



**NEWBERRY COUNTY COUNCIL
COUNTY COUNCIL AGENDA
September 21, 2022
6:00 P.M.**

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

1. Employee Recognitions -

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

2. Public Appearance -

- a. The Palmetto Trail – Furman Miller
Midlands SORBA (Southern Off-Road Bicycle Association)
Nathan Hunter
Eric Lemoine
Danny Raines
- b. Newberry Soil and Water Conservation – Toni Warren, Commissioner/Treasurer

3. Adoption of Consent Agenda

- a. Newberry County Council Meeting – Minutes September 7, 2022

4. Additions, Deletions & Adoption of the Agenda

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

This is a lease agreement to rent out the front barn at the old fairgrounds to MM Technics for an 18 month term with an option to extend for 6 additional months. Monthly rent is \$4500 per month. The revenue will be used to fix structural components and perform electrical upgrades to both barns. The Fire training props will be rebuilt in the back barn after the structural repairs are completed. Also, the Farm Museum will be able to stay at this location. We will make additional space available to MM Technics in the back barn.

- a. Public Hearing
- b. Third and Final Reading

6. Ordinance No. 09-21-2022 An Ordinance authorizing the execution and delivery of a fee agreement by and between Newberry County, South Carolina, and Newberry PV1, LLC providing for a payment of a fee in lieu of taxes, providing special source of revenue credits, and authorizing an amendment to the master agreement governing the Greenwood-Newberry Industrial Park to provide for the addition of property and other matters related thereto.

This is a FILOT agreement for an \$89,000,000.00 solar project. The agreement includes special source revenue credits to allow a predictable annual payment of approximately \$216,050 for a 30 year term. It also provides for solar panel installations at both the Chappels Fire Station and the Silverstreet Fire Station along with a robust buffer requirement to ensure the project will not be visible from any right-of-way.

- a. Second Reading

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

This ordinance amends the Budget Ordinance to reduce fees for copying at the courthouse from .50 per copy to .35 per copy.

- a. First Reading

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

This ordinance amends the Budget Ordinance to reduce building permit fees by:

1. Allowing the option to use a signed contract to determine construction valuation
2. Reducing the Plan Review fee from 50% of the permit fee to 25% for residential projects
3. Reducing the valuation of unheated space to ½ of the valuation of the heated space.

- a. First Reading

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

This Resolution provides for a one-time payment of \$3000, \$2000, or \$1500 to employees using ARP funds depending on the categories provided.

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

This Resolution approves the proposed location and memorial to be located at Community Hall.

11. Appointments

12. Discussion/Approval of RFQ for Grant Writer Services - Crystal Waldrop

13. Consideration of extending grocery store recruitment incentives policy.

14. Public Comments

15. Executive Session

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

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting names of the other employees or clients whose records are submitted for use at the hearing.
- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.
- (3) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

16. Comments/Request from County Administrator

17. Comments/Request from Council

18. Future Meetings

- a. Public Safety Committee - TBD
- b. County Council - October 5, 2022, at 6 p.m.
- c. Economic Development - October 10, 2022, at 6 p.m.
- d. Executive Committee - October 11, 2022, at 6 p.m.
- e. Work Session w/Joint Planning and Zoning - October 12, 2022, at 5 p.m.
- f. Work Session County Council - October 12, 2022, at 6 p.m.
- g. County Council - October 19, 2022, at 6 p.m.

19. Adjournment

NEWBERRY COUNTY COUNCIL

MINUTES

September 7, 2022

The Newberry County Council met on Wednesday, September 7, 2022, at 6:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.

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

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

MEDIA: Andrew Wigger, Newberry Observer

ABSENT: Henry H. Livingston, III, Council Member (District 3)

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

Mrs. Arrowood had the invocation followed by the Pledge of Allegiance.

1. Employee Recognition

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

- a. Shawn Carnes 20 years*
- b. Casey Rembisz 20 years*
- c. Kirby Richardson 10 years*
- d. Brenda McCracken 10 years*
- e. Donna Lominack 45 years*
- f. Clayton Babb 25 years*
- g. Randall Abrams 25 years*
- h. Ben Chapman 25 years*
- i. Maggie Mills 15 years*
- j. John Cearley 15 years*
- k. Nicholas Gilmore 5 years*
- l. Susan Hanvey 5 years*
- m. Melissa Vanderford 5 years*

2. Public Appearances

Jimmy Smith and Sheriff Foster

They spoke regarding placing a Memorial for past and current Law Enforcement, Fire Fighters, and First Responders. He has raised the money for this monument so there will be no cost to taxpayers. Sheriff Foster spoke also, stating that he and Mr. Smith are requesting from Council permission to place the monument on County property. The site would be in front of the flagpole on the lawn at the old courthouse. A drawing of the monument and a picture of the site was provided to Council.

Mr. Johnson stated that Council had one request to add "County" to the monument. There will be a Resolution presented and approval of placement at a later date.

Donna Lominack, County Auditor

Mrs. Lominack is presenting the County Ordinary Levy and to set the County Bond Millage. She thanked the following for their help in getting this report together,

Christopher Inglese, Debbie Cromer, Karen Brehmer, Karen Smith, Melinda Long and the staff of the Auditor's Office.

Mrs. Lominack as the Newberry County Auditor, officially set the 2022 Tax Levy for all County and School Bonded Indebtedness Purposes as authorized by "Sections 4-15-150 and 59-71-150" of the 1976 Code of Laws of South Carolina. She presented the 2022 Tax Levy for School Ordinary Purposes as set by the Newberry County Board of Education per letter dated August 8, 2022, which stated in part, "the 2022 School Ordinary Tax Levy be set at 180.0 mills".

Per County of Newberry Budget Ordinance No. 04-07-22. She recommended County Council levy 121.0 mills for County Ordinary Purposes and 0.0 mills for Reserve Fund Purposes; 2022 County Lease Purchase – she is levying 3.0 mills; County General Obligation Bonds of 2020 A – she is levying 1.1 mill; County General Bonds of 2020 B – she is levying 0.5 mill; County General Obligation Bonds 2018 C – she is levying 0.5 mill. Per County of Newberry Budget Ordinance No. 04-08-22 she is recommending County Council levy 6.9 mills for Community Services: for a total 2022 for County Purposes of 133.0 mills.

For School Purposes - the Newberry County Board of Education has levied 180.0 mills for School Ordinary Purposes for the 2022-2023 Fiscal Year. For School General Obligation Bonds of 2022, she is levying 53.0 mills for a total 2022 levy for School Purposes of 233.0 mills.

The total levy for County Purposes is 133.0 mills and for School Purposes is 233.0 mills. The total 2022 Tax Levy for both County and School Purposes is 366.0 mills.

The anticipated value of one mill for 2022-2023 Fiscal Year for County Purposes is \$163,370, for School Purposes (bonds) is \$165,806, and for School Purposes (School Operating) is \$105,997.

3. Adoption of the Consent Agenda

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

4. Additions, Deletions and Adoption of the Agenda

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

5. Proclamation - Hispanic Heritage Month

Mr. Johnson read the Proclamation into the record. A copy of the Proclamation is attached hereto and incorporated herein.

After reading the Proclamation, Mr. Johnson then presented a framed Proclamation to Liz Rivera.

Mrs. Rivera spoke thanking the County for this recognition. She also invited everyone to come celebrate different festivities that will be taking place September 15, 2022 – October 15, 2022.

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

6. Resolution 05-22 of Newberry County Council supporting the South Carolina American Revolution Sestercentennial Commission and Creating the Newberry County 250 Committee

Bill Davies spoke regarding this Resolution and the importance of the SC250 Committee. 2026 will be the 250th anniversary of the American Revolution. The Liberty Trail was established to promote heritage tourism by highlighting Revolutionary War historic sites across South Carolina. The designated sites are grouped into four Trail areas I through IV. Newberry County is in the area covered by Trail IV. The Liberty Trail will operate as a historic driving route similar to the South Carolina Heritage Corridor, with an AP guiding the way. Within Newberry County at least fourteen battle/skirmish sites have been identified. In addition, at least sixteen other sites related to British Lt. Col. Banestre Tarleton's movement through Newberry County enroute to the battle of Cowpens are proposed for possible inclusion in the Liberty Trail. Each County will establish an official "250 Committee" to manage grant money and coordinate efforts of their respective county.

Mr. Hipp moved to adopt the resolution, seconded by Mrs. Arrowood. With no further discussion, Mr. Johnson called for the vote. The vote was as follows, Mr. Scurry abstained, Mr. Reeder opposed, and Mr. Johnson, Mr. Hipp, Mr. Shealy, and Mrs. Arrowood all voted for the Resolution.

7. Resolution 06-22 Resolution authorizing an amendment to that certain fee agreement by and between Newberry County, South Carolina and Trucast, LLC; and other related matters

Ray Jones with Parker Poe Law Firm stated that Trucast, LLC has come to the County indicating that they plan on investing additional money and rather than entering into a new agreement they can extend their investment period under the old agreement. The investment was \$3,000,000 and would increase to \$8,000,000 with an additional five-year investment window. This Resolution would allow for this amendment to be made.

