



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

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

1. Adoption of Consent Agenda
 - a. Newberry County Council Meeting Minutes – August 16, 2023.
 - b. Newberry County Council Finance Committee Meeting Minutes – August 21, 2023.

2. Additions, Deletions & Adoption of the Agenda.

3. Public Appearances:
 - a. Newberry County Auditor Donna Lominack – Setting of 2023-24 Tax Levy
 - b. Mauldin and Jenkins – Presentation of FY2021-22 Audit

4. A Proclamation recognizing September 15-October 15, 2023 as *National Hispanic Heritage Month in Newberry County*.

5. A Proclamation recognizing September 18-22, 2023 as *Newberry County Adult Education and Family Literacy Week*.

6. 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. Public Hearing
 - b. Third Reading

7. 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. Third Reading

8. 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. Second Reading

9. 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. Second Reading

10. Ordinance No. 08-03-2023. An Ordinance authorizing the acceptance of Prosperity Park Avenue into the Newberry County Public Road System.
 - a. Public Hearing
 - b. Second Reading

11. 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. Public Hearing
 - b. Second Reading

12. Appointments

- a. Newberry County Joint Planning Commission (District 6 Representative)
- b. Newberry County Joint Planning Commission (Town of Prosperity Representative)

13. Public Comments

14. Executive Session

- a. Contractual Matter(s):
 - i. Discussion of matters related to a Multi-County Park Agreement with Greenwood County pursuant to SC Code of Laws Section 30-4-70(a)(2).
 - ii. Discussion of matters related to contract for construction management services pursuant to SC Code of Laws Section 30-4-70(a)(2).
- b. Legal Matter(s):
 - i. Discussion of matters related to the Board of Zoning Appeals pursuant to SC Code of Laws Section 30-4-70(a)(2)

15. Ordinance No. 09-01-2023. An Ordinance authorizing the creation of a Capital Projects Account; authorizing an amendment to the Master Agreement governing the Greenwood-Newberry Industrial Park; authorizing the county to retain certain Fee-In-Lieu of Tax revenues to fund the Capital Projects Account; and other related matters.

- a. First Reading

16. County Council may take additional action(s) following executive session on matters discussed during executive session.

17. Comments/Requests from County Administrator

18. Comments/Requests from Council

19. Future meetings

- a. Executive Committee Meeting – September 11, 2023, at 6:00 p.m.
- b. County Council Meeting – September 20, 2023, at 6:00 p.m.

- c. Economic Development Committee Meeting – September 25, 2023, at 6:00 p.m.

20. Adjournment

**NEWBERRY COUNTY COUNCIL
MINUTES
August 16, 2023**

Newberry County Council met on Wednesday, August 16, 2023, at 6:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, S.C., for a regular scheduled meeting.

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

PRESENT: Todd Johnson, Chairman
Les Hipp, Vice Chairman
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
Katie Werts, Director of Planning and Development Services
Crystal Waldrop, Director of Purchasing
Mac Bartley, Facilities Operations Manager
Michael Pisano, Director of Public Works
Andrew Wigger, Clerk to Council/PIO

MEDIA: Orion Griffin, The Newberry Observer

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

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

1. Adoption of Consent Agenda

a. Newberry County Council Meeting Minutes – July 19, 2023

Mr. Hipp made the motion to accept the minutes as submitted, which was seconded by Mr. Shealy, and was approved 6-0.

2. Additions, Deletions & Adoption of the Agenda

Mr. Sease made a motion to adopt the agenda as presented, which was seconded by Mr. Reeder, and was approved 6-0.

3. Recognitions

a. Employee Service

- | | | |
|------------------|----------|--------------|
| i. Thomas Miller | 10 years | Sheriff |
| ii. Doug Harmon | 25 years | Public Works |

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

Mr. Johnson said the people who work for Newberry County make it an incredible place and they are blessed and thankful for everyone.

4. Presentations

a. Program and Activities Update – Capital City/Lake Murray Country

- Ms. Miriam Atria, President/CEO of Capital City/Lake Murray Country, gave an update to Newberry County Council on Capital City/Lake Murray County Regional Tourism Board and invited council to their annual meeting on Monday, August 28, 2023.
- Highlights Ms. Atria gave on Newberry County include the 16th annual Black Bass World Championship event at Dreher Island State Park (the first time this event was held in the United States); Bassmaster Elite; Bassmaster Magazine named Lake Murray the top lake in the Southeast and the fourth best lake in the United States.
- Ms. Atria said when they have tournaments, they want the competitors to eat here and stay here.

