

**NEWBERRY COUNTY COUNCIL
COUNTY COUNCIL AGENDA
August 16, 2023
6:00 P.M.**

Call to order: Todd Johnson, Chairman
Invocation and Pledge of Allegiance: Les Hipp, Vice Chairman

1. Adoption of Consent Agenda
 - a. Newberry County Council Meeting Minutes – July 19, 2023

2. Additions, Deletions & Adoption of the Agenda

3. Recognitions:
 - a. Employee Service
 - i. Thomas Miller 10 years Sheriff
 - ii. Doug Harmon 25 years Public Works

4. Presentations:
 - a. Program and Activities Update - Capital City/Lake Murray Country - Miriam Atria, President / CEO.
 - b. Program and Activities Update – Newberry Opera House Foundation – Anne Pickney Smith, Executive Director.

5. Ordinance No. 07-01-2023. An Ordinance for the purpose of leasing county property located as a part of the Fairgrounds Property (TMS No. 399-39-2) to the Newberry Pistol Club.
 - a. Second Reading

6. Ordinance No. 07-02-2023. An Ordinance authorizing the execution and delivery of a Fee-In-Lieu of *Ad Valorem* Taxes and incentive agreement by and between Newberry County, South Carolina and *Project Viking* to provide for payment of a Fee-In-Lieu of Taxes; authorizing certain infrastructure credits; and other related matters.
 - a. Public Hearing
 - b. Second Reading

7. Presentation of Comprehensive Plan Elements (Community Facilities, Cultural Resources, Housing, Population, and Transportation) and consideration of a motion to approve - Katie Werts, Director of Planning & Development Services and Cheryl Matheny, Planning Consultant, The Matheny-Burns Group

8. Consideration of a motion to approve State Accommodations Tax (State A-Tax) funding recommendations of the Newberry County Accommodations Tax Advisory Committee (ATAC) – Ernie Shealy, ATAC Chairman

9. Consideration and approval of proposals for construction management services for the Capital Project Sales Tax (CPST) projects (RFP# 2023-16) – Crystal Waldrop, Director of Purchasing

10. Consideration of a motion authorizing the purchase of a replacement commercial chiller for the Newberry County Courthouse – Mac Bartley, Facilities Operations Manager

11. Consideration of a motion authorizing the County Administrator to grant an extension to Jacobs Carports Inc. to continue to occupy and utilize TMS No. 343-2-11-5 and TMS No. 343-2-11-6 through November 30, 2023.

12. Ordinance No. 08-01-2023. 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 06-11-16 and codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classification and districts as to rezone two (2) real estate parcels totaling twelve and twenty-nine hundredths (12.29) acres designated as TMS No. 290-16 and TMS No. 290-12 from LC-Limited Commercial To RG-General Residential.
 - a. First Reading

13. Ordinance No. 08-02-2023. 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 06-11-16 and codified in Chapter 153 of the Newberry

County Code of Ordinances, establishes zoning classification and districts as to rezone one (1) real estate parcel totaling two (2) acres designated as TMS No. 530-13 from LC - Limited Commercial to R2-Rural.

a. First Reading

14. Consideration of a motion to accept a surety bond for the roadway project known as Project Sunrise and named Prosperity Park Avenue – Mike Pisano, Public Works Director

15. Ordinance No. 08-03-2023. An Ordinance authorizing the acceptance of Prosperity Park Avenue into the Newberry County Public Road System.

a. First Reading

16. Consideration of a motion to accept a surety bond for the roadways within the Autumn's Cay subdivision and named Autumns Drive, Golden Way, Harvest Lane and Red Leaf Court - Mike Pisano, Public Works Director

17. Ordinance No. 08-04-2023. An Ordinance authorizing the acceptance of roads within Autumn's Cay Subdivision - Autumn Drive, Golden Way, Harvest Lane and Red Leaf Court - into the Newberry County Public Road System.

a. First Reading

18. Appointments

- a. Newberry County Joint Planning Commission (Town of Peak Representative)
- b. Newberry County Joint Planning Commission (Town of Pomaria Representative)
- c. Newberry County Water and Sewer Authority (Council District 5)
- d. Other Appointments if desired by County Council

19. Public Comments

20. Executive Session

21. Comments/Requests from County Administrator

22. Comments/Requests from Council

23. Future meetings

- a. Finance Committee Meeting – August 21, 2023 at 6:00 p.m.
- b. County Council Meeting – September 6, 2023 at 6:00 p.m.
- c. Executive Committee Meeting – September 11, 2023 at 6:00 p.m.
- d. County Council Meeting – September 20, 2023 at 6:00 p.m.
- e. Economic Development Committee Meeting – September 25, 2023 at 6:00 p.m.

24. Adjournment

**NEWBERRY COUNTY COUNCIL
MINUTES
July 19, 2023**

Newberry County Council met on Wednesday, July 19, 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, Chairman
Les Hipp, Vice Chairman
Mary Arrowood, Council Member
Karl Sease, Council Member
Robert N. Shealy, Council Member
Johnny Mack Scurry, Council Member
Travis Reeder, Council Member
Jeff Shacker, County Administrator
Karen Brehmer, Deputy County Administrator
Debbie S. Cromer, Finance Director

Absent: Joanie Winters, Interim County Attorney

MEDIA: Orion Griffin, Newberry Observer

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

Ms. Arrowood led the invocation followed by the Pledge of Allegiance.

1. Adoption of Consent Agenda

a. Newberry County Council Meeting Minutes – June 21, 2023

Mr. Shealy made the motion to accept the minutes as submitted, which was seconded by Mr. Scurry and then unanimously approved.

2. Additions, Deletions & Adoption of the Agenda

Mr. Hipp made a motion to adopt the agenda as presented, which was seconded by Ms. Arrowood and then unanimously approved.

3. Recognitions:

a. Employee Service

i. Tommy Long	15 years	Public Safety
ii. Robert Alexander	25 years	Public Works
iii. Richard Attaway	10 years	Sheriff
iv. Corey Cook	10 years	Sheriff

Mr. Shacker recognized the above employees for their service to Newberry County.

Mr. Johnson stated that the employees are such an important part of Newberry County Government, and that Newberry County is fortunate to have such great and special employees.

b. Resolution No 08-23 – A resolution honoring Council Member Mary Arrowood

Mr. Johnson read and presented the resolution as part of the official minutes.

All members of council thanked Ms. Arrowood for her hard work and dedication to the County. The council stated that Mary was always prepared.

Ms. Arrowood thanked the Council for the opportunity to serve. It was a hard decision, but she felt that it was the right decision.

4. Presentations:

a. Newberry County Economic Development Strategic Plan - CEO Crystal Morphis, *Creative. It's a good thing.*

Mr. Rick Farmer introduced Crystal Morphis, CEO, Creative. A copy of the presentation is attached to the minutes and is part of the official minutes.

Ms. Morphis stated it was a pleasure to work with Rick and the County. She wanted to thank the Council for making the investment. She said, it was also a pleasure to work with the task force.

Mr. Johnson stated Council will have one more opportunity to review the plan before it is put on the agenda for adoption.

5. Ordinance No. 06-01-2023. An Ordinance authorizing the execution and delivery of a Fee-In-Lieu of Ad Valorem Taxes and incentive agreement by and between Newberry County, South Carolina, and Project Rubicon to provide for payment of a Fee-In-Lieu of Taxes; authorizing certain infrastructure credits; and other related matters.

a. Public Hearing

Mr. Johnson declared the public hearing open. There being no one signed up to speak. Mr. Johnson then declared the public hearing closed.

b. Third Reading

Mr. Shealy made a motion for third and final reading, which was seconded by Mr. Hipp and then unanimously approved by council.

6. Resolution No. 09-23. A resolution amending the employee handbook of the County of Newberry to provide employee longevity awards and recognitions.

Mr. Shacker stated that, if approved by council, this resolution would revise the current policy in place for the recognition of Newberry County employees for their years of service and would be retroactive to July 1. As proposed in the resolution, Newberry County would reward employees on every fifth (5th) employment anniversary with a certificate, pin, and a one-time longevity payment in the following amounts:

5 years	\$250.00
10 years	\$300.00
15 years	\$350.00
20 years	\$400.00
25 years	\$450.00
30 years	\$500.00 (max for years thereafter)

Mr. Reeder made a motion to approve the resolution, which was seconded by Mr. Sease, and then approved by a unanimous vote of County Council.

7. Consideration and approval of proposals for on-call environmental testing services for CPST and potential county projects (RFP#2013-08) – Crystal Waldrop, Director of Purchasing

Ms. Waldrop stated that the county received five (5) proposals for on-call environmental testing services for CPST projects and for other possible county projects. Those proposals were reviewed and ranked by an evaluation committee consisting of Mac Bartley, Ron Powell, and Crystal Waldrop.

The committee respectfully requested authorization to negotiate with two of the highest rated firms. Those two firms are EAS Professionals and ECS Southeast.

Mr. Hipp made a motion for staff to negotiate with the two firms. His motion was seconded by Mr. Shealy and then unanimously approved by County Council.

8. Consideration and approval of proposals for on-call debris monitoring and debris removal management services (RFP# 2023-10) – Crystal Waldrop, Director of Purchasing

Ms. Waldrop stated that the county received five (5) proposals for on-call debris monitoring and debris removal management services. Those proposals were reviewed and ranked by an evaluation committee consisting of Tommy Long, Mike Pisano, and Crystal Waldrop.

The committee respectfully requested authorization to negotiate with Thompson Consulting Company, which was the highest rated firm.

Mr. Hipp expressed concern that the Florida location of the recommended company may result in slower on-site mobilization for debris removal in the event of a disaster than a company located closer to Newberry. He asked if the location of the proposers was an evaluation criterion and if the evaluation committee is confident that the responsiveness of the recommended firm will meet the needs of the county should a disaster event occur.

Ms. Waldrop stated the location of the responding firms was not a criterion used to compare the proposals and that the evaluation committee feels that the recommended company, if needed, will meet expectations.

Mr. Sease asked if the County will be required to pay a retainer.

Ms. Waldrop responded that there is no fee to retain the services of the recommended firm because their services will be delivered only on an as-needed basis.

Mr. Shealy then motioned for approval of staff's recommendation. Mr. Scurry provided a second and the motion was approved unanimously by County Council.

9. Consideration and approval of proposals for on-call debris removal and disposal services (RFP# 2023-11)- Crystal Waldrop, Director of Purchasing.

Ms. Waldrop stated that the county received five (5) proposals for on-call debris removal and disposal services, which were reviewed and ranked by an evaluation committee consisting of Tommy Long, Mike Pisano, and Crystal Waldrop.

Southern Disaster Recovery, based in Greenwood, South Carolina, was the firm that received the highest ranking by the committee and was recommended for selection.

Mr. Sease made a motion to approve the recommendation of the committee and Mr. Scurry provided a second. County Council then approved the motion unanimously.

10. Consideration and approval of proposals for engineering services for the Subertown Road/Gary Street, Whitmire, S.C. Sidewalk Project – CDBG Project #4-CE-22-09 (RFP# 2023-12)- Crystal Waldrop, Director of Purchasing.

Ms. Waldrop stated Newberry County received three (3) proposals for engineering services for the proposed sidewalk project on Subertown Road and Gary Street, which will be funded with a Community Development Block Grant. The three engineers which responded to the RFP were AECOM, Rogers & Callcott and The Landplan Group. Their proposals were reviewed and ranked by an evaluation committee consisting of Gregory Sprouse (Central Midlands Council of Governments), Mike Pisano, and Crystal Waldrop.

The Committee requested that County Council allow staff to negotiate with the top-ranked firm AECOM.

Mr. Hipp made a motion authorizing staff to negotiate with the highest ranked architectural and engineering firm using a procedure that complies with state and federal guidelines for Community Development Block Grants. He added the caveat that if the negotiated fee exceeds the approved budget for project engineering services, staff must come back to council for approval of the higher amount and authorization to proceed with project design. The motion was then seconded by Mr. Shealy and unanimously approved by council.