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

8. Resolution 07-22 Inducement Resolution committing to negotiate a fee in lieu of tax agreement between Newberry County and Newberry PVI, LLC; identifying the project; and other matters related thereto

Mr. Jones stated that this Resolution identifies this project for Fee in Lieu of Tax purposes. It provides that the County is going to commit to a negotiated Fee in Lieu of Tax agreement the solar farm investment. It provides some of the parameters which includes an \$80,000,000 investment commitment. It then effectively points you to number 9 on the agenda.

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

9. *Ordinance No. 08-21-2022 An Ordinance authorizing the execution and delivery of a fee agreement by and between Newberry County, South Carolina, and Newberry PV1, LLC providing for a payment of a fee in lieu of taxes, providing special source of revenue credits, and authorizing an amendment to the master agreement governing the Greenwood-Newberry Industrial Park to provide for the addition of property and other matters related thereto.*

- a. *First Reading*

Mr. Jones stated that this Ordinance does approve the full Fee in Lieu Tax Agreement. Because this is a solar project there is a fee in lieu of tax and a credit. The credit is designed to ensure that the solar provider only pays a certain amount per megawatt that they produce each year. The common arrangement is that the solar provider pays an amount no matter how many megawatts they produce. The investment will be made on a vacant property so all the new revenues that will come from this solar farm investment will be new revenues to the County.

There will be additional commitments incorporated into the document, on being that there will be a thirty-year arrangement that will allow the investment to pay a certain amount per megawatt produced with a floor. Currently the floor is somewhere around \$200,000. The additional agreements and commitments will be finalized before second reading.

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

10. *Public Comments*

Bob Montgomery, Newberry County Museum spoke regarding the "She Said Yes" exhibit was very successful, having over 2800 visitors and has ended. This exhibit also had over 26,000 Facebook contacts.

The next exhibit will be "Newberry Coming Home" which is about the college. It will run from September 15, 2022, through January 1, 2023.

Mr. Inglese asked that the Newberry College students and Professor Lambries be recognized for attending the County Council Meeting.

11. *Appointments*

Mrs. Arrowood moved to appoint Milledge Wilson to the Airport Commission, seconded by Mr. Shealy. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.

12. Executive Session

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

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting names of the other employees or clients whose records are submitted for use at the hearing.*
- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.*
- (3) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.*

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

EXECUTIVE SESSION 7:05 P.M. – 8:20 P.M.

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

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

13. Comments/Request from County Administrator

The Grant Services RFP has received 10 responses. Staff plans to have chosen 3 for Council to review on September 21, 2022.

The RFP for the Public Safety Study has been finalized.

The Comp Classification Study is still in the works and moving forward.

14. Comments/Request from Council Members

No comments.

15. Future Meetings

- a. *County Council - September 7, 2022, at 6:00 p.m.*
- b. *Finance Committee- September 12, 2022, at 6:00 p.m.*
- c. *County Council - September 21, 2022, at 6:00 p.m.*
- d. *Public Safety Committee - September 26, 2022, at 6:00 p.m.*

16. Adjournment

Mr. Shealy moved to adjourn the meeting, seconded by Mr. Reeder. Mr. Johnson called for the vote. Vote was unanimous. The meeting adjourned at 8:28 p.m.

Newberry County Council

Todd Johnson, Chairman

Jackie Lawrence, Clerk to Council

Minutes approved: _____

STORAGE SPACE LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made and entered into on the ____ day of _____, 2022 (the "**Commencement Date**"), by and between Newberry County, South Carolina, whose address is 1309 College Street, Newberry, South Carolina 29108 (hereinafter referred to as "**Lessor**"), and MM Technics LP, whose address is 145 Mid-Carolina-Ct, 29127 Prosperity, South Carolina, United States (hereinafter referred to as "**Lessee**", and together with the Lessor, the "**Parties**").

1. Description of Leased Premises. The Lessor agrees to lease to the Lessee the following described 12,000 square feet (SF) of warehouse space located at 2301 Adelaide Street, Newberry, South Carolina, hereinafter known as the "**Premises**" as shown on Attachment A a portion of Barn #1 and a portion of Barn #2. The portion of Barn #2 will be made available ninety days after the portion of Barn #1 and the terms of the base rent provided in Section 4 below shall be adjusted on a pro rata basis.

2. Use of Leased Premises. The Lessor is leasing the Premises to the Lessee and the Lessee is hereby agreeing to lease the Premises for the following use and purpose: Storage of metal packaging.

3. Term. The term of this Lease shall be for a period of 18 months commencing at 12:01 a.m. on October 1, 2022, and expiring at Midnight on March 31, 2024 (the "**Initial Term**"). At the conclusion of the Initial Term this Lease will automatically renew on a month-to-month term, subject to termination by either Party upon 90-days' notice.

4. Base Rent. Lessee shall pay rent monthly to Lessor ("**Basic Rent**") in advance on or before the first day of each month during the Initial Term, or any additional term, with the first payment due upon the Commencement Date. The Basic Rent payment shall be \$4,500 monthly (\$54,000 annually) and shall continue until the expiration of the Initial Term and any additional term.

5. Improvements. By September 30, 2022, Lessor shall (i) remove all personal property from the Premises, and (ii) make all improvements set forth under the scope of work contained in Bid Number 2022-9 issued by the County on July 18, 2022, and any amendments thereto. Lessor shall not be responsible for any other improvements or alterations under this Lease. Lessee shall not have the right to make any alterations to the Premises absent written consent of the Lessor.

6. Repairs. Lessee shall take or cause to be taken good care of the Premises during the Term, it being understood that Lessor shall not be required to make any repairs to the Premises during the Term. At the end or other termination of this Lease, Lessee shall deliver to Lessor the Premises thereon broom clean and in good repair and condition, ordinary wear and tear, depreciation, obsolescence and casualty and condemnation loss being excepted.

7. Utilities and Operating Expenses. Lessee shall be responsible for and shall pay all charges incurred for the use of utility services at the Premises, including, without limitation,

electricity, water, sanitary sewer, gas, and telephone services. Lessee shall additionally be solely responsible for all costs and expenses incurred in the maintenance and operations of the Premises. Such costs and operation expenses are not part of this Lease and shall not be paid to Lessor; any costs and expenses incurred in the maintenance and operations of the Premises shall be tendered by Lessee directly to the third-party seeking payment.

8. Taxes and Licenses. Lessee agrees to pay all property taxes and obtain and pay all licenses in connection with the Premises. Lessor shall have no responsibility with regard to taxes or licenses.

9. Security Deposit. \$4,500 shall be due on the Commencement Date. Such amount shall be applied in the discretion of the Lessor to make any necessary repairs or cleaning and to pay any unpaid rent that would be the responsibility of the Lessee hereunder. The foregoing shall not reduce or limit any remedy or amount owing under this Lease from Lessee to Lessor. Any balance of the security deposit remaining at the termination of this Lease shall be returned to Lessee within 30 days of such termination.

10. Insurance. Lessee shall, at all times during the Term of this Lease, maintain with a reputable insurance carrier acceptable to Lessor, a policy or policies of insurance generally known as public liability or landlord and tenant policies insuring the Lessee against any and all claims and demands made by any person or persons for injuries received in connection with the operation, use, and maintenance of the Premises, and for any other risk insured against by such liability policies. Lessee shall maintain a Commercial General Liability Policy with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Lessor shall be named as an additional insured on such policy. Lessee must provide adequate proof of insurance to Lessor on the date of execution of this Lease. Failure to maintain proper insurance under this Section 10 shall be considered a breach of this Lease and shall result in the immediate termination of this Lease. Upon such termination, all payments received by Lessor shall be retained by Lessor as liquidated damages for such breach

(b) Lessee shall, at all times during the Term of this Lease, keep the Premises, together with all improvements, personal property, fixtures and equipment included therein, insured against loss by fire, flood, earthquake, and so-called extended coverage perils, in an amount of not less than the actual replacement cost thereof or the full insurable value thereof, whichever is greater.

11. Signs. The Lessee shall not install any advertisements or signs on any part of the Premises without the Lessor's written consent, which will not be unreasonably withheld.

12. Quiet Possession. Subject to Lessee's obligation to remit timely payment of all required rent, perform and comply with all covenants and provisions of this Agreement and further subject to all rights retained by the Lessor herein, the Lessee may quietly enjoy the Premises during the pendency of this Lease.

13. Lessor's Right of Entry. Lessor and its agents and representatives shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided that such right shall be exercised in such manner as not to interfere with Lessee in the conduct of its activities on the Premises.

14. Hold Harmless. Lessee hereby indemnifies Lessor and agrees to save and make Lessor harmless from and against all claims, actions, damages, liability and expenses, including reasonable attorney's fees, in connection with loss of life, personal injury and/or damage to property arising from or in any way relating to the occupancy or use by Lessee of the Premises or any part thereof of any other part of Lessor's property, including but not limited to any act or omission of Lessee, its officers, agents, contractors or employees, subtenants or any other users of the Premises; such indemnity and hold harmless shall further apply to any default, breach, violation or nonperformance of this Agreement by Lessee; any injury to person or property or loss of life sustained in or about the Premises, during the term of this Lease.