- Ms. Atria also addressed short-term rentals with data they received, she said that in our region for the last year, revenue from these rentals was \$37 million. She said that they do not pay hotel tax dollars, and there are groups looking into that. For Newberry County, she said there were 10,357 demand nights and that she could share that information with Newberry County Council. From that, she said \$2.6 million in revenue was generated in Newberry County.
- Ms. Atria also thanked Newberry County Council for the Accommodation Tax funds they have received.
- Mr. Johnson said it is truly amazing what they do at Capital City/Lake Murray Country. He also mentioned that he, along with Mr. Shacker and Rep. Joe White, have an upcoming conference call with the Airbnb South Carolina representative.

b. Program and Activities Update – Newberry Opera House Foundation

- Anne Pickney Smith, Executive Director of the Newberry Opera House, Susan Wessinger, Chair of the Newberry Opera House Foundation, and Keith Avery, Vice Chair of the Newberry Opera House Foundation, spoke on the economic and societal impact of the Newberry Opera House.
- The study referenced was conducted by the USC Aiken Pace Center in June 2023.
- The study found that a total of 696 jobs in Newberry County are supported each year due to the NOH operations, 496 directly, 129 indirectly, 71 induced.
- The study found that the total increase in labor income due to NOH operations in local economy is \$17.96 million annually. The NOH activities generate a total output benefit of \$48.99 million. The value-added effect of NOH operations total \$23.52 million.
- The study further shows that the Newberry Opera House contributes a total of \$3.3 million to tax revenue, with Newberry County collecting \$96,870.
- The study further found that the NOH enhances the quality of life in Newberry County.
- Ms. Smith told council that as part of the 25th year, the stage and theater have been updated to 2023 standards.

- Mr. Reeder said he appreciates everything the NOH does for all the citizens of Newberry County.
- Mr. Johnson said that he doesn't think anyone could doubt the impact of the NOH, but to see the data is eye-opening.
- Mr. Sease thanked NOH representatives for the data so he can show constituents the benefits of the NOH.

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

a. Second Reading

Mr. Shealy made the motion to accept the second reading, which was seconded by Mr. Reeder. Due to a relationship with the Pistol Club, Mr. Sease abstained from the vote. The second reading was approved 5-0.

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

Mr. Johnson declared the public hearing open. With no one signing up to or standing up to speak, Mr. Johnson declared the public hearing closed.

b. Second Reading

Mr. Hipp made the motion to accept the second reading, which was seconded by Mr. Reeder. The second reading was approved 6-0.

7. Presentation of Comprehensive Plan Elements (Community Facilities, Cultural Resources, Housing, Population, and Transportation) and consideration of a motion to approve.

- Cheryl Matheny, Planning Consultant with The Matheny-Burns Group, presented the elements for Population, Housing, Cultural, Community Facilities, and Transportation for the Newberry County Comprehensive Plan.
- Mr. Hipp mentioned under the Population Element having the time frames as “on-going” and said when they get to the final approval of this document, his vote of approval will hinge on having an implementation, annual review, and clearly defined objectives so council can know that they are making progress, not just working on progress.
- Ms. Matheny said they are happy to add anything they would want to add, and they will provide an implementation plan.
- Mr. Johnson informed the public that they are approving the elements in part, starting with these five elements. They will then move to the next segment; only when the vote on the entire project will the plan become active.

Mr. Hipp made a motion to approve the elements Community Facilities, Cultural Resources, Housing, Population, and Transportation, Mr. Reeder gave a second and the motion was approved 6-0.

8. Consideration of a motion to approve State Accommodation Tax (State A-Tax) funding recommendations of the Newberry County Accommodations Tax Advisory Committee (ATAC).

- Ernie Shealy, ATAC Chairman, presented the recommendation from the committee as follows:
 - Promotional Related had a total of \$29,387.24 available and \$54,800 requested. The funds distributed as follows: Capital City Lake Murray \$10,000, Newberry County Chamber of Commerce \$13,224.26, Prosperity Business Association \$6,162.98.

- Tourism Related had a total of \$158,208.25 available with \$150,500 requested. The funds were distributed as follows: Keep Newberry County Beautiful Fair \$20,000, Little Mountain Reunion \$17,000, Newberry County AG Festival \$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, The Museum \$17,500.
- The remaining balance of \$7,708.25 will be carried forward for FY 23-24.
- Mr. Johnson thanked Mr. Shealy and the entire committee for their hard work.

Mr. Sease made a motion to approve the recommendation from ATAC, with Mr. Hipp giving the second. The motion was approved 6-0.

