



**NEWBERRY COUNTY COUNCIL
COUNTY COUNCIL AGENDA
June 21, 2023
6:00 P.M.**

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

1. Adoption of Consent Agenda
 - a. Newberry County Council Meeting Minutes – June 7, 2023
 - b. Economic Development Committee Minutes – June 12, 2023

2. Additions, Deletions & Adoption of the Agenda

3. Ordinance No. 05-06-2023. An Ordinance to authorize the County of Newberry, by Newberry County Council, to sell real estate located on Pine Hill Circle between TMS No. 340-1-10 and TMS No. 340-1-15, and described on Exhibit “A”, which is incorporated within the ordinance by reference, to the successful bidder, upon such terms and conditions as described in the request for bid.
 - a. Public Hearing
 - b. Third Reading

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

5. Appointments

6. Public Comments

7. Executive Session

a. Personnel Matter(s):

- i. Discussion of matters related to the compensation of employees within departments headed by appointed and elected officials of the county pursuant to SC Code of Laws Section 30-4-70(a)(1)

b. Contractual Matter(s):

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

c. Economic Development Matter(s):

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

8. County Council may take action following executive session on or more personnel and contractual matters discussed during executive session.

9. Resolution No. 07-23. An Inducement Resolution committing to negotiate a Fee-In-Lieu of *Ad Valorem* Taxes agreement between Newberry County and *Project Iron*; identifying the project; and other matters related thereto.

10. Comments/Requests from County Administrator

11. Comments/Requests from Council

12. Future meetings

- a. Public Safety Committee Meeting – July 10, 2023 at 6:00 p.m.
- b. County Council Meeting – July 19, 2023 at 6:00 p.m.
- c. SCAC Annual Conference / Institute of Government – July 31 – August 3, 2023
- d. Finance Committee Meeting – August 14, 2023 at 6:00 p.m.
- e. County Council Meeting – August 16, 2023 at 6:00 p.m.

13. Adjournment

**NEWBERRY COUNTY COUNCIL
MINUTES
June 7, 2023**

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

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

PRESENT: Todd Johnson, Chairman
Mary Arrowood, Council Member
Karl Sease, Council Member
Robert N. Shealy, Council Member
Johnny Mack Scurry, Council Member
Travis Reeder, Council Member
Les Hipp, Vice Chairman
Jeff Shacker, County Administrator
Karen Brehmer, Deputy County Administrator
Joanie Winters, Interim County Attorney
Debbie S. Cromer, Finance Director

MEDIA: Andrew Wigger, Newberry Observer

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

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

- 1. Adoption of Consent Agenda**
 - a. Budget Work Session Minutes – April 26, 2023**
 - b. Newberry County Council Meeting Minutes – May 3, 2023**
 - c. Budget Work Session Minutes – May 10, 2023**
 - d. Newberry County Council Meeting Minutes – May 17, 2023**

Mr. Sease stated on the April 26, 2023 minutes, I (Mr. Sease) was omitted as being in attendance. Mr. Sease made a motion to accept all the minutes as presented and to make the correction on April 26, 2023 minutes seconded by Mr. Shealy. The vote was unanimous.

2. Additions, Deletions & Adoption of the Agenda

Mr. Shealy made a motion to adopt the agenda as presented; seconded by Mr. Reeder. The vote was unanimously approved.

3. Employee Recognition

a. Stacy Guy	10 years	Administration
b. Georgia Attaway	25 years	Assessors
c. Carol Lively	30 years	Clerk of Court
d. Jenna Martin	10 years	Probate
e. Dalton Reynolds	5 years	Sheriff
f. Daniel Claytor	10 years	Sheriff
g. Rebecca Graham	10 years	Sheriff
h. Christopher Wells	10 years	Sheriff
i. Wesley Boland	30 years	Sheriff
j. Pete Johnson	30 years	Sheriff

Mr. Johnson stated it is always a pleasure to honor the employees of Newberry County. They are indeed the backbone of the county. Mr. Johnson thanked each of them for their years of services.

4. Consideration and approval of a bid for road repairs to Edgewater Drive, Edgewater Court, Lakepointe Drive, Lakeside Drive and Oak Hill Road - Crystal Waldrop, Director of Purchasing

Ms. Waldrop stated the County solicited bids for the above road repairs. The County received two bids for this project: 1) Satterfield Construction in the amount of \$329,299 and 2) Armstrong Contractors in the amount of \$391,280.

Staff recommends the Council accept the low bid of \$329,299. The CTC will fund this project.

Mr. Shealy made a motion to accept low bid; seconded by Mr. Reeder. The motion passed unanimously.

- 5. Ordinance No. 04-05-2023. Ordinance to provide for the issuance and sale of general obligation bonds of Newberry County, South Carolina not exceeding \$2,000,000 in aggregate principal amount, to prescribe the purposes for which the proceeds of said bonds shall be expended, to provide for the payment of said bonds, and other matters relating thereto.**

a. Public Hearing

Mr. Johnson asked if anyone was here to speak pro or con. There being no one signed up to speak. Mr. Johnson declared the public hearing closed.

b. Third Reading

Mr. Hipp made a motion this be third reading; seconded by Mr. Sease. The motion was unanimously approved.

- 6. Ordinance No. 05-07-2023. 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, establishing zoning classification and districts as to rezone two (2) real estate parcels totaling three and ninety-two hundredths (3.92) acres designated as TMS No. 339-3-6-1 and TMS No. 339-3-6-2 from GS-General Commercial to RSM-Single-Family Residential.**

a. Public Hearing

Mr. Johnson declared the public hearing open.

Mr. Shealy recused himself and left the meeting. A copy of the recusal statement is attached as part of the official minutes.

