real estate parcel totaling twenty and fifty-nine hundredths (20.59) acres located at 100 Tom Savage Road, Prosperity to R2-Rural from RS-Single Family Residential. Tax Map No. 589-1-1 is currently used for residential use only. The Comprehensive Plan shows the future land use for this area to be within the lake development projected area. The Planning Staff does recommend that this real estate parcel be rezoned to R2-Rural.

WHEREAS, the Newberry County Joint Planning Commission, in case number MA02-03-21-23, had this matter on its agenda and considered this request and received comments as to both the existing and intended uses of the property. The Joint Planning Commission made a motion to deny, and it failed. A motion to approve was made and it also failed. No recommendation was made by the Planning Commission. The Planning

Commission has now forwarded its report on the rezoning request to Newberry County Council, as required by law, for consideration of its actions by Newberry County Council.

**WHEREAS**, Newberry County Council is familiar with the site and the existing uses of the property located at 100 Tom Savage Road, Prosperity.

**NOW, THEREFORE**, Newberry County Council makes the following findings of fact and law as to the merits of the rezoning request concerning Tax Map No. 589-1-1, totaling twenty and fifty-nine hundredths (20.59) acres located at 100 Tom Savage Road, Prosperity, as more particularly shown on the plat accompanying the submitted “Official Zoning Map Amendment Application” included in the submitted Planning Commission report attached hereto, R2-Rural from RS-Single Family Residential:

A. That the proposed map amendment does not promote the implementation of the Comprehensive Plan in the area.

B. This amendment is needed because the proposed development cannot be accomplished by the owner under the existing zoning district regulations.

C. That traffic patterns in the neighborhood will not be adversely affected by the change in zoning.

**NOW, THEREFORE, BE IT ORDAINED that:**

Newberry County Council hereby determines, based on the findings set forth above, that the attached rezoning request for a map amendment for TMS No. 589-1-1 totaling twenty and fifty-nine hundredths (20.59) acres real estate parcel as acted on by the Planning Commission, be:

\_\_\_\_\_ disapproved;

\_\_\_\_\_ approved; or

\_\_\_\_\_ approved with the following modifications: \_\_\_\_\_

\_\_\_\_\_.

**AND IT IS SO ORDAINED** by Newberry County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023 in meeting duly assembled at Newberry, South Carolina.

**(SEAL)**

**NEWBERRY COUNTY COUNCIL**

**By:** \_\_\_\_\_  
Todd Johnson, Chairman

**Attest:**

\_\_\_\_\_  
Susan Fellers, Clerk to Council

1<sup>st</sup> reading: \_\_\_\_\_  
2<sup>nd</sup> reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
3<sup>rd</sup> reading: \_\_\_\_\_

Reviewed and approved as to form:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
County Administrator



## Newberry County

# Planning Commission Staff Report

**Request:** Rezoning request MA02-03-21-23 by David and Amy Harpool. This request is to rezone one (1) property totaling twenty and fifty-nine hundredths (20.59) acres located at 100 Tom Savage Road from RS-Single Family Residential to R2-Rural.

**Application Number:** MA02-03-21-23

**Applicant:** David and Amy Harpool

**Property Owner(s):** David and Amy Harpool

**Location Address:** 100 Tom Savage Road, Prosperity, SC 29127

**Tax Map Number(s):** 589-1-1

**Lot Size:** 20.59 acres

**Current Land Use:** Single Family Home

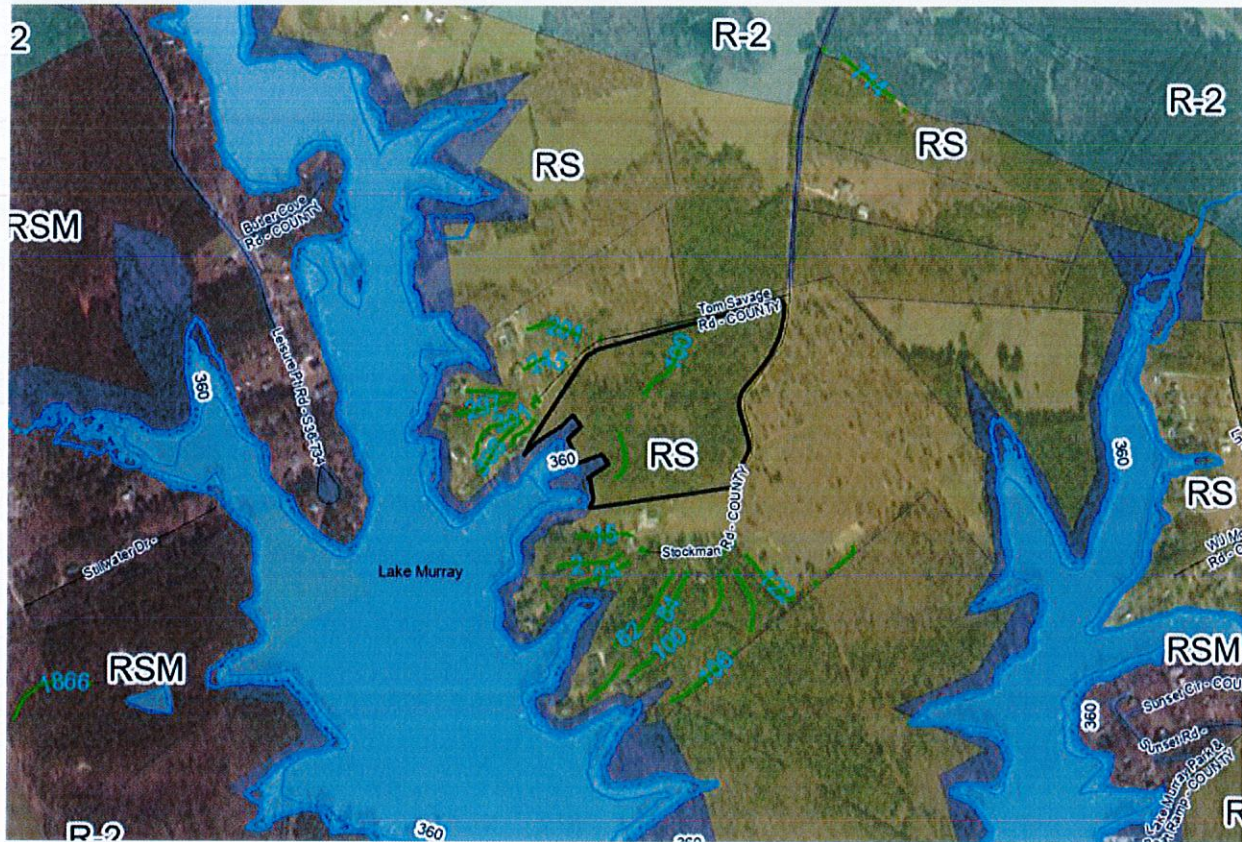
**Proposed Land Use:** Single family home with small hobby farm.