9. Consideration and approval of proposals for construction management services for Capital Project Sales Tax (CPST) projects (RFP# 2023-16).

- Ms. Waldrop presented the recommendation from the evaluation committee for the Construction Management Services 2022 CPST Projects as the highest ranked firm Clayton Construction Company.
- 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 Town of Whitmire City Gym. Totaling \$27,490,570.
- Ms. Waldrop said they received five bids, and the committee (made up of Ms. Waldrop, Ms. Brehmer, and Mr. Bartley) ranked each firm individually and then conducted phone interviews with the top two firms. After the phone interviews, she said Ms. Brehmer and herself re-evaluated their rankings and Mr. Bartley did not as his top firm was already Clayton Construction Company.
- Ms. Waldrop said the committee had extensive discussions about choosing the firm for these projects and felt confident their recommendation of Clayton Construction Company will serve the county best for these CPST projects.

- Mr. Hipp asked which CPST projects were omitted from this list. Ms. Waldrop said the Newberry Recreation Complex additions, upgrades to Cannon's Creek Wastewater Treatment Plant, IT improvements at the Newberry County Courthouse, and roof replacement and HVAC improvements at the Newberry Museum.
- Mr. Johnson asked about the revisiting of the bids. Ms. Waldrop said that was a normal course of practice on occasion, she said they felt after the phone interviews that Clayton Construction would be best suited for the projects they had, and Clayton Construction had more resources in-house to do the projects.

Mr. Hipp made a motion to accept the recommendation from the committee and award the project to Clayton Construction, which was seconded by Mr. Shealy. The motion passed 6-0.

10. Consideration of a motion authorizing the purchase of a replacement commercial chiller for the Newberry County Courthouse.

- Mr. Pisano explained that the chiller at the courthouse was installed in 2002 and since 2021 they have put \$56,000 into the unit.
- The cost for this unit is \$152,493 (from Hoffman Mechanical Solutions). Mr. Pisano said the lead time for this is 40-52 weeks and they are concerned the current unit will fail before they get a new one.
- Mr. Shacker said this is not a budgeted expenditure and that staff proposes they move forward and jump on this chiller available with the expenditure around mid-year and book it to the Capital Line Item in the Facilities Division and monitor how the budget progresses. Mr. Shacker added that if it necessitates an adjustment, they will include it with other mid-year adjustments.
- Mr. Hipp asked how this compares to a standard procurement process, price wise. Mr. Bartley said they replaced three commercial HVAC units this year in the county and took the average per ton cost and it came around \$1,900 per ton, and this chiller came out to \$1,500 per ton. He added that they already have a contract with Hoffman Mechanical Solutions to do the maintenance.

- Mr. Johnson asked Mr. Shacker if they were asking this as an emergency purchase. Mr. Shacker answered in the affirmative and said one of the challenges they ran into was tracking down pricing for commercial chillers.
- Mr. Johnson said that for all the reasons said, and the technology in the courthouse, how they could not do without air conditioning in the courthouse and taking care of employees.

Mr. Sease made a motion to authorize the emergency purchase of the chiller, which was seconded by Mr. Shealy. The motion was approved 6-0.

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.

- Mr. Shacker said he's been in regular conversations with Mr. Jacobs and that he is making progress moving to his new location, but there have been delays. Mr. Shacker said Mr. Jacobs asked to have extended use of the building to get his personal property out of the building. Mr. Shacker requested council approve the extension to give Mr. Jacobs until the end of November to make sure they don't have to come back for another extension.
- Mr. Shacker said this will not impede the CPST project (Amphitheater).

Mr. Scurry made a motion to authorize the extension, Mr. Hipp gave the second. The motion passed 6-0.

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 6-11-16 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

- Ms. Werts said the property owner requested the rezoning for his primary residents, which is not allowed under LC.
- Ms. Werts said no one spoke for or against the rezoning during the Joint Planning Commission.
- Ms. Werts said that the owner does not look to expand or build a mobile home park.

Mr. Reeder made a motion to approve the first reading, Mr. Sease gave the second. The motion was approved 6-0.

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) areas designated as TMS No. 530-13 from LC-Limited Commercial to R2-Rural.

a. First Reading

- Ms. Werts said this property is split zoned; half is R2-Rural the other half is LC-Limited Commercial. The owner would like to put per permanent residence on the property.

Mr. Sease made a motion to approve the first reading with Mr. Hipp giving the second. The motion was approved 6-0.

