

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR NEWBERRY COUNTY
ORDINANCE NO. 10-25-17

**AUTHORIZING THE EXTENSION OF THE TERM OF TWO (2) FEE-
IN-LIEU OF TAX AGREEMENTS AND THE EXTENSION AND
AMENDMENT OF ONE (1) LEASE AGREEMENT, ALL SUCH
AGREEMENTS BY AND BETWEEN NEWBERRY COUNTY, SOUTH
CAROLINA AND KISWIRE, INC.; 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 4, Chapter 12 and Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (collectively, “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 an annual fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to certain property, as further described 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 Lexington County and with Greenwood County (the “Parks”);

WHEREAS, pursuant to the FILOT Act and MCIP Act, 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, Kiswire, Inc. (“Sponsor”) has previously entered into a Lease Agreement dated as of June 16, 1999 (the “LP Agreement”), a Fee Agreement dated as of December 7, 2011 (the “2011 Fee Agreement”), and a Fee Agreement dated as of August 15, 2012 (the “2012 Fee Agreement”) (the LP Agreement, the 2011 Fee Agreement, and the 2012 Fee Agreement may hereafter be collectively referred to as the “Fee Agreements”), all of which provide for payments in lieu of taxes under the FILOT Act for the Sponsor’s investments in a bead wire plant and in a steel cord plant located in the County;

WHEREAS, based solely on information provided by the Company, the County acknowledges that the Sponsor has met or significantly exceeded the minimum investment and job creation requirements imposed under the FILOT Act and the Fee Agreements; and

WHEREAS, the Sponsor and related entities desire to commit to make additional investments in the County and create additional jobs in the County in the future as further described herein in return for the additional incentives described in Section 4 hereof; and

WHEREAS, the County desires to encourage the additional investments and job creation in the County by the Sponsor and any related entities and affiliates by providing for the incentives provided herein and to create a predictable and reasonable property tax burden to the Sponsor as it continues to invest in the County.

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

Section 1. *Incorporation of Recitals.* The recitals above are incorporated herein by reference. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the respective applicable Fee Agreement.

Section 2. *Statutory Findings.* Based solely on information provided by the Company, County Council hereby finds:

(a) The maintenance of jobs and investment in the County by the Sponsor and the encouragement of additional investment and jobs in the County, including the commitment to invest at least \$20,000,000 and create at least one hundred (100) additional new, full-time jobs (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;

(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

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

Section 3. *Approval of Incentives; Authorization to Execute and Deliver Amendment to Fee Agreements.* The incentives, Sponsor commitments, and other provisions related thereto as described in this Ordinance (“Ordinance”) and as more particularly set forth in the First Amendment to Fee Agreement attached hereto as Exhibit A (the “Amendment”), with respect to the Project are hereby approved. The form, terms and provisions of the Amendment that is before this meeting are approved and all of the Amendment’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute Amendment 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 Amendment and to deliver the Amendment to the Sponsor.

Section 4. *Incentives and Amendments to Fee Agreements.*

(a) The terms of the LP Agreement, the 2011 Fee Agreement, and the 2012 Fee Agreement are hereby extended by an additional ten (10) years, so that with respect to each Fee Agreement at least thirty (30) annual fee in lieu of tax payments with respect to each Completed Segment or Phase, as applicable, under each Fee Agreement, is made.

(b) Effective January 1, 2017, the description of “Project” in the 2012 Fee Agreement is hereby amended by adding the following to such description:

“The Project shall also include any Equipment and Improvements first placed in service in calendar year 2017 located on the Bead Wire Real Property.”

(c) The following definitions are hereby added to the 2012 Fee Agreement:

“Bead Wire Real Property” shall mean the real property described on Exhibit A-1 attached hereto.”

“Bead Wire Assets” shall mean the Equipment and Improvements located on the Bead Wire Real Property and first placed in service in 2017 or thereafter under this Fee Agreement.”

“Bead Wire Infrastructure Credit” shall mean the annual infrastructure credit or special source revenue credit against the Fee payments generated by the Bead Wire Assets provided to the Company pursuant to the MCIP Act and Section 4.1(c) hereof, with respect to the Infrastructure.”

“Steel Cord Assets” shall mean the assets covered by the 2012 Fee Agreement, as amended, excluding the Bead Wire Assets.

- (d) Section 4.1(c) of the 2012 Fee Agreement is hereby amended by amending and restating such section as follows:

“Provided the Company invests at least \$20,000,000 and creates at least 100 additional new, full time jobs by the end of the year 2022 (the “Measurement Period”), the Company shall receive an annual credit in an amount equal to the amount necessary to reduce the Company’s FILOT Payments under this Fee Agreement, excluding FILOT Payments related to the Bead Wire Assets (which shall receive a separate credit as described below) to an amount not exceeding one million dollars (\$1,000,000) for property tax years 2017, 2018 and 2019. Thereafter, the Company shall receive an annual credit in an amount equal to forty percent (40%) of the FILOT Payments under this Fee Agreement for the Steel Cord Assets only so that the Company’s annual FILOT Payment related to the Steel Cord Assets is reduced by forty percent (40%) for the property tax years 2020 through 2033.

Further, the Company shall receive a forty percent (40%) annual credit commencing with the payment for property tax year 2018 through property tax year 2033 to be applied against the FILOT payments related to the Bead Wire Assets first placed in service in 2017 or later under this Fee Agreement.”

- (e) Exhibit B attached to this Ordinance is hereby attached and made a part of the 2012 Fee Agreement as Exhibit A-1.

Section 5. Sponsor Commitments. The Sponsor agrees to the following in return for the incentives provided by the County herein:

- (a) Invest at least twenty million dollars (\$20,000,000) and create an additional one hundred (100) additional new full-time jobs by December 31, 2022.
- (b) Not to remove any real estate which is currently subject to the Fee Agreements from the Fee Agreements.
- (c) Not to amend any PT-300 returns filed for property tax years 2017 and earlier.
- (d) Not to reclassify property previously reported as real estate improvements as personal property subject to depreciation.
- (e) Not to exercise the Sponsor’s right to have real estate valued at fair market value by appraisal pursuant to Section 4.1(a) of the 2012 Fee Agreement.

- (f) Not to close its bead wire facility or its steel cord facility through December 31, 2022. Closing a facility shall mean (i) a public announcement that the Sponsor will close one or both of its facilities; (ii) a cessation of production in one or both facilities for a continuous period of nine (9) months; or (iii) reduction of the Company's workforce to fifty (50) or fewer full time employees.
- (g) Use commercially reasonable efforts to include the County in any site selection process for new manufacturing facilities or corporate headquarters that the Sponsor may decide to locate in the United States.

Section 6. *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, 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 Amendment.

Section 7. *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 8. *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 9. *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: October 18, 2017
Second Reading: November 1, 2017
Public Hearing: November 1, 2017
Third Reading: November 15, 2017

EXHIBIT A
FORM OF AMENDMENT

EXHIBIT B
BEAD WIRE REAL PROPERTY

~#4828-5098-9136 v.2~