Mr. Johnson declared the public hearing closed.

b. Third Reading

Mr. Hipp made a motion this be third reading; seconded by Mr. Scurry. The motion was unanimously approved.

- 7. ORDINANCE #05-08-2023. An Ordinance to provide appropriations for the fiscal year beginning July 1, 2023, and ending June 30, 2024, for the Newberry County Budget for County Ordinary purposes and for other county purposes for which the County may levy a tax and receive revenues, to provide for the levy of taxes on all taxable personal and real property in Newberry County for all county purposes, including sufficient tax to pay the principal and interest on outstanding indebtedness of Newberry County payable during said fiscal year; to provide matters relating to Newberry County; and to provide for the expenditure of said taxes and other revenues received by the County during said fiscal year, and to provide for borrowing in anticipation of tax collections by the issuance of one or more tax anticipation notes, if necessary**

a. Public Hearing

Mr. Johnson declared this to be a public hearing. There being no comments from the public, Mr. Johnson declared the public hearing closed.

b. Third and Final Reading

Mrs. Arrowood moved to approve third reading; seconded by Mr. Scurry.

Council members thanked the administration, staff, elected officials, and department heads for working together.

Mr. Hipp stated the documents for the budget have been on the website for the public to review since first reading.

Mr. Johnson recused himself from voting on any part of the budget that pertained to WTH and Nicholson Business.

Mr. Johnson called for the vote. The vote was unanimous.

8. ORDINANCE #05-09-23: An Ordinance to provide appropriations for the fiscal year beginning July 1, 2023, and ending June 30, 2024, for Newberry County Library, Piedmont Technical College and the Newberry Agency for Disabilities and Special Needs, to provide for the levy of taxes on all taxable personal and real estate properties in Newberry County for said purposes, to provide for the expenditure of said taxes and other revenues received by the county during said fiscal year for said purposes.

a. Public Hearing

Mr. Johnson declared the public hearing open. There being no one to speak, the public hearing was declared closed.

b. Third Reading

Mr. Shealy moved to approve the third reading; seconded by Ms. Arrowood. Motion passed unanimously.

9. Ordinance No. 05-10-2023. An Ordinance to postpone the implementation of revised values resulting from reassessment and equalization.

a. Public Hearing

Mr. Johnson declared the public hearing open. There being no one to speak at the public hearing, Mr. Johnson declared the public hearing closed.

b. Third Reading

Mr. Shealy made a motion to postpone reassessment; Ms. Arrowood seconded.

Mr. Hipp stated he would be voting against this delay because years ago Council postponed reassessment. Mr. Hipp also stated during his campaign; he had promised his constituents that he would never vote to postpone reassessment.

Ms. Arrowood stated that she would vote to postpone reassessment for one year and not two years.

Mr. Johnson stated he also remembered the memories of the prior postponement and driving Council members to the meeting at the Opera House. However, we want to get the numbers correct.

Mr. Reeder also stated he wanted the numbers to be correct and for the staff to be in place to move forward.

Mr. Johnson called for the vote. The motion passed 6-1 with Mr. Hipp voting against.

10. APPOINTMENTS

a. GLEAMNS Board of Directors

Mr. Shacker read the following names to be appointed to the GLEAMNS Board.

1. Dr. Mamie Shippy – Public Sector
2. Council Member Travis Reeder – Low-Income Sector
3. Carlton Kinard – Private Sector

Mr. Hipp made a motion to appoint the above members to the GLEAMNS Committee; seconded by Mr. Shealy. The motion was unanimous.

b. Newberry County Disabilities and Special Needs Board of Directors (Council Districts 3,4,6, and 7)

Mr. Sease made a motion to appoint Pam Bush from District 3; seconded by Mr. Shealy. The motion was unanimous.

Mr. Reeder made a motion to appoint Ms. Charlene Caldwell from District 7; seconded by Mr. Hipp. The motion was unanimous.

Mr. Shealy made a motion to appoint Rev. James Counts from District 4; seconded by Mr. Reeder. The motion was unanimous.

Mr. Scurry made a motion to appoint Ms. Susan Heydt from District 5; seconded by Mr. Shealy. The motion was unanimous.

c. Board of Rural Fire Control (Council District) 6

Mr. Scurry made a motion to appoint Bob Pollard from District 6; seconded by Mr. Shealy. The motion was unanimous.

d. Other appointments

Mr. Reeder made a motion to appoint Ernest Shealy to the Accommodations Tax Board; seconded by Mr. Hipp. The motion was unanimous.

Mr. Reeder made a motion to appoint Daniel Werts to the Board of Rural Fire Control; seconded by Mr. Sease. The motion was unanimous.

Mr. Reeder made a motion to appoint David Abrams to the Joint Planning Commission; seconded by Mr. Hipp. The motion was unanimous.

Mr. Reeder made a motion to appoint Mattie Dillion to the Hospital Board; seconded by Mr. Hipp. The motion was unanimous.

Mr. Reeder made a motion to appoint Larry Kinard to the Hospital Board; seconded by Mr. Shealy. The motion was unanimous.

Mr. Reeder made a motion to appoint Alma Sullivan to the Westview Behavioral Board; seconded by Mr. Shealy. The motion was unanimous.

Mr. Reeder stated that after 30 years his mother was resigning. Mr. Reeder made a motion to appoint Cheryl Wilson. The motion was unanimous.

Mr. Sease made a motion to appoint Tyler Johnson to the Planning Board; seconded by Mr. Hipp. The motion was unanimous.

Mr. Sease made a motion to appoint Wesley Boland to the Board of Rural Fire Control; seconded by Mr. Shealy. The motion was unanimous.

11. PUBLIC COMMENTS

No additional comments from the public.