14. Consideration of a motion to accept a surety bond for the roadway project known as Project Sunrise and named Prosperity Park Avenue.

- Mr. Pisano said this road is part of the Daeyoung roadway. The road was completed in March 2023. The road was inspected during construction and passed inspection. The amount of the bond is \$10,875, Mr. Pisano said this is roughly 58% of the normal \$18,750 that the county requires for a quarter mile or roadway. Mr.

Pisano said they did that because they broke this down by square yardage, it's a wide roadway but short.

Mr. Sease made a motion to accept the bond; Mr. Hipp gave the second. The motion passed 6-0.

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

Mr. Hipp made a motion to approve the first reading, Mr. Shealy gave the second. The motion was approved 6-0.

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 Leave Court.

- Mr. Pisano said this subdivision is off State Park Road. He said the roads were paved in the early 2000s, and the project stalled, and the roads did deteriorate over that period.
- Mr. Pisano said he met with the developer, marked out the portion of the roadway needing repair. The developer paid for the patching on a number of areas and did a full overlay of the road.
- Mr. Pisano said the amount of this bond is \$45,539, adjusted due to the length of the roads combined.

Mr. Scurry made a motion to accept the bond; Mr. Shealy gave the second. The motion was approved 6-0.

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

a. First Reading

Mr. Reeder made the motion to approve the first reading; Mr. Hipp gave the second. The motion was approved 6-0.

18. Appointments:

- a. Mr. Sease made a motion to appoint Mr. Anthony Stanley to the Joint Planning Commission as the Town of Peak's representative, Mr. Shealy seconded the motion. The motion was approved 6-0.
- b. Mr. Sease made a motion to appoint Mr. Mike Meetze to the Joint Planning Commission as the Town of Pomaria's representative; Mr. Shealy seconded the motion. The motion was approved 6-0.
- c. Mr. Hipp made a motion to appoint Mr. Scott Cain, with the approval of Mr. Johnson as Mr. Cain lives in Mr. Johnson's district, to the Newberry County Water and Sewer Authority (this appointment must meet the approval of the Governor). Mr. Shealy gave a second and the motion was approved 6-0.

19. Public Comments:

- a. Mr. Jim Heilman said that the agenda packets have numbers associated with the Newberry County Council Agenda and Meeting Minutes, but after that, page numbers are not always used with the various documents. Mr. Heilman said this makes it hard to reference a "page" in a document to be sure all pages are present.
- b. Mr. Heilman then spoke of the approval process of making contract assignments, picking a bidder, Mr. Heilman said the lowest bid was accepted. However, he said in the case of the construction removal process, council voted to go with the top-ranked firm, adding that one of the things it said was ranking was more important than price.
 1. Mr. Johnson said while they normally don't go back and forth (during public comments) he wanted to explain the decision to pick a top-ranked firm. He said for certain services, like architectural services, they cannot ask the price, and the council was called out by an individual for doing so.

- c. Mr. Zachary Bowers spoke on short-term rental properties and wanted to speak as an advocate for property rights and restrictions on short-term rentals. Mr. Bowers urged council to consider nuanced collaborative solutions, including a system of registration or educational initiative for property owners on best practices. He asked for solutions that not only address concerns, but also respect the rights of property owners.

20. Executive Session:

Not needed

21. Comments/Requests from County Administrator:

- Mr. Shacker updated council on a few special initiatives. Regarding the Comprehensive Plan, Mr. Shacker said that they have three more elements that will go before the Planning Commission and five more that will be presented to council. He said the discussion has been had to have a work session to go over the future land use map and present property maintenance and nuisance codes. He said one concept would be holding this work session at 4 p.m. before the September 6 Newberry County Council meeting.
- Mr. Shacker said the county has kicked-off the Lake Greenwood Master Plan project, with Ms. Werts representing Newberry County at the meeting.
- Mr. Shacker said that regarding the Whitmire Gary Street/Subertown Road sidewalk project, the county has fallen back to the second engineering proposal because the first that was rated and ranked was not in budget. Mr. Shacker said they have asked the County Transportation Committee to consider funding the local match.
- Mr. Shacker said Mr. Eric Nieto (I.T. Director) has made progress with the “.gov” domain for email and the website. The county is now at a point to make that move. Mr. Shacker said “.net” would continue to work, but when someone replies to an email they would see “.gov.”
- Mr. Shacker said the CPST engineering cost estimated process will get moved along quickly now that the county has a construction

management company that will help evaluate the engineering proposals the county already has for projects.