**Current Zoning District:** RS-Single Family Residential

**Proposed Zoning District:** R2-Rural

**Comprehensive Plan Designation:** Lake Development



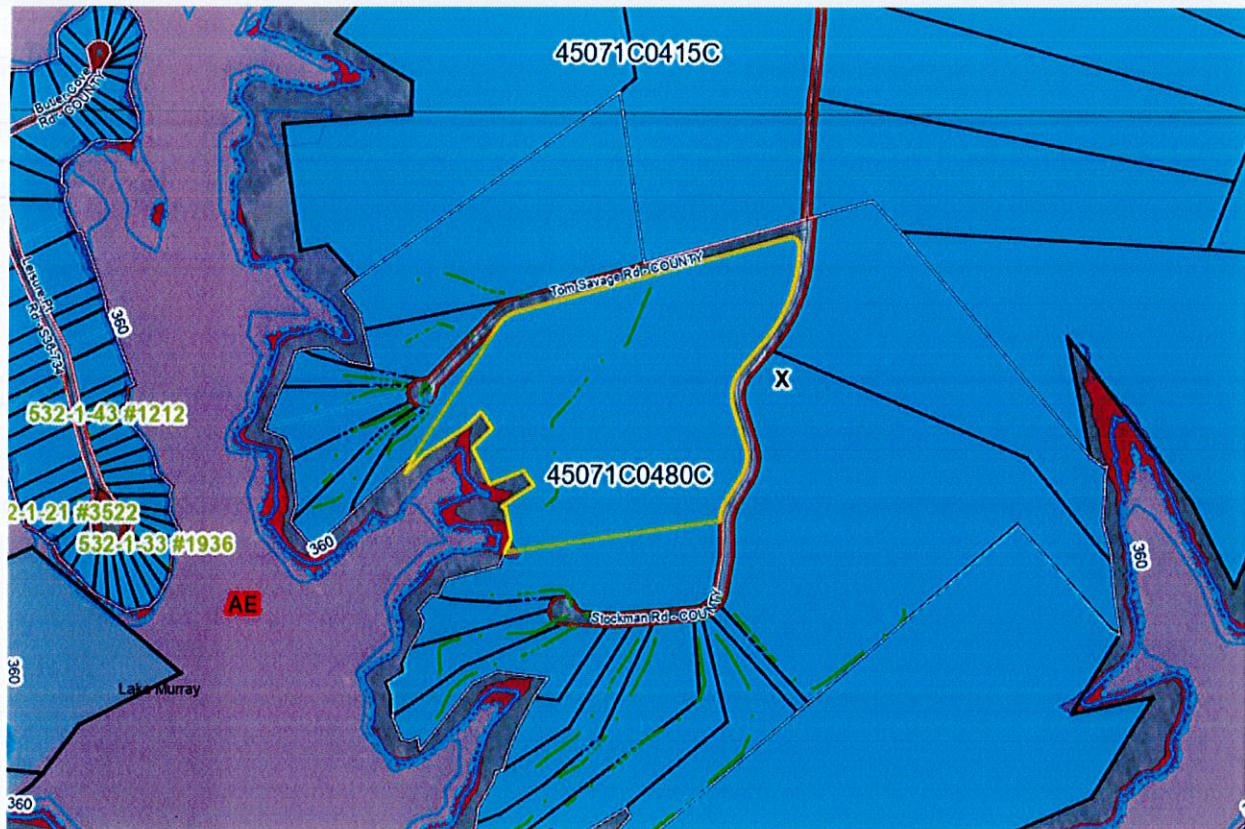
**Zoning Map:****Current Zoning District**

RS – Single Family Residential: The RS district is intended to be residential with single-family, site-built dwellings and low population densities. Compatible uses such as home occupations, K-12 education, limited recreation, and religious uses are also allowed. Manufactured homes and businesses are not permitted.

**Proposed Zoning District**

R2-Rural: The R2-Rural district is intended to be rural in nature, allowing low density residential uses including manufactured housing on individual properties, as well as home occupations, family day care, agriculture, forestry, hunting, and religious uses, but also accommodating complementary and associated uses such as recreation, government services, and appropriate service, commercial and industrial uses.



**Future Land Use Map:****Future Land Use Definition**

Lake Development – Land areas in close proximity to Lake Murray and Lake Greenwood, principally used for residential structures, but may include other complementary and associated uses such as agriculture, forestry, and public/institutional uses such as churches and schools. Where adequate road access is available, land in the Lake District may also include more intense uses such as marinas, commercial activities, and personal services.



**Analysis:**

This is a request by David and Amy Harpool to rezone one (1) parcel of land totaling twenty and fifty-nine hundredths (20.59) acres located at 100 Tom Savage Road, from RS-Single Family Residential to R2-Rural. Currently there is a site built residential unit on the property. The owners are wanting to add a small hobby farm to the property.

Surrounding land uses include single-family residences.

The Comprehensive Plan identifies this property and the surrounding area as Lake Development. Lake development is intended to be land that contains residential structures but may include other complementary and associated uses such as agriculture and forestry.

When considering a rezoning, per Title 6, Chapter 29 of the Code of Laws of South Carolina, the decision of the Planning Commission serves as a recommendation and is forwarded to County Council for review and approval.

**Recommendations:**

**Staff:** Recommends approval of the request from RS-Single Family Residential to R2-Rural as it is supported by the Comprehensive Plan.

**Planning Commission:** A motion was made to deny the rezoning but failed. A motion was made to approve the rezoning but also failed. No recommendation was made by Planning Commission.

**County Council:**

STATE OF SOUTH CAROLINA )  
NEWBERRY COUNTY )

ORDINANCE NO. 04-04-2023

**AN ORDINANCE ACTING ON A REQUEST TO AMEND THE OFFICIAL ZONING MAP ESTABLISHED PURSUANT TO ZONING ORDINANCE NO. 12-24-01 AS REVISED AND AMENDED BY ZONING ORDINANCE NO. 6-11-16 AND CODIFIED IN CHAPTER 153 OF THE NEWBERRY COUNTY CODE OF ORDINANCES, ESTABLISHES ZONING CLASSIFICATION AND DISTRICTS SO AS TO REZONE ONE (1) REAL ESTATE PARCEL TOTALING SIXTY AND FIFTY HUNDREDTHS (60.50) ACRES DESIGNATED AS TMS NO. 392-3 FROM R2-RURAL TO RS-SINGLE FAMILY RESIDENTIAL.**

**WHEREAS**, Zoning Ordinance, codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classifications and districts, as well as an Official Zoning Map; and

**WHEREAS**, said Zoning Ordinance provides procedures for the amendment of both the text of the Ordinance and the district boundaries shown on the Official Zoning Map; and

**WHEREAS**, pursuant to the procedures established by the Zoning Ordinance, application was made for a map amendment to rezone one (1) real estate parcel totaling sixty and fifty hundredths (60.50) acres located off Mt. Bethel Garmany Road, Newberry to RS-Single Family Residential from R2-Rural. Tax Map No. 392-3 is currently vacant. The Comprehensive Plan shows the future land use for this area to be within the economic development projected area. The Planning Staff does recommend that this real estate parcel be rezoned to RS-Single Family Residential.

**WHEREAS**, the Newberry County Joint Planning Commission, in case number MA03-03-21-23, had this matter on its agenda and considered this request and received comments as to both the existing and intended uses of the property. The Joint Planning Commission determined that it does concur with the recommendation of the Planning Staff. The Planning Commission has now forwarded its report on the rezoning request to

Newberry County Council, as required by law, for consideration of its actions by Newberry County Council.

**WHEREAS**, Newberry County Council is familiar with the site and the existing uses of the property located off Mt. Bethel Garmany Road.

**NOW, THEREFORE**, Newberry County Council makes the following findings of fact and law as to the merits of the rezoning request concerning Tax Map No. 392-3, totaling sixty and fifty hundredths (60.50) acres located off Mt. Bethel Garmany Road, Newberry, as more particularly shown on the plat accompanying the submitted "Official Zoning Map Amendment Application" included in the submitted Planning Commission report attached hereto, RS-Single Family Residential from R2-Rural:

A. That the proposed map amendment does not promote the implementation of the Comprehensive Plan in the area.

B. This amendment is needed because the proposed development cannot be accomplished by the owner under the existing zoning district regulations.

C. That traffic patterns in the neighborhood will not be adversely affected by the change in zoning.

**NOW, THEREFORE, BE IT ORDAINED that:**

Newberry County Council hereby determines, based on the findings set forth above, that the attached rezoning request for a map amendment for TMS No. 392-3 totaling sixty and fifty hundredths (60.50) acres real estate parcel as acted on by the Planning Commission, be:

\_\_\_\_\_ disapproved;

\_\_\_\_\_ approved; or

\_\_\_\_\_ approved with the following modifications: \_\_\_\_\_

\_\_\_\_\_

**AND IT IS SO ORDAINED** by Newberry County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023 in meeting duly assembled at Newberry, South Carolina.

**NEWBERRY COUNTY COUNCIL**

**(SEAL)**

**By:** \_\_\_\_\_  
Todd Johnson, Chairman

**Attest:**

\_\_\_\_\_  
Susan Fellers, Clerk to Council

1<sup>st</sup> reading: \_\_\_\_\_  
2<sup>nd</sup> reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
3<sup>rd</sup> reading: \_\_\_\_\_

Reviewed and approved as to form:  
\_\_\_\_\_  
Attorney

\_\_\_\_\_  
County Administrator



# Newberry County

## Planning Commission Staff Report

**Request:** Rezoning request MA03-03-21-23 by D.R. Horton. This request is to rezone one (1) property totaling sixty and fifty hundredths (60.50) acres located on Mt. Bethel Garmany Rd. from R2-Rural to RS-Single Family Residential.