15. Notice. Notice is duly given hereunder: (a) if by transmission by hand delivery, when delivered; (b) if mailed via the official governmental mail system, three business days after the post mark, *provided* said notice is sent first class, postage pre-paid, via certified or registered mail, with a return receipt requested; (c) if mailed by an internationally recognized overnight express mail service such as Federal Express, UPS, DHL Worldwide or a similar organization, one business day after deposit therewith prepaid; or (d) by e-mail upon delivery with receipt confirmed. Notices shall be transmitted to the principal addresses of the Parties as follows:

Newberry County, South Carolina
1309 College Street
P.O. Box 156
Newberry, SC 29108
Attn: County Administrator
Email: cinglese@newberrycounty.net

MM Technics LP
[Street Address]
[City, SC Zip Code]
Attn: [●]
Email:

16. Damage. (a) If the Premises shall be so damaged by fire, other casualty, or act of the public enemy so as to be substantially destroyed and unusable, then this Lease shall terminate, and any unearned rent paid in advance by Lessee shall be proportionately apportioned and refunded to it.

(b) In case the Premises is not substantially destroyed, the Lessor may elect to restore the Premises, and, in such event, a portion of the rent payment shall abate in proportion to usable square footage. The Lessee agrees to give the Lessor immediate notice of any damage to the Premises. Failure to timely provide notice to Lessor shall result in a waiver of any abatement rights under Section 16(a).

17. Default. If the Lessee fails to perform or observe any of the covenants contained herein on its part to be observed and performed for 30 days after notice by Lessor, (a) the Lessor may forthwith terminate or cancel this Lease by notifying Lessee of such termination or cancellation, and upon such termination or cancellation the Lessee shall be liable to the Lessor for

all damages Lessor sustains by reason of Lessee's breach of covenant and of such termination or cancellation; or (b) the Lessor may forthwith re-enter the Premises without notice and upon re-entry may let the Premises or any part thereof as agent for Lessee and receive the rent therefore, applying the same first to the payment of such expense as the Lessor may be put to in entering and letting the premises and then to the payment of the rent and the fulfillment of the Lessee's covenants hereunder. A waiver by the Lessor of any breach or breaches by the Lessee of any one or more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of the Lessor for any subsequent breach of any such or other covenants and conditions.

18. Additional Rent. If the Lessor shall make any expenditure for which Lessee is ultimately responsible, in whole or in part, or if the Lessee shall fail to make any payment which Lessee is obliged to make hereunder, then the amount thereof may at Lessor's option be added to any installment of Basic Rent then due or thereafter becoming due and shall be paid immediately upon demand by Lessor.

19. Termination. As provided in Section 16 hereof, or if at any time proceedings in bankruptcy, or pursuant to any other act for the relief of debtors, shall be instituted by or against the Lessee, or if the Lessee shall compound Lessee's debts or assign over Lessee's estate or effects for payment thereof, or if any execution shall issue against the Lessee or any of Lessee's effects whatsoever, or if a receiver or trustee shall be appointed of the Lessee's property, or if this Lease shall, by operation of law, devolve upon or pass to any person or persons other than Lessee personally, then and in each of such cases, the Lessor may terminate this Lease forthwith by notifying Lessee as herein provided. Upon such termination all sums due and payable or to become due and payable by Lessee shall at once become due and payable. Further, any and all amounts previously paid by Lessee shall be deemed earned in full by Lessor, except as set forth in Section 16.

20. Choice of Law. This Agreement shall be governed in all respects by the laws of the State of South Carolina, except with respect to any provisions that would refer the governance of this Agreement to the laws of any other jurisdiction.

21. Condemnation. If the Premises or any part thereof are taken or condemned for a temporary or permanent public or quasi-public use, either Party may, at its option, terminate this Lease and in such event any unearned rent paid in advance shall be returned to the Lessee which shall be the extent of the Lessor's obligations in such event. Furthermore, should the activities taking place on the Premises during the term of this Lease cause the Premises to become or be declared a public nuisance, or should law enforcement or any public body with jurisdiction take any other action to cause the Premises to be declared unsuitable for the purpose of this Lease, then Lessor may immediately terminate this Lease with no further obligations to Lessor.

22. No Partnership or Joint Venture. Nothing contained herein shall have the effect of creating any relationship of principal and agent or of partnership or joint venture between the Parties, whose sole relationship is that of lessor and lessee.

23. Title. Title to the Premises shall at all times remain with the Lessor.

24. Assignment. This Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns and shall be governed by the laws of the State of South Carolina. Provided, however, that written consent shall be obtained by the Party seeking any assignment from the other party.

25. Facsimile and Other Electronic Means. The parties agree that this Lease may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

26. Entire Agreement. The Parties agree that this Lease constitutes the entire agreement between the Parties related to the Premises and that no other agreements or representations other than those contained in this Lease have been made by the Parties. This Lease shall be amended only in writing, and effective when signed by the authorized agents of the Parties.

27. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

28. Severability. In the event that any term or provision of this Lease is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Commencement Date.

WITNESS:

(witness signature)

WITNESS:

(witness signature)

**Newberry County, South Carolina,
as Lessor**

(signature for landlord)

(printed name and title of signatory)

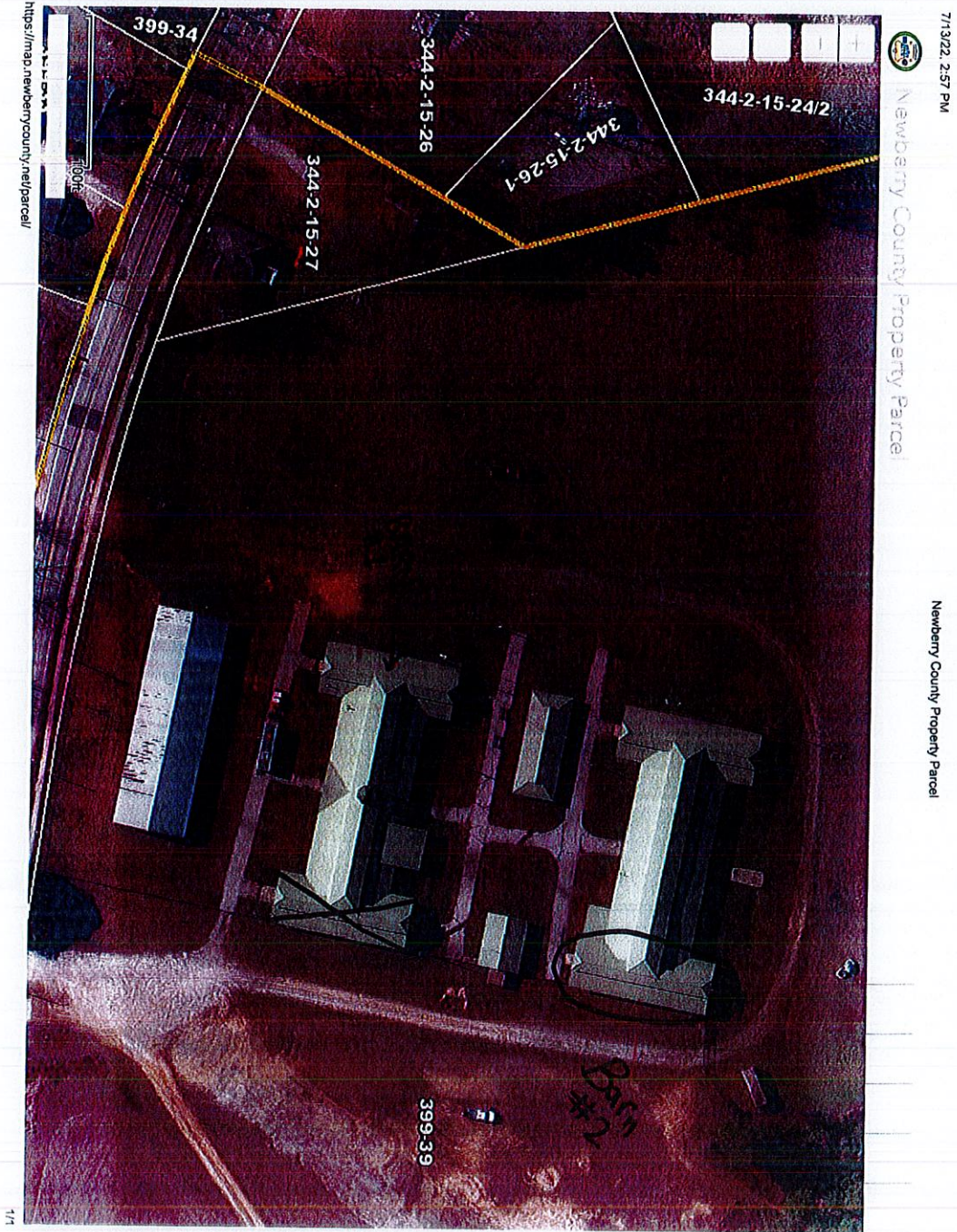
**MM Technics LP,
as Lessee**

(signature for tenant)

(printed name and title of signatory)

Attachment A

Property





STORAGE SPACE LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made and entered into on the ____ day of ____, 2022 (the "**Commencement Date**"), by and between Newberry County, South Carolina, whose address is 1309 College Street, Newberry, South Carolina 29108 (hereinafter referred to as "**Lessor**"), and MM Technics LP, whose address is 145 Mid-Carolina-Ct, 29127 Prosperity, South Carolina, United States (hereinafter referred to as "**Lessee**", and together with the Lessor, the "**Parties**").

