

RESOLUTION NO. 14-13

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY NEWBERRY COUNTY, SOUTH CAROLINA OF AN INDUCEMENT AGREEMENT WITH WEST FRASER, INC., WHEREBY, UNDER CERTAIN CONDITIONS, NEWBERRY COUNTY WILL EXECUTE A FEE IN LIEU OF TAX AGREEMENT WITH WEST FRASER, INC. WITH RESPECT TO AN INDUSTRIAL PROJECT IN THE COUNTY WHEREBY THE PROJECT WOULD BE SUBJECT TO PAYMENT OF CERTAIN FEES IN LIEU OF TAXES, AND AN INFRASTRUCTURE FINANCE AGREEMENT WHEREBY WEST FRASER, INC. WILL BE PROVIDED CERTAIN CREDITS AGAINST FEE PAYMENTS IN REIMBURSEMENT OF INVESTMENT IN RELATED QUALIFIED INFRASTRUCTURE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, NEWBERRY COUNTY, SOUTH CAROLINA (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the "FILOT Act"), Title 4, Chapter 1 (the "Multi-County Park Act"), Code of Laws of South Carolina 1976, as amended (the "Code"), to enter into agreements with industry, to offer certain privileges, benefits, and incentives as inducements for economic development within the County; to acquire, or cause to be acquired, properties as may be defined as "projects" in the Act and to enter agreements with the industry to facilitate the construction, operation, maintenance and improvement of such projects; to enter into or allow financing agreements with respect to such projects; and to accept any grants for such projects through which powers the industrial and business development of the State will be promoted, whereby the industry would pay fees-in-lieu-of taxes with respect to qualified industrial projects; to provide credits against payment in lieu of taxes for reimbursement in respect of investment in certain infrastructure serving the County or the project, including improved or unimproved real estate and personal property, and machinery and equipment, used in the manufacturing or industrial enterprise (collectively, "Infrastructure"); through all such powers the industrial development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, West Fraser, Inc., a corporation organized and existing under the laws of the state of Delaware (the "Company"), has requested that the County assist in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property (collectively, the "Project") to constitute an expansion of the Company's manufacturing facilities in the County (the "Facilities"), which will result in expected investment by the Company in the Project of at least \$27,000,000 within the period beginning January 1, 2014 and ending December 31, 2019 (the "Investment Period"); and

WHEREAS, the Company has requested that the County enter into a fee in lieu of tax agreement and an infrastructure finance agreement with the Company, thereby providing for certain fee in lieu of tax and infrastructure credit incentives with respect to the Project, all as more fully set forth in the Inducement Agreement attached hereto and made part hereof; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that the Project would be a "project" and "economic development property" as such terms are defined in the FILOT Act and that the Project would serve the purposes of the FILOT Act; and

WHEREAS, pursuant to the authority of Section 4-1-170 of the Multi-County Park Act and Article VIII, Section 13 of the South Carolina Constitution, the County intends to cause the Project to be located, to the extent not already so located, in a multi-county industrial and business park established, or to be established, by the County (a “Park”) pursuant to a qualifying agreement with one or more contiguous counties in the State (a “Park Agreement”); and

WHEREAS, the County has determined and found, on the basis of representations of the Company, that the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; that the Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either; that 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; that the inducement of the location of the Project within the County and State is of paramount importance; and that the benefits of the Project will be greater than the costs; and the County has agreed to effect the delivery of an Inducement Agreement on the terms and conditions hereinafter set forth;

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

Section 1. (a) Pursuant to the authority given to County Council by the South Carolina Constitution, the Code, the FILOT Act and the Multi-County Park Act, and subject to the enactment of required legislative authorizations by the County Council, and for the purpose of providing development incentives for the Project through the payment by the Company of fees in lieu of taxes with respect to the Project pursuant to Section 12-44-40 of the Act, there is hereby authorized to be executed an Inducement Agreement between the County and the Company pertaining to the Project (the “Inducement Agreement”) so as to establish, among other things, that the County and the Company will be parties to a fee in lieu of tax agreement (the “FILOT Agreement”).