- Mr. Shacker said that Mr. Rick Farmer (Director of Newberry County Economic Development) received word that the \$600,000 grant request for the Locate S.C. Site Enhancement grant, for the extension of Mawsons Way, was approved. Mr. Shacker said that amount is twice as much as the average award.
- Mr. Shacker said that Ms. Jessie Long (Director of Parks and Recreation) has several projects including the Kids in Parks initiative, the Spartan Race coming to Newberry (Nov. 18-19) which will utilize Lynch's Woods again and the Recreation Trail Program grant (\$44,398) to make improvements in Lynch's Woods has been approved.
- Mr. Shacker said as a reminder the county has a Republican Primary on September 5, 2023, for District 2, with two candidates.
- Mr. Shacker said there will be a First Responder Monument Dedication in front of Community Hall on Sept. 10 at 3 p.m.

22. Comments/Requests from Council

- Mr. Reeder said he appreciated everyone attending the meeting, adding that it makes a meeting more meaningful to see people out to listen and have something to say.
- Mr. Sease also thanked everyone for coming to the meeting.
- Mr. Hipp said it had been a long and fruitful meeting. He said the Comprehensive Plan is something he is passionate about because there are a lot of people in the community with input that got together in meetings and the document is not created by one or two people, but a lot of people, and they gave their time to create that document. He said council needs to make sure that their time is recognized by following through with recommendations of the Comprehensive Plan.
- All members of council agreed to a Land Use Work Session on Sept. 6 at 4 p.m.

23. Future Meetings:

- a. Finance Committee Meeting – August 21, 2023, at 6 p.m.**

- b. Land Use Work Session – September 6, 2023, at 4 p.m.
- c. County Council Meeting – September 6, 2023, at 6 p.m.
- d. Executive Committee Meeting – September 20, 2023, at 6 p.m.
- e. Economic Development Committee Meeting – September 20, 2023, at 6 p.m.

24. Adjournment:

There being no further business, Mr. Shealy made a motion to adjourn; seconded by Mr. Hipp. The motion was approved 6-0.

Mr. Johnson declared the meeting adjourned at 7:48 p.m.

NEWBERRY COUNTY COUNCIL

Todd Johnson, Chairman

Andrew Wigger, Clerk to Court

Minutes Approved: _____

**NEWBERRY COUNTY COUNCIL FINANCE COMMITTEE
MINUTES
August 21, 2023**

The Newberry County Council Finance Committee met on Monday, August 21, 2023, at 6:08 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: Karl Sease, Committee Chair
Les Hipp, Committee Member
Johnny Mack Scurry, Committee Member
Jeff Shacker, County Administrator
Debbie Cromer, Finance Director
Karen Brehmer, Deputy County Administrator
Donna Lominack, County Auditor
Karen Lindler Smith, County Treasurer
Ben Chapman, NCSO
Andrew Wigger, Clerk to Council/PIO

Mr. Hipp called the meeting to order at 6:08 p.m. and determined a quorum to be present.

1. Election of Committee Chairman

- As Vice Chair of Newberry County Council, Mr. Hipp opened the floor to nominations for a new chair of the Finance Committee. Mr. Scurry nominated Mr. Sease, which was seconded by Mr. Hipp.
- Without object, the vote to name Mr. Sease Committee Chair was approved 3-0.
- Mr. Hipp turned the meeting over to Mr. Sease.

2. Additions, Deletions & Adoption of the Agenda

Mr. Scurry made a motion to approve the agenda as presented, Mr. Hipp seconded, and the vote passed 3-0.

3. Presentation of the audit for June 30, 2022

- Mr. David Usefara, Manager with Mauldin and Jenkins, presented the results of the June 30, 2022, audit via Zoom.
- Mr. Usefara said that Newberry County is responsible for the financial statements and Mauldin and Jenkins' job is to express an opinion on the statements.
- Mr. Usefara said for the year end audit of 2022 for Newberry County, for the governmental activities and the aggregate fund activities, they are giving an unmodified, clean opinion.
- However, Mr. Usefara said they did note that the county had three component units being the library, the hospital, and Westview Behavioral Health Services, because the library audit isn't done, he said they had a choice to wait for the library audit or to give a qualified opinion for the component units. He said a qualified opinion is an area of uncertainty where they cannot say component units are presented fairly. He said in the past, the component units were not even on the statements.
- Mr. Usefara gave highlights on the General Fund, \$18.7 million in total assets in 2022 with \$17 million being in cash and \$1.3 million being in receivables. He said this was offset by \$5.3 million in total liabilities with \$1.3 being regular accounts payable, \$2.8 million amounts owned to other governments related to property taxes, and \$700,000 in unavailable revenue.
- Mr. Usefara said that left a \$13.3 million fund balance in the General Fund, \$2 million is restricted and \$11.3 million unrestricted.
- Mr. Usefara said GASB 54 gives criteria for what a Special Revenue Fund is, and in the past, the county has reported the Airport Fund as Special Revenue Fund. Under GASB 54, the Airport Fund does not qualify as a Special Revenue Fund. He said what the county will need to move the Airport Fund into the General Fund.
- Mr. Usefara said the Airport Fund led to a finding of \$108,000 to move from the Airport Fund to the General Fund.
- Mr. Usefara said there was another instance of GASB 84 that was supposed to be implemented in the prior year and wasn't. This relates to the accounting of