1. Description of Leased Premises. The Lessor agrees to lease to the Lessee the following described 12,000 square feet (SF) of warehouse space located at 2301 Adelaide Street, Newberry, South Carolina, hereinafter known as the "**Premises**" as shown on Attachment A a portion of Barn #1 and a portion of Barn #2. The portion of Barn #2 will be made available ninety days after the portion of Barn #1 and the terms of the base rent provided in Section 4 below shall be adjusted on a pro rata basis.

2. Use of Leased Premises. The Lessor is leasing the Premises to the Lessee and the Lessee is hereby agreeing to lease the Premises for the following use and purpose: Storage of metal packaging.

3. Term. The term of this Lease shall be for a period of 18 months commencing at 12:01 a.m. on October 1, 2022, and expiring at Midnight on March 31, 2024 (the "**Initial Term**"). At the conclusion of the Initial Term this Lease will automatically renew on a month-to-month term, subject to termination by either Party upon 90-days notice.

4. Base Rent. Lessee shall pay rent monthly to Lessor ("**Basic Rent**") in advance on or before the first day of each month during the Initial Term, or any additional term, with the first payment due upon the Commencement Date. The Basic Rent payment shall be \$4,500 monthly (\$54,000 annually), and shall continue until the expiration of the Initial Term and any additional term.

5. Improvements. By September 30, 2022, Lessor shall (i) remove all personal property from the Premises, and (ii) make all improvements set forth under the scope of work contained in Bid Number 2022-9 issued by the County on July 18, 2022, and any amendments thereto. Lessor shall not be responsible for any other improvements or alterations under this Lease. Lessee shall not have the right to make any alterations to the Premises absent written consent of the Lessor.

6. Repairs. Lessee shall take or cause to be taken good care of the Premises during the Term, it being understood that Lessor shall not be required to make any repairs to the Premises during the Term. At the end or other termination of this Lease, Lessee shall deliver to Lessor the Premises thereon broom clean and in good repair and condition, ordinary wear and tear, depreciation, obsolescence and casualty and condemnation loss being excepted.

7. Utilities and Operating Expenses. Lessee shall be responsible for and shall pay all charges incurred for the use of utility services at the Premises, including, without limitation,

electricity, water, sanitary sewer, gas, and telephone services. Lessee shall additionally be solely responsible for all costs and expenses incurred in the maintenance and operations of the Premises. Such costs and operation expenses are not part of this Lease and shall not be paid to Lessor; any costs and expenses incurred in the maintenance and operations of the Premises shall be tendered by Lessee directly to the third-party seeking payment.

8. Taxes and Licenses. Lessee agrees to pay all property taxes and obtain and pay all licenses in connection with the Premises. Lessor shall have no responsibility with regard to taxes or licenses.

9. Security Deposit. \$4,500 shall be due on the Commencement Date. Such amount shall be applied in the discretion of the Lessor to make any necessary repairs or cleaning and to pay any unpaid rent that would be the responsibility of the Lessee hereunder. The foregoing shall not reduce or limit any remedy or amount owing under this Lease from Lessee to Lessor. Any balance of the security deposit remaining at the termination of this Lease shall be returned to Lessee within 30 days of such termination.

10. Insurance. Lessee shall, at all times during the Term of this Lease, maintain with a reputable insurance carrier acceptable to Lessor, a policy or policies of insurance generally known as public liability or landlord and tenant policies insuring the Lessee against any and all claims and demands made by any person or persons for injuries received in connection with the operation, use, and maintenance of the Premises, and for any other risk insured against by such liability policies. Lessee shall maintain a Commercial General Liability Policy with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Lessor shall be named as an additional insured on such policy. Lessee must provide adequate proof of insurance to Lessor on the date of execution of this Lease. Failure to maintain proper insurance under this Section 10 shall be considered a breach of this Lease and shall result in the immediate termination of this Lease. Upon such termination, all payments received by Lessor shall be retained by Lessor as liquidated damages for such breach

(b) Lessee shall, at all times during the Term of this Lease, keep the Premises, together with all improvements, personal property, fixtures and equipment included therein, insured against loss by fire, flood, earthquake, and so-called extended coverage perils, in an amount of not less than the actual replacement cost thereof or the full insurable value thereof, whichever is greater.

11. Signs. The Lessee shall not install any advertisements or signs on any part of the Premises without the Lessor's written consent, which will not be unreasonably withheld.

12. Quiet Possession. Subject to Lessee's obligation to remit timely payment of all required rent, perform and comply with all covenants and provisions of this Agreement and further subject to the all rights retained by the Lessor herein, the Lessee may quietly enjoy the Premises during the pendency of this Lease.

13. Lessor's Right of Entry. Lessor and its agents and representatives shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof,

provided that such right shall be exercised in such manner as not to interfere with Lessee in the conduct of its activities on the Premises.

14. Hold Harmless. Lessee hereby indemnifies Lessor and agrees to save and make Lessor harmless from and against all claims, actions, damages, liability and expenses, including reasonable attorney's fees, in connection with loss of life, personal injury and/or damage to property arising from or in any way relating to the occupancy or use by Lessee of the Premises or any part thereof of any other part of Lessor's property, including but not limited to any act or omission of Lessee, its officers, agents, contractors or employees, subtenants or any other users of the Premises; such indemnity and hold harmless shall further apply to any default, breach, violation or nonperformance of this Agreement by Lessee; any injury to person or property or loss of life sustained in or about the Premises, during the term of this Lease.

15. Notice. Notice is duly given hereunder: (a) if by transmission by hand delivery, when delivered; (b) if mailed via the official governmental mail system, three business days after the post mark, *provided* said notice is sent first class, postage pre-paid, via certified or registered mail, with a return receipt requested; (c) if mailed by an internationally recognized overnight express mail service such as Federal Express, UPS, DHL Worldwide or a similar organization, one business day after deposit therewith prepaid; or (d) by e-mail upon delivery with receipt confirmed. Notices shall be transmitted to the principal addresses of the Parties as follows:

Newberry County, South Carolina
1309 College Street
P.O. Box 156
Newberry, SC 29108
Attn: County Administrator
Email: cinglese@newberrycounty.net

MM Technics LP
[Street Address]
[City, SC Zip Code]
Attn: [●]
Email:

16. Damage. (a) If the Premises shall be so damaged by fire, other casualty, or act of the public enemy so as to be substantially destroyed and unusable, then this Lease shall terminate and any unearned rent paid in advance by Lessee shall be proportionately apportioned and refunded to it.

(b) In case the Premises is not substantially destroyed, the Lessor may elect to restore the Premises and, in such event, a portion of the rent payment shall abate in proportion to usable square footage. The Lessee agrees to give the Lessor immediate notice of any damage to the Premises. Failure to timely provide notice to Lessor shall result in a waiver of any abatement rights under Section 16(a).

17. Default. If the Lessee fails to perform or observe any of the covenants contained herein on its part to be observed and performed for 30 days after notice by Lessor, (a) the Lessor

may forthwith terminate or cancel this Lease by notifying Lessee of such termination or cancellation, and upon such termination or cancellation the Lessee shall be liable to the Lessor for all damages Lessor sustains by reason of Lessee's breach of covenant and of such termination or cancellation; or (b) the Lessor may forthwith re-enter the Premises without notice and upon re-entry may let the Premises or any part thereof as agent for Lessee and receive the rent therefore, applying the same first to the payment of such expense as the Lessor may be put to in entering and letting the premises and then to the payment of the rent and the fulfillment of the Lessee's covenants hereunder. A waiver by the Lessor of any breach or breaches by the Lessee of any one or more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of the Lessor for any subsequent breach of any such or other covenants and conditions.

18. Additional Rent. If the Lessor shall make any expenditure for which Lessee is ultimately responsible, in whole or in part, or if the Lessee shall fail to make any payment which Lessee is obliged to make hereunder, then the amount thereof may at Lessor's option be added to any installment of Basic Rent then due or thereafter becoming due and shall be paid immediately upon demand by Lessor.

19. Termination. As provided in Section 16 hereof, or if at any time proceedings in bankruptcy, or pursuant to any other act for the relief of debtors, shall be instituted by or against the Lessee, or if the Lessee shall compound Lessee's debts or assign over Lessee's estate or effects for payment thereof, or if any execution shall issue against the Lessee or any of Lessee's effects whatsoever, or if a receiver or trustee shall be appointed of the Lessee's property, or if this Lease shall, by operation of law, devolve upon or pass to any person or persons other than Lessee personally, then and in each of such cases, the Lessor may terminate this Lease forthwith by notifying Lessee as herein provided. Upon such termination all sums due and payable or to become due and payable by Lessee shall at once become due and payable. Further, any and all amounts previously paid by Lessee shall be deemed earned in full by Lessor, except as set forth in Section 16.

20. Choice of Law. This Agreement shall be governed in all respects by the laws of the State of South Carolina, except with respect to any provisions that would refer the governance of this Agreement to the laws of any other jurisdiction.