**Application Number:** MA03-03-21-23

**Applicant:** D.R. Horton

**Property Owner(s):** John R. Frazier and Susan Newton

**Location Address:** Mt. Bethel Garmany Road

**Tax Map Number(s):** 392-3

**Lot Size:** 60.50 acres

**Current Land Use:** Vacant

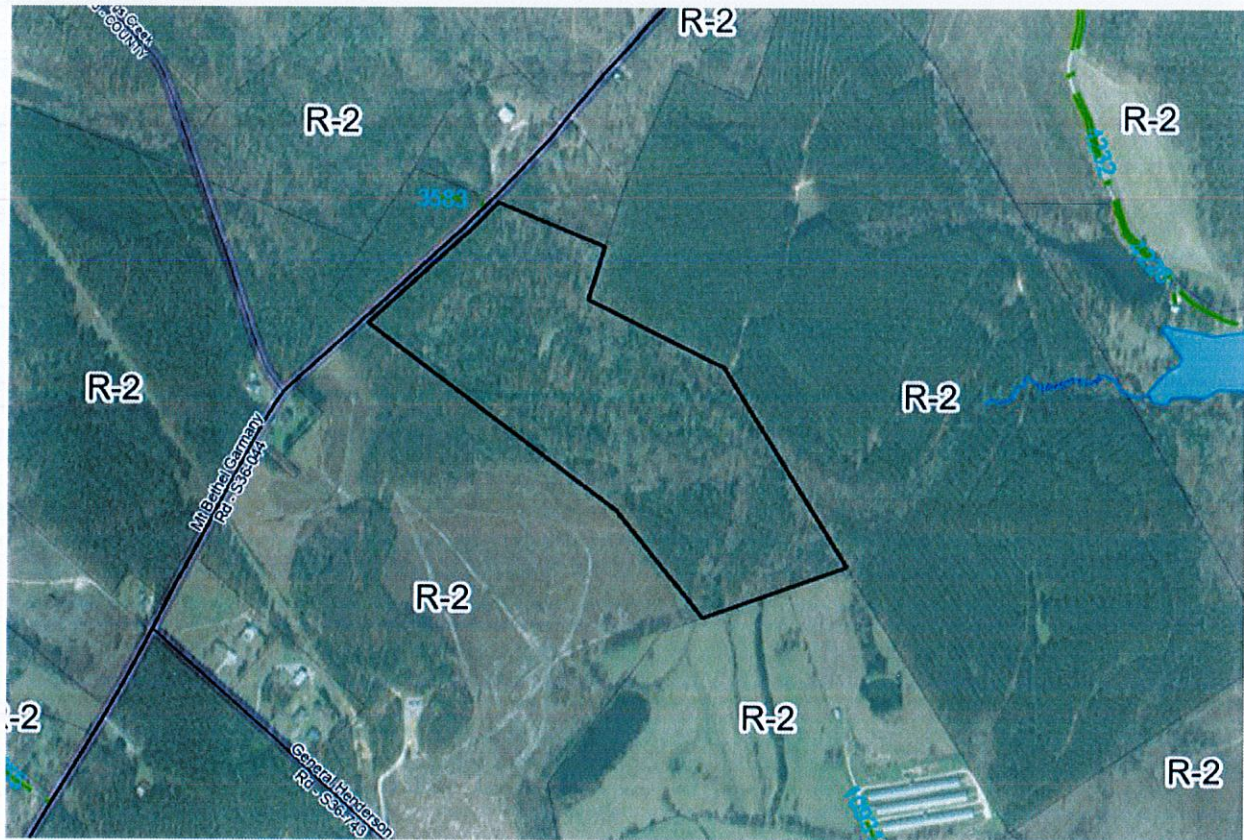
**Proposed Land Use:** 70 Single Family Residential Lots

**Current Zoning District:** R2-Rural

**Proposed Zoning District:** RS-Single Family Residential

**Comprehensive Plan Designation:** Economic Development



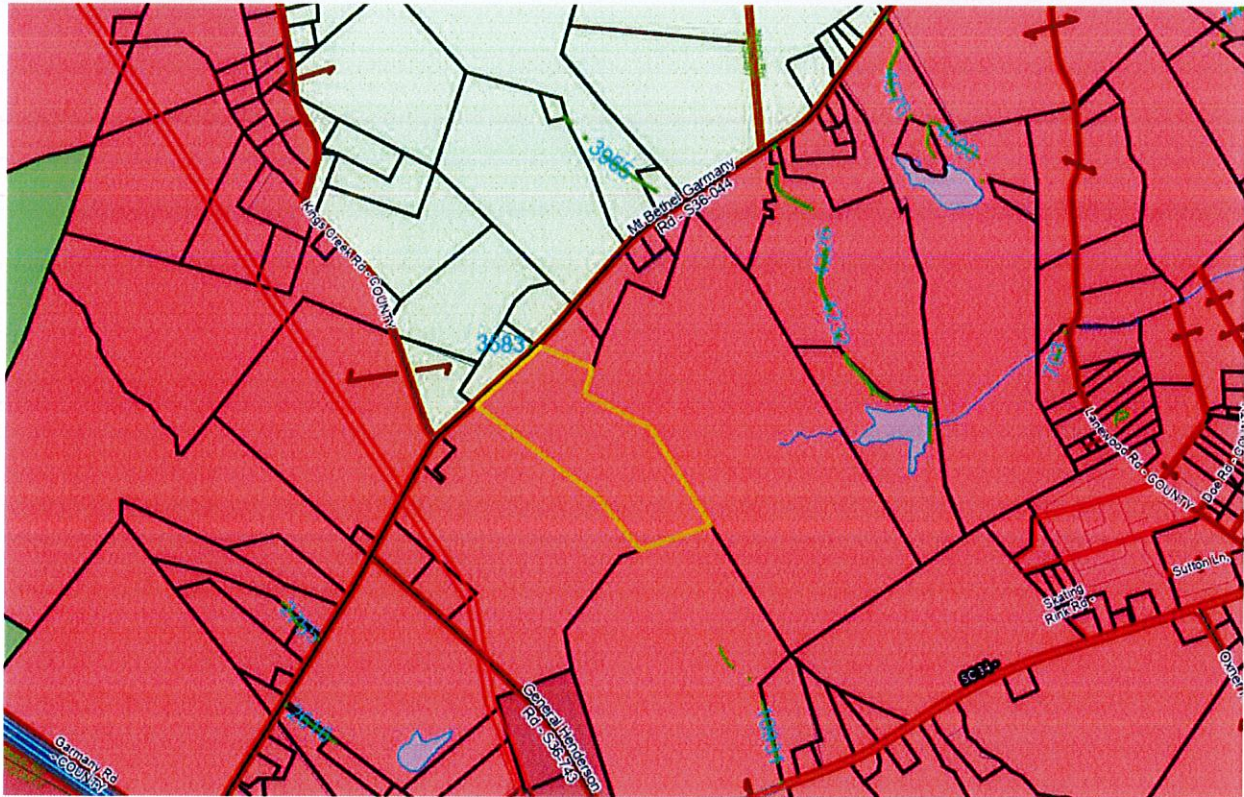
**Zoning Map:****Current Zoning District**

R2-Rural: The R2-Rural district is intended to be rural in nature, allowing low density residential uses including manufactured housing on individual properties, as well as home occupations, family day care, agriculture, forestry, hunting, and religious uses, but also accommodating complementary and associated uses such as recreation, government services, and appropriate service, commercial and industrial uses.

**Proposed Zoning District**

RS – Single Family Residential: The RS district is intended to be residential with single-family, site-built dwellings and low population densities. Compatible uses such as home occupations, K-12 education, limited recreation, and religious uses are also allowed. Manufactured homes and businesses are not permitted.



**Future Land Use Map:****Future Land Use Definition**

Economic Development – Land areas that either are or have the potential to be economic development centers and include uses such as commercial, industrial, higher density residential, public, and institutional, and related infrastructure. Commercial uses include businesses, trade activities, administrative activities, professional activities or services, or personal services. Industrial uses include the manufacturing, assembly, processing, fabrication, storage (warehousing), and transportation of goods. Public and institutional uses include city, county, state, and federal offices; schools; churches; hospitals; congregate care facilities (nursing homes); utility offices and facilities; postsecondary institutions; communication towers; community non-profit organizations; cemeteries; and libraries.