12. EXECUTIVE SESSION:

a. Personnel Matter(s):

- i. Discussion of matters related to compensation of elected officials pursuant to SC Code of Laws Section 30-4-70(a)(1)**
- ii. Discussion of matters related to appointment and compensation of employees within County Administration pursuant to SC Code of Laws Section 30-4-70(a)(1)**
- iii. Discussion of matters related to appointment and compensation of employees within Building and Zoning pursuant to SC Code of Laws Section 30-4-70(a)(1)**

b. Economic Development Matter(s):

i. Discussion of matters related Project Rubicon pursuant to SC Code of Laws Section 30-4-70 (a)(1)

Mr. Shealy moved to go into Executive Session for the above-stated reasons; seconded by Ms. Arrowood. There being no discussion, Mr. Johnson called for the vote. The vote was unanimous.

**EXECUTIVE SESSION
6:30 PM - 7:12 PM**

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

Mr. Johnson said no action was needed based on the Executive Session.

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

Mr. Hipp made a motion authorizing Mr. Johnson to create a letter of employment for the candidate we discussed for clerk to council. Seconded by Mr. Sease, the motion passed unanimously.

14. Resolution No. 06-23. An Inducement Resolution committing to negotiate a Fee-In-Lieu of *Ad Valorem* Taxes agreement between Newberry County and Project Rubicon; identifying the project' and other matters related thereto.

Ms. Arrowood made a motion to approve the Resolution; seconded by Mr. Shealy. The motion was unanimous.

15. Ordinance No. 06-01-2023. An Ordinance authorizing the execution and delivery of a Fee-In-Lieu of *Ad Valorem* Taxes and incentive agreement by

and between Newberry County, South Carolina, and Project Rubicon to provide for payment of a Fee-In-Lieu of Taxes; authorizing certain infrastructure; and other related matters.

a. First Reading

Mr. Shealy made a motion to approve the first reading; seconded by Ms. Arrowood.

Mr. Johnson stated it is my understanding that we have the plant manager and staff with us tonight. Ms. Ebony Orr, Plant Manager, spoke regarding Project Rubicon. Ms. Orr stated that is a \$72million dollar investment to expand and modernize the plant. We look forward to working with you on this project.

Mr. Johnson stated they are a vital part of the community, and we are fortunate to have you.

Mr. Johnson called the question. The vote was unanimous to approve the first reading of the ordinance.

16. COMMENTS/REQUESTS FROM COUNTY ADMINISTRATOR

Mr. Shacker stated the Comprehensive plan must be reevaluated every 5 years and updated every 10 years. The plan is divided into ten elements. You have a binder with the first three elements.

Mr. Shacker said the Strategic plan would be presented at the July 19, 2023, meeting.

Mr. Shacker stated the Greenwood Master Plan meeting dates have not been set. They want to hold meetings in all three counties. I will let you know when the meeting has been scheduled.

Mr. Shacker stated the Class and Compensation study has been updated to include the elected officials. A follow-up meeting with the department heads/elected officials will be scheduled later.

Last, Mr. Shacker stated AFPs are being solicited for the capital sales tax projects for the architect and engineering. This will be for all projects except for the Water and Sewer Authority and the City of Newberry.

17. COMMENTS/REQUESTS FROM COUNCIL MEMBERS

Mr. Shealy said good information and thanked Jeff and staff.

Mr. Sease also thank staff for putting all this together.

Mr. Scurry thanked the county administrator and staff for working together.

Ms. Arrowood stated we are going in the right direction.

Ms. Arrowood also stated that she would have to resign from District 2. She had prayed about it, but she would be moving out of the district to move closer to my daughter. As many of you know she has had two brain surgeries in the past 18 months and some other health issues. I will be resigning on July 7, 2023.

Mr. Hipp thanked Ms. Arrowood for a wonderful job. Mr. Hipp also echoed the job done by the administrator and staff.

Mr. Johnson stated it would be a time to celebrate her service as an employee and a council member.

18. FUTURE MEETINGS:

- a. **Economic Development Committee Meeting – June 12, 2023 at 6:00 p.m.**
- b. **Newberry-Richland County Boundary Meeting – June 14, 2023 at 6:00 p.m.**
- c. **County Council Meeting – June 21, 2023, 6:00 p.m.**
- d. **Public Safety Committee Meeting – July 10, 2023 at 6:00 p.m.**
- e. **County Council Meeting – July 19, 2023 at 6:00 p.m.**

19. ADJOURNMENT

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

Mr. Johnson declared the meeting adjourned at 7:25 p.m.

NEWBERRY COUNTY COUNCIL

Todd Johnson, Chairman

Debbie S. Cromer, Finance Director

Minutes Approved: _____

RECUSAL STATEMENT

Member Name: ROBERT N. SHEALY

Meeting Date: 6/7/23

Agenda Item: Section _____ Number: 05-07-2023

Topic: REZONE PARCELS 339-B-6-1 & 339-3-6-2

FROM GC - GENERAL COMMERCIAL TO RSM - SINGLE FAMILY RES.

The Ethics Act, SC Code §8-13-700, provides that no public official may knowingly use his office to obtain an economic interest for himself, a family member of his immediate family, an individual with whom he is associated, or a business with which he is associated. No public official may make, participate in making, or influence a governmental decision in which he or any such person or business has an economic interest. Failure to recuse oneself from an issue in which there is or may be conflict of interest is the sole responsibility of the council member (1991 Op. Atty. Gen. No. 91-37.) A written statement describing the matter requiring action and the nature of the potential conflict of interest is required.

Justification to Recuse:

Professionally employed by or under contract with principal

Owns or has vested interest in principal or property

Other: _____

Date: 6/7/23

Robert N. Shealy
Member

Approved by Parliamentarian: Janice Winters

**NEWBERRY COUNTY COUNCIL
ECONOMIC DEVELOPMENT COMMITTEE
MINUTES
June 12, 2023**

The Newberry County Council Economic Development Committee met on Monday, June 12, 2023 in the Courthouse Annex Conference Room, 1309 College St., Newberry, SC, for a regularly scheduled meeting.