21. Condemnation. If the Premises or any part thereof are taken or condemned for a temporary or permanent public or quasi-public use, either Party may, at its option, terminate this Lease and in such event any unearned rent paid in advance shall be returned to the Lessee which shall be the extent of the Lessor's obligations in such event. Furthermore, should the activities taking place on the Premises during the term of this Lease cause the Premises to become or be declared a public nuisance, or should law enforcement or any public body with jurisdiction take any other action to cause the Premises to be declared unsuitable for the purpose of this Lease, then Lessor may immediately terminate this Lease with no further obligations to Lessor.

22. No Partnership or Joint Venture. Nothing contained herein shall have the effect of creating any relationship of principal and agent or of partnership or joint venture between the Parties, whose sole relationship is that of lessor and lessee.

23. Title. Title to the Premises shall at all times remain with the Lessor.

24. Assignment. This Lease shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns and shall be governed by the laws of the State of South Carolina. Provided, however, that written consent shall be obtained by the Party seeking any assignment from the other party.

25. Facsimile and Other Electronic Means. The parties agree that this Lease may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party

26. Entire Agreement. The Parties agree that this Lease constitutes the entire agreement between the Parties related to the Premises and that no other agreements or representations other than those contained in this Lease have been made by the Parties. This Lease shall be amended only in writing, and effective when signed by the authorized agents of the Parties.

27. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

28. Severability. In the event that any term or provision of this Lease is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Commencement Date.

WITNESS:

**Newberry County, South Carolina,
as Lessor**

(witness signature)

(signature for landlord)

(printed name and title of signatory)

WITNESS:

**MM Technics LP,
as Lessee**

(witness signature)

(signature for tenant)

(printed name and title of signatory)

Attachment A

Property





STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 09-21-2022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(SIGNATURE PAGE TO FOLLOW)

EXHIBIT A
DESCRIPTION OF NEWBERRY PV1, LLC PROPERTY

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

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

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

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

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

[Parker Poe, 9.9.22](#)

FEE AGREEMENT

Between

NEWBERRY COUNTY, SOUTH CAROLINA

and

NEWBERRY PV1, LLC

Dated as of October __, 2022

[Parker Poe, 9.9.22](#)

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

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

FEE AGREEMENT

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

RECITALS

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Fee Agreement” shall mean this Fee Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

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

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

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

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

(d) The millage rate in Section 4.1 hereof is the lowest millage rate permissible under the Act, which the parties understand to be ~~[233.0]~~ 367 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2021, as provided under Section 12-44-50(A)(1)(d) of the Act.

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

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

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

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

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

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

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

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

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

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

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

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

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

Section 3.3 Filings and Reports.

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

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

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

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

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

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

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

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

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

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

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

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

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

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

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

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

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

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

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

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

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

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

Section 4.7 Damage or Destruction of Economic Development Property.

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

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

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

Section 4.8 Condemnation.

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

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

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

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

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

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

Section 4.11 No Double Payment; Future Changes in Legislation.

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

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

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

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

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

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

ARTICLE V

DEFAULT

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

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

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

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

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

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

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

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

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

Section 5.2 Remedies on Default.

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

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

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

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

(i) bring an action for specific enforcement;

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

ARTICLE VI

MISCELLANEOUS

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

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

IF TO THE COMPANY:

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

WITH A COPY TO:

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

IF TO THE COUNTY:

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

WITH COPIES TO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

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

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

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

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

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

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

~~(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement.~~

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

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

(Signature Page Follows)

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

**NEWBERRY COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: _____
Title: _____

ATTEST:

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

NEWBERRY PV1, LLC

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

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

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

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

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

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

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

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Date

Name of Sponsor Affiliate

Signature: _____

Name: _____

Title: _____

Address: _____

COMPANY:

Signature: _____

Name: _____

Title: _____

EXHIBIT C
COMMUNITY COMMITMENTS

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

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

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

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

**Newberry County
Administration**

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



Agenda Item Briefing

Subject: Fees and Fines – Copier Cost

Prepared By: Debbie S. Cromer

Department/Division: Administration

Legal Review: N/A

Finance Review: Karen Brehmer

Administrator Review: Christopher Inglese

Requested meeting: Committee County Council

Title: Finance Director

Date Prepared: 9/13/2022

Date: N/A

Date: 9/13/2022

Date: 9/13/2022

Meeting Date: Wednesday, September 21, 2022

FIDUCIARY:

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

If NO, is a budget amendment necessary? Yes No

STAFF'S RECOMMENDED ACTION: Staff recommend no changes to the fee schedule. At the Finance Committee meeting on September 12, 2022, Committee members approved to present to full Council a revised fee schedule for copier cost. Based upon the recommendation of committee, staff has been requested to prepare an ordinance to decrease the per copy cost from \$.50 to \$.35. First reading of this ordinance will be tonight, September 21, 2022.

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: The amendment will result in less revenue than project for the copies line item.

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Ordinance 09-22-22

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 09-22-2022

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE FOR THE FISCAL YEAR 22-23, ORDINANCE NUMBER 4-7-22, TO PROVIDE FOR AN AMENDMENT TO THE COPYING FEES AT THE COURTHOUSE

WHEREAS, Newberry County Council adopted Ordinance 04-7-21 (the “Budget Ordinance”), establishing the budget for the fiscal year 2022-2023; and

WHEREAS, Newberry County Council wishes to revise fee schedule adopted as part of the fiscal year 2022-2023, in order to reduce the fees charged for black and white copies from .50 to .35 per page; and

WHEREAS, the purpose of this Budget Amendment Ordinance is to establish that Newberry County Council has approved those revisions contained herein.

Fees Charged by County Departments

Basic cost for copies Countywide \$.5035 per page.

CLERK OF COURT

Copies \$.5035 per page

PROBATE JUDGE

Copies \$.5035 per page

TAX ASSESSOR

Copies \$.5035 per page

B/W 8 ½ x 11 Property Cards \$.5035 per page

AND IT IS SO ORDAINED by Newberry County Council this _____ day of _____ 2022, in meeting duly assembled at Newberry, South Carolina.

NEWBERRY COUNTY COUNCIL

(SEAL)

By: _____

Todd Johnson, Chairman

Attest:

Jackie Lawrence, Clerk to Council

First Reading: 09-21-2022

Second Reading:

Public Hearing:

Third Reading:

Reviewed and approved as to form:

Christopher S. Inglese, County Administrator

Joanie Winters, Interim County Attorney

**Newberry County
Administration**

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



Agenda Item Briefing

Subject: Fees and Fines – Building Department

Prepared By: Debbie S. Cromer

Title: Finance Director

Department/Division: Administration

Date Prepared: 9/13/2022

Legal Review: N/A

Date: N/A

Finance Review: Karen Brehmer

Date: 9/13/2022

Administrator Review: Christopher Inglese

Date: 9/13/2022

Requested meeting: Committee County Council

Meeting Date: Wednesday, September 21, 2022

FIDUCIARY:

Are funds allocated in the department's current fiscal year budget?

Yes

No

If NO, is a budget amendment necessary?

Yes

No

STAFF'S RECOMMENDED ACTION: Staff's recommendation is to make no changes to the previously approved fee schedule. At the Finance Committee meeting on September 12, 2022, Committee members recommended to full Council a revised fee schedule for building department. Committee recommends 3 changes:

1. Provide an option to use a signed contract to determinate the construction valuation as an alternative to the ICC valuation
2. Reduce the plan review fee for residential projects to 25% down from 50%
3. Apply a valuation to unheated space that is ½ the valuation of heated space

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: Amending the fee schedule will result in less than projected revenues in the FY 23 Budget.

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Ordinance 09-23-22

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 09-23-2022

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE FOR THE FISCAL YEAR 22-23, ORDINANCE NUMBER 04-07-22, TO REVISE THE FEES COLLECTED BY THE BUILDING DEPARTMENT

WHEREAS, Newberry County Council adopted Ordinance 04-07-22 (the “Budget Ordinance”), establishing the budget for the fiscal year 2022-2023; and

WHEREAS, Newberry County Council wishes to revise the fee scheduled for the Building Department for the fiscal year 2022-2023; and

WHEREAS, the purpose of this Budget Amendment Ordinance is to establish that Newberry County Council has approved those revisions contained herein.

**Fees and Fines
Newberry County
FY 2022-2023**

Building Department

\$1,000 or less	\$50.00
\$1,001 to \$5,000	\$50.00 for the first \$1,000, plus \$10.00 for each additional \$1,000 or fraction thereof
\$5,001 to \$50,000	\$50.00 for the first \$5,000, plus \$10.00 for each additional \$1,000 or fraction thereof
\$50,001 to \$100,000	\$270.00 for the first \$50,000, plus \$5.00 for each additional \$1,000 or fraction thereof
\$100,001 to \$500,000	\$470.00 for the first \$100,000, plus \$5.00 for each additional \$1,000 or fraction thereof
\$500,001 and up	\$1,670.00 for the first \$500,000, plus \$5.00 for each additional \$1,000 or fraction thereof

Building permit fees are based on building valuation data as published by the ICC (International Code Council) and will be calculated by staff at the time of permit issuance. As an alternative, applicants may submit a fully executed contract for construction that determines an alternative building valuation based on the contracted cost of construction. For the purposes of calculating building valuation, the ICC valuation shall be applied to the heated space of a proposed building and one-half (1/2) of the ICC valuation shall be applied to unheated space of a proposed building.