(b) To the extent the Project is not already so located, the County agrees to use its best efforts to enter into a qualifying Park Agreement with an adjoining South Carolina county in order to cause the Project to be located in a Park created pursuant to Section 4-1-170 of the Multi-County Park Act and Article VIII, Section 13 of the South Carolina Constitution.

(c) Pursuant to Section 4-1-175 of the Multi-County Park Act, and for the purpose of authorizing an agreement providing for the provision of infrastructure credits against payments in lieu of taxes made by the Company pursuant to the FILOT Agreement and a Park Agreement, there is hereby authorized to be negotiated an infrastructure finance agreement between the County and the Company (the “Infrastructure Agreement”), in order to allow reimbursement to the Company of a portion of its investment in qualified Infrastructure, within the meaning and purposes of Section 4-29-68 of the Code, all as provided in the Inducement Agreement.

Section 2. The provisions, terms and conditions of the FILOT Agreement and the Infrastructure Agreement shall be prescribed and authorized by subsequent ordinance(s) of the County Council, which, to the extent not prohibited by law, shall be consistent with the terms of this Resolution and the Inducement Agreement.

Section 3. In connection with the above, the Chairman of County Council is hereby authorized and directed to execute the Inducement Agreement substantially in the form attached hereto, in the name of and on behalf of the County; and the Clerk of County Council is hereby authorized and directed to attest the same; and such officers are hereby further authorized and directed to deliver said executed Inducement Agreement to the Company.

Section 4. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Section 5. The authorization of the execution and delivery of the documents related to the FILOT Agreement and the Infrastructure Agreement and all other documents or obligations of the County required by the Inducement Agreement is subject to the compliance by the County Council with the provisions of the Home Rule Act regarding the procedural requirements for adopting ordinances and resolutions.

Section 6. It is the intention of the County Council that this resolution shall constitute an inducement resolution with respect to the Project, within the meaning of the Act.

DONE in meeting duly assembled this 4th day of December, 2013.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman, Newberry County Council

Attest:

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

INDUCEMENT AGREEMENT

THIS INDUCEMENT AGREEMENT (this "Agreement") made and entered into as of December 4, 2013 by and between **NEWBERRY COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and West Fraser, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company").

WITNESSETH:

ARTICLE I RECITATION OF FACTS

Section 1.1. As a means of setting forth the matters of mutual inducement which have resulted in the making and entering into of this Agreement, the following statements of fact are herewith recited:

(a) The County, by and through its County Council, is authorized and empowered by the provisions of Title 12, Chapter 44 (the "FILOT Act"), Title 4, Chapter 1 (the "Multi-County Park Act"), Code of Laws of South Carolina 1976, as amended (the "Code"), to allow for the payment of certain fees in lieu of *ad valorem* taxes with respect to industrial properties; to provide infrastructure credits against payment in lieu of taxes for reimbursement in respect of investment in certain infrastructure serving the County or the project, including improved or unimproved real estate and personal property, and machinery and equipment, used in the manufacturing or industrial enterprise (collectively, "Infrastructure"); through all such powers the industrial development of the State of South Carolina (the "State") will be promoted and trade developed by inducing new industries to locate in the State and by encouraging industries now located in the State to expand their investments and thus utilize and employ manpower and other resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally.

(b) The Company has requested that the County assist in the acquisition, construction and installation of buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property (collectively, the "Project") to constitute an expansion of the Company's manufacturing facilities in the County (the "Facilities"), which will result in an expected aggregate investment by the Company in the Project of at least \$27,000,000 (the "Investment Requirement") within the period beginning January 1, 2014 and ending December 31, 2019 (the "Investment Period").

(c) The County is authorized by Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Multi-County Park Act to enter into agreements (a "Park Agreement") with one or more contiguous counties in the State for the creation and operation of one or more joint county industrial and business parks (a "Park").