**Analysis:**

This is a request by D.R. Horton to rezone one (1) parcel of land totaling sixty and fifty hundredths (60.50) acres located on Mt. Bethel Garmany Rd. from R2-Rural to RS-Single Family Residential. Property is currently vacant. Applicant is wanting to create a 70-lot subdivision that will be supplied by Newberry County Water and Sewer Authority for water and private septic tanks.

Surrounding land uses include single-family residences.

The Comprehensive Plan identifies this property and the surrounding area as Economic Development. Economic development is intended to be land that has the potential to have higher density residential.

When considering a rezoning, per Title 6, Chapter 29 of the Code of Laws of South Carolina, the decision of the Planning Commission serves as a recommendation and is forwarded to County Council for review and approval.

**Recommendations:**

**Staff:** Recommends approval of the request from R2-Rural to RS-Single Family Residential as it is supported by the Comprehensive Plan.

**Planning Commission:** Recommended approval of the request from R2-Rural to RS-Single Family Residential.

**County Council:**

**AN ORDINANCE NO. 04-05-2023**

**TO PROVIDE FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF NEWBERRY COUNTY, SOUTH CAROLINA NOT EXCEEDING \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT, TO PRESCRIBE THE PURPOSES FOR WHICH THE PROCEEDS OF SAID BONDS SHALL BE EXPENDED, TO PROVIDE FOR THE PAYMENT OF SAID BONDS, AND OTHER MATTERS RELATING THERETO.**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I FINDINGS OF FACT</b>	
Section 1.01 Findings .....	1
Section 1.02 Recital of Applicable Constitutional Provisions.....	2
Section 1.03 Holding of Public Hearing and Notice Thereof.....	2
<b>ARTICLE II DEFINITIONS AND AUTHORITY</b>	
Section 2.01 Definitions. ....	3
Section 2.02 Construction.....	4
<b>ARTICLE III ISSUANCE OF BONDS</b>	
Section 3.01 Ordering the Issuance of Bonds.....	5
Section 3.02 Maturity Schedule of Bonds. ....	5
Section 3.03 Medium of Payment; Form and Denomination of Bonds; Place of Payment of Principal.....	5
Section 3.04 Execution and Authentication.....	5
Section 3.05 Exchange of a Bond.....	6
Section 3.06 Transferability and Registry. ....	6
Section 3.07 Transfer of the Bond.....	6
Section 3.08 Regulations with Respect to Exchanges and Transfers. ....	6
Section 3.09 Mutilated, Destroyed, Lost and Stolen Bond.....	7
Section 3.10 Holder As Owner of Bond.....	7
Section 3.11 Cancellation of the Bond. ....	7
Section 3.12 Payments Due on Saturdays, Sundays and Holidays.....	7
Section 3.13 Tax Exemption in South Carolina. ....	8
Section 3.14 Order to Levy Ad Valorem Taxes to Pay Principal and Interest of Bond. ....	8
Section 3.15 Notice to Auditor and Treasurer. ....	8
Section 3.16 Form of Bond.....	8
<b>ARTICLE IV REDEMPTION OF BONDS</b>	
Section 4.01 Redemption of Bonds. ....	9
<b>ARTICLE V SALE OF BONDS</b>	
Section 5.01 Sale and Award of Bonds. ....	10

**TABLE OF CONTENTS**  
(continued)

**Page**

**ARTICLE VI**  
**DISPOSITION OF PROCEEDS OF SALE OF BONDS**

Section 6.01 Disposition of Bond Proceeds Including Temporary Investments..... 11

**ARTICLE VII**  
**DEFEASANCE OF BONDS**

Section 7.01 Discharge of Ordinance - Where and How a Bond is Deemed to Have  
Been Paid and Defeased. .... 12

**ARTICLE VIII**  
**CERTAIN TAX AND DISCLOSURE CONSIDERATIONS**

Section 8.01 Covenants to Comply with Requirements of the Code..... 13  
Section 8.02 Qualified Tax-Exempt Obligation. .... 13  
Section 8.03 Ability to Meet Arbitrage Requirements. .... 14  
Section 8.04 Escrow Agreement..... 14  
Section 8.05 Continuing Disclosure. .... 14  
Section 8.06 Taxable Obligation. .... 14

**ARTICLE IX**  
**MISCELLANEOUS**

Section 9.01 Savings Clause..... 15  
Section 9.02 Successors..... 15  
Section 9.03 Ordinance to Constitute Contract. .... 15  
Section 9.04 Filing of Copies of Ordinance. .... 15  
Section 9.05 Appropriation of Funds..... 15  
Section 9.06 Further Action by Officers of County..... 15  
Section 9.07 Effective Date of Ordinance. .... 16

EXHIBIT A – NOTICE OF PUBLIC HEARING

EXHIBIT B – FORM OF BOND

EXHIBIT C – FORM OF NOTICE OF SALE

BE IT ORDAINED BY THE COUNTY COUNCIL OF NEWBERRY COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

**ARTICLE I**

**FINDINGS OF FACT**

Section 1.01 Findings.

As an incident to the adoption of this Ordinance, the Newberry County Council (the "Council"), the governing body of Newberry County, South Carolina (the "County"), finds that the facts set forth in this Article exist and the statements made with respect thereto are in all respects true and correct:

1. By virtue of Chapter 15, Title 4, Code of Laws of South Carolina, 1976, as amended and supplemented by Act No. 113 of the 1999 Acts of the South Carolina General Assembly (collectively, the "County Bond Act"), the County is empowered to issue general obligation bonds for any "authorized purpose" as therein defined.

The Council has heretofore determined that it is in the best interest of the County to provide for the acquisition of certain equipment for fire, rescue and ambulance functions within the County, such equipment to include fire trucks, ambulances and other vehicles, solid waste processing equipment, and other items of personal property (collectively, the "Equipment").

The Council has further determined that the cost of purchase of the Equipment will be defrayed in each year through the proceeds of a series of lease-purchase agreements to be entered into from time to time, subject to the decision by the Council to suspend or discontinue or modify such plan at any time. Lease-purchase agreements for items such as the Equipment are expressly exempt from the provisions of Section 11-27-110, Code of Laws of South Carolina, 1976, and, accordingly, are not chargeable against the constitutional debt limit of the County as described in Section 1.02 of this Ordinance. Subject to the right of the County reserved in each lease-purchase agreement now in effect and to become effective hereafter to not appropriate funds in any fiscal year for the payment due thereunder, the County will make annual payments payable under each lease purchase agreement (collectively, "Lease Payments") in order to enjoy the use of the equipment in each fiscal year.

The County has also as of April 30, 2013 entered into with Newberry County Public Facilities Corporation, a South Carolina non-profit corporation (the "Corporation") a Facilities Purchase and Occupancy Agreement (the "Facilities Agreement"). Pursuant to the Facilities Agreement, the Corporation has provided to the County permanent financing for the construction and equipping of the County's public works administration and animal control facility, and the County has agreed, for its use and acquisition of such facility over a term of years, to make annual "Acquisition Payments" to the Corporation. Amounts payable under the Facilities Agreement are not subject to the constitutional debt limit of the County as described in Section 1.02 of this Ordinance.

The Council further intends the Lease Payments and the Acquisition Payments (collectively, the "Annual Appropriation Payments") will be paid from the proceeds of general obligation bonds of the County to be issued annually, in sufficient time to allow for the timely funding of the Annual Appropriation Payments. The payment of Annual Appropriation Payments constitutes an authorized purpose for the issuance of general obligation bonds of the County within the meaning of the County Bond Act.



The Council has determined to presently authorize the issuance of two general obligation bonds of the County, one to be issued in Fiscal Year 2023-24, and the other to be issued in Fiscal Year 2024-25, in order to provide funds with which to pay Annual Appropriation Payments in such Fiscal Years. The total estimated cost of such Annual Appropriation Payments and, additionally, costs of issuance of the bonds, will not exceed \$2,000,000.

Section 1.02 Recital of Applicable Constitutional Provisions.

