

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

ORDINANCE NO. 03-06-13

AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND GEORGIA-PACIFIC WOOD PRODUCTS LLC; THE APPLICATION OF A SPECIAL SOURCE REVENUE CREDIT TO FEES-IN-LIEU OF TAX PAYMENTS; AND PROVIDING FOR OTHER MATTERS RELATING THERETO.

WHEREAS, Newberry County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is empowered under and pursuant to the provision of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “FILOT Act”) to enter into a fee-in-lieu-of property tax agreement (“Fee Agreement”) with companies in order to induce such companies to design, acquire, construct, operate, maintain or improve a project, within the meaning of the FILOT Act; and

WHEREAS, the County Council is empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (the “MCIP Act”), and particularly Section 4-1-175 thereof, to grant special source revenue credits against fee-in-lieu of tax payments in order to reimburse companies for expenditures towards infrastructure serving the County or the applicable project or for improved or unimproved real estate and personal property used in the operation of manufacturing or commercial enterprises, all within the meaning of Section 4-29-68, Code of Laws of South Carolina 1976 (“Infrastructure”); and

WHEREAS, the County, by an Inducement Resolution adopted by the County Council on March 6, 2013, has agreed to assist and induce Georgia-Pacific Wood Products LLC, a Delaware limited liability company authorized to transact business in South Carolina (the “Company”), in respect of the Company’s investment in certain land, buildings or other improvements thereon and in certain machinery, apparatus, equipment, office facilities, furnishings and other personal property for the purpose of a facility to manufacture wood products, and any and all activities relating thereto (which properties and facilities constitute a project under the FILOT Act and are referred to hereinafter as the “Project”) by entering into a Fee Agreement providing for payments-in-lieu of taxes and certain special source revenue credits against the same; and

WHEREAS, the Company has represented that the Project will represent an investment of not less than \$64 million in the County and the creation of at least 39 new, full-time, jobs in connection therewith, all within the standard investment period provided by the FILOT Act; and

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

WHEREAS, the County has agreed to use its best efforts to place the Project in a joint county industrial and business park (the “Park”) established pursuant to the MCIP Act and Article VII, Section 13 of the South Carolina Constitution by the County and Greenwood County, South Carolina pursuant to the Master Agreement Governing the Greenwood-Newberry Industrial Park between Greenwood County, South Carolina and Newberry County, South Carolina dated as of December 31, 2012, as amended; and

WHEREAS, the Company has requested the County to use a portion of the above aforementioned fee-inlieu of tax payments for the purpose of defraying the costs of designing, acquiring, constructing, improving or expanding the Infrastructure serving the Project; and

WHEREAS, the County Council, having found that the Company’s investment in the Infrastructure will assist the County in its economic development efforts by inducing the Company to locate the Project in the County, proposes to provide the Company with an annual special source revenue credit equal to 15% of fee-in-lieu of tax payments payable by the Company on taxable property related to the Project during the first five years of FILOT tax payments, beginning in the first year the Company files a FILOT return; and

WHEREAS, it appears that the documentation referred hereby which is now before this meeting, is in appropriate form for approval, signature and delivery by the County for the purposes intended.

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

Section 1. Pursuant to the FILOT Act and particularly Section 12-44-40(H) and (I) thereof, the County Council, based on information provided by the Company, has made and hereby makes the following findings:

(a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the FILOT Act;

(b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;

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

(d) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$64 million and the creation of at least 39 new full time jobs;

(e) The benefits of the Project to the public are greater than the costs to the public;

(f) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State of South Carolina, the form, terms and provisions of the Fee Agreement which is before this meeting and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chair of the County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officials of the County, upon advice of counsel to the County, executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. The consummation of all transactions contemplated by the Fee Agreement is hereby approved.

Section 4. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 5. 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 6. 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.

Section 7. This Ordinance shall be effective after third and final reading.

DONE, RATIFIED AND ADOPTED this ___ day of _____, 2013.

NEWBERRY COUNTY, SOUTH CAROLINA

BY: _____
Henry H. Livingston III, Chairman

ATTEST:

Approved as to form:

Laurie N. Renwick, Clerk to Council

A.J. Tothacer, Jr., County Attorney

Wayne R. Adams, County Administrator

First Reading: March 20, 2013
Second Reading: _____, 2013
Third Reading: _____, 2013
Public Reading: _____, 2013