

FILED  
NEWBERRY COUNTY  
2024 JAN -5 AM 11:25  
ELIZABETH R. FOLK  
CLERK OF COURT

**STATE OF SOUTH CAROLINA**  
**COUNTY COUNCIL FOR NEWBERRY COUNTY**  
**ORDINANCE NO. 11-02-2023**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND AMONG NEWBERRY COUNTY, SOUTH CAROLINA (THE "COUNTY") AND BOWERS ROAD SOLAR, LLC, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT CAVALIER, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), PURSUANT TO WHICH THE COMPANY SHALL BE ENTITLED TO CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE ADDITION OF THE PROJECT TO A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK; AND (3) OTHER MATTERS RELATING THERETO.

WHEREAS, Newberry County, South Carolina ("County"), acting by and through its County Council ("Council") is authorized pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended ("Code"), and particularly Title 12, Chapter 44 of the Code ("Negotiated FILOT Act"), as well as Title 4, Chapter 1 of the Code together with Article VIII, Section 13 of the South Carolina Constitution (collectively, "Multi-County Park 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 one or more investors to (i) accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (ii) permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iii) create, in conjunction with one or more other counties, a multi-county industrial or business park ("Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, Bowers Road Solar, LLC, a South Carolina limited liability company previously identified as Project Cavalier, acting for itself, one or more affiliates, and/or other project sponsors (collectively, the "Company"), is considering the establishment and/or expansion of certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, the Company anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$55,000,000, in the aggregate, in the Project; and

WHEREAS, on the basis of the information supplied to it by the Company, the County has determined, *inter alia*, that the Project would subserve the purposes of the Negotiated FILOT Act and has made certain findings pertaining thereto in accordance with the Negotiated FILOT Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted Resolution No. 12-23 on November 15, 2023 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, the County and the Company have agreed to the specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project the form of which is attached hereto as Exhibit A (the “Incentive Agreement”) to be dated as of January 3, 2024, or such other date as the parties thereto may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

(a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and

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

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

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

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

Section 2. The County hereby agrees to enter into the Incentive Agreement with the Company, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, and whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County, under certain conditions set forth in the Incentive Agreement, will agree to accept certain negotiated fee in lieu of *ad valorem* tax (“Negotiated FILOT”) payments with respect to the Project, all in accordance with the terms of the Incentive Agreement.

Section 3. The County agrees to designate the Project and the Land as part of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution, if not already so designated, and agrees to maintain the Project and the Land within the boundaries of such a multi-county industrial or business park on terms, and for a duration, which facilitate provision by the County, and receipt by the Company, of the Special Source Credits set forth in Section 4 hereof, all in accordance with the terms of the Incentive Agreement.

Section 4. As an additional incentive to induce the Company to locate the Project in the County, and as reimbursement for investment in Special Source Improvements, and subject to the requirements of the Special Source Act, the County does hereby agree that the Company shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT Payment due from the Company with respect to the Project for the entire Negotiated FILOT payment period as more fully set forth in the Incentive Agreement.

Section 5. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 6. The Chairman of the Council, the County Administrator of the County, and the Clerk to the Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to Incentive Agreement.

Section 7. 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 8. All orders, 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 and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 3<sup>rd</sup> day of January, 2024.

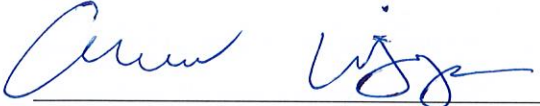
**NEWBERRY COUNTY, SOUTH CAROLINA**

By: 

Todd Johnson, Chairman, County Council  
Newberry County, South Carolina

[SEAL]

ATTEST:



Andrew Wigger, Clerk to County Council  
Newberry County, South Carolina

First Reading: November 15, 2023

Second Reading: December 6, 2023

Public Hearing: January 3, 2024

Third Reading: January 3, 2024