(d) The County has determined after due investigation that the Project would be aided by the availability of the assistance which the County might render through applicable provisions of the FILOT Act and the Multi-County Park Act as economic development incentives, and the inducements offered, will, to a great degree, result in the Project locating in the County. Pursuant to this determination, the Company and the County have agreed to negotiate an agreement for payments in lieu of *ad valorem* taxes as authorized by the FILOT Act, and the Company and the County have agreed to negotiate an infrastructure finance agreement whereby, pursuant to Section 4-1-175 of the Multi-County Park Act, the Company would be afforded certain credits as described herein against its payments in lieu of taxes in respect of the Company's investment in qualified Infrastructure within the meaning and purposes of Section 4-29-68 of the Code.

(e) The County has given due consideration to the economic development impact of the Project, and as a preliminary matter, based on representations by the Company, hereby finds and determines that (i) the Project is anticipated to benefit the general public welfare of the County by providing service, employment, recreation or other public benefits not otherwise provided locally, (ii) the Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either, (iii) the purposes to be accomplished by the Project, i.e., economic development, retention of jobs, and addition to the tax base of the County, are proper governmental and public purposes, (iv) the inducement of the location of the Project within the County and State is of paramount importance and (v) the benefits of the Project will be greater than the costs. The County, therefore, has agreed to effect the issuance and delivery of this Agreement, pursuant to the FILOT Act, the Multi-County Park Act and a Resolution of the County Council dated December 4, 2013, and on the terms and conditions set forth.

ARTICLE II UNDERTAKINGS ON THE PART OF THE COUNTY

The County agrees as follows:

Section 2.1. The County, subject to the limits set forth herein, agrees to enter into a Fee in Lieu of Tax Agreement with the Company with respect to the Project (the "FILOT Agreement").

Section 2.2. The FILOT Agreement will be executed at such time and upon such mutually acceptable terms as the Company shall request, subject to the provisions of Sections 2.7 and 4.2 herein.

Section 2.3. The terms and provisions of the FILOT Agreement shall be substantially in the form generally utilized in connection with the FILOT Act, as to be agreed upon by the County and the Company. The FILOT Agreement shall contain, in substance, the following provisions:

(a) The term of the FILOT Agreement will be 20 years..

(b) The FILOT Agreement shall provide that, in the performance of the agreements contained therein on the part of the County, such agreement will not give rise to any pecuniary liability of the County and shall not create a charge against the general credit or taxing power of the County, the State or any incorporated municipality.

(c) The FILOT Agreement shall contain a provision requiring the Company to make payments in lieu of taxes to the County for a period of twenty (20) years after each year of the capital investment made under the FILOT Agreement during the Initial Investment Period, and any extension of such period as may be granted by the County in accordance with Section 12-44-30(13) of the FILOT Act. The amounts of such payments shall be determined by using (i) an assessment ratio of 6%; (ii) a fixed millage rate 382.0 mills (that is, the cumulative millage rate for all taxing entities in effect at the site of the Facilities as of June 30, 2013); and (iii) the fair market value of the Project property as determined by the South Carolina Department of Revenue in accordance with the FILOT Act. For purposes of computing the amount of such fee, in accordance with the terms of Section 12-44-50(A)(2) of the FILOT Act, the property shall be allowed all applicable property tax exemptions except the exemption allowed under Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemptions allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(d) The Company may dispose of and replace property subject to fee in lieu of tax payments, as set forth in Section 12-44-60 of the FILOT Act; the fee with respect to such replacement property shall be calculated in accordance with the provisions of said Section 12-44-60.

Section 2.4. The County hereby permits the planning, design, acquisition, construction and carrying out of the Project to commence prior to the execution and delivery of the FILOT Agreement. Contracts for construction and for purchase of machinery, equipment and personal property deemed necessary under the FILOT Agreement or that are otherwise permitted under the FILOT Act may be let by the Company, in its sole discretion.