11. Consideration of a motion to authorize the County Administrator to execute a Memorandum of Understanding with Greenwood County, Laurens County, Greenwood Commissioners of Public Works, and Laurens County Water and Sewer Authority to jointly fund an update to the Lake Greenwood Master Plan.

Mr. Shacker stated that Greenwood County approached the County about participating in this project several months ago and county staff are excited to do so. The total cost of the project, which the consulting firm Arnett-Muldrow is coordinating, is \$108,000. Greenwood County has requested that Newberry County fund \$5,000 of that cost, which is funded in the county's FY2023-2024 General Fund budget.

Mr. Sease motioned to authorize Mr. Shacker to execute the memorandum of understanding, which Ms. Arrowood seconded. The motion was then unanimously approved by County Council.

12. APPOINTMENTS

a. Clerk to Council

Mr. Sease made a motion to appoint Andrew Wigger to the position of Clerk to Council / Public Information Officer. Mr. Hipp provided a second. The motion was then unanimously approved.

b. Board of Rural Fire Control (Council District 2)

Ms. Arrowood stated that she had received the resignation of Mr. Rodney Bedenbaugh from the Board of Rural Fire Control. She thanked him for his many years of service.

Ms. Arrowood then made a motion to appoint Mr. Paul Cromer to the Fire Board. That motion was seconded by Mr. Shealy and approved unanimously by County Council.

Mr. Johnson also thanked Mr. Bedenbaugh for his dedicated service.

c. Other Appointments if necessary and desired by Council.

No other appointments were made by County Council.

13. PUBLIC COMMENTS

Mr. Gregg spoke about short-term rentals.

Mr. Gregg stated that they have a problem in his neighborhood on Lake Greenwood with short-term rentals, including those facilitated by Airbnb. He said that in his neighborhood they have three single-family residences which are currently being utilized as short-term rentals and that the residents of the neighborhood anticipate that two additional short-term rental uses will soon be established.

Mr. Gregg indicated that in his neighborhood short-term rentals are creating public nuisances related to noise, trash, and vehicular speeding, and that short-term renters are not familiar with state boating laws and regulations including the no wake buffers which must be observed by boaters when operating near docks.

Mr. Gregg requested that County Council consider limiting the ratio of short-term rentals within subdivisions and/or communities to no more than one (1) per one hundred (100) housing units. He also requested that short-term rentals be regulated and taxed like a business and made more specific reference to the application of state and local accommodations taxes, local business licensing, and building, fire and safety codes.

Mr. Gregg also requested that the Sheriff be given the authority to deem short-term rentals, when they create nuisance conditions, a nuisance business and to require their closure or to recommend their closure to County Council for consideration and action. them down or come to County Council and let me shut them down. Mr. Gregg also stated he would like to have an ordinance to say they are a business. Mr. Gregg stated he had also talked to Joe White regarding this situation.

Mr. Johnson stated that he also has received complaints concerning short-term rentals on Lake Murray and asked Mr. Shacker look into the problem and research solutions.

14. EXECUTIVE SESSION:

a. Contractual Matter(a):

- i. Discussion of matters related to lease agreement with Newberry Pistol Club pursuant to SC Code of Laws Section 30-4-70 (a)(2)

b. Economic Development Matter (s):

- i. Discussion of matters related to *Project Viking* pursuant to SC Code of Laws Section 30-4-70(a)(5)

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

EXECUTIVE SESSION

7:08 PM – 7:32 PM

Mr. Shealy motioned to return to open session; seconded by Ms. Arrowood. There being no discussion, Mr. Johnson called for the vote, which was unanimous.

15. Ordinance No. 07-01-2023. An Ordinance for the purpose of leasing county property located as a part of the Fairgrounds Property (TMS No. 399-39-2) to the Newberry Pistol Club.

a. First reading

Mr. Shealy made a motion this be first reading; seconded by Mr. Reeder. The motion was unanimous with Mr. Sease recusing himself.

- 16. Resolution No 10-23. An Inducement Resolution committing to negotiate a Fee-In-Lieu of Ad Valorem Taxes agreement between Newberry County and Project Viking; identifying the project; and other matters related thereto.**

Mr. Hipp motioned for approval of the resolution, which was seconded by Ms. Arrowood. The motion was then unanimously approved by County Council.

- 17. Ordinance No. 07-02-2023. An Ordinance authorizing the execution and delivery of a Fee -In-Lieu of Ad Valorem Taxes and incentive agreement by and between Newberry County, South Carolina, and Project Viking to provide for payment of a Fee-In-Lieu of Taxes, authorizing certain infrastructure credits; and other matters.**

a. First Reading

Mr. Hipp made a motion this be first reading. The motion was seconded by Ms. Arrowood; the motion was unanimous.

- 18. Comments/Request from County Administrator**

Mr. Shacker informed the council that:

- a. An overview of the first group of elements of the proposed Comprehensive Plan will be presented by the county's planning consultant Cheryl Matheny at the August 16th council meeting. Mr. Shacker indicated that staff will request that council consider approving the first group by motion and vote at the August 16th meeting with additional elements to follow at future meetings. Once all ten (10) elements have been presented to council and approved by motion, County Council will be asked to consider an ordinance to adopt the entire plan following a public hearing advertised in the newspaper a minimum of 30-days in advance of the date of the hearing. Additionally, staff will reach out to council to schedule a council work session with Cheryl Matheny to discuss the proposed future land use map, which will become a component of the land use element of the new comprehensive plan.

- b. The Greenwood Master Plan project will soon kick-off and that staff will keep council informed on progress.
- c. Newberry County Parks and Recreation has secured a Recreation Trails Program (RTP) from the S.C. Department of Parks, Recreation and Tourism to make improvements to Lynch's Woods Park. The project budget is approximately \$45,000 and is being managed by Parks and Recreation Director Jessie Long.
- d. Department Heads Rick Farmer, Jessie Long, Liz McDonald and Eric Nieto are coordinating the design of a new website for Newberry County government. As the design and layout of the site takes shape, staff will share it with council for feedback and suggestions.
- e. IT Director Eric Nieto has secured a new domain for the county's website and email. That domain is newberrycounty.gov. The .GOV domain provides enhanced security, is exclusively reserved for governmental entities, and is free-of-charge.
- f. Staff would like to begin the pursuit of the branding project, which would include the development of a county logo system and some branding. The project was budgeted by council in the non-departmental division of the FY2023-2024 General Fund budget.
- g. Staff has solicited and received proposals for architectural and engineering services for the 2022 CPST projects. Staff has also solicited proposals for construction management services. Those proposals are due back on July 26th. Staff is hopefully that a recommendation to award a contract for construction management services will be ready for council to consider at the August 16th meeting.

19. COMMENTS/REQUESTS FROM COUNCIL MEMBERS

Ms. Arrowood stated she enjoyed working with the Council.

Mr. Sease thanked staff for their teamwork and helping move the county in the right direction.

Mr. Shealy also thanked the staff and welcomed Andrew Wigger to the county.

Mr. Hipp stated he would like staff to look at the county's ordinances and bring recommendations to Council.

20. FUTURE MEETINGS:

- a. SCAC Annual Conference/Institute of Government–July 31–August 3, 2023,
- b. Finance Committee Meeting – August 14, 2023, at 6:00 p.m.
- c. County Council Meeting – August 16, 2023, at 6:00 p.m.
- d. County Council Meeting – September 6, 2023, at 6:00 p.m.

21. ADJOURNMENT

There being no further business, Mr. Shealy moved to adjourn; seconded by Ms. Arrowood. The vote was unanimous.

Mr. Johnson declared the meeting adjourned at 7:45 p.m.

NEWBERRY COUNTY COUNCIL

Todd Johnson, Chairman

Debbie S. Cromer, Finance Director

Minutes Approved: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 07-01-23

**AN ORDINANCE FOR THE PURPOSE OF LEASING COUNTY PROPERTY
LOCATED AS A PART OF THE FAIRGROUNDS PROPERTY (TMS NO. 399-
39-2)**

WHEREAS, Newberry County Council desires to continue leasing the former Horse Stables located on the Fairgrounds and access from U.S. Highway 34 in the city of Newberry to the Newberry Pistol Club for use as a shooting range and associated services; and

WHEREAS, in compliance with Section 4-9-130 of the South Carolina Code of Laws, a public hearing has been duly advertised and held; and

WHEREAS, Newberry County Council finds it to be an appropriate use of this facility in furtherance of the health and general welfare and benefit to the citizens of Newberry County.

NOW, THEREFORE BE IT ORDAINED by the County Council of the County of Newberry, in Council duly assembled this 19th day of July 2023 that the lease attached hereto is approved and shall be executed by the appropriate official.

NEWBERRY COUNTY COUNCIL

(SEAL)

BY: _____
Todd Johnson, Chairman

ATTEST:

Approved as to form:

Susan C. Fellers, Clerk to Council

Joanie Winters, Interim County Attorney

1st Reading: July 19, 2023
2nd Reading: August 16, 2023
Public Hearing: September 6, 2023
3rd Reading: September 6, 2023

Jeff Shacker, County Administrator

STATE OF SOUTH CAROLINA)
) **ORDINANCE NO. 07-02-2023**
COUNTY OF NEWBERRY)

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND WEST FRASER, INC. WITH RESPECT TO CERTAIN ECONOMIC DEVELOPMENT PROPERTY IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF TAXES, INCLUDING THE PROVISION OF CERTAIN SPECIAL SOURCE CREDITS; AND OTHER MATTERS RELATED THERETO.

WHEREAS, NEWBERRY COUNTY, SOUTH CAROLINA (the “County”), acting by and through its County Council (the “County Council”), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the “FILOT Act”), Title 4, Chapter 1 (the “Multi-County Park Act”), and Title 4, Chapter 29, of the Code of Laws of South Carolina 1976, as amended, to enter into agreements with industry whereby the industry would pay fees-in-lieu-of taxes with respect to qualified industrial projects; to provide infrastructure credits against payment in lieu of taxes for reimbursement in respect of investment in certain infrastructure enhancing the economic development of the County; through all such powers the industrial development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, pursuant to the FILOT Act, and in order to induce investment in the County, the County Council adopted on July 19, 2023, an inducement resolution (the “Inducement Resolution”) with West Fraser, Inc. (the “Company”), with respect to the acquisition, construction, and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property to constitute an expansion of the Company’s existing facilities in the County for the manufacture of wood products (collectively, the “Project”); and

WHEREAS, the Company has represented that the Project will involve an investment of approximately \$17,703,823 in the County and the creation of approximately 30 new, full-time jobs at the Project, all within the Investment Period (as such term is defined in the hereinafter defined Fee Agreement; and

WHEREAS, the County has determined, solely on the basis of the information supplied to it by the Company, that the Project would be a “project” and “economic development property” as such terms are defined in the FILOT Act, and that the Project would serve the purposes of the FILOT Act; and

WHEREAS, pursuant to the authority of Section 4-1-170 of the Multi-County Park Act and Article VIII, Section 13 of the South Carolina Constitution, the County intends to cause the Project, to the extent not already therein located, to be placed in a joint county industrial and business park such that the Project will receive the benefits of the Multi-County Park Act; and

WHEREAS, at the request of the Company, the County desires to, among other things, (a) enter into a FILOT Agreement with the Company (the “Fee Agreement”), whereby the County would provide therein for a payment of a fee-in-lieu-of taxes by the Company with respect to the Project, and (b) provide

for certain infrastructure credits to be claimed by the Company against its payments of fees-in-lieu-of taxes with respect to the Project pursuant to Section 4-1-175 of the Multi-County Park Act; and

WHEREAS, there is hereby presented to this meeting the form of the Fee Agreement, a copy of which is attached hereto as Exhibit A, which the County proposes to execute and deliver; and

WHEREAS, it appears that the documents above referred to, which are now before this meeting, are in appropriate form and are an appropriate instrument to be executed and delivered or approved by the County for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED, by the County Council as follows:

Section 1. Based 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” and “economic development property” as said terms are referred to and defined in the FILOT Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;

(b) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

(c) The Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;

(d) 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; and

(e) The benefits of the Project are anticipated to be greater than the costs.

