
01-02-21 AN ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF A NEWBERRY COUNTY, SOUTH CAROLINA, SPECIAL SOURCE REVENUE BOND IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$5,500,000 IN ONE OR MORE SERIES; THE APPLICATION OF THE PROCEEDS OF SAID BONDS TO DEFRAY, FOR ECONOMIC DEVELOPMENT PURPOSES, THE COSTS OF CERTAIN INFRASTRUCTURE IMPROVEMENTS AND OF ACQUIRING CERTAIN PROPERTY IN NEWBERRY COUNTY; TO REFUND OUTSTANDING AMOUNTS OF THE COUNTY'S SERIES 2006 SPECIAL SOURCE REVENUE BONDS; AND OTHER MATTERS RELATING THERETO.

Enacted February 3, 2021

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BE IT ORDAINED BY THE COUNTY COUNCIL OF NEWBERRY COUNTY, SOUTH CAROLINA, AS FOLLOWS:

**ARTICLE I
FINDINGS OF FACT**

Section 1.01 Recitals and Statements of Purpose.

As an incident to the enactment of this Ordinance, the County Council (the "Council"), the governing body of Newberry County, South Carolina (the "County"), has made the following findings:

(A) The several counties in the State of South Carolina (the "State") are empowered pursuant to Title 4, Chapters 1 and 29, Code of Laws of South Carolina 1976, as amended (collectively, the "Act"), to provide for the issuance of special source revenue bonds by the County payable solely from revenues derived from payments in lieu of taxes ("FILOT Payments") pursuant to Section 13 of Article VIII of the South Carolina Constitution for the purpose of paying the cost of designing, acquiring, constructing, improving or expanding (i) the infrastructure serving the County or any project, (ii) for improved or unimproved real estate and personal property, including machinery and equipment used in the operation of a manufacturing or commercial enterprise, (iii) aircraft which qualifies as a project pursuant to Section 12-44-30(16) of the Code of Laws of South Carolina 1976, as amended, or (iv) such other purposes as may be permitted, from time to time, by the Act, which property is determined by the County Council to enhance economic development of the County.

(B) Pursuant to Section 4-1-170 of the Act and Article VIII, Section 13 of the South Carolina Constitution, the County has established a joint county industrial and business Park pursuant to agreement with Greenwood County, as more fully described herein (together, the "Multi-County Park").

(C) The Council has determined to (i) acquire certain land located near the southeast quadrant of the intersection of Interstate 26 and S.C. Highway 773 in the County for purposes of development of an industrial and business park, and to provide certain infrastructure improvements in connection therewith in order to induce manufacturing and commercial enterprises to locate in the County and thereby increase the County's tax base and have a beneficial effect upon the economy of the County and areas adjacent thereto by providing employment not otherwise provided in the County (the "Project") and (ii) refund the outstanding principal amounts of the County's \$6,410,000 Special Source Revenue Bond, Series 2006, maturing in the years 2022 through 2026, inclusive, which outstanding principal amount is \$2,105,000.

(D) Pursuant to Sections 4-12-30, 4-29-67, and Chapter 44, Title 12 of the Code of Laws of South Carolina 1976, as amended (collectively, the "FILOT Statutes"), the County is authorized to (i) induce industries to locate in the State; (ii) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) enter into fee-in-lieu of tax and incentive agreements ("FILOT Agreements") with entities meeting the requirements of the FILOT Statutes; and

(E) Pursuant to the FILOT Statutes, the Council has approved FILOT Agreements from time to time with various manufacturing and commercial enterprises located within the Multi-County Park (the "County FILOT Agreements") to induce or otherwise encourage them to locate, construct or expand operations in the County, resulting in significant economic development in the County.

(F) The Council has determined that the Project will promote and enhance the economic development of the County.

(G) Pursuant to Section 4-1-175 of the Act, the Council has determined to issue \$5,500,000 principal amount of revenue bonds, payable from revenues of the Multi-County Park which may be received and retained by the Newberry County Treasurer, in order to defray the cost of acquisition, construction and installation of the Project, to refund the outstanding principal amounts of the County's \$6,410,000 Special Source Revenue Bond, Series 2006, maturing in the years 2022 through 2026, inclusive and to pay costs of issuance.

(H) The Council finds that the form of the Bond which is now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.

ARTICLE II DEFINITIONS, CONSTRUCTION AND INTERPRETATIONS

Section 2.01 Defined Terms.

The terms defined in this **Article II** shall for all purposes of this Ordinance have the meanings herein specified, unless the context clearly otherwise requires.