Section 14 of Article X of the Constitution of the State of South Carolina (the "Constitution") provides that the counties of the State may issue bonded indebtedness in an amount not exceeding eight percent (8%) of the assessed value of all taxable property therein, and provides further that no bonded indebtedness incurred on or prior to November 30, 1977, shall be charged against such eight percent (8%) debt limitation. Paragraph (6) of Section 14 of Article X of the Constitution further provides that general obligation debt authorized by a majority of the qualified electors of the issuer may be issued without consideration of the eight percent (8%) limit otherwise imposed by Section 14 of Article X. The assessed value of all taxable property located within the County (including merchants' inventory, but net of property subject to a fee in lieu of tax) as certified by the County Auditor for the year 2021, which is the last completed assessment thereof, is a sum of not less than \$155,088,455, and thus the eight percent (8%) debt limit of the County is not less than \$12,407,076. At the time of the issuance of the first bond authorized by this Ordinance in December 2023, the County will have outstanding general obligation debt chargeable against the eight percent (8%) limit in the principal amount of not exceeding \$2,022,976. Thus, the Council may issue the general obligation debt provided for by this ordinance without the authorization required by Section 14(6) of the Constitution, provided that the County does not additional indebtedness which would, along with such general obligation debt, exceed the debt limit of the County.

Section 1.03 Holding of Public Hearing and Notice Thereof.

Pursuant to the provisions of Section 4-9-130 of the Code of Laws of South Carolina, 1976, as amended, a public hearing, after giving reasonable notice, is required to be conducted prior to the third and final reading of this Ordinance by Council. In accordance with this provision, a public hearing shall be conducted and due notice shall be provided as required by said Section 4-9-130. The form of the notice to be published shall be substantially as set forth as **Exhibit A** attached hereto.

\* \* \*

## ARTICLE II

### DEFINITIONS AND AUTHORITY

#### Section 2.01 Definitions.

As used in this Ordinance, unless the context shall otherwise require, the following terms shall have the following respective meanings:

“Administrative Costs” means all amounts payable by the County to the Corporation under the Facilities Agreement as “Additional Payments”.

“Annual Appropriation Payments” shall have the meaning given thereto in Section 1.01 of this Ordinance.

“Authorized Investments” means any securities which are authorized legal investments for political subdivisions pursuant to the Code of Laws of South Carolina.

“Authorized Officer” means the Chairman or the Vice-Chairman of the Council, the County Administrator of the County, and any other officer or employee of the Council designated from time to time as an Authorized Officer by resolution of the Council, and when used with reference to any act or document also means any other person authorized by resolution of the Council to perform such act or sign such document. During such time as a State of Emergency exists, the Chairman (or Vice-Chairman in the absence or disability of the Chairman) is empowered to designate any officer or employee of the County as an Authorized Officer.

“Bond”, “a Bond” or “the Bond” means a Bond issued in accordance with the provisions of this Ordinance. “Bonds” means all Bonds issued hereunder.

“Bondholder” or “Holder” or “Holder of Bond” or “Owner” or similar term means, when used with respect to a Bond, any person who shall be registered as the owner of a Bond outstanding.

“Bond Payment” means the payment of principal of and interest on a Bond.

“Bond Payment Date” means each date on which a Bond Payment shall be payable.

“Code” means the Internal Revenue Code of 1986, as amended.

“Council” means the Newberry County Council, South Carolina, the governing body of said County or any successor governing body of said County.

“County” means Newberry County, South Carolina.

“County Bond Act” shall have the meaning given thereto in Section 1.01 of this Ordinance.

“Equipment” shall have the meaning given in Section 1.01 of this Ordinance.

“Facilities Agreement” shall have the meaning given in Section 1.01 of this Ordinance.

“Government Obligations” means and includes direct general obligations of the United States of America or agencies thereof or obligations, the payment of principal or interest on which is fully and unconditionally guaranteed by the United States of America.

“Holder” means the registered owner, from time to time, of a Bond as shown on the registration books of the County maintained by the Registrar.

“Ordinance” shall mean this ordinance of County Council authorizing the issuance of the Bond.

“Outstanding”, when used in this Ordinance with respect to a Bond, means as of any date, such Bond theretofore delivered pursuant to this Ordinance except:

(a) if such Bond shall have been cancelled or delivered to the Registrar for cancellation on or before such date;

(b) if such Bond deemed to have been paid in accordance with the provisions of Section 7.01 hereof; and

(c) any Bond in lieu of or in exchange for which another Bond shall have been authenticated and delivered pursuant to Section 3.11 of this Ordinance.

“Paying Agent” means the County Treasurer of Newberry County.

“Person” means an individual, a partnership, a corporation, a trust, a trustee, an unincorporated organization, or a government or an agency or political subdivision thereof.

“Record Date” means the 15<sup>th</sup> day of the month immediately preceding a Bond Payment Date.

“Registrar” means the County, acting through the Clerk to Council.

“State of Emergency” means a period during which a proclamation issued by the Governor of the State pursuant to South Carolina Code Ann. Sec. 1-3-420 (1976, as amended) remains effective in the County.

## Section 2.02 Construction.

In this Ordinance, unless the context otherwise requires:

1. Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Ordinance.

2. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Ordinance, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Ordinance.

3. Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

4. Any fiduciary shall be deemed to hold an Authorized Investment in which money is invested pursuant to the provisions of this Ordinance, even though such Authorized Investment is evidenced only by a book entry or similar record of investment.

\* \* \*

## ARTICLE III

### ISSUANCE OF BONDS

#### Section 3.01 Ordering the Issuance of Bonds.

Pursuant to the provisions of the County Bond Act, and for the purpose of obtaining funds with which to pay Annual Appropriation Payments and Administrative Costs, there shall be issued, as two or more separate Bonds, not exceeding Two Million Dollars (\$2,000,000) aggregate principal amount general obligation bonds of the County. Each Bond issued hereunder shall bear a series designation which reflects the calendar year of issuance and sequence of issuance within such calendar year relative to other general obligation bonds, if any, of the County issued within such calendar year. The first Bond issued under the authorizations of this Ordinance shall be issued in Fiscal Year 2023-24 and in time sufficient to pay Annual Appropriation Payments and Administrative Costs due in such Fiscal Year. Likewise, the final Bonds issued under the authorizations of this Ordinance shall be issued in Fiscal Year 2024-25 and in time sufficient to pay Annual Appropriation Payments and Administrative Costs due in such Fiscal Year. The principal amount of a Bond in a given year shall be adjusted, or the issuance thereof cancelled, as appropriate, in the event the Council determines not to appropriate Annual Appropriation Payments or portion thereof for such year. The County Administrator may, in his sole discretion, determine that a Bond be issued as two or more separate series to reflect a difference in tax-exempt status, the initial source of payment therefore, or any other basis not inconsistent with this Ordinance.

#### Section 3.02 Maturity Schedule of Bonds.

A Bond shall be dated as of the date of its delivery and shall bear interest from its dated date. The principal amount of a Bond shall be sufficient to pay the Annual Appropriation Payment due in the Fiscal Year of such Bond's issuance, Administrative Costs, and the costs of issuance of such Bond, as determined by the County Administrator. A Bond shall mature no later than June 30 of the Fiscal Year of its issuance on such date, as determined by the County Administrator.

#### Section 3.03 Medium of Payment; Form and Denomination of Bonds; Place of Payment of Principal.

(a) A Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) A Bond shall be issued in the form of one (1) fully registered bond.

(c) A Bond Payment shall be payable to the Person appearing as the Holder of the applicable Bond on the Record Date on the registration books of the County, which books shall be held by the County as Registrar as provided in Section 3.06 hereof, upon the presentation and surrender for cancellation of the Bond at the office of the Paying Agent, provided, however, that the Paying Agent may, upon advice of the County Administrator, waive presentment prior to the delivery of the Bond Payment to the Holder as provided in this Section 3.03(c).

#### Section 3.04 Execution and Authentication.

(a) A Bond shall be executed in the name and on behalf of the County by the manual signature of an Authorized Officer or Officers, with its corporate seal impressed, imprinted or otherwise reproduced thereon, and attested by the manual signature of the Clerk to County Council or an Authorized Officer (other than the officer or officers executing such Bond). A Bond may bear

the manual signature of any person who shall have been such an Authorized Officer authorized to sign such Bond at the time such Bond was so executed, and shall bind the County notwithstanding the fact that his or her authorization may have ceased prior to the authentication and delivery of such Bond.

(b) A Bond shall not be valid or obligatory for any purpose nor shall it be entitled to any right or benefit hereunder unless there shall be endorsed on the Bond a certificate of authentication in the form set forth in this Ordinance, duly executed by the manual signature of the Registrar, and such certificate of authentication upon a Bond executed on behalf of the County shall be conclusive evidence that the Bond so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of this Ordinance.