Section 2. The form, terms and provisions of the Fee Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The County Administrator is hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Administrator, upon advice of counsel, her execution thereof to constitute conclusive evidence of her approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. To the extent the Project is not already located in the Park, the expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the 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 4. The County Administrator, for and on behalf of the County, is 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 thereunder.

Section 5. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions 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 6. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This ordinance shall take effect and be in full force from and after its passage by the County Council.

ENACTED in meeting duly assembled this 6th day of September, 2023.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

Jeff Shacker
Newberry County Administrator

ATTEST:

Andrew Wigger
Clerk to Newberry County Council

First Reading: July 19, 2023
Second Reading: August 16, 2023
Third Reading: September 6, 2023
Public Hearing: August 16, 2023

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned Clerk to County Council of Newberry County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received unanimous approval, by the County Council at its meetings of July 19, 2023, August 16, 2023, and September 6, 2023, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

Andrew Wigger
Clerk to Newberry County Council

Dated: September 6, 2023

**FEE IN LIEU OF TAX AND
SPECIAL SOURCE CREDIT AGREEMENT**

Between

NEWBERRY COUNTY, SOUTH CAROLINA

and

WEST FRASER, INC.

Dated as of September 6, 2023

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

SECTION 1.01 DEFINITIONS	2
SECTION 1.02 PROJECT-RELATED INVESTMENTS	5

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

SECTION 2.01 REPRESENTATIONS, WARRANTIES, AND AGREEMENTS OF THE COUNTY	7
SECTION 2.02 REPRESENTATIONS, WARRANTIES, AND AGREEMENTS OF THE COMPANY	7

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

SECTION 3.01 THE PROJECT	9
SECTION 3.02 DILIGENT COMPLETION	9
SECTION 3.03 FILINGS AND REPORTS	9

ARTICLE IV

FILOT PAYMENTS

SECTION 4.01 FILOT PAYMENTS	11
SECTION 4.02 SPECIAL SOURCE REVENUE CREDITS	ERROR! BOOKMARK NOT DEFINED.
SECTION 4.03 FAILURE TO ACHIEVE MINIMUM INVESTMENT REQUIREMENTS	13
SECTION 4.04 REMOVAL OF EQUIPMENT	13
SECTION 4.05 FILOT PAYMENTS ON REPLACEMENT PROPERTY	13
SECTION 4.06 REDUCTIONS IN PAYMENT OF TAXES UPON DIMINUTION IN VALUE; INVESTMENT MAINTENANCE REQUIREMENT	14

ARTICLE V

PARTICULAR COVENANTS AND AGREEMENTS

SECTION 5.01 CESSATION OF OPERATIONS	15
SECTION 5.02 RIGHTS TO INSPECT	15
SECTION 5.03 CONFIDENTIALITY	15
SECTION 5.04 LIMITATION OF COUNTY'S LIABILITY	15
SECTION 5.05 MERGERS, REORGANIZATIONS AND EQUITY TRANSFERS	16
SECTION 5.06 INDEMNIFICATION COVENANTS	16
SECTION 5.07 QUALIFICATION IN STATE	17
SECTION 5.08 NO LIABILITY OF COUNTY'S PERSONNEL	17
SECTION 5.09 ASSIGNMENT, LEASES OR TRANSFERS	17
SECTION 5.10 ADMINISTRATION EXPENSES	18
SECTION 5.11 PRIORITY LIEN STATUS	18
SECTION 5.12 INTEREST; PENALTIES	18
SECTION 5.13 SPONSOR AFFILIATES	18

ARTICLE VI

DEFAULT

SECTION 6.01 EVENTS OF DEFAULT 20
SECTION 6.02 REMEDIES UPON DEFAULT 20
SECTION 6.03 REIMBURSEMENT OF LEGAL FEES AND EXPENSES AND OTHER EXPENSES 21
SECTION 6.04 NO WAIVER 21

ARTICLE VII

MISCELLANEOUS

SECTION 7.01 NOTICES 22
SECTION 7.02 BINDING EFFECT 22
SECTION 7.03 COUNTERPARTS 23
SECTION 7.04 GOVERNING LAW 23
SECTION 7.05 HEADINGS 23
SECTION 7.06 AMENDMENTS 23
SECTION 7.07 FURTHER ASSURANCE 23
SECTION 7.08 INTERPRETATION; INVALIDITY; CHANGE IN LAWS 23
SECTION 7.09 TERMINATION BY COMPANY 24
SECTION 7.10 ENTIRE UNDERSTANDING 24
SECTION 7.11 WAIVER 24
SECTION 7.12 BUSINESS DAY 24

- EXHIBIT A – DESCRIPTION OF LAND
- EXHIBIT B – INVESTMENT CERTIFICATION
- EXHIBIT C—JOINDER AGREEMENT
- EXHIBIT D – DESCRIPTION OF CLAW BACK

**SUMMARY OF CONTENTS OF
FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT**

As permitted under Section 12-44-55(B), Code of Laws of South Carolina 1976, as amended (the "Code"), the parties have agreed to waive the requirements of Section 12-44-55 of the Code. The following is a summary of the key provisions of this Fee in Lieu of Tax and Special Source Credit Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee in Lieu of Tax and Special Source Credit Agreement or a summary compliant with Section 12-44-55 of the Code.

Company Name:	West Fraser, Inc.	Project Code Name:	Project Viking
Projected Investment:	\$17,703,823	Projected Jobs:	30
Location (street):	3287 College Street Newberry, SC 29108	Tax Map Nos.:	339-1-40; 339-1-24
1. FILOT			
Required Investment:	\$17,000,000	Required Jobs:	N/A
Investment Period:	5 years	Ordinance No./Date:	07-02-2023; September 6, 2023
Assessment Ratio:	6%	Term (years):	20 years
Millage:	0.367 mills	Net Present Value (if yes, discount rate):	N/A
Adjustable or fixed millage:	Fixed		
Clawback information:	See Section 4.03(a)		
2. MCIP			
Included in an MCIP:	Yes		
If yes, Name & Date:	Greenwood-Newberry Industrial Park ("Park") pursuant to that certain Master Agreement Governing the Greenwood-Newberry Industrial Park dated December 31, 2012.		
3. SSRC			
Total Amount:	See section 4.02		
No. of Years	10 years		
Yearly Increments:	20% for years 1-10		
Clawback information:	Pro rata clawback.		
4. Other information			

FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT

THIS FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT (the "*Fee Agreement*") is made and entered into as of September 6, 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 **WEST FRASER, INC.**, a corporation organized and existing under the laws of the State of Delaware (the "*Company*").

RECITALS

1. Title 12, Chapter 44 (the "*FILOT Act*"), Code of Laws of South Carolina, 1976, as amended (the "*Code*"), authorizes the County to (a) induce industries to locate in the State; (b) 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 (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property.

2. Sections 4-1-17 and 12-44-70 of the Code authorize the County to provide special source revenue credit ("*Special Source Revenue Credit*") financing secured by and payable solely from revenues of the County derived from payments in lieu of taxes for the purposes set forth in Section 4-29-68 of the Code, namely: the defraying of the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate, and personal property, including but not limited to machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County (collectively, "*Infrastructure*").

3. The Company (as a Sponsor, within the meaning of the FILOT Act) desires to provide for the acquisition and construction of the Project (as defined herein) to constitute an expansion of the Company's facilities in the County for the manufacture of wood products.

4. Based on information supplied by the Company, the County Council has evaluated the Project based on 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, employment to be created or maintained, and the anticipated costs and benefits to the County. Pursuant to Section 12-44-40(H)(1) of the FILOT Act, the County finds that: (a) 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; (b) the Project will give rise to no pecuniary liability of the County or any incorporated municipality therein and to no charge against their general credit or taxing powers; (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.

5. The Project is located, or if not so located as of the date of this Fee Agreement the County intends to use its best efforts to so locate the Project, in a joint county industrial or business park created with an adjoining county in the State pursuant to agreement entered into pursuant to Section 4-1-170 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution.

6. By enactment of an Ordinance on September 6, 2023, the County Council has authorized the County to enter into this Fee Agreement with the Company which classifies the Project as Economic

Development Property under the FILOT Act and provides for the payment of fees in lieu of taxes and the provision of Special Source Revenue Credits to reimburse the Company for payment of the cost of certain Infrastructure in connection with the Project, 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 1.01 Definitions

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

“Administration Expenses” shall mean the reasonable and necessary expenses incurred by the County with respect to this Fee Agreement, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

“Affiliate” shall mean any corporation, limited liability company, partnership or other entity which owns all or part of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or which is owned in whole or in part by the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or by any partner, shareholder or owner of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as well as any subsidiary, affiliate, individual or entity who bears a relationship to the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

“Code” shall mean the Code of Laws of South Carolina 1976, as amended.

“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 shall not be later than the last day of the property tax year which is three (3) years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean West Fraser, Inc. a Delaware corporation, 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.

“Condemnation Event” shall mean any act of taking by a public or quasi-public authority through condemnation, reverse condemnation or eminent domain.

“Contract Minimum Jobs Requirement” shall mean, with respect to the Project, the creation by the Company and any Sponsor Affiliates of at least 30 new, full-time jobs at the Project.

“Contract Minimum Investment Requirement” shall mean, with respect to the Project, investment by the Company and any Sponsor Affiliates of at least \$17,000,000 in Economic Development Property subject (non-exempt) to *ad valorem* taxation (in the absence of this Fee Agreement).

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

“*County Administrator*” shall mean the Newberry County Administrator, the interim or acting Newberry County Administrator or the person holding any successor office of the County.

“*County Assessor*” shall mean the Newberry County Assessor, or the person holding any successor office of the County.

“*County Auditor*” shall mean the Newberry County Auditor, or the person holding any successor office of the County.

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

“*County Treasurer*” shall mean the Newberry County Treasurer, or the person holding any successor office of the County.

“*Defaulting Entity*” shall have the meaning set forth for such term in Section 6.02(a) hereof.

“*Deficiency Amount*” shall have the meaning set forth for such term in Section 4.03(a) hereof.

“*Department*” shall mean the South Carolina Department of Revenue.

“*Diminution in Value*” in respect 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 4.01 of this Fee Agreement, of the items which constitute a part of the Project and which are subject to FILOT payments which may be caused by the Company’s or any Sponsor Affiliate’s removal and/or disposal of equipment pursuant to Section 4.04 hereof, or by its election to remove components of the Project as a result of any damage or destruction or any Condemnation Event with respect thereto.

“*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 FILOT Act, selected and identified by the Company or any Sponsor Affiliate in its 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 machinery, equipment, furniture, office equipment, and other tangible personal property, together with any and all additions, accessions, replacements, and substitutions thereto or therefor.

“*Event of Default*” shall mean any event of default specified in Section 6.01 hereof.

“*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 portion 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 Agreement*” shall mean this Fee in Lieu of Tax and Special Source Credit Agreement.

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

“*FILOT Act*” shall mean Title 12, Chapter 44, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

“*FILOT Act Minimum Investment Requirement*” shall mean, with respect to the Project, an investment of at least \$2,500,000 by the Company, or of at least \$5,000,000 by the Company and any Sponsor Affiliates in the aggregate, in Economic Development Property.

“*Improvements*” shall mean improvements to the Land, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor.

“*Infrastructure*” shall mean infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of the Project, within the meaning of Section 4-29-68 of the Code.

“*Investment Period*” shall mean, and shall be equal to, the Standard Investment Period.