“Act” shall mean, collectively, Title 4, Chapters 1 and 29 Code of Laws of South Carolina, 1976, as amended, and all future acts amendatory thereof.

“Administrator” shall mean the County Administrator or any acting or interim County Administrator of the County.

“Annual Debt Service Requirement” shall have the meaning provided for such term in **Section 7.02(d)** hereof.

“Bond” or ***“Bonds”*** shall mean the Newberry County, South Carolina, Special Source Revenue Bond, Series 2021, in the principal amount of \$5,500,000 the proceeds of which will be disbursed to the County to finance the acquisition and construction of the Project, to refund the Refunded Bond, and to pay costs of issuance.

“Bond Counsel” shall mean an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and reasonably acceptable to the County.

“Bond Register” shall have the meaning specified in **Section 3.03** hereof.

“Bond Registrar” shall mean the Finance Director of the County.

“Cost” or ***“Cost of the Project”*** shall mean the cost of acquiring, by construction and purchase, the Project, including improved or unimproved real property, and shall be deemed to include, whether incurred prior to or after the date of this Ordinance: (a) obligations of the County incurred for labor, materials and other expenses to contractors, builders and materialmen in connection with the acquisition, construction and installation of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Project, which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses of the County for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefore, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction and installation of the Project; (d) costs incurred by the County for the acquisition of an interest in the land upon which the Project is located; (e) any sums required to reimburse the County for advances made by it for any of the above

items, or for any other work done and costs incurred by the County which are for the acquisition of land or property or a character subject to the allowance for depreciation provided for under Section 167 of the Code and included in the Project; and (f) any amount of the payment of interest on the Bond accruing prior to the completion date.

“County” shall mean Newberry County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina and its successors and assigns.

“Debt Service Fund” shall mean the fund of that name created under **Section 7.02** hereof.

“Default” shall mean an event or condition, the occurrence of which with the lapse of time or notice or both, become an Event of Default under **Section 9.01** hereof.

“Event of Default” shall mean, with reference to this Ordinance, any of the occurrences described in **Section 9.01** hereof.

“FILOT Revenues” shall mean the payments in-lieu-of taxes received by the Treasurer pursuant to the Park Agreement.

“Multi-County Fees” shall mean the fee payable by the County to Greenwood County and any successors thereto under the Park Agreement with respect to FILOT Revenues received from properties located in the County.

“Net FILOT Revenues” shall mean the FILOT Revenues remaining after payment of the Multi-County Fees.

“Ordinance” shall mean this Ordinance, as the same may be amended, modified or supplemented in accordance with the terms hereof.

“Park Agreement” shall mean the “Master Agreement Governing the Greenwood-Newberry Industrial Park with Greenwood County” dated December 31, 2012, as amended, a copy of which is attached hereto as Exhibit B, as such Park Agreement has been and may hereafter be further modified, supplemented or amended from time to time; and such other agreements entered in to by the County and any partner county pursuant to Section 4-1-170 of the Act, or any successor provision, which the County, in its discretion, may hereafter determine to include in this definition of “Park Agreement” for purposes of adding additional security to the Bond.

“Person” shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision.

“Pledged Revenues” shall mean (i) the Net FILOT Revenues and (ii) the proceeds of the Bond.

“Project” shall mean (i) acquisition of certain real property located on the east side of Highway 773 between Interstate Highway 26 and U.S. Highway 76; (ii) site preparation, roads, sidewalks, building site pads, as well as water, sewer and drainage facilities, and other utilities serving said property, and (iii) related landscaping and signage.

“Project Fund” shall mean the fund of that name created under **Section 4.01** hereof.

“Purchaser” shall mean Truist Bank, as the initial Registered Owner of the Bond.

“Registered Owner” shall mean the Person or Persons in whose name or names the Bond shall be registered on the Bond Register.

"Registrar" shall mean the Finance Director of the County.

"Revenue Fund" shall mean the fund of that name created under **Section 7.01** hereof.

"SFAA" shall mean the State Fiscal Accountability Authority of the State.

"State" shall mean the State of South Carolina.

"Treasurer" shall mean the Newberry County Treasurer or the acting or interim County Treasurer of the County.

Section 2.02 Interpretations.

In this Ordinance, unless the context otherwise requires:

(A) Articles, Sections and paragraphs referred to by number shall mean the corresponding Articles, Sections and paragraphs of this Ordinance.

(B) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, or other legal entities, including public bodies, as well as natural persons.