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

PRESENT: Travis Reeder, Council Member, Committee Member
Les Hipp, Council Vice-Chair, Committee Chairman
Jeff Shacker, Newberry County Administrator
Rick Farmer, Economic Development Director

ABSENT: Nick Shealy, Council Member, Committee Member

1. Call to Order

Chairman Les Hipp called the meeting to order.

2. Additions, Deletions & Adoption of the Agenda

Chairman Hipp asked the committee if there were any additions or deletions of the agenda. Hearing none, Mr. Reeder made a motion to approve the agenda as presented. Mr. Hipp gave the second. There was no discussion and the vote to approve the agenda was unanimous.

4. Public Comments

Mr. Hipp asked Mr. Farmer if anyone signed up to speak publicly at the meeting. Mr. Farmer said no one had.

5. Staff Report

a. **Project Activity:** Mr. Farmer reported that project activity has picked up in the last quarter, and said there were seven site submissions since the committee last met. He said there are several expansions at local industries pending.

b. Product Development

i. Mr. Farmer said the new road in Mid-Carolina Commerce has been completed. He said final steps include the disbursement of grant funds. He told the committee a \$600,000 grant from the state had been requested and the funds received. He said a \$1.5 million grant promised by the SC Power Team had been applied for, but has not yet been delivered.

ii. Mr. Farmer reminded the committee that the Daeyoung Construction in Mid-Carolina Commerce Park II is now complete, and the new public road and turn lane have been completed as well. He said the County should adopt the road formally, and then he will process the last remaining grant to Daeyoung.

iii. Mr. Farmer said there has been significant planning activity for the \$3.3 million Mawsons Way Extension project. He said the financial planning stage is essentially complete, and presented the following sources of funding:

Coordinating Council:	\$2,000,000
SC Dept. of Commerce:	\$600,000
County Transportation Committee:	\$500,000
<u>Newberry County:</u>	<u>\$200,000</u>
TOTAL FUNDING SOURCES:	\$3,300,000

c. Prospect Development

i. Mr. Farmer said he plans a significant web site overhaul in the coming fiscal year. He said the web site last received a significant upgrade back in 2016. Funding for the project was included in his FY23-24 budget.

ii. Mr. Farmer said planning for a fall marketing mission will begin in July. He said he will be coordinating the effort with the Central SC Alliance and the SC Dept. of Commerce.

d. Other

i. Mr. Farmer reported that the Economic Development Strategic Plan would be presented to the full Council for consideration at the July 19, 2023 meeting.

ii. Mr. Farmer said the Central SC Alliance has asked if Newberry County could direct utility tax credits through the Alliance, so that the Alliance can get matching funds from the state. Newberry County would still get 100% of the funds. He said this is done in other regions, and has been done in the Central SC Alliance with other counties.

Chairman Hipp asked Mr. Farmer to look into the possibilities of Utility Tax Credits from other utilities. Mr. Farmer said he has, in the past, reached out to other utilities like Duke and Dominion, but to no avail. He said he would make contacts again with other utilities, and see if there are opportunities.

6. Comments by and discussion items from Committee Members

Chairman Hipp asked if there were any comments or further discussion from the committee members. Hearing none, he moved to the next item on the agenda.

7. Executive Session: §30-4-70 (a)(2) and (a)(5): Discussion of matters incident to proposed contractual arrangements, and related to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other business in the area served by the public body, including Projects Rubicon, Belford Solar, Feder, Alpha, CA, JG, YMCA, BRT and other unnamed projects.

Mr. Hipp said that the committee needed to enter executive session to discuss matters of economic development, contractual matters, and issues surrounding the proposed location, expansion, or the provision of services encouraging location or expansion of industries. Mr. Reeder made a motion that the committee enter executive session, and Mr. Hipp gave the second. The vote was unanimous.

EXECUTIVE SESSION
6:23 p.m. – 7:22 p.m.

Upon returning to open session, Mr. Hipp stated that the committee discussed the items as previously described, and that no actions were taken during executive session.

8. Adjourn

Mr. Reeder offered a motion to adjourn, and Mr. Hipp gave the second. The vote was unanimous and the meeting was adjourned at 7:22 p.m.

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

Ordinance No. 05-06-2023

AN ORDINANCE TO AUTHORIZE THE COUNTY OF NEWBERRY, BY NEWBERRY COUNTY COUNCIL, TO SELL THE REAL ESTATE DESCRIBED ON ATTACHED EXHIBIT "A" WHICH IS INCORPORATED HEREIN BY REFERENCE TO AS THE SUCCESSFUL IDDER. UPON SUCH TERMS AND CONDITIONS AS DESCRIBED IN THE REQUEST FOR BID

WHEREAS, under the Ordinances of Newberry County, it is necessary for Newberry County Council to pass an Ordinance and have a public hearing whenever it sells county property; and

WHEREAS, Newberry County owns property being and connecting to Pond Lane, being a certain parcel or tract of land described as 139 feet in length and 40 feet wide also known as Tax Map No. 340-1-10 and 340—1-15; and

WHEREAS, Newberry County Council had determined that it is in the best interest of the County and the citizens of Newberry County to entertain sealed bids for the sale of said property and issued the request via advertisement on February 21, 2023, as Bid Number 2023-4; and

WHEREAS, on March 7, 2023, the singular bid received was accepted and opened, and was accepted by Newberry County on March 7, 2023; and

WHEREAS, Newberry County Council must approve the sale via the legislative process of adopting an ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL FOR NEWBERRY COUNTY, SOUTH CAROLINA, DULY ASSEMBLED THAT THE FOLLOWING ORDINANCE IS HEREBY ADOPTED:

Newberry County Council does hereby authorize the sale of the real estate described on attached Exhibit "A" and upon such terms and conditions as described under the advertised request for bid.