“*Land*” means the land upon which the Project will be located, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with Section 3.01(c) hereof.

“*MCIP Act*” shall mean Title 4, Chapter 1, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

“*MCIP Agreement*” shall mean the Master Agreement Governing the Greenwood-Newberry Industrial Park dated December 31, 2012, as amended, between the County and Greenwood County, South Carolina, as the same may be further amended or supplemented from time to time, or such other agreement as the County may enter with respect to the Project to offer the benefits of the Special Source Revenue Credits to the Company hereunder.

“*MCIP*” shall mean (i) the joint county industrial park established pursuant to the terms of the MCIP Agreement and (ii) any joint county industrial park created pursuant to a successor park agreement delivered by the County and a partner county in accordance with Section 4-1-170 of the MCIP Act, or any successor provision, with respect to the Project.

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

“*Project*” shall mean the Land and all the Equipment and Improvements that the Company determines to be necessary, suitable or useful for the purposes described in Section 2.02(b) hereof, to the extent determined by the Company and any Sponsor Affiliate to be a part of the Project and placed in service during the Investment Period, and any Replacement Property. Notwithstanding anything in this Fee Agreement to the contrary, the Project shall not include property which will not qualify for the FILOT pursuant to Section 12-44-110 of the FILOT Act, including without limitation property which has been subject to *ad valorem* taxation in the State prior to commencement of the Investment Period; provided, however, the Project may include (a) modifications which constitute an expansion of the real property portion of the Project, (b) property described in Section 12-44-110(3) of the FILOT Act to the

extent the Company and any Sponsor Affiliates invest at least an additional \$45,000,000 in the Project, exclusive of such described property, and (c) the property allowed pursuant to Section 12-44-110(2) of the FILOT Act.

“Removed Components” shall mean components of the Project or portions thereof which the Company or any Sponsor Affiliate in its sole discretion, elects to remove from the Project pursuant to Section 4.04 hereof or as a result of any Condemnation Event.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment or any Improvement 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 or any Improvement to the fullest extent that the FILOT Act permits.

“Special Source Revenue Credits” shall mean the annual special source revenue credits provided to the Company pursuant to Section 4.02 hereof.

“Sponsor Affiliate” shall mean an entity that joins with the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the FILOT Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, all as set forth in Section 5.13 hereof.

“Standard Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five (5) years after the Commencement Date.

“State” shall mean the State of South Carolina.

“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 19th 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 20 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 shall mean the date of such termination.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the FILOT Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers.

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 1.02 Project-Related Investments

The term “investment” or “invest” as used herein shall include not only investments made by the Company and any Sponsor Affiliates, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company or any Sponsor Affiliate with respect to 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.

[End of Article I]

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.01 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 FILOT 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 FILOT Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in the State.

(d) The millage rate set forth in Step 3 of Section 4.01(a) hereof is 0.367 mills, which is the millage rate in effect with respect to the location of the proposed Project as of June 30, 2021, as permitted under Section 12-44-50(A)(1)(d) of the FILOT Act.

(e) The County will use its reasonable best efforts to cause the Project to be located in a MCIP for a term extending at least until the end of the period of FILOT Payments against which a Special Source Revenue Credit is to be provided under this Fee Agreement.

Section 2.02 Representations, Warranties, and Agreements of the Company

The Company hereby represents, warrants, and agrees as follows:

(a) The Company is organized and in good standing under the laws of the State of Delaware, is registered as a foreign corporation with the South Carolina Secretary of State and 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 FILOT Act as in effect on the date hereof. The Company intends to operate the Project for the purpose of manufacturing wood products, and for such other purposes that the FILOT Act permits as the Company may deem appropriate.

(c) The execution and delivery of this Fee Agreement by the County has been instrumental in inducing the Company to locate the Project in the County.

(d) The Company, together with any Sponsor Affiliates, will use commercially reasonable efforts to meet, or cause to be met, the FILOT Act Minimum Investment Requirement within the Investment Period.

[End of Article II]

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.01 The Project

(a) The Company intends and expects, together with any Sponsor Affiliate, to (i) construct and acquire the Project, and (ii) meet the Contract Minimum Investment Requirement within the Investment Period. The Company anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2023.

(b) Pursuant to the FILOT Act and subject to Section 4.03 hereof, the Company and the County hereby agree that the Company and any Sponsor Affiliates shall identify annually those assets which are eligible for FILOT payments under the FILOT Act and which the Company or any Sponsor Affiliate selects for such treatment by listing such assets in its annual PT-300S 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 and any Sponsor Affiliates shall not be obligated to complete the acquisition of the Project. However, if the Company, together with any Sponsor Affiliates, does not meet the FILOT Act Minimum Investment Requirement within the Investment Period, the provisions of Section 4.03 hereof shall control.

(c) The Company may add to the Land such real property, located in the same taxing District in the County as the original Land, as the Company, in its discretion, deems useful or desirable. In such event, the Company, at its expense, shall deliver an appropriately revised Exhibit A to this Fee Agreement, in form reasonably acceptable to the County, and the Company shall pay any Administration Expenses related to the addition of such additional real property to the MCIP.

Section 3.02 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 3.03 Filings and Reports

(a) Each year during the term of the Fee Agreement, the Company and any Sponsor Affiliates shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer a copy of their most recent annual filings with the Department with respect to the Project, not later than thirty (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, and to their counterparts in the partner county to the MCIP Agreement, the County Administrator and the Department within thirty (30) days after the date of execution and delivery of this Fee Agreement by all parties hereto.

(c) Each of the Company and any Sponsor Affiliates agree to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made

by the Company and any such Sponsor Affiliates in accordance with Section 3.03(a) or (b) above with respect to property placed in service as part of the Project.

[End of Article III]

ARTICLE IV
FILOT PAYMENTS

Section 4.01 FILOT Payments

(a) Pursuant to Section 12-44-50 of the FILOT Act, the Company and any Sponsor Affiliates, as applicable, 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 anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the FILOT Act, the County and the Company have negotiated the amount of the FILOT Payments in accordance therewith. The Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, 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 required by the FILOT Act):

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 FILOT Act defines such term, that the Company and any Sponsor Affiliates 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 Exemption Period remains the fair market value of the real property and Improvements for the life of the Exemption Period. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company and any Sponsor Affiliates if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the FILOT 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 19 years thereafter or such longer period of years in which the FILOT Act permits the Company and any Sponsor Affiliates to make annual FILOT payments.

Step 3: Use a millage rate of 0.367 mills during the Exemption Period against the taxable value to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.

(b) In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Act and/or the herein-described FILOT Payments 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 thereof (without increasing the amount of incentives being afforded herein) and so as to afford the Company and any Sponsor Affiliates with the benefits to be derived herefrom, the intention of the County being to offer the Company and such Sponsor Affiliates 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 and any Sponsor Affiliates 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 and such Sponsor Affiliates. Any amount determined to be due and owing to the County from the Company and such Sponsor Affiliates, with respect to a year or years for which the Company or such Sponsor Affiliates previously remitted FILOT Payments to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company or such Sponsor Affiliates 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 FILOT Payments the Company or such Sponsor Affiliates had made with respect to the Project pursuant to the terms hereof.

Section 4.02 Special Source Revenue Credits

(a) In accordance with and pursuant to Section 12-44-70 of the FILOT Act and Section 4-1-175 of the MCIP Act, in order to reimburse the Company for qualifying capital expenditures incurred for costs of the Infrastructure during the Standard Investment Period, the Company shall be entitled to receive, and the County agrees to provide, annual Special Source Revenue Credits against the Company's FILOT Payments for a period of ten (10) consecutive years of this Fee Agreement. The application of such Special Source Revenue Credits shall begin in the same year as the Commencement Date and shall be provided by the County in an amount equal to twenty percent (20%) of that portion of FILOT Payments payable by the Company with respect to the Project (that is, with respect to investment made by the Company in the Project during the Standard Investment Period), calculated and applied after payment of the amount due the non-host county under the MCIP Agreement.

(b) Pursuant to Section 4-29-68(a)(2)(ii) of the Code, to the extent any Special Source Revenue Credits are applied against personal property, including machinery and equipment, and the personal property is removed from the Project at any time prior to the Termination Date, then the amount of FILOT Payments due on such personal property for the year of such removal shall also be due for the two (2) years following the removal; provided, that if such removed personal property is replaced with Replacement Property, then such personal property shall not be considered removed from the Project for these purposes.

(c) Each annual Special Source Revenue Credit shall be reflected by the County Auditor or other authorized County official or representative on each bill for FILOT Payments sent to the Company by the County for each applicable property tax year, by reducing such FILOT Payments otherwise due by the amount of the Special Source Revenue Credit to be provided to the Company for such property tax year.

(d) The Special Source Revenue Credits are payable solely from the FILOT Payments, are not secured by, or in any way entitled to, a pledge of the full faith, credit or taxing power of the County, are not an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation, are payable solely from a special source that does not include revenues from any tax or license, and are not a pecuniary liability of the County or a charge against the general credit or taxing power of the County.

Section 4.03 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event the Company, together with any Sponsor Affiliates, fails to meet the FILOT Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall automatically terminate and the Company and such Sponsor Affiliates shall pay the County an amount 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 and such Sponsor Affiliates 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 and such Sponsor Affiliates have made with respect to the Economic Development Property (after taking into account any Special Source Revenue Credits received) (such excess, a “*Deficiency Amount*”) for the period through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be payable to the County on or before the second (2nd) January 15 following the last day of the Investment Period.

(b) As a condition to the FILOT benefit provided herein, the Company agrees to provide the County Administrator, the County Assessor, the County Auditor and the County Treasurer with an annual certification as to investment in the Project. Such certification shall be in substantially the form attached hereto as Exhibit B, and shall be due no later than the May 1 following the immediately preceding December 31 of each year during the Investment Period.

Section 4.04 Removal of Equipment

Subject, always, to the other terms and provisions of this Fee Agreement, the Company and any Sponsor Affiliates shall be entitled to remove and dispose of components of the Project from the Project in its sole discretion with the result that said components 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. Economic Development Property is disposed of only when it is scrapped or sold or 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 4.05 FILOT Payments on Replacement Property

If the Company or any Sponsor Affiliate 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 or any Sponsor Affiliate otherwise utilizes Replacement Property, then, pursuant and subject to the provisions of Section 12-44-60 of the FILOT Act, the Company or such Sponsor Affiliate 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 FILOT shall be recorded using its income tax basis, and the calculation of the FILOT shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the FILOT.

Section 4.06 Reductions in Payment of Taxes Upon Diminution in Value; Investment Maintenance Requirement

In the event of a Diminution in Value of the Economic Development Property, the FILOT Payment with regard to 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 as determined pursuant to Step 1 of Section 4.01(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project remaining in the County based on the original income tax basis thereof (that is, without regard to depreciation), is less than the FILOT Act Minimum Investment Requirement, then beginning with the first payment thereafter due hereunder and continuing until the Termination Date, the Project shall no longer be entitled to the incentive provided in Section 4.01, and the Company and any Sponsor Affiliate shall therefore commence to pay regular *ad valorem* taxes thereon, calculated as set forth in Section 4.01(b) hereof.

Section 4.07 Reductions in Payment of Taxes Upon Diminution in Value; Investment Maintenance Requirement

If the Company, together with any Sponsor Affiliate, fails to meet the Contract Minimum Investment Requirement or the Contract Minimum Jobs Requirement within the Investment Period the Company is subject to the claw backs as described in Exhibit D. Any amount that may be due from the Company to the County as calculated in accordance with or described in Exhibit D is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Company to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section and Exhibit D survives termination of this Fee Agreement.

