

**NEWBERRY COUNTY  
ORDINANCE NO. 03-06-21**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA (THE "COUNTY") AND NEWBERRY ELECTRIC COOPERATIVE, INC., ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Newberry County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, the "Special Source Act", and, together with the Negotiated FILOT Act, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County or improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, pursuant to the Multi-County Park Act, the County created a multicounty park with Greenwood County, South Carolina ("Greenwood County"), more particularly known as Greenwood-Newberry MultiCounty Industrial Park (the "Multi-County Park"), which is governed by that certain Master Agreement Governing the Greenwood-Newberry Industrial Park dated December 31, 2012, between Greenwood County and the County ("Park Agreement");

WHEREAS, Newberry Electric Cooperative, Inc., a corporation organized and existing under the laws of the State of South Carolina, acting for itself, one or more affiliates, and/or project sponsors (collectively, the “Company”), is considering the establishment and/or expansion of certain manufacturing and related facilities at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or caused to be invested, at least \$2,500,000, in the aggregate, in the Project; and

WHEREAS, based solely on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on March 3, 2021 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, at the request of the Company, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Company with respect to the Project (the “Incentive Agreement”), the form of which is presented to this meeting, which Incentive Agreement is to be dated as of \_\_\_\_\_, 2021, or such other date as the parties thereto may agree; and

WHEREAS, it appears that the Incentive Agreement 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 Council, as follows:

Section 1.     ***Findings.*** Based solely on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

(a)     The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b)     The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and

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

(d)     The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and

(e) The purposes to be accomplished by the Project are proper governmental and public purposes; and

(f) The benefits of the Project are greater than the costs.

**Section 2.     *Approval of Incentive Agreement.***

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the “Negotiated FILOT”) in accordance with the terms of the Incentive Agreement.

(b) The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting

(c)

**Section 3.     *Inclusion Within the Park.*** The expansion of the Multi-County Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Multi-County Park boundaries. Pursuant to the terms of the Park Agreement, the expansion of the Multi-County Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of this Ordinance to Greenwood County.. The County agrees to designate the Project as part of the Multi-County Park, if not already so designated, and agrees to maintain the Project within the boundaries of the Multi-County Park for the duration of the Incentive Agreement.

**Section 4.     *Approval of Special Source Revenue Credits.*** As an additional incentive to induce the Company to undertake the Project, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County hereby agrees that each Credit Eligible Entity shall be entitled to receive, and the County shall,

subject to the provisions of the Incentive Agreement, provide, certain Special Source Credits against certain FILOT Payments due from each such Credit Eligible Entity with respect to the Project for a period of ten (10) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project, in an annual amount equal to twenty percent (20%) of each such FILOT payment, all as set forth in greater detail in the Incentive Agreement. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Co-Investors.

Section 5. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, 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, phases, and provisions hereunder.

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

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2021.

NEWBERRY COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Henry H. Livingston, III, Chairman, County Council,  
Newberry County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Susan C. Fellers, Clerk to County Council,  
Newberry County, South Carolina

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