This Ordinance shall be effective upon adoption by the Newberry County Council on the date of the final reading approval.

Enacted and approved this ____ day of _____, 2023.

DONE IN MEETING DULY ASSEMBLED, this ____ day of _____ 2023.

COUNTY COUNCIL OF NEWBERRY COUNTY

Todd Johnson
Chairman, County Council of Newberry County

ATTEST:

Susan C. Fellers
Clerk to County Council of Newberry County

Jeff Shacker, County Administrator

First Reading: _____, 2023
Second Reading: _____, 2023
Public Hearing: _____, 2023
Third Reading: _____, 2023

The subject property is a portion of a driveway that was deeded to the County and is 139 feet in length and having a width of forty feet. The subject property is located in the Pine Hill Estate, off of Hwy US 76, Newberry, South Carolina. The subject property is identified on the Newberry County Assessor's tax maps as being in between parcel numbers 340-1-10 and 340—1-15. The property connects to a private drive, Pond Lane.

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR NEWBERRY COUNTY
ORDINANCE NO. 06-01-2023

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND PROJECT RUBICON TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; AND OTHER RELATED MATTERS.

WHEREAS, Newberry County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Greenwood County more particularly known as Greenwood-Newberry Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, Project Rubicon, (“Sponsor”), desires to expand its manufacturing facility in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$72,000,000; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, the final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (i) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; (2) locating the Project in the Park; and (3) providing Infrastructure Credits as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure.

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

Section 1. Statutory Findings. Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be retained, and the anticipated costs and benefits to the County, and hereby finds:

(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 gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power;

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Inclusion within 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.

Section 4. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

Section 5. *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 6. *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.

Section 7. *Effectiveness.* This Ordinance is effective after its third reading and public hearing.

NEWBERRY COUNTY, SOUTH CAROLINA

Chair, Newberry County Council

(SEAL)
ATTEST:

Clerk of Council, Newberry County Council

First Reading: June 7, 2023
Second Reading: June 21, 2023
Public Hearing: July 19, 2023
Third Reading: July 19, 2023

EXHIBIT A
FORM OF FEE AGREEMENT

**ARTICLE V
ADDITIONAL INCENTIVES**

Section 5.1. Infrastructure Credits. To assist in paying for costs of Infrastructure, the Sponsor is entitled to claim an Infrastructure Credit to reduce certain FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Infrastructure Credit is described in Exhibit C. In no event may the Sponsor's aggregate Infrastructure Credit claimed pursuant to this Section exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Infrastructure Credit is applicable ("**Credit Term**"), the County shall prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment, calculated in accordance with Exhibit C, or Exhibit D if applicable. Following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

**ARTICLE VI
REDUCED INFRASTRUCTURE CREDIT**

Section 6.1. Reduced Credit. If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit D, then the Sponsor is subject to a reduction of the Infrastructure Credit as described in Exhibit D (the Reduced Credit.) Should a Reduced Credit be applied to the Net FILOT Payment, then following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

Beginning in the calendar year following the Commencement Date and continuing through the end of the Credit Term, the Sponsor shall certify to the County the FTE Jobs and taxable investment in personal property at the Project no later than July 1 of each year by filing a form with the County Treasurer, with copies to the Administrator, Auditor, Assessor and Economic Developer, the form of which is attached as Exhibit E.

**ARTICLE VII
DEFAULT**

Section 7.1. Events of Default. The following are "Events of Default" under this Fee Agreement:

(a) Failure to make FILOT Payments, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;

(b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement;

(c) A Cessation of Operations. For purposes of this Fee Agreement, a "**Cessation of Operations**" means a publicly announced closure of the Facility, a layoff of a majority of the employees working at the Facility, or a substantial reduction in production that continues for a period of twelve (12) months;

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

(e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently

EXHIBIT D (see Section 6.1)
DESCRIPTION OF REDUCED CREDIT

The Infrastructure Credit described in Exhibit C shall be reduced if the Company fails to meet the Contract Minimum Investment Requirement and/or the Contract Minimum Job Requirement for the year in which the Infrastructure Credit is applied and such reduction shall be calculated as set out below.

Beginning in the calendar year following the Commencement Date and continuing through the end of the Credit Term, the Sponsor shall certify to the County the FTE Jobs and taxable investment in personal property at the Project no later than July 1 of each year by filing a form with the County Treasurer, [with copies to the Administrator](#), Auditor, Assessor and Economic Developer, the form of which is attached as [Exhibit E](#).

The Reduced Credit shall be applied to the FILOT Payment in lieu of the Infrastructure Credit, to arrive at the Net FILOT Payment. The Reduced Credit shall not be applied to the first year of Infrastructure Credit for Phase 1.

Reduced Credit = Infrastructure Credit x 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 Full-Time Jobs Retained / 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 and the Contract Minimum Jobs Requirement will be counted. Provided, however, if the Investment Achievement Percentage is 90% or greater such percentage shall be deemed to be 100%, and if the Jobs Achievement Percentage is 95% or greater, such percentage shall be deemed to be 100%. Percentages will be rounded up or down to the nearest tenth of a percentage with rounding up beginning with .06 or more.