[End of Article IV]

ARTICLE V

PARTICULAR COVENANTS AND AGREEMENTS

Section 5.01 Cessation of Operations

Notwithstanding any other provision of this Fee Agreement, each of the Company and any Sponsor Affiliates acknowledges and agrees that County's obligation to provide the FILOT incentive ends, and this Fee Agreement is terminated, if the Company ceases operations at the Project. For purposes of this Section, "ceases operations" means closure of the facility or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months. The provisions of Section 4.03 hereof relating to retroactive payments shall apply, if applicable, if this Fee Agreement is terminated in accordance with this Section prior to the end of the Investment Period. Each of the Company and any Sponsor Affiliates agrees that if this Fee Agreement is terminated pursuant to this subsection, that under no circumstance shall the County be required to refund or pay any monies to the Company or any Sponsor Affiliates.

Section 5.02 Rights to Inspect

The Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice, to have access to examine and inspect the Company's South Carolina property tax returns, as filed. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, and shall be subject to the provisions of Section 5.03 hereof.

Section 5.03 Confidentiality

The County acknowledges and understands that the Company and any Sponsor Affiliates may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein "Confidential Information"). In this regard, the Company and any Sponsor Affiliates may clearly label any Confidential Information delivered to the County "Confidential Information." The County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall disclose or otherwise divulge any such clearly labeled Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law. Each of the Company and any Sponsor Affiliates acknowledge that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. In the event that the County is required to disclose any Confidential Information obtained from the Company or any Sponsor Affiliates to any third party, the County agrees to provide the Company and such Sponsor Affiliates with as much advance notice as is reasonably possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company and such Sponsor Affiliates to obtain judicial or other relief from such disclosure requirement.

Section 5.04 Limitation of County's 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 (it being intended herein that any obligations of the County with respect to the Special Source Revenue Credits shall be payable only from FILOT payments received

from or payable by the Company or any Sponsor Affiliates); provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 5.05 Mergers, Reorganizations and Equity Transfers

Each of the Company and any Sponsor Affiliates acknowledges that any mergers, reorganizations or consolidations of the Company and such Sponsor Affiliates may cause the Project to become ineligible for negotiated fees in lieu of taxes under the FILOT Act absent compliance by the Company and such Sponsor Affiliates with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the FILOT Act or any successor provision, any financing arrangements entered into by the Company or any Sponsor Affiliates with respect to the Project and any security interests granted by the Company or any Sponsor Affiliates in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Fee Agreement to the contrary, it is not intended in this Fee Agreement that the County shall impose transfer restrictions with respect to the Company, any Sponsor Affiliates or the Project as are any more restrictive than the Transfer Provisions.

Section 5.06 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 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 the County 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 5.07 Qualification in State

Each of the Company and any Sponsor Affiliates warrant that it is duly qualified to do business in the State, and covenants that it will continue to be so qualified so long as it operates any portion of the Project.

Section 5.08 No Liability of County's Personnel

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member 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 shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any elected official, officer, agent, servants or employee of the County and no recourse shall be had against any member of the County Council or any elected official, officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 5.09 Assignment, Leases or Transfers

The County agrees that the Company and any Sponsor Affiliates may at any time (a) transfer all or any of their rights and interests under this Fee Agreement or with respect to all or any part of the Project, or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing or other entity with respect to this Fee Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any Sponsor Affiliate or operates such assets for the Company or any Sponsor Affiliate or is leasing the portion of the Project in question from the Company or any Sponsor Affiliate. In order to preserve the FILOT benefit afforded hereunder with respect to any portion of the Project so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to an Affiliate of the Company or of any Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company and any Sponsor Affiliates, as applicable, shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Project is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any Sponsor Affiliate, as the case may be, hereunder, or when the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company and any Sponsor Affiliates hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make FILOT Payments hereunder, the transferee shall assume the then current basis of, as the case may be, the Company or any Sponsor Affiliates (or prior transferee) in the portion of the Project transferred; (iv) the Company or applicable Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department a true and complete copy of any such transfer agreement; and (v) the Company, the Sponsor Affiliates and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this Section, and at the expense of the Company or any Sponsor Affiliate, as the case may be, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or such Sponsor Affiliate under this Fee Agreement and/or any release of the Company or such Sponsor Affiliate pursuant to this Section.

Each of the Company and any Sponsor Affiliates acknowledges that such a transfer of an interest under this Fee Agreement or in the Project may cause all or part of the Project to become ineligible for the FILOT benefit afforded hereunder or result in penalties under the FILOT Act absent compliance by the Company and any Sponsor Affiliates with the Transfer Provisions.

Section 5.10 Administration Expenses

The Company agrees to pay any Administration Expenses to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Fee Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County's or Indemnified Party's right to receive such payment, specifying the nature of such expense and requesting payment of same. The Company will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$10,000 in connection with the execution and delivery of this Fee Agreement.

Section 5.11 Priority Lien Status

The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the FILOT Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code.

Section 5.12 Interest; Penalties

In the event the Company or any Sponsor Affiliate should fail to make any of the payments to the County required under this Fee Agreement, then the item or installment so in default shall continue as an obligation of the Company or such Sponsor Affiliate until the Company or such Sponsor Affiliate shall have fully paid the amount, and the Company and any Sponsor Affiliates agree, as applicable, to pay the same with interest thereon at a rate, unless expressly provided otherwise herein and in the case of FILOT payments, of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, at the rate for non-payment of *ad valorem* taxes under State law and subject to the penalties the law provides until payment.

Section 5.13 Sponsor Affiliates

The Company may designate from time to time any Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the FILOT Act, which Sponsor Affiliates shall join with the Company and make investments with respect to the Project, or participate in the financing of such investments. To designate a Sponsor Affiliate, the Company must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Company and Sponsor Affiliate following receipt by the

County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project.. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit C, executed by the Sponsor Affiliate to the County.

[End of Article V]

ARTICLE VI

DEFAULT

Section 6.01 Events of Default

The following shall be “Events of Default” under this Fee Agreement, and the term “Event 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 or any Sponsor Affiliate to make the FILOT Payments described in Section 4.01 hereof, or any other amounts payable to the County under this Fee Agreement when due, which failure shall not have been cured within thirty (30) days following receipt of written notice thereof from the County; provided, however, that the Company and any Sponsor Affiliates shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company or any Sponsor Affiliate hereunder which is deemed materially incorrect when deemed made; or

(c) Failure by the Company or any Sponsor Affiliate 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 thirty (30) days after written notice from the County to the Company and such Sponsor Affiliate specifying such failure and requesting that it be remedied, unless the Company or such Sponsor Affiliate 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 or such Sponsor Affiliate is diligently pursuing corrective action; or

(d) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of thirty (30) days after written notice from the Company to the County and any Sponsor Affiliates 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 6.02 Remedies Upon Default

(a) Whenever any Event of Default by the Company or any Sponsor Affiliate (the “*Defaulting Entity*”) shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions as to the Defaulting Entity, only:

(i) terminate this Fee Agreement; 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 or any Sponsor Affiliate be liable to the County or otherwise for monetary damages resulting from the Company’s (together with any Sponsor Affiliates) failure to meet the FILOT Act Minimum Investment Requirement other than as expressly set forth in this Fee Agreement.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as provided in Section 12-44-90 of the FILOT Act. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

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

- (i) bring an action for specific enforcement;
- (ii) terminate this Fee Agreement as to the acting party; or
- (iii) 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.

Section 6.03 Reimbursement of Legal Fees and Expenses and Other Expenses

Upon the occurrence of an Event of Default hereunder by a party, should the non-defaulting party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the non-defaulting party shall be entitled, within thirty (30) days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 6.04 No Waiver

No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

[End of Article VI]

ARTICLE VII
MISCELLANEOUS

Section 7.01 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:

West Fraser, Inc.
Attn: Anthony Ventrini (Anthony.Ventrini@westfraser.com)
1900 Exeter Road, Suite 105
Germantown, Tennessee 38138

With a copy to:

Haynsworth Sinkler Boyd, P.A.
Attn: J. Philip Land, Jr. (pland@hsblawfirm.com)
One North Main Street
2nd Floor
Greenville, South Carolina 29601

If to the County:

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

With a copy to:

Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, South Carolina 29201

and

Winters Law Firm
P.O. Box 127
Chester, South Carolina 29706

Section 7.02 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 and any Sponsor Affiliates, 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 7.03 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 7.04 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.

Section 7.05 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 7.06 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 7.07 Further Assurance

From time to time, and at the expense of the Company and any Sponsor Affiliates, the County agrees to execute and deliver to the Company and any such Sponsor Affiliates such additional instruments as the Company or such Sponsor Affiliates may reasonably request and as are authorized by law and reasonably within the purposes and scope of the FILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 7.08 Interpretation; Invalidation; Change in Laws

(a) 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 FILOT Act, to the extent not inconsistent with any of the explicit terms hereof.

(b) 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 and any Sponsor Affiliates with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company and any Sponsor Affiliates

the strongest inducement possible, within the provisions of the FILOT Act, to locate the Project in the County.

(c) In case a change in the FILOT Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and any Sponsor Affiliates and the FILOT incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company and any Sponsor Affiliates with the benefits of such change in the FILOT Act or South Carolina laws.

(d) Pursuant to this Section 7.08, in the event any incentive described in this Fee Agreement is found to be invalid and the Company and any Sponsor Affiliates do not realize the economic benefit they are intended to receive from the County under this Fee Agreement, the County shall provide the Company and any Sponsor Affiliates additional Special Source Revenue Credits to the maximum extent permitted by law, in an amount sufficient to ensure the same net financial benefit is afforded to the Project as is to be provided hereunder.

Section 7.09 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 thirty (30) days' written notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto (including without limitation any amounts owed with respect to Section 4.03 hereof); and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such 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 Agreement. The Company's obligation to make FILOT Payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 7.10 Entire Understanding

This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 7.11 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 7.12 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.

[End of Article VII]

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 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 officers, all as of the day and year first above written.

**NEWBERRY COUNTY, SOUTH
CAROLINA**

By: Jeff Shacker
Newberry County Administrator

ATTEST:

Andrew Wigger
Clerk to Newberry County Council

[Signature Page 1 to Fee in Lieu of Tax and Special Source Credit Agreement]

WEST FRASER, INC.

By: _____

Its: _____

[Signature Page 2 to Fee in Lieu of Tax and Special Source Credit Agreement]

EXHIBIT A

LEGAL DESCRIPTION

Newberry County Tax Map Nos. 339-1-40; 339-1-24

EXHIBIT B

INVESTMENT CERTIFICATION

I _____, the _____ of _____ (the "Company"), do hereby certify for and on behalf of the Company and not in my personal capacity in connection with Section 4.03 of the Fee in Lieu of Tax and Special Source Credit Agreement dated as of _____, 2023 between Newberry County, South Carolina and the Company (the "Agreement"), as follows:

(1) The total investment made by the Company and any Sponsor Affiliates in the Project during the calendar year ending December 31, 20__ was \$ _____.

(2) The cumulative total investment made by the Company and any Sponsor Affiliates in the Project from the period beginning _____, 20__ (that is, the beginning date of the Investment Period) and ending December 31, 20__, is \$ _____.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this ____ day of _____, 20__.

WEST FRASER, INC.

Name: _____

Its: _____

EXHIBIT C

FORM OF JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of Tax and Special Source Credit Agreement, effective _____, 2023 (“*Fee Agreement*”), between Newberry County, South Carolina (“*County*”) and West Fraser, Inc. (“*Sponsor*”).

1. Joinder to Fee Agreement.

[_____], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, 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 as if it were a Sponsor [except the following: _____]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following _____]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project; and (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.

2. Capitalized Terms.

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate.

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Company in the Project in the County.

4. Governing Law.

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

5. Notice.

Notices under Section 10.1 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.

