

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR NEWBERRY COUNTY
ORDINANCE NO. 02-01-19

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND A COMPANY OR COMPANIES KNOWN TO THE COUNTY AT THIS TIME AS PROJECT CUMULUS WITH RESPECT TO CERTAIN ECONOMIC DEVELOPMENT PROPERTY IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF TAXES, INCLUDING THE PROVISION OF CERTAIN SPECIAL SOURCE REVENUE CREDITS; 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 “*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 projects; to provide infrastructure credits against payment in lieu of taxes for reimbursement in respect of investment in certain infrastructure enhancing the economic development of the County; 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, a private partnership (the “*Sponsor*”), whose identity is being withheld at Sponsor’s request until it is in a position to make a public announcement, desires to establish a site on which it will produce and supply to the public electricity by conversion of solar energy (“*Project Cumulus*,” or the “*Project*”) consisting of taxable investment in real and personal property of not less than \$45,000,000 in the County; and

WHEREAS, the Company has represented that the Project will involve an investment in at least the amount detailed above within the Investment Period (as such term is defined in the hereinafter defined Fee Agreement); and

WHEREAS, based solely on information provided by the Company to the County, the County has determined 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 granted to the County under Section 4-1-170 of the Park Act and Article VIII, Section 13 of the South Carolina Constitution, the County intends to

cause the Project, to the extent not already therein located, to be placed in a joint county industrial and business park (a ***“Park”***) such that the Project will receive the benefits of the FILOT Act; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to, among other things, enter into a Fee in Lieu of Tax and Special Source Revenue Credit Agreement with the Company for the Project, the final form of which is attached as Exhibit A (the ***“Fee Agreement”***), whereby the County would (a) provide therein for a payment of a fee-in-lieu-of taxes by the Company with respect to the Project, and (b) provide for certain special source revenue credits to be claimed by the Company against its payments of fees-in-lieu-of taxes with respect to the Project pursuant to Section 4-1-175 of the Park Act.

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

Section 1. *Statutory Findings.* Based solely on information supplied to the County by the Company, 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 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;

(c) The Project will not give rise to any pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;

(d) 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

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

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The form, terms and provisions of the Fee 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 Fee Agreement was set out in this Ordinance in its entirety. The Chairman of County Council or the County Administrator are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the Fee Agreement to be delivered to the Company and cause a copy of the same to be delivered to the Newberry County Auditor, Assessor and Treasurer. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the Chairman of County Council or the County Administrator, upon advice of counsel, such official’s execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. *Inclusion within the Park.* The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park ("Park Agreement"), the expansion of the Park's boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and an approving companion ordinance by the County Council of Greenwood County, South Carolina.

Section 4. *Further Assurances.* The Chairman of County Council, the County Administrator and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County thereunder.

Section 5. *Savings Clause.* 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 6. *General Repealer; Effectiveness.* 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 after its third reading and public hearing.

[Signature Page Follows]

ENACTED in meeting duly assembled this ____th day of _____ 2019.

NEWBERRY COUNTY, SOUTH CAROLINA

By: _____
Chairman, Newberry County Council

(SEAL)
ATTEST:

Clerk to Council, Newberry County Council

First Reading: 02/06/2019
Second Reading: 02/20/2019
Public Hearing: 03/06/2019
Third Reading: 03/06/2019