fiduciary funds (Magistrate, Clerk to Court and Newberry County Schools Fund). He said GASB 84 makes it so there is now a statement of fiduciary net position. He said this is a balance sheet and shows cash and property tax receivables listed through the assets. With GASB 84, these will also show balance of net position.

- Mr. Usefara said this year there was a \$360,000 net position, that was related to Magistrate, Clerk to Court monies that they hold and cannot release until certain conditions are met. Previously, he said, it would be considered a liability because money is owed elsewhere, but because certain things must happen so that money can be released, it is required to be net position as opposed to a liability. He said that is something that should have been implemented last year but had to be implemented this year.
- Mr. Usefara said that there were some other findings, looking at last year, that stated this has been a finding since 1995. The General Ledger and Segregation of Duties finding. He said he understood how difficult it is to implement proper Segregation of Duties with staffing issues.
- Mr. Usefara said they left a recommendation for something that could lead to future findings. He said during the audit, depreciation is calculated using a manual spreadsheet and ideally, the software will calculate the depreciation.
- Mr. Usefara said that Ms. Cromer has been an absolute pleasure to work with throughout this process, helping them a great deal and worked hard throughout.
- Mr. Hipp asked Mr. Usefara to go through the GASB changes and identify what the impact on the county and operations.
 - Mr. Usefara addressed GASB 96, this will be for subscription-based IT. Any kind of IT subscription being paid for monthly will possibly have to change how it is accounted for. Currently, they are recorded as expenditures, and they will be recorded as liabilities instead, if it becomes material.

4. Public Comments

There were no public comments.

5. Comments from Committee Members

- Mr. Hipp said there were a couple of items he wanted to look into before the presentation at the general meeting. He said one item of note, while the county still has roughly six months in reserve in the general fund, if you look at the trend, it is not going in the best direction. He said they had some monies that came in that were obligated in a previous year, or funds received in a subsequent year that impacted past years. Mr. Hipp said they are going to be looking into specific numbers for those three years.
 - Ms. Cromer said that the trend is not looking how it is, due to the CPST project not being reimbursed, \$1.6 million received from Commerce, and the \$600,000, and the county just received some of that in the current year.
 - Mr. Hipp said he would like an explanation for what could be considered a negative trend, for the public.
 - Mr. Shacker said staff is working on a spreadsheet to show the changes in fund balance and recoveries the county has received.

6. Adjournment

Mr. Scurry made a motion to adjourn, seconded by Mr. Hipp. The motion was approved 3-0.

Mr. Sease declared the meeting adjourned at 6:42.

NEWBERRY COUNTY COUNCIL

Karl Sease, Committee Chairman

Andrew Wigger, Clerk to Council

Minutes Approved: _____

COUNTY OF NEWBERRY)
)
STATE OF SOUTH CAROLINA)

**PROCLAMATION
HISPANIC HERITAGE MONTH**

WHEREAS, the County of Newberry encourages and promotes strong and inclusive communities that recognize and celebrate efforts to bring people together for a greater good; and,

WHEREAS, the County of Newberry commemorate the strong and visible roots of Hispanic and Latino heritage in the national, regional, and local landscape of the nation; and,

WHEREAS, September 15th to October 15th is National Hispanic Heritage Month and in which many federal agencies, such as the Library of Congress, National Park Service and Smithsonian Institution, join in paying tribute to the generations of Hispanic Americans who have positively influenced and enriched our nation and society; and,

WHEREAS, the date September 15th is significant because it is the anniversary of independence for the Latin American countries of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and additionally Mexico and Chile celebrate their independence days on September 16th and 18th respectively; and,

WHEREAS, Newberry County has many families representing different Hispanic Cultures and traditions from Puerto Rico, Mexico, Guatemala, Honduras, Nicaragua, El Salvador, Chile, and other South American countries; and,

WHEREAS, National Hispanic Heritage Month has been celebrated since 1989; and

WHEREAS, the Hispanic community in Newberry County makes significant contributions to the cultural, educational, and economic vitality of Newberry County.