Date

Name of Entity

By: _____

Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

NEWBERRY COUNTY, SOUTH CAROLINA

By: _____

Its: _____

EXHIBIT D

DESCRIPTION OF CLAW BACK

The Company's failure to meet the Contract Minimum Investment Requirement within the Investment Period shall result in a retroactive and proactive pro-rata claw back of the Special Source Revenue Credits. The retroactive payment due to the County shall be calculated as follows:

Repayment Amount = Total Received Special Source Revenue Credits x Claw Back Percentage

Claw Back Percentage = 100% - Overall Achievement Percentage

Overall Achievement Percentage = (Investment Achievement Percentage + Jobs Achievement Percentage) / 2

Investment Achievement Percentage = Actual Investment Achieved / Contract Minimum Investment Requirement [may not exceed 100%]

Jobs Achievement Percentage = Actual New, Full-Time Jobs Created / Contract Minimum Jobs Requirement [may not exceed 100%]

In calculating each achievement percentage, only the investment made or new jobs achieved up to the Contract Minimum Investment Requirement (\$17,000,000) and the Contract Minimum Jobs Requirement (30 jobs) will be counted.

For example, and by way of example only, if the County granted \$500,000 in Special Source Revenue Credits, and \$8,500,000 had been invested at the Project and 21 jobs had been created by the end of the Investment Period, the Repayment Amount would be calculated as follows:

$$\text{Jobs Achievement Percentage} = 21/30 = 70\%$$

$$\text{Investment Achievement Percentage} = 8,500,000/\$17,000,000 = 50\%$$

$$\text{Overall Achievement Percentage} = (70\% + 50\%)/2 = 60\%$$

$$\text{Claw Back Percentage} = 100\% - 60\% = 40\%$$

$$\text{Repayment Amount} = \$500,000 \times 40\% = \$200,000$$

The Company shall pay any amounts described in or calculated pursuant to this Exhibit D within 30 days of receipt of a written statement from the County. If not timely paid by the Company, the amount due is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation described in this Exhibit D survives termination of this Fee Agreement.



Newberry County
 Administration
 1309 College Street
 Newberry, SC 29108
 803-321-2100

Agenda Briefing

Prepared By: Debbie S. Cromer	Title: Finance Director
Department: Accommodations Tax	Division:
Date Prepared: 8-9-2023	Meeting Date: 7-20-2023
Legal Review	Date:
Budget Review:	Date:
Approved for Consideration:	Date:
Request / County Council	
Subject: State Accommodations Tax Advisory Committee (ATAC) Funding Recommendations	

The Accommodations Tax Committee recommends that Council approve the following funding awards:

PROMOTIONAL RELATED

Funds available = **\$29,387.24**

Requests were received as follows:

Capital City Lake Murray	\$10,000
Newberry County Chamber of Commerce	\$17,000
<u>Prosperity Business Association</u>	<u>\$27,800</u>
Total:	\$54,800

ATAC Recommendation to Council:

Capital City Lake Murray	\$10,000.00	(34%)
Newberry County Chamber of Commerce	\$13,224.26	(45%)
<u>Prosperity Business Association</u>	<u>\$ 6,162.98</u>	<u>(21%)</u>
Total:	\$29,387.24	

TOURISM RELATED:

Funds available = **\$158,208.25**

Requests were received as follows:

Keep Newberry County Beautiful (Fair)	\$ 25,000
Little Mountain Reunion	\$ 17,000
Newberry County AG Festival (new)	\$ 5,000
Newberry Historical Society	\$ 6,500
Newberry County Law Enforcement	\$ 5,000
Newberry Opera House	\$ 50,000
Newberry Visitors Center	\$ 17,000
Prosperity Hoppin	\$ 10,000
<u>The Newberry Museum</u>	<u>\$ 15,000</u>
Total:	\$150,500

ATAC Recommendation to Council:

Keep Newberry County Beautiful Fair	\$ 20,000
Little Mountain Reunion	\$ 17,000
Newberry County AG Festival (new)	\$ 5,000
Newberry County Historical Society	\$ 9,000
Newberry County Law Enforcement	\$ 5,000
Newberry Opera House	\$ 50,000
Newberry Visitors Center	\$ 17,000
Prosperity Hoppin	\$ 10,000
<u>The Museum</u>	<u>\$ 17,500</u>
Total:	\$150,500

Note: the remaining balance of **\$7,708.25** will be carried forward for FY23-24.

FIDUCIARY:

Are Funds allocated in the department's current fiscal year budget?	X	Yes		No
If no, is a budget amendment necessary?		Yes	X	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: N/A

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA (s) OF LEGAL EXPOSURE: N/A

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS:

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



Agenda Item Briefing

Subject: Request for Proposal: 2023-16 Construction Management Services 2022 CPST Projects

Prepared By: Crystal Waldrop

Title: Purchasing Director

Department/Division: Purchasing

Date Prepared: August 10, 2023

Legal Review: _____

Date: Click or tap to enter a date.

Finance Review: _____

Date: Click or tap to enter a date.

Administrator Review: _____

Date: Click or tap to enter a date.

Requested meeting: Committee County Council

Meeting Date: August 16, 2023

FIDUCIARY: Funding will be provided by the 2022 CPST referendum. The amount for each project will be determined by the overall construction amount and the amount of manpower needed to oversee each project.

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

If NO, is a budget amendment necessary? Yes No

STAFF'S RECOMMENDED ACTION: The evaluation committee recommends the highest ranked firm: Clayton Construction Company.

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: There are two options to fund the projects on the 2022 CPST referendum: bonding, which will allow the projects to commence once the funds become available or pay as you go. The pay as you go method dictates that the projects are done in order as listed in the referendum. The first project on the ballot can begin once funds are collected equal to the referendum cost for that project. Once it is completed, sufficient funds must be collected for the next project before it may begin. This process will continue until the last project is completed. No cost overruns are funded until the last project has been completed.

SUMMARY DISCUSSION: The evaluation committee conducted phone interviews with the top two ranked firms: CPM and Clayton Construction Company.

ADDITIONAL COMMENTS FOR CONSIDERATION: The construction management services will oversee the following projects listed on the CPST referendum: County Public Safety Complex, Town of Prosperity Parks, Detention Center Cell Block, Town of Little Mountain Reunion Park, Downtown Amphitheater, Old Gallman High School renovations, Town of Pomaria Community Center, and the Town of Whitmire City Gym.

ATTACHMENTS: Individual committee members' evaluations and final evaluation form. Brehmer and Waldrop re-evaluated the two firms that were interviewed.

2023-16 Construction Management Services		Committee Evaluation-----after interviews were conducted	
Firm	Bartley	Brehmer	Waldrop
CPM	90	88	90
Clayton Construction Company	95	91	93
Doll Construction Managers	80	91	76
LCK	90	87	81
LMG	85	82	87

Evaluation Committee Recommends Clayton Construction Company for the CPST construction management services

*Bartley did not re-evaluate the two firms that were interviewed, as he originally scored Clayton as his highest ranked firm.

2023-16 Construction Management Services 2022 CPST

After interviews

Vendor	Qualifications of Firm (25)	Qualification of Project Team (25)	Approach to Scope of Work (10)	Previous Experience (15)	Fee Schedule (25)	Total (100)
CPM	23	20	10	15	20	88
Clayton Construction Company	24	23	10	15	19	91

Committee Member:

Jane P. Sullivan

8/10/23

2023-16 Construction Management Services 2022 CPST

Re-evaluation after interviews were conducted

Vendor	Qualifications of Firm (25)	Qualifications of Project Team (25)	Approach to Scope of Work (10)	Previous Experience (15)	Fee Schedule (25)	Total (100)
CPM	25	17	10	15	23	90
Clayton Construction Company	24	25	10	13	21	93

Committee Member Crystal Waldrop 8/10/23

ORIGINAL SCORE SHEET

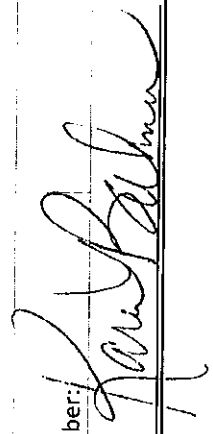
2023-16 Construction Management Services					
Committee Evaluation					
Firm	Bartley	Brehmer	Waldrop		
CPM	90	94	93		92
Clayton Construction Company	95	86	89		90
Doll Construction Managers	80	91	76		82
LCK	90	87	81		86
LMG	85	82	87		85

2023-16 Construction Management Services 2022 CPST						
Vendor	Qualifications of Firm (25)	Qualification of Project Team (25)	Approach to Scope of Work (10)	Previous Experience (15)	Fee Schedule (25)	Total (100)
CPM	20	25	10	15	20	90
Clayton Construction Company	25	25	10	15	20	95
Doll Construction Managers	20	20	10	10	20	80
LCK	25	25	10	15	15	90
LMG	25	25	10	15	20	85
Committee Member:						
<i>Kevin M. Barry</i>						

2023-16 Construction Management Services 2022 CPST

Vendor	Qualifications of Firm (25)	Qualification of Project Team (25)	Approach to Scope of Work (10)	Previous Experience (15)	Fee Schedule (25)	Total (100)
CPM	25	24	10	15	20	94
Clayton Construction Company	24	21	10	12	19	86
Doll Construction Managers	23	22	10	13	23	91
LCK	23	24	10	12	18	87
LMG	24	20	5	12	21	82

Committee Member:



2023-16 Construction Management Services 2022 CPST

Vendor	Qualifications of Firm (25)	Qualification of Project Team (25)	Approach to Scope of Work (10)	Previous Experience (15)	Fee Schedule (25)	Total (100)
CPM	24	23	10	13	23	93
Clayton Construction Company	24	20	10	13	22	89
Doll Construction Managers	18	15	10	10	23	76
LCK	22	22	9	10	18	81
LMG	24	25	8	10	20	87

Committee Member:

Crystal Waldrop



Agenda Briefing

Prepared By: Mac Bartley	Title: Facilities Operations Manager
Department: Newberry Courthouse	Division:
Date Prepared: 8-11-2023	Meeting Date: 8-16-2023
Legal Review	Date:
Budget Review:	Date:
Approved for Consideration:	Date:
Request / County Council	
Subject: Consideration of a motion authorizing the purchase of a replacement HVAC chiller for the Newberry County Courthouse	

Staff respectfully requests that County Council approve a proposal from Hoffman Mechanical to replace the commercial chiller which cools the Newberry County Courthouse. The amount of proposal is \$152,493.00, which will become a firm price once the proposal is accepted by the staff if authorized by council.

This would be an emergency purchase from HMS – which is the mechanical contractor presently under contract to perform maintenance and service work on the current chiller at the courthouse.

The reason that staff recommends this emergency purchase is the importance of the courthouse and the extensive amount of time that it would take from purchase to installation if a standard bid / order / purchase process was used, which could be as long as 10 months. If the current chiller were to unexpectedly become non-operational, the county would be required to relocate the entire court system and courthouse staff to another building capable of accommodating them.

Presently, the courthouse has a chiller and boiler system to maintain a comfortable temperature throughout the building and to maintain the humidity level in the building to prevent mold and mildew growth. Generally speaking, commercial chillers like the one at the courthouse have a life expectancy of 15-20 years. The current unit is over 20 years old – having been installed back in March 2002 at the time of a major renovation of the building.

Currently, we are experiencing refrigerant leaks on certain circuits along with compressors, valves, fan motors and circuit board failures. When a circuit leaks, you must use reclaimed R-22 refrigerant (if available) and pay a premium price. Some parts are still available. However, with this unit being 20+ years old, some will soon be obsolete.

A new unit will have EPA approved refrigerant and a higher SEER rating which will lead to lower electric costs.

The unit in the proposal is currently on hold and has a ship date of late January 2024. It could be installed as early as February or March of next year, which would be an ideal time of year because the winter months are the period of time when the chiller is least needed and used.

If approved by council, HMS will provide the labor and materials to replace the new chiller. They will shut down the unit and disconnect the electrical, disconnect the inlet and outlet piping, remove the chiller using a boom truck, and haul it away for proper disposal. Using a boom, HMS will mount the new chiller on the existing concrete pad, modify and then reconnect the inlet and outlet piping, line the piping with heat trace, reconnect the electrical, and perform start-up and operation testing.