#### Section 3.05 Exchange of a Bond.

A Bond, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Holder or his duly authorized attorney, may, at the option of the registered Holder thereof, be exchanged for a new Bond of the same interest rate and maturity. So long as a Bond remains Outstanding, the County shall make all necessary provisions to permit the exchange of the Bond. Such new Bond shall reflect the principal amount thereof as then yet unpaid.

#### Section 3.06 Transferability and Registry.

A Bond shall at all times, when the same is Outstanding, be payable to a Person, and shall be transferable only in accordance with the provisions for registration and transfer contained in this Ordinance and in the Bond. So long as a Bond remains Outstanding, the Registrar shall maintain and keep, at its administrative office, books for the registration and transfer of the Bond, and, upon presentation thereof for such purpose at such office, the Registrar shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it may prescribe, such Bond. So long as the Bond remains Outstanding, the Registrar shall make all necessary provisions to permit the transfer of such Bond at its administrative office.

#### Section 3.07 Transfer of the Bond.

A Bond shall be transferable only upon the books of the Registrar, upon presentation and surrender thereof by the Holder of the Bond in person or by his attorney duly authorized in writing, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered Holder or his duly authorized attorney. Upon surrender for transfer of a Bond, the County shall execute, authenticate and deliver, in the name of the Person who is the transferee, a new Bond of the same principal amount and maturity and rate of interest as the surrendered Bond. Such new Bond shall reflect the principal amount thereof as then yet unpaid.

#### Section 3.08 Regulations with Respect to Exchanges and Transfers.

A Bond surrendered in any exchange or transfer shall forthwith be cancelled by the Registrar. For each such exchange or transfer of the Bond, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The County shall not be obligated to issue, exchange or transfer a Bond during the 15 days next preceding the Bond Payment Date applicable thereto.



Section 3.09 Mutilated, Destroyed, Lost and Stolen Bond.

(a) If the Holder surrenders a mutilated Bond to the Registrar or the Registrar receives evidence to its satisfaction of the destruction, loss, or theft of a Bond, and there is delivered to the Registrar such security or indemnity as may be required by it to save it harmless, then, in the absence of notice that such Bond has been acquired by a bona fide purchaser, the County shall execute and deliver, in exchange for the mutilated Bond or in lieu of any such destroyed, lost, or stolen Bond, a new Bond of like tenor, maturity, and interest rate bearing a number unlike that of such mutilated, destroyed, lost, or stolen Bond, and shall thereupon cancel any such mutilated Bond so surrendered.

(b) Upon the issuance of any new Bond under this Section 3.09, the County may require the payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the County or the Registrar connected therewith.

(c) Each new Bond issued pursuant to this Section in lieu of any destroyed, lost, or stolen Bond, shall constitute an additional contractual obligation of the County, whether or not the destroyed, lost, or stolen Bond shall at any time be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with the Bond duly issued pursuant to this Ordinance.

(d) A Bond shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of the mutilated, destroyed, lost, or stolen Bond and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement or payment of the mutilated, destroyed, lost, or stolen Bond or securities.

Section 3.10 Holder As Owner of Bond.

In its capacity as Registrar, the County may treat the Holder of a Bond as the absolute owner thereof, whether the Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the Bond Payment on the Bond and for all other purposes, and payment of the Bond Payment shall be made only to, or upon the order of, such Holder. All payments to such Holder shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid, and the County shall not be affected by any notice to the contrary.

Section 3.11 Cancellation of the Bond.

The Registrar shall destroy a Bond when the same shall be surrendered to it for cancellation. In such event, such Bond shall no longer be deemed Outstanding under this Ordinance and no Bond shall be issued in lieu thereof.

Section 3.12 Payments Due on Saturdays, Sundays and Holidays.

In any case where a Bond Payment Date shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the Bond Payment need not be made on such date but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close, with the same force and effect as if made on the Bond Payment Date and no interest shall accrue for the period after such date.

Section 3.13 Tax Exemption in South Carolina.

Bond Payments shall be exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes.

Section 3.14 Order to Levy Ad Valorem Taxes to Pay Principal and Interest of Bond.

For the payment of principal of and interest on a Bond as the same become due and for the creation of such sinking fund as may be necessary therefor, the full faith, credit, and taxing power of the County are hereby irrevocably pledged, and there shall be levied an ad valorem tax upon all taxable property located within the County sufficient to pay the principal of and interest on the Bond as the same become due and to create such sinking fund as may be necessary therefor. The property upon which ad valorem taxes shall be initially levied to pay principal of and interest on a Bond shall include only such property located within a special tax district if the Bond is issued for the benefit of such special tax district.

Section 3.15 Notice to Auditor and Treasurer.

The Auditor and Treasurer of Newberry County, South Carolina, shall be notified of the issuance of a Bond and directed to levy and collect annually upon all taxable property within the County ad valorem property taxes in an amount sufficient to pay the principal of and interest on such Bond as the same become due and to create such sinking fund as may be necessary therefor. The property upon which ad valorem taxes shall be initially levied to pay principal of and interest on a Bond shall include only such property located within a special tax district if the Bond is issued for the benefit of such special tax district.

Section 3.16 Form of Bond.

The form of a Bond, and registration provisions to be endorsed thereon, shall be substantially as set forth in **Exhibit B** attached hereto and made a part of this Ordinance.

\* \* \*

**ARTICLE IV**

**REDEMPTION OF BONDS**

Section 4.01 Redemption of Bonds.

A Bond shall not be subject to redemption prior to maturity except as may be agreed to by the Holder thereof and the County.

\* \* \*

**ARTICLE V**

**SALE OF BONDS**

Section 5.01 Sale and Award of Bonds.

A Bond shall be sold at a price of not less than par. Bids for a Bond shall be solicited by the County Administrator from not less than three (3) financial institutions with at least seven (7) days advance notice to institutions so solicited.

Unless all bids are rejected, the County Administrator is authorized to award the Bond to the bidder offering the lowest net interest cost therefor; for purposes of this paragraph, net interest cost shall be determined by computing the total dollar interest cost from the date of the Bond to maturity and deducting therefrom the amount of the premium offered, if any, over and above the principal amount. Any proposed fees of bank counsel shall be treated as additional interest cost in evaluating bids. In the case of a tie in net interest cost, the award of the Bond shall be based upon the flip of a coin. Notwithstanding the foregoing, no such award shall be effective without the approval of Council, by resolution duly adopted, if the net interest cost of such Bond exceeds 5.00% per annum.

Notwithstanding the foregoing, upon advice of Counsel, the sale of a Bond may be combined with the negotiation of a lease-purchase agreement for Equipment, and the Bond may be awarded together with such lease purchase agreement to the bidder offering to the County, in the sole discretion of the County Administrator, the best overall terms for the purchase of such items. No such award shall be effective without the approval of Council, by resolution duly adopted, if the net interest cost of such Bond exceeds 5.00% per annum.

There shall be published in a newspaper of general circulation in the County at least seven (7) days prior to the delivery of a Bond a Notice of Sale in form substantially similar to that appearing at **Exhibit C** hereto.

\* \* \*

## ARTICLE VI

### DISPOSITION OF PROCEEDS OF SALE OF BONDS

#### Section 6.01 Disposition of Bond Proceeds Including Temporary Investments.

The proceeds derived from the sale of a Bond shall be paid to the Treasurer of Newberry County, to be deposited in a separate Bond Account, and shall be expended and made use of by the Council to defray the cost of issuing the Bond and to pay Annual Appropriation Payments and Administrative Costs. Any premium shall be placed in the sinking fund held by the Treasurer of Newberry County for payment of principal and interest on the Bond and applied to the discharge of principal on such Bond.

Pending the use of Bond proceeds, the same, but subject to the provisions of Section 8.04, shall be invested and reinvested by the Treasurer of Newberry County in Authorized Investments. All earnings from such investments shall be applied, at the direction of the Council, either (1) to defray the cost of the undertakings for which the Bond is issued and if not required for this purpose, then (2) to interest on the Bond from the proceeds of which such earnings were derived.

Neither the purchaser nor Holder of the Bond shall be liable for the proper application of the proceeds thereof.