(C) The terms "hereby", "hereof", "hereto", "herein", "hereunder", and any similar terms, as used in this Ordinance refer to this Ordinance or Sections or paragraphs of this Ordinance and the term "hereafter" shall mean any date after the date of adoption of this Ordinance.

(D) References to the payment of principal of Bonds shall be deemed to include payment of principal both at maturity and by mandatory redemption pursuant to any sinking fund payment obligations.

(E) Unless the context shall clearly indicate otherwise, all accounting terms used herein without definition shall be interpreted in accordance with generally accepted accounting principles.

ARTICLE III
DESCRIPTION, AUTHORIZATION, MANNER OF EXECUTION, REGISTRATION AND
TRANSFER OF BOND

Section 3.01 Authorization and Details of Bond.

The Bond shall be designated as the "Newberry County, South Carolina, Special Source Revenue Bond (Industrial Park Project), Series 2021" and shall be dated as of the date of its original issuance and delivery and shall be issued as a single certificate in the principal amount of \$5,500,000. The outstanding principal of the Bond shall bear interest at the rate of Three and thirty-five hundredths percent (3.35%) per annum. Interest on the Bond shall be payable each April 1 and October 1, commencing October 1, 2021. Principal of the Bond shall be payable on April 1 of the following years, in the respective amounts shown:

<u>April 1</u>	<u>Principal Amount</u>	<u>April 1</u>	<u>Principal Amount</u>
2022	\$251,269.33	2030	\$346,394.38
2023	275,041.02	2031	357,998.60
2024	284,254.90	2032	369,991.54
2025	293,777.44	2033	382,386.26
2026	303,618.98	2034	395,196.20
2027	313,790.22	2035	408,435.28
2028	324,302.18	2036	422,117.86
2029	335,166.32	2037	436,259.49

The Bond shall be prepayable at the option of the County in whole at a price of 101% of the principal amount to be redeemed, upon fifteen (15) days prior written notice to the Registered Owner.

The Bond shall be issued in substantially the form as set forth in Exhibit C attached hereto, with necessary appropriate variations, omissions and insertions as permitted or required by this Ordinance.

The installments of principal and interest on the Bond shall be payable to the Registered Owner thereof or its assigns by check or draft (via first class mail) or wire transfer to such Person at his orders last appearing on the Bond Register. All payments of principal and interest on the Bond shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 3.02 Execution of Bond.

The Bond shall be executed on behalf of the County by the manual or facsimile signature of the Chairman or Vice-Chairman of the Council and its corporate seal shall be impressed, imprinted, engraved or otherwise affixed or reproduced thereunto and attested to by the manual or facsimile signature of the Clerk to Council. If any of the officers who shall have signed or sealed the Bond shall cease to be such officer of the County before the Bond so signed and sealed shall have been actually delivered by the County, the Bond nevertheless may be issued and delivered with the same force and effect as though the person or persons who signed or sealed the Bond had not ceased to be such officer or officers of the County; and also the Bond may be signed and sealed on behalf of the County by those persons who, at the actual date of the execution of the Bond, shall be the proper officers of the County, although at the date of the Bond any such person shall not have been such officer of the County.

Section 3.03 Negotiability, Registration and Transfer.

The Bond Registrar shall maintain on behalf of the County, as Bond Registrar, a register to record the names and addresses of the last known Registered Owners of the Bond known as the Bond Register. Upon surrender of the Bond for transfer thereof by the Registered Owner, in person or by his attorney duly authorized in writing, together with a written instrument of transfer in form satisfactory to the Bond Registrar, including the address to which payment of the Bond is to be directed and at which presentment is to be made, duly executed by the Registered Owner or his attorney duly authorized in writing, and upon payment by such Registered Owner of a sum sufficient to cover any governmental tax or charge required to be paid, the Bond shall be reissued at the same interest rate to the transferee with a notation as to the principal amount outstanding as of the date of such transfer.

The County may deem and treat the Registered Owner of the Bond as the absolute owner of such Bond for the purpose of receiving any payment on the Bond and for all other purposes of this Ordinance, whether such Bond shall be overdue or not, and the County shall not be affected by any notice to the contrary. Payment of, or on account of, the principal and interest on the Bond shall be made to such Registered Owner or upon his written order. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

Notwithstanding anything herein to the contrary, absent the prior written consent of the County to appropriate modifications of the Bond and this Ordinance, the Bond may be assigned or transferred by the Purchaser or any subsequent Registered Owner only in whole but not in part. Transfer of this Bond is subject to the terms of Letter of Representation in form substantially similar to that as Exhibit D hereto.

Section 3.04 Lost, Mutilated Bonds; Exchange.

