

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR NEWBERRY COUNTY
ORDINANCE NO. 12-22-19

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

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

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

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

WHEREAS, a company identified for the time being as Project Tiger Shark, (“Sponsor”), desires to expand its manufacturing facility in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$9,420,000 and the creation of 34 new, full-time jobs;

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

WHEREAS, pursuant to Section 3.03(b) of the master agreement governing the Park (the “Park Agreement”) the County may unilaterally modify the internal distribution of Residual FILOT Revenues (as defined in the Park Agreement) set forth in Section 3.03(a)(ii) of the Park Agreement; and

WHEREAS, in order to recoup certain capital investments made by the County for the Project, the County desires to modify the internal distribution of Residual FILOT Revenues so the County may retain

90% of the Residual FILOT Revenues received from the first seven (7) FILOT Payments made pursuant to the Fee Agreement and distribute the remaining 10% to the Newberry County School District.

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

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

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

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

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

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

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the Park Agreement, the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of the Ordinance to Greenwood County, South Carolina.

Section 4. *Modification of Internal Distributions.* The unilateral modification of Section 3.03(a)(ii) of the Park Agreement is authorized and approved. For the first seven FILOT Payments received pursuant to the Fee Agreement, the County shall retain 90% of the Residual FILOT Revenues and distribute the remaining 10% to the Newberry County School District. 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 modification of the internal distribution method set forth in Section 3.03(a)(ii) of the Park Agreement.

Section 5 *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement.

Section 6. *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 7. *General Repealer.* Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 8. *Effectiveness.* This Ordinance is effective after its third reading and public hearing.

NEWBERRY COUNTY, SOUTH CAROLINA

Chair, Newberry County Council

(SEAL)
ATTEST:

Clerk of Council, Newberry County Council

First Reading: December 4, 2019
Second Reading: December 11, 2019
Public Hearing: December 18, 2019
Third Reading: December 18, 2019

EXHIBIT A
FORM OF FEE AGREEMENT