\* \* \*



## ARTICLE VII

### DEFEASANCE OF BONDS

Section 7.01 Discharge of Ordinance - Where and How a Bond is Deemed to Have Been Paid and Defeased.

If a Bond and the interest thereon shall have been paid and discharged, then the obligations of the County under this Ordinance as to such Bond and all other rights granted hereby shall cease and determine. A Bond shall be deemed to have been paid and discharged within the meaning of this Article under each of the following circumstances, viz.:

(1) A third party fiduciary, which shall be any bank, trust company, or national banking association which is authorized to provide corporate trust services (the "Fiduciary"), shall hold, in trust and irrevocably appropriated thereto, sufficient moneys for the payment of the Bond Payment due thereunder; or

(2) If default in the payment when due of a Bond Payment shall have occurred, and thereafter tender of such payment shall have been made, and at such time the Fiduciary shall hold in trust and irrevocably appropriated thereto, sufficient moneys for the payment thereof to the date of the tender of such payment; or

(3) If the County shall elect to provide for the payment of a Bond prior to its stated maturity and shall have deposited with the Fiduciary, in an irrevocable trust, moneys which shall be sufficient, or Government Obligations, the principal of and interest on which when due will provide moneys, which together with moneys, if any, deposited with the Fiduciary at the same time, shall be sufficient to pay the Bond Payment when due.

Neither the Government Obligations nor moneys deposited with the Fiduciary pursuant to this Section nor the Bond Payments thereon shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Bond Payment on a Bond; provided that any cash received from such principal or interest payments on Government Obligations deposited with the Fiduciary, if not then needed for such purpose, shall to the extent practicable be invested and reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the Bond Payment to become due on a Bond on the Bond Payment Date thereof, and interest earned from such reinvestments not required for the payment of the Bond Payment may be paid over to the County, free and clear of any trust, lien or pledge.

\* \* \*

## ARTICLE VIII

### CERTAIN TAX AND DISCLOSURE CONSIDERATIONS

#### Section 8.01 Covenants to Comply with Requirements of the Code.

The County hereby represents and covenants that it will comply with all requirements of the Code, and that it will not take any action which will, or fail to take any action (including, without limitation, filing the required information reports with the Internal Revenue Service) which failure will, cause interest on a Bond to become includable in the gross income of the Holder thereof for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of a Bond. Without limiting the generality of the foregoing, the County represents and covenants that:

1. All property provided by the net proceeds of a Bond will be owned by the County in accordance with the rules governing the ownership of property for federal income tax purposes.

2. The County shall not permit the proceeds of a Bond or any facility financed with the proceeds of the Bond to be used in any manner that would result in (a) ten percent (10%) or more of such proceeds being considered as having been used directly or indirectly in any trade or business carried on by any natural person or in any activity carried on by a person other than a natural person other than a governmental unit as provided in Section 141(b) of the Code, or (b) five percent (5%) or more of such proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit as provided in Section 141(c) of the Code.

3. The County is not a party to nor will it enter into any contracts with any person for the use or management of any facility provided with the proceeds of a Bond that do not conform to the guidelines set forth in Revenue Procedure 2017-13.

4. The County will not sell or lease the Equipment or any property provided by a Bond to any person unless it obtains the opinion of nationally recognized bond counsel that such lease or sale will not affect the tax exemption of the Bond.

5. A Bond will not be federally guaranteed within the meaning of Section 149(b) of the Code. The County is not a party to any leases or sales or service contracts with any federal government agency with respect to the projects and will not enter into any such leases or contracts unless it obtains the opinion of nationally recognized bond counsel that such action will not affect the tax exemption of a Bond.

Notwithstanding the foregoing, the County Administrator may determine that interest on a Bond shall be subject to federal income tax if so requested by the purchaser thereof, subject always to Section 5.01 of this Bond Ordinance. In such case, the foregoing covenants and the remainder of this Article VIII shall be inapplicable.

#### Section 8.02 Qualified Tax-Exempt Obligation.

The County Administrator, upon advice of Bond Counsel, is authorized to designate as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code any Bonds, provided he reasonably expects that, in the calendar year of issuance thereof, the County and entities subordinate thereto will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations.

Section 8.03 Ability to Meet Arbitrage Requirements.

Careful consideration has been given to the time in which the expenditures of the proceeds of each Bond authorized hereby will be made, and it has been ascertained that all of the money received from the proceeds of each Bond will be expended within the limitations imposed by Section 148(c) of the Code, so that the Council will be able to certify upon reasonable grounds that each Bond is not an "arbitrage bond" within the meaning of Section 148(c) of the Code.

Section 8.04 Escrow Agreement.

In the event that the County Administrator is advised by Bond Counsel that it is necessary that proceeds of the Bonds to be applied to Annual Appropriation Payments be invested at a restricted yield in order to maintain the tax-exempt status of the Bonds, the County Administrator shall engage a Fiduciary to establish an escrow account for the deposit of such proceeds and shall enter into an agreement with such Fiduciary for the custody, investment, and expenditure of such proceeds in form satisfactory to Bond Counsel.

Section 8.05 Continuing Disclosure.

Pursuant to Section 11-1-85 of the Code of Laws of South Carolina 1976, as amended, the County covenants to file with a central repository for availability in the secondary bond market when requested:

- (a) An annual independent audit, within thirty days of the County's receipt of the audit; and
- (b) Event specific information within thirty days of an event adversely affecting more than five percent of revenue or the County's tax base.

The only remedy for failure by the County to comply with the covenant in this Section 8.04 shall be an action for specific performance of this covenant. The County specifically reserves the right to amend this covenant to reflect any change in Section 11-1-85, without the consent of any Bondholder.

Section 8.06 Taxable Obligation.

Any Bond may be issued as a taxable obligation if the County Administrator determines in his sole discretion that it is in the best interests of the County to do so.

\* \* \*

## ARTICLE IX

### MISCELLANEOUS

#### Section 9.01 Savings Clause.

If any one or more of the covenants or agreements provided in this Ordinance should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Ordinance.

#### Section 9.02 Successors.

Whenever in this Ordinance the County is named or referred to, it shall be deemed to include any entity, which may succeed to the principal functions and powers of the County, and all the covenants and agreements contained in this Ordinance or by or on behalf of the County shall bind and inure to the benefit of said successor whether so expressed or not.

#### Section 9.03 Ordinance to Constitute Contract.

In consideration of the purchase and acceptance of a Bond by those who shall purchase and hold the same from time to time, the provisions of this Ordinance shall be deemed to be and shall constitute a contract between the County and the Holder from time to time of the Bond, and such provisions are covenants and agreements with such Holder which the County hereby determined to be necessary and desirable for the security and payment thereof. The pledge hereof and the provisions, covenants, and agreements herein set forth to be performed on behalf of the County shall be for the benefit, protection, and security of the Holder of the Bond.

#### Section 9.04 Filing of Copies of Ordinance.

Copies of this Ordinance shall be filed in the offices of the Council and in the office of the Clerk of Court for Newberry County (as a part of the Transcript of Proceedings).

#### Section 9.05 Appropriation of Funds.

Notwithstanding Section 9.07 of this Ordinance, the adoption hereof shall not be construed as an appropriation of funds with which to make Annual Appropriation Payments or Administrative Costs in any Fiscal Year. Such appropriation shall be made, if ever, only in connection with the adoption of the County's annual operating budget for each Fiscal Year. The Bonds authorized hereby may be sold and delivered only to pay Annual Appropriation Payments and Administrative Costs when and to the extent so appropriated.

#### Section 9.06 Further Action by Officers of County.

The proper officers of the County are fully authorized and empowered to take the actions required to implement the provisions of this Ordinance and to furnish such certificates and other proofs as may be required of them, which includes but is not limited to providing the notice and conducting the public hearing described in Section 1.03 hereof. In the absence of any officer of the Council herein authorized to take any act or make any decision, the County Administrator is hereby authorized to take any such act or make any such decision.

Section 9.07 Effective Date of Ordinance.

This Ordinance shall take effect upon its third reading and shall be forthwith codified in the Code of County Ordinances and indexed under the general heading "An Ordinance To Provide For The Issuance And Sale Of General Obligation Bonds Of Newberry County, South Carolina Not Exceeding \$2,000,000 In Aggregate Principal Amount, To Prescribe The Purposes For Which The Proceeds Of Said Bonds Shall Be Expended, To Provide For The Payment Of Said Bonds, And Other Matters Relating Thereto."