Re-inspection Fee \$75.00 for first re-inspection; doubles each inspection thereafter

Plan Review Fee $\frac{1}{2}$ the cost of the permit fee for non-residential projects
 $\frac{1}{4}$ the cost of the permit fee for residential projects

MANUFACTURED HOME FEES

Single Wide Manufactured Home Fee	\$ 100.00
Double Wide Manufactured Home Fee	\$ 200.00
Manufactured Home Moving Fee	\$ 100.00
Manufactured Home Decal	\$ 5.00

FLOOD MANAGEMENT

Flood Permit Fee \$75.00

PLANNING AND ZONING

New Sign	\$ 200.00
Re-facing Fee	\$ 75.00
Tower Permit Fee	\$ 500.00
Co-Location Tower Permit Fee	\$ 200.00
Zoning Permit Fee	\$ 75.00
Demo Fee	\$ 50.00
Re-inspection Fee	\$ 75.00
Zoning Map Amendment/ Rezoning Request	\$ 200.00 per acre 1 st acre, \$200.00 for 2 nd acre \$ 25 per acre thereafter

Manufactured Home Park/ Application Fee	\$ 200.00 plus \$20 per lot
Variance Request	\$ 150.00
Notice of Appeal	\$ 200.00
Special Exception Request	\$ 200.00

LAND DEVELOPMENT (Subdivision)

Application Fee	\$100.00 plus \$20.00/lot or dwelling unit up to 4
Traditional Subdivision	\$ 5.00 per lot above 4 lots
Residential Group Developments:	\$300.00 plus \$20.00/lot for more than 4 units or lots

Traditional Subdivision and Residential Group Developments:
1-5 Lots/Units \$100 application fee plus \$20 per lot/unit
More than 5 Lots/Units \$300.00 application fee plus \$20 per lot/unit

Plat Revisions \$ 25.00

Commercial or Industrial Group Developments:
\$500 application fees plus \$0.01 per sq. ft of building space

Gross Square footage
1-5 buildings \$ 25.00 per building
Above 5 buildings \$ 125.00 plus \$10.00 per building above 5

AND IT IS SO ORDAINED by Newberry County Council this ____ day of _____ 2022,
in meeting duly assembled at Newberry, South Carolina.

NEWBERRY COUNTY COUNCIL

(SEAL)

By: _____
Todd Johnson, Chairman

Attest:

Jackie Lawrence, Clerk to Council

First Reading: 09-21-2022
Second Reading:
Public Hearing:
Third Reading:

Reviewed and approved as to form:

Joanie Elizabeth Winters, Interim County Attorney

Christopher S. Inglese, County Administrator

**Newberry County
Administration**

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



Agenda Item Briefing

Subject: Proposed Premium Pay

Prepared By: Debbie S. Cromer

Department/Division: Administration

Legal Review: N/A

Finance Review: Karen Brehmer

Administrator Review: Christopher Inglese

Requested meeting: Committee County Council

Title: Finance Director

Date Prepared: 9/13/2022

Date: N/A

Date: 9/13/2022

Date: 9/13/2022

Meeting Date: Wednesday, September 21, 2022

FIDUCIARY:

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

If NO, is a budget amendment necessary? Yes No

Funds to be paid from ARPA funds.

STAFF'S RECOMMENDED ACTION: At the Finance Committee meeting on September 12, 2022. Committee members approve to present to full Council another round of premium pay. Based upon the recommendations of committee, staff has been requested to figure the cost increases each category by \$500.00. \$3,000 for public safety, law enforcement, communications, public safety, building maintenance, custodial, coroner; \$2,000 for administrative support and leadership (FTE); \$1,500 for volunteers (fire, rescue, and hazmat). The second round of ARPA funding would cost approximately \$697,000; social security of \$53,321; and the cost of the extra payroll processing \$2,910 the total cost would be \$750,321. This is based on the same criteria and information from the prior premium pay paid in December 2021 with the exception of communications has been added to public safety.

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Resolution 08-22

STATE OF SOUTH CAROLINA)
)
)
)
)
)
)
)
COUNTY OF NEWBERRY)

RESOLUTION 08 - 22

RESOLUTION ADOPTING CRITERIA TO BE
TO BE USED IN DETERMINING PREMIUM
PAY AND AUTHORIZING PAYMENT
PURSUANT TO THE AMERICAN RESCUE
PLAN ACT OF 2021

WHEREAS, the United States Congress passed the American Rescue Plan Act of 2021 (“ARPA”) is delivering direct relief to the American people, rescuing the American economy, and starting to beat the virus; and

WHEREAS, County Council has determined that certain criteria should be followed in authorizing Premium Pay for certain employees and volunteers of Newberry County and desires to express and endorse those criteria by this Resolution.

NOW, THEREFORE BE IT RESOLVED THAT NEWBERRY COUNTY COUNCIL, IN MEETING DULY ASSEMBLED, that the following criteria and adopted for the purpose of guiding the payment of Premium Pay:

- Qualifying individuals must have worked between April 2021 and April 2021 and be Currently employed as of the date of this Resolution.
- The qualifying individual’s Premium Pay will be based on the following tiers:
 - \$3,000 gross for critical infrastructure and high degrees of COVID exposure (FTE-law enforcement, public safety, communications, public works, building maintenance, custodial coroner)
 - \$2,000 gross for administrative support and leadership (FTE) who worked through the height of the pandemic
 - \$1,500 gross for volunteers (fire, rescue, hazmat) who complied with the volunteer incentive program for 2021 and for part-time deputy coroner
- A written statement is required for each individual who will receive Premium Pay and whose salary is greater than \$69,345 justifying why this individual qualifies to receive Premium Pay. The statement is to be signed by the department heads.
- Premium pay will be taxed for federal, state, social security, and Medicare. No deductions will be made for SC retirement (SCRS or PORS.)
- Funding for this Premium Pay one-time disbursement will be taken from funds received through the American Rescue Plan Act.

AND IT IS SO RESOLVED this day of 2022.

(SEAL)

Newberry County Council

BY: _____
Todd Johnson, Chairman

ATTEST:

Jackie Lawrence, Clerk to Council

ARPA FUNDS

American Recovery Funds	Deposit	Interest	W/D	Balance
June, 2021	3,733,259.50			\$ 3,733,259.50
June, 2021 Interest		212.75	-	3,733,472.25
July, 2021 Interest		507.37		3,733,979.62
August, 2021 Interest		507.45		3,734,487.07
September, 2021 interest		491.14		3,734,978.21
October, 2021		507.58		3,735,485.79
November, 2021 interest		491.27		3,735,977.06
December, 2021 interest		507.72		3,736,484.78
May 4, 2022 Premium Pay pd December, 2021			597,995.75	3,138,489.03
May 4, 2022 ADP processing pd December, 2021			2,909.99	3,135,579.04
January, 2022 interest		507.78		3,136,086.82
February, 2022 interest		458.71		3,136,545.53
March, 2022 interest		507.92		3,137,053.45
April, 2022 interest		491.59		3,137,545.04
May, 2022 interest		439.57		3,137,984.61
June, 2022 interest		593.26		3,138,577.87
July, 2022 interest		1,802.92		3,140,380.79
July 14, 2022 Final ARPA payment	3,733,259.50			6,873,640.29
August, 2022 interest		2,335.54		6,875,975.83
Approved in FY 22-23 Budget - Capital Equipment Budget				
Engine			350,000.00	6,525,975.83
Brush Truck			128,192.00	6,397,783.83
Hospital Remount			200,000.00	6,197,783.83
EMS Life Pak			46,808.00	6,150,975.83
Other Funding Approved FY 22-23				
Public Defender			70,000.00	6,080,975.83
Solicitor's Office			70,000.00	6,010,975.83
Newberry Electric - Broadband 5-18-2022			92,000.00	5,918,975.83
AVAILABLE BALANCE 9-1-2022				\$ 5,918,975.83

STATE OF SOUTH CAROLINA)
)
)
)
)
)
COUNTY OF NEWBERRY)

**RESOLUTION NO. 9-22
RESOLUTION FOR THE LOCATION AND
DEDICATION OF THE MEMORIAL
HONORING ALL FIRST RESPONDERS IN
NEWBERRY COUNTY**

WHEREAS, last year marked the 20th anniversary of the 9/11 terrorist attacks, the deadliest terror attacks in world history, where First Responders played a vital role in saving innocent victims of the attacks, often at their own peril; and

WHEREAS, First Responders continue to make countless sacrifices and selfless efforts to ensure our communities are safe and peaceful places to call home; and

WHEREAS, Newberry County Council desires to recognize all who make these sacrifices on a regular basis, especially those who have made the ultimate sacrifice with their life in the line of duty; and

WHEREAS, through the generous initiative of Mr. Jimmy Smith in conjunction with Sheriff Lee Foster, a public safety memorial will be erected and placed at the left side of the entrance of the Newberry County Courthouse, thus honoring First Responders of Newberry County.