Work will be done during normal business hours (Monday-Friday, 8 a.m. - 5 p.m.).

FIDUCIARY:

Are Funds allocated in the department's current fiscal year budget?		Yes	X	No
If no, is a budget amendment necessary?		Yes	X	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: If approved by council, this expenditure will be charged to Capital Repairs Building, and it is possible that a budget amendment may be necessary later during the 2023-2024 fiscal year. Staff will monitor the county's budgetary performance and keep council apprised.

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA (s) OF LEGAL EXPOSURE: N/A

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Please find attached

Courthouse Chiller Replacement

- Newberry County Courthouse has a Chiller and Boiler system to maintain the comfort level throughout the entire building. It also maintains the buildings humidity level to prevent mold and mildew growth.
- The current unit was installed in March 2002.
- The chiller is used heavily in the spring and summer months and even till the end of the year.
- It is a 100 Ton capacity air-cooled unit.
- It is also in excess of 21 years old and in the end stages of life cycle.
- Air cooled chillers have a life expectancy of 15 to 20 years.
- Currently we are experiencing refrigerant leaks on certain circuits along with compressor, valves, fan motors, and circuit board failures.
- It requires R-22 as the refrigerant.
- On January 1, 2020 the US EPA banned the production and Import of R-22 refrigerant.
- When a circuit leaks you must use reclaimed refrigerant (if available) and pay a premium price for it.
- Some Parts are currently available , but with this unit being 20+ years old we will soon see parts as obsolete.
- A new unit will have EPA approved refrigerant and a higher SEER rating which will lead lower electric cost.
- Rental Taps will also be installed during the changeout.
- Manufacturers have lead times for delivery of a unit ranging from 40 to 52 weeks.
- We currently have a unit on hold that has a ship date of late January 2024 with an install date in February and March of 2024. This will be during the least time period the chiller is required.
- The current setup does not have rental taps to hook up a portable chiller. If the Chiller unexpectedly becomes non operational current staff along with the Court system will have to be moved to another location.
- Without the ability to maintain humidity levels some portions of the building will be a prime environment for mold growth.
- Because of the importance of the Courthouse Building and the Staff we recommend the County proceed with the proposal from Hoffman Mechanical as soon as possible.



HOFFMAN MECHANICAL SOLUTIONS

AL Mech Contractor #22137, GA Mech Contractor #CN211360, NC Mech Lic #28275, SC Mech Contractor #M113953,
SC Gen Contractor #G120314, TN Mech License #71199, VA Contractor License #2705164248

P.O. Box 77319 Greensboro, NC 27417

24 Hour Service 855-761-HVAC(4822) Fax 855-327-4830

QUOTE

Customer: Newberry Courthouse

Date: 5/25/2023

Site Name: Newberry Courthouse

Quote #: Q-GGC-012023-03

Site Address: 1226 College Street, Newberry, SC 29108

Quote Contact: Mac Bartley

Ref. WO Number: _____

Equipment Tag: Chiller 1

Model #: 30GTN100E70812

Manufacturer: Carrier

Serial #: 030F31881

Scope of work to be performed:

HMS to provide the labor and materials to replace the chiller at the Newberry Courthouse. HMS will shut down the unit, and disconnect the electrical. HMS will disconnect the inlet and outlet piping. HMS will remove the chiller using a boom truck, and haul away for proper disposal. HMS using a boom will mount new chiller on existing concrete pad. HMS will modify the piping and reconnect the inlet and outlet piping. HMS will line the piping with heat trace. HMS will reconnect the electrical and perform start up and operational testing.

Work to be done during normal business hours, M-F, 8:00 AM - 5:00 PM

The Hoffman Mechanical Solutions, Inc. price for this work is: **\$ 152,493.00**

Proposal expires if not accepted by Customer within thirty (30) days from the date of the proposal. Prices are at all times subject to escalation. Hoffman Mechanical Solutions, Inc.'s normal working hours are from 8am to 5pm, Monday through Friday. Any work requested to be performed after normal working hours are subject to additional costs. On-site safety training and drug testing are not included in quote unless noted. Parts only quotes do not include taxes or freight unless noted. They will be added to the invoice.

Payment terms shall be net 30 days. An additional 3.0% convenience fee will be added to the total amount due for any payments received via credit card.

As a condition of this Proposal, all work performed by Hoffman Mechanical Solutions, Inc. shall be only in accordance with the Terms and Conditions, attached and incorporated herein by reference. In the event any terms of any other purchase order or project contract documents conflict with or add to the attached Terms and Conditions, those other terms are rejected by Hoffman Mechanical Solutions, Inc. Furthermore, this Proposal is contingent upon final approval of the Hoffman Credit Department and may be rescinded in the Company's sole discretion.

For North Carolina Only – See NCDOR Form E-589CI for Capital Improvements.

Quote Prepared By: Gregory Coggins

Authorized By: _____

Customer P.O. _____

Date: _____

E-mail signed quote and purchase order documents to Service@Hoffmech.com. Include quote number.

Cost Comparison of Replaced HVAC units in 2023			
Location	Date Replaced	Tonnage Size	Cost per ton
Silverstreet Rescue	May-23	4	\$ 2,137.50
Detention Center	May-23	10	\$ 1,695.00
Magistrates Office	Jul-23	20	\$ 1,945.00
Average Cost per Ton for HVAC replacement in 2023			\$ 1,925.83
Cost per Ton for New Chiller from Hoffman Mechanical			\$ 1,524.93
The cost proposal per ton for the new chiller from Hoffman Mechanical is well within the price comparison of Commercial HVAC units replaced in 2023			
Hoffman currently has the maintenance agreement for the Chiller and Boiler			



**Newberry County
Administration**
1309 College Street
Newberry, SC 29108
803-321-2100

Agenda Briefing

Prepared By: Katie Werts	Title: Zoning Administrator
Department: Planning & Zoning	Division: N/A
Date Prepared: August 11, 2023	Meeting Date: August 16, 2023
Legal Review:	Date:
Budget Review: N/A	Date: N/A
Approved for Consideration: Joint Planning Commission	Date: July 18, 2023
Request Consideration by Committee / County Council: County Council	
Subject: MA01-07-18-23 Rezoning	

STAFF'S RECOMMENDED ACTION:

This ordinance is for the request to rezone two (2) properties totaling twelve and twenty-nine hundredths (12.29) acres located at 8152 Highway 121, Newberry, from LC – Limited Commercial to RG- General Residential. The property owner has asked to rezone to RG- General Commercial from LC-Limited Commercial for his personal residence. The future land use map of the comprehensive plan has identified this property to be within the economic development overlay. The rezoning of RG-General Residential does fit within the definition of the economic development overlay. The Planning staff does recommend this rezoning. The Joint Planning Commission voted to approve the rezoning also.

FIDUCIARY:

Are Funds allocated in the department's current fiscal year budget?		Yes		No
If no, is a budget amendment necessary?		Yes		No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

N/A

COUNTY ATTORNEY'S OFFICE FEEDBACK/POSSIBLE AREA (S) OF LEGAL EXPOSURE:

SUMMARY DISCUSSION:

This ordinance is for the request to rezone two (2) properties totaling twelve and twenty-nine hundredths (12.29) acres located at 8152 Highway 121, Newberry, from LC – Limited Commercial to RG- General Residential. The property owner has asked to rezone to RG- General Commercial from LC-Limited Commercial for his personal residence.

ADDITIONAL COMMENTS FOR CONSIDERATION:

None

ATTACHMENTS:

Planning Commission Staff Report

Ordinance No.

STATE OF SOUTH CAROLINA)
NEWBERRY COUNTY)

ORDINANCE NO. 08-01-23

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 TWO (2) REAL ESTATE PARCELS TOTALING TWELVE AND TWENTY-NINE HUNDREDTHS (12.29) ACRES DESIGNATED AS TMS NO. 290-16 AND TMS NO. 290-12 FROM LC-LIMITED COMMERCIAL TO RG-GENERAL 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 two (2) real estate parcels totaling twelve and twenty-nine hundredths (12.29) acres located at 8152 Highway 121, Newberry, to RG-General Residential from LC-Limited Commercial. Tax Map No. 290-16 and Tax Map No. 290-12 are both currently undeveloped. 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 RG-General Residential.

WHEREAS, the Newberry County Joint Planning Commission, in case number MA01-07-18-23, 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 properties located at 8152 Highway 121., Newberry.

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. 290-16 and Tax Map No. 290-12, totaling twelve and twenty-nine hundredths (12.29) acres located at 8152 Highway 121., 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, RG-General Residential from LC-Limited Commercial:

- A. That the proposed map amendment does 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 Tax Map No. 290-16 and Tax Map No. 290-12, totaling twelve and twenty-nine hundredths (12.29) 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:

Andrew Wigger, Clerk to Council

1st reading: _____
2nd reading: _____
Public Hearing: _____
3rd reading: _____

Reviewed and approved as to form:

Attorney

County Administrator



**Newberry County
Administration**

1309 College Street
Newberry, SC 29108
803-321-2100

Agenda Briefing

Prepared By: Katie Werts	Title: Zoning Administrator
Department: Planning & Zoning	Division: N/A
Date Prepared: August 11, 2023	Meeting Date: August 16, 2023
Legal Review:	Date:
Budget Review: N/A	Date: N/A
Approved for Consideration: Joint Planning Commission	Date: July 18, 2023
Request Consideration by Committee / County Council: County Council	
Subject: MA03-07-18-23 Rezoning	

STAFF'S RECOMMENDED ACTION:

This ordinance is for the request to rezone one (1) property that is currently split zoned totaling two (2) acres located at 2467 Seibert Road, Prosperity, from LC – Limited Commercial to R2- Rural for the owner’s residence. The future land use map of the comprehensive plan has identified this property to be within the rural development overlay. The rezoning of R2-Rural does fit within the definition of the rural development overlay. The Planning staff does recommend this rezoning. The Joint Planning Commission voted to approve the rezoning also.

FIDUCIARY:

Are Funds allocated in the department's current fiscal year budget?		Yes		No
If no, is a budget amendment necessary?		Yes		No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

N/A

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA (s) OF LEGAL EXPOSURE:

SUMMARY DISCUSSION:

This ordinance is for the request to rezone one (1) property that is currently split zoned totaling two (2) acres located at 2467 Seibert Road, Prosperity, from LC – Limited Commercial to R2- Rural.

ADDITIONAL COMMENTS FOR CONSIDERATION:

None

ATTACHMENTS:

Planning Commission Staff Report

Ordinance No.