DONE IN MEETING DULY ASSEMBLED, this \_\_\_ of \_\_\_\_\_, 2023.

NEWBERRY COUNTY COUNCIL

(SEAL)

\_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Clerk



**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that the Newberry County Council, State of South Carolina will conduct the following public hearing(s) at its meeting on the \_\_\_\_ day of \_\_\_\_\_, 2023, to be held in the Newberry County Council Chamber, 1309 College Street, Newberry, South Carolina, at \_\_\_\_\_ P.M.

Ordinance No. \_\_\_\_: An Ordinance To Provide For The Issuance And Sale Of General Obligation Bonds Of Newberry County, South Carolina Not Exceeding \$2,000,000 In Aggregate Principal Amount, To Prescribe The Purposes For Which The Proceeds Of Said Bonds Shall Be Expended, To Provide For The Payment Of Said Bonds, And Other Matters Relating Thereto.

[OTHER ORDINANCES RECEIVING PUBLIC HEARINGS INSERTED HERE]

At the time and place fixed for said public hearing(s), all taxpayers, residents or other interested persons who appear will be given an opportunity to express their views for or against the adoption of the Ordinance. A copy of the proposed Ordinance(s) is available for inspection in the Clerk to Council's office located in the Courthouse Annex at 1309 College Street, Newberry, South Carolina, during its regular business hours. Assistance is available for those who are visually or hearing-impaired. For assistance, call \_\_\_\_\_, Clerk to Council, (803) 321-2100.

\_\_\_\_\_  
Chairman, Newberry County Council

(FORM OF BOND)

**TRANSFER OF THIS BOND IS RESTRICTED BY THAT WRITTEN CONFIRMATION OF (BANK) DATED \_\_\_\_\_, THE TERMS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE AS IF FULLY SET FORTH HEREIN. TRANSFER OF THIS BOND IS OTHERWISE UNLAWFUL AND UNENFORCEABLE.**

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY  
GENERAL OBLIGATION BOND, SERIES 202\_\_

No. 1

Registered Holder: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

NEWBERRY COUNTY, SOUTH CAROLINA (the "County"), a public body corporate and politic and a political subdivision of the State of South Carolina (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received hereby promises to pay, solely as hereinafter provided, to the Registered Holder named above or registered assigns, the Principal Amount stated above and interest thereon on such date and in the manner provided herein.

This bond ("Bond") is issued in the principal amount of \_\_\_\_\_ for purposes authorized by and pursuant to and in accordance with the Constitution and Statutes of the State of South Carolina, including particularly the provisions of Sections 4-15-10 through 4-15-180, Code of Laws of South Carolina, 1976, as amended, and an Ordinance duly adopted by the County Council of Newberry County (the "Ordinance") on \_\_\_\_\_, 2023. This Bond is not subject to redemption prior to maturity except as may be agreed to by the County and the Holder hereof.

The principal and interest on this Bond shall be paid on \_\_\_\_\_, 20\_\_ upon the presentation and surrender for cancellation of this Bond at the office of the County Treasurer of Newberry County, as Paying Agent, to the person shown on the books of registration of the County as the Holder hereof on the Record Date. The Bond Payment is payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Certain capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Ordinance. Certified copies of the Ordinance are on file in the office of the Clerk of Court of Newberry County and in the office of the County Council of Newberry County.

This Bond is payable from a tax levied on all taxable property within the County. For the prompt payment of the Bond Payment as the same shall become due, the full faith, credit, and taxing power of the County are irrevocably pledged.

This Bond and the interest hereon are exempt from all State, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer, or certain franchise taxes.

The Bond is issued in the form of one (1) fully registered Bond and is transferable, as provided in the Ordinance, only upon the registration books of the County kept for that purpose at the offices of the County by the registered Holder in person or by his duly authorized attorney upon, (i) surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered holder or his duly authorized attorney, and (ii) payment of the charges, if any, prescribed in the Ordinance. Thereupon a new fully registered Bond of interest rate and like principal amount shall be issued to the transferee in exchange therefor as provided in the Ordinance. The County may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of the Bond Payment due hereon and for all other purposes.

For every exchange or transfer of the Bond, the County may make a charge sufficient to reimburse it for any tax, fee, or other governmental charge required to be paid with respect to such exchange or transfer.

It is hereby certified and recited that all acts, conditions, and things required to exist, happen, and to be performed precedent to and in the adoption of the Ordinance and in the issuance of the Bond in order to make the legal, valid, and binding general obligation of the County in accordance with its terms, do exist, have been done, have happened and have been performed in regular and due form as required by law; and that the issuance of the Bond does not exceed or violate any constitutional, statutory, or other limitation upon the amount of indebtedness prescribed by law.

IN WITNESS WHEREOF, NEWBERRY COUNTY, SOUTH CAROLINA, has caused this Bond to be signed by the manual signature of the Chairman of the Newberry County Council, attested by the manual signature of the Clerk to the Newberry County Council, and the seal of the County impressed hereon.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chairman, Newberry County Council

ATTEST:

\_\_\_\_\_  
Clerk, Newberry County Council

CERTIFICATE OF AUTHENTICATION

This Bond is the Bond of the issue described in the within mentioned Ordinance.

Registrar

By: \_\_\_\_\_  
\_\_\_\_\_, Clerk to Council

Date of Authentication: \_\_\_\_\_, 20\_\_

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common

UNIF GIFT MIN ACT -

TEN ENT - as tenants by the entireties

\_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

JT TEN - as joint tenants with right of survivorship and not as tenants in common

under Uniform Gifts to Minors Act \_\_\_\_\_  
(state)

Additional abbreviations may also be used though not in above list.

**(FORM OF ASSIGNMENT)**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ the within bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature Guaranteed

\_\_\_\_\_  
(Authorized Officer)

\_\_\_\_\_  
(Signature must be guaranteed by a participant in the Securities Transfer Agent Medallion Program (STAMP))

\_\_\_\_\_  
Notice: The signature to the assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

**NOTICE OF SALE**

Notice is hereby given that Newberry County, South Carolina shall deliver to (Purchaser) on (Date of Delivery) it's \$\_\_\_\_\_ principal amount General Obligation Bond, Series \_\_\_\_\_. The Bond has been sold to (Purchaser) at a price of \_\_\_\_\_ and an interest rate of \_\_\_\_%. The Bond matures on \_\_\_\_\_, 202\_\_ at which time the principal thereof and interest thereon in the amount of \$\_\_\_\_\_ shall be due and payable.

\_\_\_\_\_  
Chairman, Newberry County Council



STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned, Clerk to Council of Newberry County, South Carolina, DO HEREBY CERTIFY:

1. That the foregoing is a true, correct and verbatim copy of an Ordinance adopted by the County Council of Newberry County on \_\_\_\_\_, 2023, at which a majority/all members were present. It was first introduced at the regular meeting of County Council held on \_\_\_\_\_, 2023. At that meeting, it was given first reading by the majority/unanimous vote of the County Council. Afterwards, at the regular meeting of the County Council held on \_\_\_\_\_, 2023, it was given its second reading and at the regular meeting of the County Council held on \_\_\_\_\_, 2023, it was give third and final reading by the unanimous vote of County Council. At each of said meetings, a quorum of County Council was present at all times during the proceedings pursuant to which the aforesaid Ordinance was adopted, the original of which is duly entered in the record of minutes of the aforesaid meetings of said County Council in my Custody as such Clerk.

2. As required by Title 30, Chapter 4 of the Code of Laws of South Carolina 1976, as amended, being the Freedom of Information Act, a copy of the agenda of meetings (showing the date, time and place of the meeting) of the County Council of the County is posted on a designated bulletin board in the administrative offices of the County, posted on the County’s publicly-available website and supplied to news media as requested, in each case at least 24 hours prior to regularly scheduled meetings of the County Council. An agenda was posted in accordance with the foregoing sentence for each meeting at which the attached Ordinance was voted upon, and each agenda as so posted contained as an item the consideration of the attached Ordinance by the County Council.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of the County, this \_\_\_ day of \_\_\_\_\_ 2023.

(SEAL)

\_\_\_\_\_  
Clerk, Newberry County Council

First reading: \_\_\_\_\_

Second reading: \_\_\_\_\_

Third reading: \_\_\_\_\_

Public Hearing: \_\_\_\_\_