NOW, THEREFORE BE IT RESOLVED THAT NEWBERRY COUNTY COUNCIL BY PASSAGE OF THIS RESOLUTION DOES HEREBY AUTHORIZE THE LOCATION AND DEDICATION OF THE PUBLIC SAFETY MEMORIAL FOR ERECTION ON THE LEFT SIDE OF THE ENTRANCE, AS SHOWN ON EXHIBIT A OF THE NEWBERRY COUNTY COURTHOUSE, AS DESIGNED AND APPROVED BY THE CITY OF NEWBERRY ARB, AS SHOWN ON EXHIBIT B, TO HONOR ALL FIRST RESPONDERS OF THIS COUNTY WHO CONTINUE DAILY TO RISK THEIR LIVES TO KEEP US SAFE.

AND BE IT FURTHER RESOLVED, that this Resolution shall be published in the official minutes of the Newberry County Council.

AND IT IS SO RESOLVED this 21st day of September 2022.

NEWBERRY COUNTY COUNCIL

(SEAL)

BY: _____
Todd Johnson, Chairman

Attest:

Jackie Lawrence, Clerk to Council

EXHIBIT A

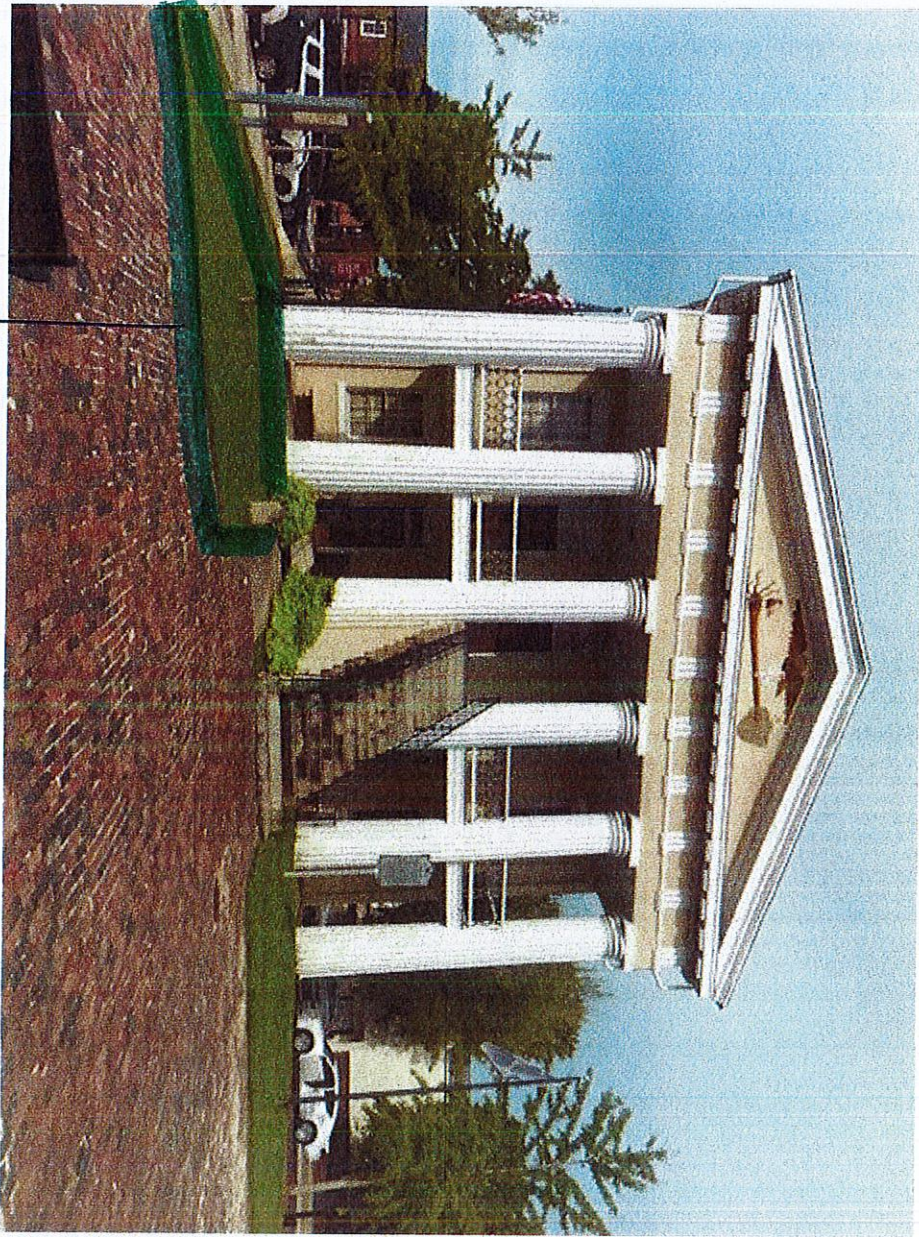
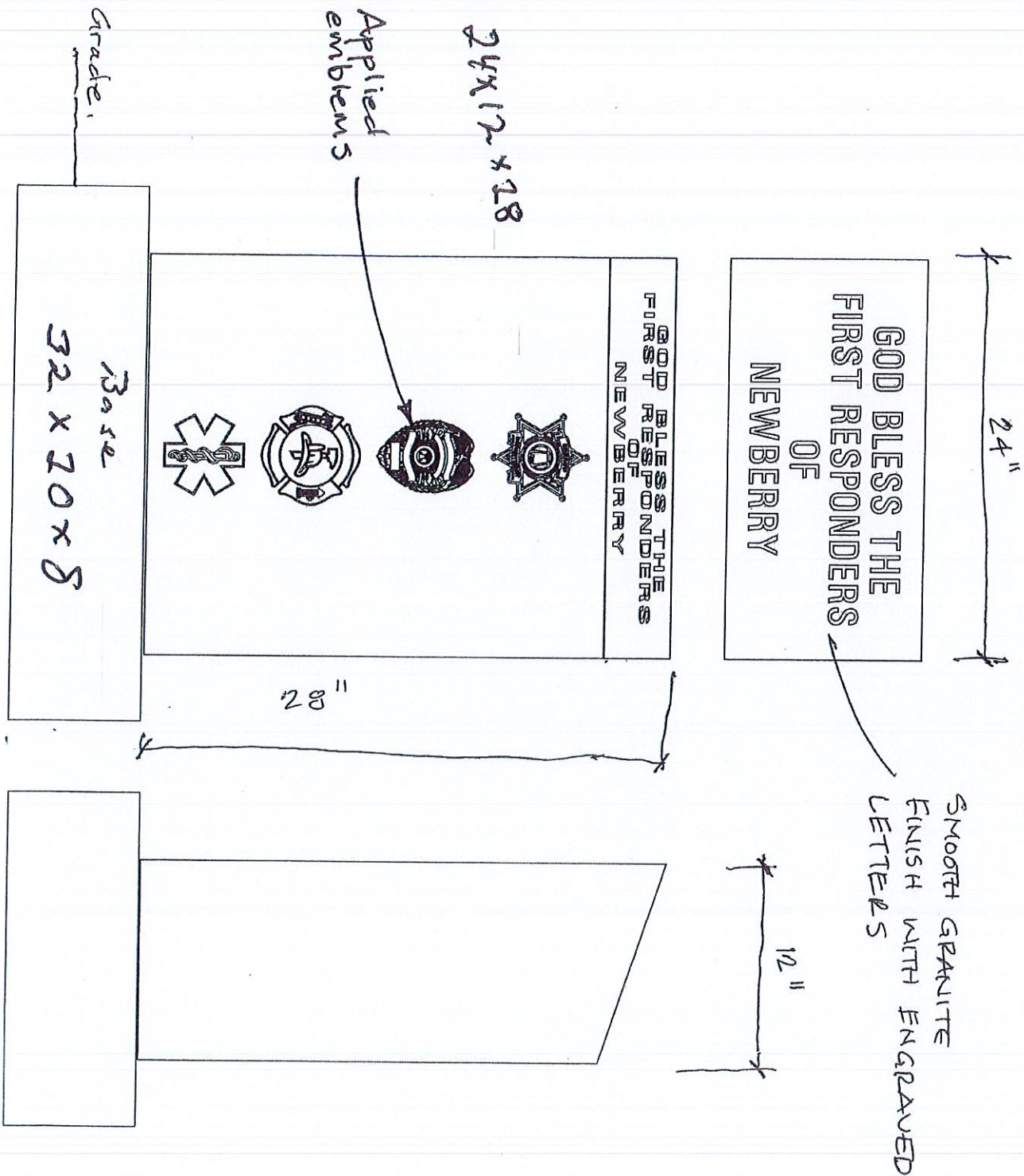


EXHIBIT B



**Newberry County
Administration**

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



Agenda Item Briefing

Subject: Grant Consulting Services

Prepared By: Crystal Waldrop

Department/Division: Administration

Legal Review: _____

Finance Review: _____

Administrator Review: _____

Requested meeting: Committee County Council
2022

Title: Purchasing Director

Date Prepared: 9/15/2022

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Meeting Date: Wednesday, September 21,

FIDUCIARY:

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

If NO, is a budget amendment necessary? Yes No

STAFF'S RECOMMENDED ACTION: Staff will present the highest-ranking firm for the Grant Consulting Services.