For example, and by way of example only, if the Company was entitled to 25% Infrastructure Credit on Phase 1 investment and 35% Infrastructure Credit on Phase 2 investment, and \$55,250,000 had been invested at the Project and 714 jobs had been retained as of December 31 of that year, the Reduced Credit would be calculated as follows:

$$\text{Jobs Achievement Percentage} = 714/760 = 93.9\%$$

$$\text{Investment Achievement Percentage} = \$55,250,000/\$65,000,000 = 85\%$$

$$\text{Overall Achievement Percentage} = (93.9\% + 85\%)/2 = 89.4\%$$

$$\text{Reduced Credit} = 25\% \times 89.4\% = 22.4\% \text{ for Phase 1 credit; } 35\% \times 89.4\% = 31.3\% \text{ for Phase 2 credit}$$

If the Report is not filed [with the County Treasurer](#) by July 1 of the second year for which the Company is eligible for an Infrastructure Credit, the County shall deem the Overall Achievement Percentage to be 75% under the calculation above. If the Report is not filed by July 1 of any other year for

FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT

BETWEEN

PROJECT RUBICON

AND

NEWBERRY COUNTY, SOUTH CAROLINA

EFFECTIVE AS OF JULY __, 2023

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**SUMMARY OF CONTENTS OF
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
Sponsor Name		Section 1.1
Project Location		Exhibit A
Tax Map No.		Exhibit A
FILOT		
• Phase Exemption Period		Section 1.1.
• Contract Minimum Investment Requirement		Section 1.1
• Contract Minimum Jobs Requirement		Section 1.1.
• Investment Period		Section 1.1
• Assessment Ratio		Section 4.1(a)(ii)
• Millage Rate		Section 4.1(a)(iii)
• Fixed or Five-Year Adjustable Millage		Section 4.1(a)(iii)
Multicounty Park		Section 1.1
Infrastructure Credit		
• Brief Description		Exhibit C
• Credit Term		Exhibit C
• Reduced Credit Information		Exhibit D

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("*Fee Agreement*") is entered into, effective, as of [DATE], between Newberry County, South Carolina ("*County*"), a body politic and corporate and a political subdivision of the State of South Carolina ("*State*"), acting through the Newberry County Council ("*County Council*") as the governing body of the County, and Project Rubicon, a corporation organized and existing under the laws of the State of Pennsylvania ("*Sponsor*").

WITNESSETH:

(a) Title 12, Chapter 44, ("*Act*") of the Code of Laws of South Carolina, 1976, as amended ("*Code*"), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax ("*FILOT*") with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits ("*Infrastructure Credit*") against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, "*Infrastructure*");

(c) The Sponsor intends to expand a manufacturing facility ("*Facility*") in the County, consisting of taxable investment in real and personal property of not less than \$72,000,000;

(d) By an ordinance enacted on [DATE], County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to expand its Facility in the County.

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

ARTICLE I DEFINITIONS

Section 1.1. Terms. The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

"*Act*" means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

"*Act Minimum Investment Requirement*" means an investment of at least \$2,500,000 in the Project within five years of the Commencement Date.

"*Administration Expenses*" means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney's and consultant's fees. Administration Expenses does not include any costs, expenses, including attorney's fees, incurred by the County (i) in defending challenges to the FILOT Payments, Infrastructure Credits or other incentives provided by this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the

Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“**Code**” means the Code of Laws of South Carolina, 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2023.

“**Contract Minimum Investment Requirement**” means a taxable investment in personal property at the Project of not less than \$65,000,000.

“**Contract Minimum Jobs Requirement**” means not less than 760 FTE Jobs retained by the Sponsor at the facility as measured at December 31 of each year in which the Company is eligible for the Infrastructure Credit.

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

“**Credit Term**” means the years during the Fee Term in which the Infrastructure Credit is applicable, as described in Exhibit C.

“**Department**” means the South Carolina Department of Revenue.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“**Event of Default**” means any event of default specified in Section 7.1 of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1.

“**Final Phase**” means the Economic Development Property placed in service during the last year of the Investment Period.

“**Final Termination Date**” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2047, the Final Termination Date is expected to be January 15, 2049, which is the due date of the last FILOT Payment with respect to the Final Phase.

“**FTE Jobs**” means the number of full time equivalent jobs measured by taking the total number of hours compensated at the facility in a given calendar year, divided by 1,820 hours to arrive at the total FTE Jobs for that year. Each open position that the Company is actively trying to fill shall be counted as 1,820 hours in the calculation of FTE Jobs.

“**Improvements**” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“**Infrastructure**” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“**Infrastructure Credit**” means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“**Investment Period**” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2028.

“**MCIP Act**” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“**Multicounty Park**” means the multicounty industrial or business park governed by the Master Agreement Governing the Greenwood-Newberry Industrial Park, dated as of December 31, 2012, between the County and Greenwood County, South Carolina.

“**Net FILOT Payment**” means the FILOT Payment net of the Infrastructure Credit or the Reduced Credit as is applicable.

“**Phase**” means the Economic Development Property placed in service during a particular year of the Investment Period.

“Phase Exemption Period” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

“Phase Termination Date” means, with respect to each Phase, the last day of the property tax year which is the 19th year following the first property tax year in which the Phase is placed in service.

“Project” means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

“Real Property” means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

“Reduced Credit” means a credit calculated after any percentage reduction in the Infrastructure Credit as set forth in Section 6.1 and Exhibits C and D of this Fee Agreement.

“Removed Components” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“Sponsor” means Project Rubicon 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 Sponsor under this Fee Agreement.

“Sponsor Affiliate” means an entity that participates in the investment at the Project and, following receipt of the County’s approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

“State” means the State of South Carolina.

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.

