

ORDINANCE NO. 01-02-14

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT AND AN INFRASTRUCTURE FINANCE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND WEST FRASER, INC. WITH RESPECT TO CERTAIN ECONOMIC DEVELOPMENT PROPERTY IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF TAXES, AND WEST FRASER, INC. WILL RECEIVE CERTAIN INFRASTRUCTURE CREDITS IN RESPECT OF INVESTMENT IN RELATED INFRASTRUCTURE; 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 under and pursuant to the provisions of Title 12, Chapter 44 (the "FILOT Act"), Title 4, Chapter 1 (the "Multi-County Park Act"), and Title 4, Chapter 29, of the Code of Laws of South Carolina 1976, as amended, to enter into agreements with industry 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, including 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, pursuant to the FILOT Act, and in order to induce certain investment in the County, the County did previously enter into an Inducement Agreement dated as of December 4, 2013 (the "Inducement Agreement") with West Fraser, Inc., a Delaware corporation (the "Company"), with respect to 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"); 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 (collectively, the "Multi-County Park Authority"), the County has agreed to use its best efforts to cause the land upon which the Facilities are located to be located in a qualifying joint county industrial and business park established by the County pursuant to a qualifying agreement with an adjoining county in the State (the "Park Agreement"); and

WHEREAS, pursuant to Section 4-1-175 of the Multi-County Park Act, the County is authorized to reimburse industry for the cost of Infrastructure through the provision of credits against fee in lieu of tax payments by such industry; and

WHEREAS, pursuant to the Inducement Agreement, the County has agreed to enter into (a) a Fee in Lieu of Tax Agreement with the Company (the "FILOT Agreement"), whereby the County would provide therein for a payment of fee in lieu of taxes by the Company to the County with respect to the

Project, and (b) an Infrastructure Finance Agreement with the Company (the “Infrastructure Agreement”), whereby the County would provide therein for certain infrastructure credits in respect of qualifying Infrastructure with respect to the Project to be claimed by the Company against its payments in lieu of taxes with respect to the Project pursuant to the FILOT Agreement and the Park Agreement; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the FILOT Agreement and the Infrastructure Agreement which the County proposes to execute and deliver; and

WHEREAS, it appears that the documents above referred to, which are now before this meeting, are in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended; and

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

Section 1. It is hereby found, determined and declared by the County Council, as follows:

(a) The Project will constitute a “project” and “economic development property” as said terms are referred to and defined in the FILOT Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;

(b) The terms and provisions of the Inducement Agreement are incorporated herein and made a part hereof;

(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 provided locally;

(d) 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;

(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; and

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

Section 2. The form, terms and provisions of the FILOT Agreement and the Infrastructure Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the FILOT Agreement and the Infrastructure Agreement were set out in this Ordinance in their entirety. The Chairman of County Council is hereby authorized and empowered to execute, acknowledge and deliver the FILOT Agreement and the Infrastructure Agreement 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 thereupon to cause the FILOT Agreement to be delivered to the Company and the Infrastructure Agreement to be delivered to the Company and the Company shall cause a copy of the FILOT Agreement and the Infrastructure Agreement to be delivered to the Newberry County Auditor and Assessor. The FILOT Agreement and the Infrastructure Agreement are to be in substantially the forms now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, upon advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the forms of FILOT Agreement and the Infrastructure Agreement now before this meeting.

Section 3. The Chairman of Newberry County Council, for and on behalf of the County, is hereby authorized to do any and all things necessary to effect the execution and delivery of the FILOT Agreement and the Infrastructure Agreement and the performance of all obligations of the County under and pursuant to the FILOT Agreement and the Infrastructure Agreement.

Section 4. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions 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 5. All 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 by the County Council.

ENACTED in meeting duly assembled this ____ day of _____, 2014.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman, Newberry County Council

Attest:

By: _____
Clerk to Newberry County Council

First Reading: _____, 2014
Second Reading: _____, 2014
Third Reading: _____, 2014
Public Hearing: _____, 2014

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned Clerk to County Council of Newberry County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received unanimous approval, by the County Council at its meetings of _____, 2014, _____, 2014 and _____, 2014, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

Clerk, County Council of Newberry County

Dated: _____, 2014