(A) If any mutilated Bond is surrendered to the Registrar and the Registrar or the County receives evidence to their satisfaction of the destruction, loss or theft of any Bond, and there is delivered to the Registrar or the County such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice that such Bond has been acquired by a bona fide purchaser, the County shall execute, and upon County Request, the Registrar shall authenticate and deliver, in exchange for any such mutilated Bond or in lieu of any such destroyed, lost or stolen Bond, a new Bond of like Series, tenor, principal amount and redemption provisions, bearing a number unlike that of a Bond contemporaneously Outstanding. The Registrar shall thereupon cancel any such mutilated Bond so surrendered. In case any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the County in its discretion may, instead of issuing a new Bond, pay such Bond.

(B) Upon the issuance of any new Bond under this **Section 3.04**, the County may require the payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the County or the Registrar connected therewith.

(C) Each new Bond issued pursuant to this Section in lieu of any destroyed, lost or stolen Bond, shall constitute an additional contractual obligation of the County, whether or not the destroyed, lost or stolen Bond shall at any time be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with any and all other Bonds duly issued pursuant to the Ordinance. All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds.

Section 3.05 Holder As Owner of Bond.

The County, the Registrar and any Paying Agent may treat the Holder of any Bond as the absolute owner thereof, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the Principal Installment of, redemption premium, if any, and interest on such Bond and for all other purposes, and payment of the Principal Installment, redemption premium, if any, and interest shall be made only to, or upon the order of, such Holder. All payments to such Holder shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the County nor any Paying Agent shall be affected by any notice to the contrary.

Section 3.06 Cancellation of Bonds.

The Registrar shall destroy all Bonds surrendered to it for cancellation and shall deliver a certificate to that effect to the County. No such Bonds shall be deemed Outstanding under the Ordinance and no Bonds shall be issued in lieu thereof.

Section 3.07 Limited Obligation of the County.

The Bond shall be a limited obligation of the County, the principal and interest on which shall be secured by, and payable by the County solely out of, the Pledged Revenues. THE BOND AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY, OTHER THAN THE PLEDGED REVENUES, OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No breach by the County of this Ordinance or of any provision or condition hereof or in the Bond or of any agreement contained herein or in the Bond shall result in the imposition of any pecuniary liability upon the County, other than from the Pledged Revenues or any charge upon its general credit or against its taxing power. The liability of the County under this Ordinance and the Bond or any provision or condition hereof or thereof or of any agreement herein or in the Bond contained or of any warranty herein or in the Bond included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the applicable property pledged herein. The County shall not be required to execute or perform any of its duties, obligations, powers or covenants hereunder or under the Bond except to the extent of the Pledged Revenues pledged thereto and available therefor.

THE PROVISIONS OF THIS SECTION 3.04 SHALL CONTROL EVERY OTHER PROVISION OF THIS ORDINANCE, ANYTHING IN SUCH OTHER PROVISIONS TO THE CONTRARY NOTWITHSTANDING.

**ARTICLE IV
USE OF NET PROCEEDS OF THE BOND**

Section 4.01 Project Fund.

(a) Upon the issuance of the Bond, the Purchaser shall remit to the County the net sales proceeds of the Bond, which shall equal the par amount thereof less (i) counsel fees, and (ii) the amount required to discharge the Refunded Bond, taking into account other monies provided by the County for such purpose, as determined by the County Administrator. The net sale proceeds so remitted shall be deposited in a special fund maintained by the Treasurer and designated as the “Newberry County Series 2021 Special Source Revenue Bond Project Fund”. Such amounts may be invested and reinvested in any investments which are authorized for funds of political subdivisions under the laws of the State.

(b) Amounts in the Project Fund shall be disbursed by the Treasurer, at the direction of the Administrator, to pay, or reimburse the County for payments previously made to pay, Costs of the Project and costs of issuance of the Bond.

(c) Amounts, if any, remaining in the Project Fund shall, upon receipt of certification from the Administrator that no further amounts are required to be disbursed for issuance costs and costs and expenses of the Project, be applied to the first installments of interest coming due on the Bond.

(d) Neither the Purchaser nor any other Registered Owner of the Bond shall be liable for the proper application of the proceeds thereof.

**ARTICLE V
REPRESENTATIONS AND COVENANTS OF THE COUNTY**

Section 5.01 Representations of County.