Section 2.5. To the extent the Project is not already so located, the County agrees to use its best efforts to enter into a qualifying Park Agreement with an adjoining South Carolina county in order to cause the Project to be located in a Park created pursuant to Section 4-1-170 of the Multi-County Park Act and Article VIII, Section 13 of the South Carolina Constitution.

Section 2.6. Pursuant to Section 4-1-175 of the Multi-County Park Act, the County, subject to the limits set forth herein, including Sections 2.7 and 4.2 hereof, pursuant to an Infrastructure Finance Agreement with the Company (the "Infrastructure Agreement"), will provide an infrastructure credit against payments in lieu of taxes by the Company pursuant to a Park Agreement and the FILOT Agreement to reimburse the Company in respect of its investment in Infrastructure pertaining to the Project. In these respects, the Company shall be entitled to claim an annual infrastructure credit equal to 15% of each year's payments in lieu of taxes pursuant with respect to the Project for five (5) consecutive years.

Section 2.7. Subject to the matters contained herein, the Infrastructure Agreement will be executed at such time and upon such mutually acceptable terms as the parties shall agree.

Section 2.8. Notwithstanding anything in this Agreement to the contrary, the authorization by the County of the FILOT Agreement and the Infrastructure Agreement is subject to compliance by the County with the provisions of the Home Rule Act regarding the enactment of ordinances and shall not constitute a general obligation or indebtedness of the County nor a pledge of the full faith and credit or the taxing power of the County. Further, the County will perform such other acts and adopt such other proceedings, consistent with this Agreement, as may be required to faithfully implement this Agreement and will assist, in good faith and with all reasonable diligence, with such usual and customary governmental functions as will assist the successful completion of the Project by the Company.

ARTICLE III UNDERTAKINGS ON THE PART OF THE COMPANY

Section 3.1. Except with respect to the FILOT Agreement and the Infrastructure Agreement, the County will have no obligation to assist the Company in finding any source of financing for all or any portion of the property constituting the Project and the Company may endeavor to finance the Project to the extent required to finance the cost of the acquisition and installation of the Project.

Section 3.2. If the Project proceeds as contemplated, the Company agrees:

(a) To enter into the FILOT Agreement, under the terms of which it will obligate itself to make the payments required by the FILOT Act including, but not limited to, payments in lieu of taxes at rates calculated in accordance with Section 2.3(d) hereof;

(b) To enter into the Infrastructure Agreement;

(c) With respect to the Project, to reimburse the County for all out-of-pocket costs, including reasonable attorney's fees of the County actually incurred, and other out-of-pocket expenditures to third parties to which the County might be reasonably put with regard to executing and entering into this Agreement, the FILOT Agreement and the Infrastructure Agreement;

(d) To hold the County harmless from all pecuniary liability including, without limitation, environmental liability, and to reimburse the County for all expenses to which the County might be put in the fulfillment of its obligations under this Agreement and in the negotiation and implementation of its terms and provisions, including reasonable legal expenses and fees;

(e) To apply for, and use commercially reasonable efforts to obtain, all permits, licenses, authorizations and approvals required by all governmental authorities in connection with the construction and implementation of the Project;

(f) To indemnify, defend and hold the County and the individual members, officers, agents and employees thereof harmless against any claim or loss or damage to property or any injury or death of any person or persons occurring in connection with the planning, design, acquisition, construction, leasing, carrying out or operation of the Project, including without limitation any environmental liability. The Company agrees to reimburse or otherwise pay, on behalf of the County, any and all expenses not hereinbefore mentioned incurred by the County in connection with the Project, including the review and execution of the Resolution and this Agreement; and

(g) The Company agrees to use commercially reasonable efforts to meet the Investment Requirement during the Investment Period. Should the Company fail to meet the Investment Requirement during the Investment Period, the FILOT Agreement and the Infrastructure Agreement shall terminate, and the Company shall be liable to the County for the difference between the amount of payments in lieu of taxes actually paid pursuant to the FILOT Agreement (taking into account any infrastructure credits received) and the amount of *ad valorem* taxes which would have been due and payable with respect to the Project had the FILOT Agreement not been entered into, with interest at the rate payable for late payment of taxes.