STATE OF SOUTH CAROLINA)
)
NEWBERRY COUNTY)

ORDINANCE NO. 08-02-23

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 TWO (2) ACRES DESIGNATED AS TMS NO. 530-13 FROM LC-LIMITED COMMERCIAL 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 two (2) acres located at 2467 Seibert Road, Prosperity, to R2-Rural from LC-Limited Commercial. Tax Map No. 530-13 is currently undeveloped. The Comprehensive Plan shows the future land use for this area to be within the rural 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 MA03-07-18-23, 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 at 2467 Seibert 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. 530-13, totaling two (2) acres located at 2467 Seibert 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 LC-Limited Commercial:

A. That the proposed map amendment does 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 Tax Map No. 530-13, totaling two (2) 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:

Andrew Wigger, Clerk to Council

1st reading: _____
2nd reading: _____
Public Hearing: _____
3rd reading: _____

Reviewed and approved as to form:

Attorney

County Administrator

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)

**STATEMENT OF CONDITIONS FOR
ACCEPTANCE OF ROADS
(Construction Bond)**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned Scott Lvery,
by, Gray Construction its BUSINESS LEADER (hereinafter, the "Principal"), is held
firmly bound unto the County of Newberry, South Carolina, in the sum of Ten Thousand, Eight
Hundred Seventy Five Dollars and NO Cents (\$10,875.00). The undersigned does bind itself, its
heirs and assigns, firmly by these presents:

THE CONDITIONS OF ITS OBLIGATIONS are such that whereas the Principal made
application to the Newberry County Planning & Zoning Department for approval of a roadway
project known as Project Sunrise, located within the planning jurisdiction of Newberry County,
South Carolina; and

WHEREAS, Newberry County does require a bond for roadways in the amount of
Eighteen Thousand Seven Hundred Fifty Dollars and NO Cents (18,750.00) per ¼ mile of
roadway; and

WHEREAS, since the square yardage upon completion of this project is approximately
58% of the yardage calculated for ¼ mile roads, the County agrees to prorate the bond amount
to a lesser amount; and

WHEREAS, the Newberry County Public Works Department has inspected and approved
said streets for maintenance purposes; and

WHEREAS, it appears to the County of Newberry that the costs of said road
maintenance results in a surety amount required by the County to be Ten Thousand, Eight
Hundred Seventy Five Dollars and No Cents (\$10,875.00); and

WHEREAS, the County of Newberry has agreed to the presentation of a Construction Bond in the above amount for the benefit of Newberry County, as security for the road maintenance as herein set forth; and

WHEREAS, in the event that the Principal shall not comply with the terms and conditions as herein set out, then the same shall be considered in default, and the County of Newberry may call upon its representative to make demand on the collateral pledged by the Construction Bond in the manner therein provided for.

NOW THEREFORE, if the Principal shall well and truly and with reasonable diligence and promptness cause the said improvements herein above mentioned to be made, no claim, suit, or action shall be brought hereunder after the expiration of two (2) years following the completion date of March 14, 2023, upon which the Principal is released from this bond. The conditions in the Agreement are in addition to and do not limit conditions as provided in the Construction Bond executed by _____, for the undersigned Entity on 7-21-2023

IN WITNESS WHEREOF, the Principal has its name and seal affixed hereto, this the 21 day of July, 2023.

(COMPANY NAME)

WITNESSES:

EMMA FISH - Emma fish
Kennedy Stone Kennedy Stone

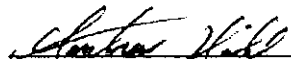
(COMPANY NAME)
By: _____
[Name of person signing]
Its Authorized Agent

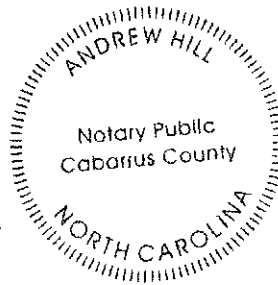
STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBERG)
)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Scott Way, by Gray Construction, its Business Unit Leader, sign, seal and deliver the within written instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.


Witness

SWORN to be before me this
24th day of July, 2023


NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 6-27-2026



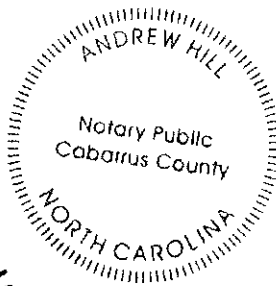
STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBERG)
)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Scott Wray, by Gray Construction, its Business Unit Leader, sign, seal and deliver the within written instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.

Kennedy Stone
Witness

SWORN to be before me this
24th day of July, 2023

Andrew Hill
NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 6-27-2026



STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 08-03-23

**AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF PROSPERITY
PARK AVENUE INTO THE NEWBERRY COUNTY PUBLIC ROAD SYSTEM**

WHEREAS, Gray Construction made application to the Newberry County Planning and Zoning Department for approval of a roadway project known as Project Sunrise, located within the planning jurisdiction of Newberry County, South Carolina; and

WHEREAS, the Newberry County Public Works Department has inspected said road for maintenance purposes and confirmed that it is constructed to the standards set forth in the Newberry County Road Ordinance and codified in Chapter 91 of the Newberry County Code of Ordinances; and

WHEREAS, Gray Construction has provided a surety bond of \$10,875.00, which the County Council of the County of Newberry has accepted, in a form and amount that conforms with the requirements set forth in the Newberry County Road Ordinance and codified in Chapter 91, Section 20 of the Newberry County Code of Ordinances, to Newberry County as security for the maintenance of the road.

NOW, THEREFORE BE IT ORDAINED by the County Council of the County of Newberry, in Council duly assembled this 20th day of September 2023 that:

1. Prosperity Park Avenue, as described on plat recorded in Plat Book D191 at page 4 in the office of the Clerk of Court for Newberry County, is accepted into the Newberry County Public Road System as a public road of the County of Newberry.
2. The County of Newberry is hereby responsible for the maintenance and upkeep of Prosperity Park Avenue.
3. Prosperity Park Avenue is hereby under the jurisdiction of the County of Newberry for purposes of law enforcement and regulation of use, including the issuance of encroachment permits for installation of utility easements in the road right of way.

NEWBERRY COUNTY COUNCIL

(SEAL)

BY: _____
Todd Johnson, Chairman

ATTEST:

Andrew Wigger, Clerk to Council

Approved as to form:

Joanie Winters, Interim County Attorney

Jeff Shacker, County Administrator

1st Reading: August 16, 2023
2nd Reading: September 6, 2023
Public Hearing: September 6, 2023
3rd Reading: September 20, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)

STATEMENT OF CONDITIONS FOR
ACCEPTANCE OF ROADS
(Construction Bond)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned John P Johnson
by Michael Basil, LLC, its Member (hereinafter, the "Principal"), is held
firmly bound unto the County of Newberry, South Carolina, in the sum of Forty Five Thousand,
Five Hundred Thirty Nine Dollars and NO Cents (\$45,539.00). The undersigned does bind itself,
its heirs and assigns, firmly by these presents:

THE CONDITIONS OF ITS OBLIGATIONS are such that whereas the Principal made
application to the Newberry County Planning & Zoning Department for approval of a
subdivision plat known as Autumn Cay, located within the planning jurisdiction of Newberry
County, South Carolina; and

WHEREAS, the lots contained in said proposed subdivision are to be offered for sale
upon the representation that the improvements, as shown on said plat, are to be constructed in
such a manner that the County of Newberry, South Carolina, may accept the same for
maintenance, and upon further representation that streets will be provided and extended to
each lot in said subdivision; and

WHEREAS, the Newberry County Public Works Department may accept said streets for
maintenance purposes, provided that the Principal stabilizes the same in accordance with the
minimum design standards of Newberry County; and

WHEREAS, it appears to the County of Newberry that the costs of said road
maintenance results in a surety amount required by the County to be Forty Five Thousand, Five
Hundred Thirty Nine Dollars and No Cents (\$45,539.00); and

WHEREAS, the Newberry County Planning and Zoning Department approved the plans for a subdivision known as "Autumn Cay", _____, subject to the aforesaid work being completed by the above-bound Principal, and

WHEREAS, the County of Newberry has agreed to allow and does hereby allow the plat of the aforesaid subdivision to be recorded, conditioned upon the execution of this obligation and the presentation of a Construction Bond in the above amount for the benefit of Newberry County, as security for the road maintenance as herein set forth; and

WHEREAS, in the event that the Principal shall not comply with the terms and conditions as herein set out, then the same shall be considered in default, and the County of Newberry may call upon its representative to make demand on the collateral pledged by the Construction Bond in the manner therein provided for.

NOW THEREFORE, if the Principal shall well and truly and with reasonable diligence and promptness cause the said improvements herein above mentioned to be made, no claim, suit, or action shall be brought hereunder after the expiration of two (2) years following the date upon which the Principal is released from this bond. The conditions in the Agreement are in addition to and do not limit conditions as provided in the Construction Bond executed by

John P Johnson _____, for the undersigned Entity on July 20, 2023

Completion date for this project was October 31, 2022.

Signature Page to Follow

IN WITNESS WHEREOF, the Principal has its name and seal affixed hereto, this the 20 day of July, 2023.

WITNESSES:

Harriet H. Zwart
[Signature]

Michael Basil, LLC

(COMPANY NAME)

By: John P Johnson

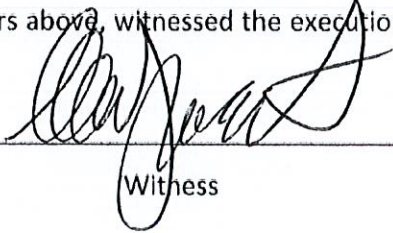
[Name of person signing]

Its Authorized Agent

[Signature]

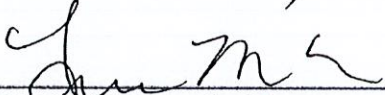
STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Michael Basil, LLC, by John P Johnson, its Member, sign, seal and deliver the within written instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.



Witness

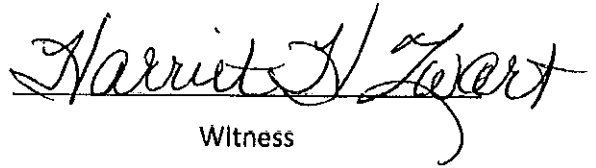
SWORN to be before me this
21 day of July, 2023



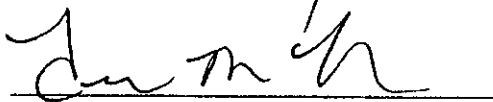
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5-17-2026

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Michael Basil, LLC, by John P Johnson, its Member, sign, seal and deliver the within written instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.


Witness

SWORN to be before me this
21 day of July, 2023



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5-17-2026

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 08-04-23

**AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF ROADS WITHIN
AUTUMN’S CAY SUBDIVISION – AUTUMN DRIVE, GOLDEN WAY,
HARVEST LANE, AND RED LEAF COURT – INTO THE NEWBERRY
COUNTY PUBLIC ROAD SYSTEM**

WHEREAS, Michael Basil, LLC. made application to the Newberry County Planning and Zoning Department for approval of a subdivision known as Autumn’s Cay, located within the planning jurisdiction of Newberry County, South Carolina; and

WHEREAS, the Newberry County Public Works Department has inspected the roads within Autumn’s Cay subdivision for maintenance purposes and confirmed that they are constructed to the standards set forth in the Newberry County Road Ordinance and codified in Chapter 91 of the Newberry County Code of Ordinances; and

WHEREAS, Michael Basil, LLC. has provided a surety bond of \$45,539.00, which the County Council of the County of Newberry has accepted, in a form and amount that conforms with the requirements set forth in the Newberry County Road Ordinance and codified in Chapter 91, Section 20 of the Newberry County Code of Ordinances, to Newberry County as security for the maintenance of the road.

NOW, THEREFORE BE IT ORDAINED by the County Council of the County of Newberry, in Council duly assembled this 20th day of September 2023 that:

1. Autumn Drive, Golden Way, Harvest Lane, and Red Leaf Court, as described on plat recorded in Plat Book B39 at page 3 in the office of the Clerk of Court for Newberry County, is accepted into the Newberry County Public Road System as a public road of the County of Newberry.
2. The County of Newberry is hereby responsible for the maintenance and upkeep of Autumn Drive, Golden Way, Harvest Lane, and Red Leaf Court.
3. Autumn Drive, Golden Way, Harvest Lane, and Red Leaf Court are hereby under the jurisdiction of the County of Newberry for purposes of law enforcement and regulation of use, including the issuance of encroachment permits for installation of utility easements in the road rights of way.

NEWBERRY COUNTY COUNCIL

(SEAL)

BY: _____
Todd Johnson, Chairman

ATTEST:

Andrew Wigger, Clerk to Council

Approved as to form:

Joanie Winters, Interim County Attorney

Jeff Shacker, County Administrator

1st Reading: August 16, 2023
2nd Reading: September 6, 2023
Public Hearing: September 6, 2023
3rd Reading: September 20, 2023