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

SUMMARY DISCUSSION: Procurement solicited request for proposals for the grant writing consulting services and received ten (10) responses. The responses were evaluated by the selected committee which consisted of the County Administrator, the Assistant to the Co. Administrator, the Public Safety Director, and the Purchasing Director. The firms were evaluated based on the following criteria: program understanding and approach, experience of staff and references, firm's ability to meet schedule, the location of the firm and their cost associated with the services.

The Evaluation Committee conducted phone interviews with the three top ranked firms and discussed their submittal in more detail, along with their cost proposal, deadline for potential grants, and their ability to provide Newberry County with the services needed to obtain the most funding available for our needs.

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: Listing of responding firms and score sheets from committee, along with the complete scoring tabulation from the committee ranking the submittals. (the score sheets and final tabulation will be provided prior to the meeting on September 21st).

Request for Proposal: 2022-8

Grant Writing Consultant RFP

Date: August 17, 2022 @ 3:00 p.m.

Newberry County Courthouse Annex
Conference Room, 1309 College Street,
Newberry

Proposer

Granscribe

TJD Consulting

Forvis LLP

Global Partners for Fathers & Families

Jetco Solutions

Integrated Solutions Consulting

MRB Group

iParametric

Merchants McIntyre Associates

Thomas & Hutton

Accepted by:



Purchasing Director

**Newberry County
Administration**

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



Agenda Item Briefing

Subject: Grocery Incentives Policy

Prepared By: Rick Farmer

Department/Division: Economic Development

Legal Review: _____

Finance Review: _____

Administrator Review: _____

Requested meeting: Committee County Council
2022

Title: Director

Date Prepared: 9/14/2022

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

Meeting Date: Wednesday, September 21,

FIDUCIARY:

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

If NO, is a budget amendment necessary? Yes No

STAFF'S RECOMMENDED ACTION: The grocery store incentives policy, designed to help the community recruit a new full-service grocery store, has expired. Staff recommends Council consider extending the policy for an additional three years.

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER: There are no direct costs to the grocery store policy, however, the policy does create a pathway for a grocer to receive Special Source Revenue Credits in exchange for investments following the guidelines of the policy. Any revenues generated from future implementation of this policy would be new revenues to the community.

SUMMARY DISCUSSION:

ADDITIONAL COMMENTS FOR CONSIDERATION:

ATTACHMENTS: 1. Revised Grocery Store Incentives Policy

Newberry County Council
Qualified Grocery Store Investment Incentives

A Policy Document

September 28, 2020

Revised: Sept. 21, 2022

Findings of Newberry County Council

Newberry County Council, as a public body duly assembled, resolves as follows:

- 1) There is a need within Newberry County for a more competitive full-service grocery marketplace, in order to: a) improve retail grocery store facilities within Newberry County, b) improve customer services provided to Newberry County grocery shoppers, and c) improve the variety and pricing of products available to Newberry County grocery shoppers.
- 2) The incentivization and recruitment of new grocery store investment is a legitimate public purpose and, to the greatest degree possible, should be pursued using the same property tax incentives available to County Council under state law for the incentivization and recruitment of industrial investment.
- 3) The incentives contained herein are intended to promote growth in investment through the establishment of new full-service grocery stores in Newberry County, as well as new investments that may significantly improve existing full-service grocery stores and/or vacant properties compatible for use as full-service grocery store facilities.
- 4) Determinations concerning which companies might establish new full-service grocery stores in Newberry County, where such stores might be located within Newberry County, and which existing stores or compatible vacant properties might be improved pursuant to this policy, are largely matters for the private sector to determine; *provided that, the County and its municipalities shall have the authority to reject any proposal not deemed to be in the public interest.*

Qualified Grocery Store Project

For purposes of this policy, a “Qualified Grocery Store Project” is one that meets all of the following criteria: 1) minimum size of 10,000 square feet floor space; 2) new demonstrated investment expenditures of at least \$1 million related to the provision of full-service grocery shopping services; 3) more than 50% of floor space dedicated to the sale of a wide variety of food products generally found in full-service grocery stores, including but not limited to meats, seafood, dairy, canned goods, baked goods, fresh produce, and frozen foods; 4) more than 50% of total revenue coming from food sales; 5) operation by a qualified grocer, whether such grocer is operating as the owner or the lessee of the real property involved; 6) no abandonment of an existing facility, i.e., no creation of “empty boxes,” to build elsewhere in Newberry County; and 7) if not a stand-alone store, inclusion for Credit purposes of only the discrete, full-service grocery store component of any given retail development/shopping center. The County’s intent,

with this policy, is to improve the *full-service grocery store services* available to Newberry County's citizens.

The property tax-related incentives (Credits) provided for herein will promote new grocery store investment, which will necessitate investment in real property. As such, the benefits of this policy will flow directly to the property owner of the Qualified Grocery Store Project, unless lease terms between the real property owner and grocery operator provide otherwise, as with a "triple-net" or similar lease arrangement.

New Taxable Value and Demonstrated New Expenditures

"New Taxable Value" shall result from two components: 1) "Prior Taxable Value," and 2) the increased taxable value resulting from "Demonstrated New Expenditures." The Prior Taxable Value shall be that value on the County's tax rolls prior to any improvements made pursuant to this policy, except that commercial land value equivalents shall be used to establish Prior Taxable Value where agriculturally-assessed property is being converted to use for a Qualified Grocery Store Project. The Demonstrated New Expenditures shall be the total of all expenditures made pursuant to this policy for the provision of improved or expanded full-service grocery shopping services. The value of Demonstrated New Expenditures will be subject to independent verification, in the County's sole discretion. New Taxable Value shall be the sum of Prior Taxable Value and the taxable value of those Demonstrated New Expenditures made pursuant to this policy.

While Demonstrated New Expenditures will enable achievement of the thresholds for the property tax incentives described herein, the entire taxable value of the property after these improvements have been made shall be the property's New Taxable Value, and the property tax-related incentives (Credits) described herein shall apply to the entire New Taxable Value.

Property Tax Incentives and Demonstrated New Expenditures

Qualified Grocery Store Projects meeting certain thresholds for new expenditures made in the form of Demonstrated New Expenditures will receive property tax incentives by means of a special source revenue credit (SSRC "Credit"). The Credit, for purposes of this policy document, is expressed as a percentage reduction of the total property tax liability due (all applicable levies). Qualification for the Credit involves placement of the Qualified Grocery Store Project in a multi-county industrial park, as defined by South Carolina law. (Note: The term multi-county industrial park refers to a mode of tax treatment under state law, not a physical or geographical location. This policy does not determine where Qualified Grocery Store Projects may locate.) The express concurrence of municipal governments is required where Qualified Grocery Store Projects are located within the corporate boundaries of a town or city. Unless otherwise specified, the term of the Credit will be for twenty (20) years.

For any Qualified Grocery Store Project proposing Demonstrated New Expenditures of at least \$1 million in a single location within Newberry County, the resulting New Taxable Value of the property may be subject to a 60% Credit for twenty (20) years. Demonstrated New Expenditures of at least \$2.5 million at a single location within Newberry County may qualify the New

Taxable Value of the Qualified Grocery Store Project for a 100% Credit for each of the first three years and a Credit of 60% per year for years four (4) through twenty (20). Demonstrated New Expenditures of at least \$4 million at a single location within Newberry County may qualify the New Taxable Value of the Qualified Grocery Store Project for a 100% Credit for each of the first five (5) years and a Credit of 60% per year for years six (6) through twenty (20). All property tax incentives apply only to New Taxable Values of Qualified Grocery Store Projects making improvements subject to this policy; provided that, the inclusion of *any* Qualified Grocery Store Project under this policy is at the sole discretion of the County.

Limited Time Period

The property tax-related incentives (Credits) provided for herein may apply to Qualified Grocery Store Project investments announced within three (3) years following the adoption of this policy and completed within five (5) years following the adoption of this policy. Any extensions or other modifications of these terms must be approved by County Council.

Application/Approval

To be considered for the Credits described herein, a representative of the project must complete a Request for Consideration of Credit Application ("RCC Application"), which will require details about the proposed grocery store project and a general demonstration of the project's applicability to this policy, as well as its suitability for Newberry County and its municipalities. Applications will be reviewed by Newberry County Council, county administration, and municipalities, as may be deemed appropriate. *The approval of any application will be in the sole discretion of the County.* If approved, the Credit may be claimed by the party responsible for paying the property taxes on the recognized site/real property of the Qualified Grocery Store Project during the period of the term of the Credit. The actual grant of the Credit will be accomplished through an agreement between the County and the appropriate taxpayer(s), which agreements shall be subject to approval by Ordinance of the County Council.

Continuous Operation Required

For any period of time that the Qualified Grocery Store Project is closed to the public for longer than six months, the Credit described herein will cease, and a new Application process will be required as a condition of continuing or restarting the Credit. Closure for reasons of *force majeure* are exempt from this provision, but only where the clear intent to continue operations is sufficiently established, in the County's sole discretion.