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

Section 2.1. *Representations and Warranties of the County.* The County represents and warrants as follows:

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

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) 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; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on [DATE] and adopted an Inducement Resolution, as defined in the Act on June 7, 2023.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

Section 2.2. *Representations and Warranties of the Sponsor.* The Sponsor represents and warrants as follows:

(a) The Sponsor 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 Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

ARTICLE III THE PROJECT

Section 3.1. *The Project.* The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2023. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

Section 3.2 *Leased Property.* To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

Section 3.3. *Filings and Reports.*

(a) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(b) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

ARTICLE IV FILOT PAYMENTS

Section 4.1. *FILOT Payments.*

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property portion of the Phase, the County and the Sponsor have elected to use the fair

market value established in the first year of the Phase Exemption Period), multiplied by

- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 366 mills, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2023.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7.

Section 4.2. FILOT Payments on Replacement Property. If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

Section 4.3. Removal of Components of the Project. Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.4. Damage or Destruction of Economic Development Property.

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT

Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

Section 4.5. Condemnation.

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

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

Section 4.6. Calculating FILOT Payments on Diminution in Value. If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

Section 4.7. Payment of Ad Valorem Taxes. If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

Section 4.8. Place of FILOT Payments. All FILOT Payments shall be made directly to the County in accordance with applicable law.

**ARTICLE V
ADDITIONAL INCENTIVES**

Section 5.1. *Infrastructure Credits.* To assist in paying for costs of Infrastructure, the Sponsor is entitled to claim an Infrastructure Credit to reduce certain FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Infrastructure Credit is described in Exhibit C. In no event may the Sponsor's aggregate Infrastructure Credit claimed pursuant to this Section exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Infrastructure Credit is applicable ("*Credit Term*"), the County shall prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment, calculated in accordance with Exhibit C, or Exhibit D if applicable. Following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

**ARTICLE VI
REDUCED INFRASTRUCTURE CREDIT**

Section 6.1. *Reduced Credit.* If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit D, then the Sponsor is subject to a reduction of the Infrastructure Credit as described in Exhibit D (the Reduced Credit.) Should a Reduced Credit be applied to the Net FILOT Payment, then following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

Beginning in the calendar year following the Commencement Date and continuing through the end of the Credit Term, the Sponsor shall certify to the County the FTE Jobs and taxable investment in personal property at the Project no later than July 1 of each year by filing a form with the County Treasurer, with copies to the Administrator, Auditor, Assessor and Economic Developer, the form of which is attached as Exhibit E.

**ARTICLE VII
DEFAULT**

Section 7.1. *Events of Default.* The following are "Events of Default" under this Fee Agreement:

(a) Failure to make FILOT Payments, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;

(b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement;

(c) A Cessation of Operations. For purposes of this Fee Agreement, a "*Cessation of Operations*" means a publicly announced closure of the Facility, a layoff of a majority of the employees working at the Facility, or a substantial reduction in production that continues for a period of twelve (12) months;

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

(e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently

pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

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

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

Section 7.2. Remedies on Default.

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; 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 7.3. Reimbursement of Legal Fees and Other Expenses. On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.4. Remedies Not Exclusive. No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

ARTICLE VIII PARTICULAR RIGHTS AND COVENANTS

Section 8.1. Right to Inspect. The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

Section 8.2. Confidentiality. The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“**Confidential Information**”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “**Confidential Information.**” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges 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. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

Section 8.3. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Sponsor 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 Sponsor 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 Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor 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 Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor 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 Sponsor 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 Sponsor 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 Sponsor 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 Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

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

Section 8.5. *Limitation of Liability.* The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

Section 8.6. *Assignment.* The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

Section 8.7. *No Double Payment; Future Changes in Legislation.* Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

Section 8.8. *Administration Expenses.* The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$7,500. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

ARTICLE IX SPONSOR AFFILIATES

Section 9.1. *Sponsor Affiliates.* The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor 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 Sponsor 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 B, executed by the Sponsor Affiliate to the County.

Section 9.2. Primary Responsibility. Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

ARTICLE X MISCELLANEOUS

Section 10.1. Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is 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 of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE SPONSOR:

□

WITH A COPY TO (does not constitute notice):

Turner Padgett Graham & Laney, PA
Attn: Art Justice
P.O. Box 5478
Florence, SC 29502

IF TO THE COUNTY:

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

WITH A COPY TO (does not constitute notice):

Parker Poe Adams & Bernstein LLP
Attn: Ray E. Jones
1221 Main Street, Suite 1100 (29201)
Post Office Box 1509
Columbia, South Carolina 29202-1509

Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor. Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

Section 10.3. Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

Section 10.4. Governing Law. South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

Section 10.5. Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

Section 10.6. Amendments. This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

Section 10.7. Agreement to Sign Other Documents. From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 10.8. Interpretation; Invalidity; Change in Laws.

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

Section 10.9. Force Majeure. The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national

emergency, acts of God, pandemic, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

Section 10.10. Termination; Termination by Sponsor.

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

Section 10.11. Entire Agreement. This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is 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 of this Fee Agreement.

Section 10.12. Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 10.13. Business Day. If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

Section 10.14. Agreement's Construction. Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

[Signature pages follow]

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

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
County Council Chair
Newberry County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Newberry County, South Carolina

[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]

[PROJECT/SPONSOR NAME]

By: _____

Its: _____

[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]

EXHIBIT A
PROPERTY DESCRIPTION

**EXHIBIT B (see Section 9.1)
FORM OF JOINDER AGREEMENT**

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective [DATE] (“Fee Agreement”), between Newberry County, South Carolina (“County”) and [COMPANY] (“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 Sponsor 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 Sponsor 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 C (see Section 5.1)
DESCRIPTION OF INFRASTRUCTURE CREDIT

The Company shall receive an Infrastructure Credit to offset the aggregate Infrastructure costs incurred. The Infrastructure Credit shall be applied annually as a setoff against the FILOT Payments owed for the then current year which resulting amount shall be the Net FILOT Payment.