ARTICLE IV GENERAL PROVISIONS

Section 4.1. All commitments of the County under Article II hereof are subject to all of the provisions of the FILOT Act and the Multi-County Park Act, including, without limitation, the condition that nothing contained in this Agreement shall constitute or give rise to a pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing powers of either.

Section 4.2. All commitments of the County and the Company hereunder are subject to the condition that the County and the Company agree on mutually acceptable terms and conditions of all documents, the execution and delivery of which are contemplated by the provisions hereof, and the adoption by the County Council of an ordinance authorizing the execution and delivery of such documents and approving the terms thereof. If the parties enter into the FILOT Agreement and the Infrastructure Agreement, each party shall perform such further acts and adopt such further proceedings as may be required to faithfully implement its undertakings pursuant to such agreements.

Section 4.3. If for any reason this Agreement (as opposed to the Fee in Lieu of Tax Agreement and the Infrastructure Agreement, which are contemplated to be negotiated, signed and delivered subsequent to the execution and delivery of this Agreement) is not executed and delivered by the Company on or before December 31, 2014, the provisions of this Agreement may be cancelled by the County by delivery of written notice of cancellation signed by the County Administrator and delivered to the Company; thereafter neither party shall have any further rights against the other and no third parties shall have any rights against either party except that the Company shall pay the out-of-pocket expenses to third parties of officers, agents and employees of the County and counsel for the County incurred in connection with the authorization and approval of the FILOT Agreement and Infrastructure Agreement.

Section 4.4. The parties understand that the Company may choose not to proceed with the Project, in which event this Agreement shall be cancelled and, subject to parties' obligations described in Section 4.3 hereof, neither party shall have any further rights against the other, and no third party shall have any rights against either party.

Section 4.5. To the maximum extent allowable under the FILOT Act and the Multi-County Park Act, the Company may, with the prior consent of the County (which shall not be unreasonably withheld), assign (including, without limitation, absolute, collateral, and other assignments) all or part of its rights and/or obligations under this Agreement to one or more other entities, in connection with the FILOT Agreement or the Infrastructure Agreement, without adversely affecting the benefits to the Company or its assignees pursuant hereto or pursuant to the FILOT Act or the Multi-County Park Act; provided, however, that the Company may make any such assignment to an affiliate of the Company without obtaining the consent of the County, to the extent permitted by law.

Section 4.6. This Agreement may not be modified or amended except by a writing signed by or on behalf of all parties by their duly authorized officers and approved by appropriate legal process. No amendment, modification, or termination of this Agreement, and no waiver of any provisions or consent required hereunder shall be valid unless consented to in writing by all parties.

Section 4.7. Nothing in this Agreement or any attachments hereto is intended to create, and no provision hereof should be so construed or interpreted as to create any third party beneficiary rights in any form whatsoever nor any form of partnership or other legal entity relationship between the County and the Company.

Section 4.8. This Agreement constitutes the entire agreement between the parties regarding the matters set forth herein. This Agreement shall be interpreted by the laws of the State.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Inducement Agreement on the respective dates indicated below, as of the date first above written.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman, Newberry County Council

Attest:

By: _____
Clerk to County Council of Newberry County

[SIGNATURE PAGE 1 OF INDUCEMENT AGREEMENT]

[SIGNATURE PAGE 2 OF INDUCEMENT AGREEMENT]

WEST FRASER, INC.

By: _____

Name: _____

Title: _____

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned Clerk of the County Council of Newberry County, South Carolina, do hereby certify that the foregoing is a true, correct and verbatim copy of resolution duly adopted at a meeting of said County Council held on December 4, 2013, at which meeting a quorum was at all times present.

WITNESS MY HAND this ____ day of December, 2013.

Clerk to County Council of
Newberry County, South Carolina