NOW, THEREFORE, BE IT PROCLAIMED by the County Council of the County of Newberry that September 15th through October 15, 2023 shall be *National Hispanic Heritage Month in Newberry County* in recognition of the many important and positive contributions of Hispanic culture to our nation, state, and county.

NEWBERRY COUNTY COUNCIL

SEAL

By _____
Todd Johnson, Chairman

ATTEST:

Andrew Wigger, Clerk of Council

COUNTY OF NEWBERRY)
)
STATE OF SOUTH CAROLINA)

**PROCLAMATION
NATIONAL ADULT EDUCATION AND
FAMILY LITERACY WEEK**

WHEREAS, during the 2021-2022 academic year, 5,754 high school students in South Carolina dropped out of school, a rate of 2.4 percent; and

WHEREAS, Adult Education programs contribute to solving these challenges by helping Americans move along the continuum in their educational journey to achieve basic skills and get prepared for career and college; and

WHEREAS, Adult Education and family literacy programs assist adults who are parents or family members in obtaining the education and skills that are necessary to become full partners in the educational development of their children and lead to sustainable improvements in the economic opportunities for their family; and

WHEREAS, South Carolina celebrates Adult Education and Family Literacy Week as a proud participant in the national Educate & Elevate Campaign which helps our citizens learn about all of their Adult Education options to attain their professional and personal goals; and

WHEREAS, in the Palmetto State an estimated 796,387 citizens ages 16-74 are below the literacy level, and an estimated 450,966 South Carolinians over the age of 18 do not have a high school diploma or equivalent; and

WHEREAS, in 2022-23, South Carolina adult education programs served 21,009 adult learners: with 2,157 earning a high school equivalency diploma (GED) and 831 earning a high school diploma; and

WHEREAS, in 2022-23 Newberry Adult and Continuing Education programs served 289 adult learners; with 28 earning a high school equivalency diploma (GED) and 25 earning a South Carolina High School Diploma.

NOW, THEREFORE, BE IT PROCLAIMED by the County Council of the County of Newberry that September 18-22, 2023, shall be *Newberry County Adult Education and Family Literacy Week* throughout the county and encourage all Citizens of Newberry County to work together to increase literacy among the residents of the Palmetto State.

NEWBERRY COUNTY COUNCIL

SEAL

By _____
Todd Johnson, Chairman

ATTEST:

Andrew Wigger, Clerk of Council

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

**Newberry County
Administration**

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



Agenda Item Briefing

Subject: Project Viking

Prepared By: Rick Farmer

Department/Division: Economic Development

Legal Review: _____

Finance Review: _____

Administrator Review: _____

Requested meeting: Committee County Council

Title: Director

Date Prepared 8/9/23

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Meeting Date: Wednesday, August 16, 2023

FIDUCIARY:

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

If NO, is a budget amendment necessary? Yes No

STAFF’S RECOMMENDED ACTION: Staff recommends Council consider second reading of Project Viking. Additionally, staff recommends Council hold the required public hearing. The ad for the public hearing was published on 7/26/23, so we have met the legal posting requirement. Project Viking is a \$17 million expansion at a local industry. Council has agreed to offer the company a 20-year fee-in-lieu-of-tax (FILOT) agreement, and an associated 10-year Special Source Revenue Credit of 20% for Years 1 through 10.

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: There are only indirect costs associated with this, in the form of legal fees. The ordinance under consideration requires the company to reimburse the county for up to \$10,000 in legal and administrative costs. No county grants are being offered, but the State of SC has offered a \$100,000 grant and the County will be a pass-through agency.

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Resolution #10-23, an inducement resolution; Ordinance #07-01-23, the ordinance authorizing the fee-in-lieu-of-tax agreement.

**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

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**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; Invalidity; 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:

Jobs Achievement Percentage = 21/30 = 70%

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

Overall Achievement Percentage = (70% + 50%)/2 = 60%

Claw Back Percentage = 100% - 60% = 40%

Repayment Amount = \$500,000 x 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.

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



**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.

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.