The Infrastructure Credit applied will be 50% for year one of each Phase, 35% for year two of each Phase, and 25% for each year three through eight of each Phase. No Infrastructure Credit will be applied for any year beyond the eighth year of each Phase. For example, and by example only:

if the FILOT Payment for the year is \$100,000, \$60,000 of which is for year two of Phase 1 investment and \$40,000 for year one of Phase 2 investment, An Infrastructure Credit of 35% would be applied to the Phase 1 FILOT Payment ($\$60,000 \times .35 = \$21,000$ credit) and 50% would be applied to the Phase 2 FILOT Payment ($\$40,000 \times .50 = \$20,000$ credit). The Net FILOT Payment would be \$59,000 ($\$100,000 - \$21,000 - \$20,000$.)

EXHIBIT D (see Section 6.1)
DESCRIPTION OF REDUCED CREDIT

The Infrastructure Credit described in Exhibit C shall be reduced if the Company fails to meet the Contract Minimum Investment Requirement and/or the Contract Minimum Job Requirement for the year in which the Infrastructure Credit is applied and such reduction shall be calculated as set out below.

Beginning in the calendar year following the Commencement Date and continuing through the end of the Credit Term, the Sponsor shall certify to the County the FTE Jobs and taxable investment in personal property at the Project no later than July 1 of each year by filing a form with the County Treasurer, with copies to the Administrator, Auditor, Assessor and Economic Developer, the form of which is attached as Exhibit E.

The Reduced Credit shall be applied to the FILOT Payment in lieu of the Infrastructure Credit, to arrive at the Net FILOT Payment. The Reduced Credit shall not be applied to the first year of Infrastructure Credit for Phase 1.

Reduced Credit = Infrastructure Credit x 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 Full-Time Jobs Retained / 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 and the Contract Minimum Jobs Requirement will be counted. Provided, however, if the Investment Achievement Percentage is 90% or greater such percentage shall be deemed to be 100%, and if the Jobs Achievement Percentage is 95% or greater, such percentage shall be deemed to be 100%. Percentages will be rounded up or down to the nearest tenth of a percentage with rounding up beginning with .06 or more.

For example, and by way of example only, if the Company was entitled to 25% Infrastructure Credit on Phase 1 investment and 35% Infrastructure Credit on Phase 2 investment, and \$55,250,000 had been invested at the Project and 714 jobs had been retained as of December 31 of that year, the Reduced Credit would be calculated as follows:

$$\text{Jobs Achievement Percentage} = 714/760 = 93.9\%$$

$$\text{Investment Achievement Percentage} = \$55,250,000/\$65,000,000 = 85\%$$

$$\text{Overall Achievement Percentage} = (93.9\% + 85\%)/2 = 89.4\%$$

$$\text{Reduced Credit} = 25\% \times 89.4\% = 22.4\% \text{ for Phase 1 credit; } 35\% \times 89.4\% = 31.3\% \text{ for Phase 2 credit}$$

If the Report is not filed with the County Treasurer by July 1 of the second year for which the Company is eligible for an Infrastructure Credit, the County shall deem the Overall Achievement Percentage to be 75% under the calculation above. If the Report is not filed by July 1 of any other year for

which the Company is eligible for an Infrastructure Credit, the County shall deem the Overall Achievement Percentage to be the percentage under the last Report the Company filed.

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 Exhibit D survives termination of this Fee Agreement.

EXHIBIT E
FORM OF SPONSOR CERTIFICATION

FOR YEAR ENDING December 31, ____.

Number of FTE Jobs as of 12/31 of the reporting year (including Open Positions): _____

Jobs Achievement Percentage = ____/760 = ____%

*95% or higher = 100%

Cumulative taxable investment in personal property since commencement of Investment Period:

\$_____.

Investment Achievement Percentage = _____/\$65,000,000 = __%

*90% or higher = 100%

Overall Achievement Percentage = (____% + ____%)/2 = ____%

Reduced Credit (if applicable):

____% x ____% = ____% for Phase 1 credit

____% x ____% = ____% for Phase 2 credit

[subsequent Phases to be added if applicable]

Certified correct, this ____ day of _____, ____.

[Company Name]

By: _____

Its: _____

SOUTH CAROLINA

)

A RESOLUTION 07-23

NEWBERRY COUNTY

)

)

COMMITTING TO NEGOTIATE A FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT BETWEEN NEWBERRY COUNTY AND PROJECT IRON; IDENTIFYING THE PROJECT; AND OTHER MATTERS RELATED THERETO

WHEREAS, Newberry County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“Act”) to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”) with respect to economic development property, as defined in the Act;

WHEREAS, Project Iron, an entity whose name cannot be publicly disclosed at this time (“Sponsor”), desires to invest capital in the County in order to establish a solar generation facility in the County (“Project”);

WHEREAS, the Project is anticipated to result in an investment of approximately \$65,000,000 in taxable real and personal property; and

WHEREAS, as an inducement to the Sponsor locate the Project in the County, the Sponsor has requested that the County negotiate an agreement (“Agreement”), which provides for FILOT Payments with respect to the portion of the Project which constitutes economic development property, as defined in the Act.

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

Section 1. This Resolution is an inducement resolution for this Project for purposes of the Act.

Section 2. County Council agrees to enter into the Agreement, which provides for FILOT Payments with respect to the portion of the Project which constitutes economic development property. The further details of the FILOT Payments and the Agreement will be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 3. County Council identifies and reflects the Project by this Resolution, therefore permitting expenditures made in connection with the Project before the date of this Resolution to qualify as economic development property, subject to the terms and conditions of the Agreement and the Act.

Section 4. This Resolution is effective after its approval by the County Council.

RESOLVED: this ____ day of June, 2023

NEWBERRY COUNTY, SOUTH CAROLINA

Chair, Newberry County Council

(SEAL)
ATTEST:

Clerk to County Council