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)

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)

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

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR NEWBERRY COUNTY
ORDINANCE NO. _____

AUTHORIZING THE CREATION OF A CAPITAL PROJECTS ACCOUNT; AUTHORIZING AN AMENDMENT TO THE MASTER AGREEMENT GOVERNING THE GREENWOOD-NEWBERRY INDUSTRIAL PARK; AUTHORIZING THE COUNTY TO RETAIN CERTAIN FEE-IN-LIEU OF TAX REVENUES IN ORDER TO FUND THE CAPITAL PROJECTS ACCOUNT; AND OTHER RELATED MATTERS.

WHEREAS, Newberry County (“Newberry”), a public body corporate and politic under the laws of the State of South Carolina, is authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, the “Act”), to (i) create multi-county industrial parks in partnership with counties having contiguous borders with Newberry; and (ii) include the property of eligible companies within such multi-county industrial parks, which inclusion under the terms of the Act makes such property exempt from *ad valorem* property taxes, and changes the character of the annual receipts from such property to fees-in-lieu of ad valorem property taxes in an amount equivalent to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multi-county industrial parks (“Fee Payments”);

WHEREAS, Newberry and Greenwood County, South Carolina (“Greenwood”) have previously developed a multi-county industrial park (“Park”) and entered into the Master Agreement Governing the Greenwood-Newberry Industrial Park, dated December 31, 2012, which governs the operation of the Park (“Park Agreement”);

WHEREAS, pursuant to the Act and Park Agreement, Newberry is authorized to specify the manner in which Fee Payments (i) received by Newberry from property located in Greenwood or (ii) retained by Newberry from property located in Newberry are distributed to each of the taxing entities within Newberry;

WHEREAS, Newberry desires to create a fund in which Newberry’s portion of certain fee-in-lieu of ad valorem property tax payments from properties in the Park (“Revenues”) will be deposited (the “Capital Projects Account”);

WHEREAS, Newberry desires to amend the Park Agreement to modify the method of distributing the Revenues as authorized by the Park Agreement; and

WHEREAS, the Newberry County Council, the governing body of Newberry (the “County Council”) shall be authorized to use the Capital Projects Account, in its sole discretion, for the purposes set forth in the Amendment (as defined below).

NOW THEREFORE, THE COUNTY COUNCIL OF NEWBERRY COUNTY, SOUTH CAROLINA, ORDAINS:

Section 1. *Creation of the Capital Projects Account.* County Council hereby creates a Capital Projects Account in which to deposit certain Revenues in accordance with the Amendment. The Capital Projects Account shall be maintained at a bank chosen by the County Council. Newberry may use the Capital Projects Account, in its discretion, to: (i) acquire, construct, maintain, repair, renovate, or upfit capital projects in Newberry, including, but not limited to parks and recreational facilities, airports, roads and

bridges, public safety facilities and equipment, public works facilities and equipment, speculative buildings, multicounty park infrastructure, water and sewer facilities, solid waste disposal facilities and equipment, and any other Newberry-owned real property, (ii) make expenditures necessary for any economic development project in Newberry or provide grants to any business entity that intends to locate an economic development project in Newberry or (iii) make any other expenditure in the discretion of Newberry County Council. ((i) – (iii) are collectively “Capital Projects”). Capital Projects shall be identified by resolution of Newberry County Council and may include those that are part of Newberry’s long-term capital improvement plan, or those that Newberry determines will have a direct benefit to Newberry’s residents. Funds in the Capital Improvement Account may pay all of the costs of a Capital Project or may be used to supplement the costs of a Capital Project

Section 2. Amendment Authorized. Council authorizes an amendment to the Park Agreement, as set forth more fully in the Amendment to Master Agreement Governing the Greenwood-Newberry Industrial Park attached as Exhibit A (“Amendment”), to ratify and approve the retention of Revenues by Newberry. The County Council Chair, or the Vice Chair in the event the Chair is absent, and the Clerk to the County Council are hereby authorized to execute the Amendment. The Chair is further directed to deliver the Amendment to Greenwood.

Section 3. Further Assurances. The County Administrator (and his designated appointees) is authorized and directed, in the name of and on behalf of Newberry, to take whatever further actions and execute whatever further documents as the County Administrator (and his designated appointees) deems to be reasonably necessary and prudent to effect the intent of this Ordinance.

Section 4. Savings Clause. The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 5. General Repealer. Any prior ordinance, resolution or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

This Ordinance is effective after its third reading and public hearing.

[Signature Page Follows]

NEWBERRY COUNTY, SOUTH CAROLINA

Chairman, Newberry County Council

(SEAL)
ATTEST:

Clerk to Newberry County Council

First Reading:
Second Reading:
Public Hearing:
Third Reading:

EXHIBIT A
FORM OF AMENDMENT