The County represents and warrants that:

- (a) The County is a body politic and corporate and a political subdivision of the State.
- (b) The County has full power, authority and legal right under the Constitution and laws of the State, including the Act, to: (i) to issue the Bond and to use the proceeds thereof to defray the cost of acquiring, by construction and purchase, the Project and refund the Refunded Bonds; (ii) enact this Ordinance and execute and deliver the Bond; and (iii) perform and observe all of the County's obligations under this Ordinance and the Bond.
- (c) The County has held a public hearing with respect to the issuance of the Bond and will duly authorize the issuance of the Bond by the enactment of this Ordinance.
- (d) This Ordinance and the Bond constitute the legal, valid and binding obligations of the County.
- (e) To the best of the County's knowledge, the execution and delivery of the Bond, the enactment of this Ordinance, and performance by the County of its obligations hereunder and thereunder, do not and will not: (i) conflict with, or result in the violation or breach of, or constitute a Default or Event of Default or require any consent under, or create any lien, charge or encumbrance under the provisions of (x) the Constitution of the State or any law, rule or regulation of any governmental authority, or (y) any agreement; (ii) call into question the creation, organization or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby; or (iii) result in any suit, action of decree wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Ordinance and the Bond or any other agreement or instrument to which the County is a party.
- (f) The Park Agreement is in full force and effect and is legal, valid and binding and enforceable against the County and the partner county thereto.

Section 5.02 Pledge and Security Interest.

The Bond shall be payable solely from and shall be secured by a pledge of and lien upon all of the County's right, title and interest in the Pledged Revenues. Such pledge and lien constitutes a first and prior pledge of and lien upon and security interest in the Pledged Revenues, subject to the provisions of **Article VI** hereof. Said pledge, lien and security interest shall at no time be impaired directly or indirectly by the County, and, subject to the provisions of said **Article VI**, the County's right, title and interest in the Pledged Revenues shall not otherwise be pledged and, except as expressly provided herein, no person shall have any rights with respect thereto.

Section 5.03 Amendments to Park Agreement or this Ordinance.

For the term of the Bond or until otherwise paid, the County, without the prior written consent of the Registered Owner or as may otherwise be expressly provided herein, shall not agree to:

(i) amend, modify or terminate the Park Agreement in any manner which would adversely impact the rights of the Registered Owner hereunder;

(ii) a reduction in the rate or amount of fees in lieu of taxes otherwise currently payable by all fee and tax payers whose properties are currently subject to the Park Agreement, so as to diminish the amount of FILOT Revenues otherwise receivable pursuant to the Park Agreement; provided, however, nothing herein shall be construed to limit the ability of the County to hereafter (a) add additional properties to the Park Agreement (“Additional Park Businesses”) or (b) provide any fee in lieu of tax incentives, including infrastructure credits, pursuant to the Act, (1) to any Additional Park Businesses or (2) with respect to additional investment made after such date by businesses currently subject to the Park Agreement; or

(iii) amend, modify or terminate this Ordinance, except as may be (a) required in accordance with the provisions of **Section 6.01** hereof and (b) necessary in order to enable the County, at its discretion, to add any additional security to the pledge and lien securing the Bond (including without limitation Net FILOT Revenues receivable with respect to any joint county industrial or park agreement established by the County with a partner county pursuant to Section 4-1-170 of the Act, other than the agreement set forth in Exhibit B hereto).

Section 5.04 Post-Issuance Actions.

[Reserved].

**ARTICLE VI
ADDITIONAL BONDS**

Section 6.01 Additional Bonds.

Notwithstanding anything in this Ordinance to the contrary, the County shall be hereafter entitled to issue from time to time, Additional Bonds. Such Additional Bonds shall be payable from the Net FILOT Revenues, provided that (a) prior to any such issuance, the County demonstrates, to the Registered Owner’s reasonable satisfaction, that Net FILOT Revenues for the preceding fiscal year of the County, as adjusted to reflect any additional annual Net FILOT Revenues as may reasonably be expected to be received by the County as a result of (i) any additional investment by industries or businesses since such fiscal year or (ii) any subsequent pledge by the County of amounts receivable pursuant to any joint county industrial or business park agreement established by the County with a partner county pursuant to Section 4-1-170 of the Act, other than the agreement set forth in Exhibit A hereto, were sufficient to pay the Annual Debt Service Requirement on the Bond for such fiscal year plus the maximum annual debt service on the proposed issuance of Additional Bonds (net of any capitalized interest) at a rate of 1.35 times coverage; (b) the lien upon the Net FILOT Revenues securing such Additional Bonds is expressly stated to be equal in all respects (pari passu) to the lien established under this Ordinance with respect to the Bonds; (c) the applicable provisions of this Ordinance, including without limitation **Article VII** hereof, are amended by enactment of ordinance of the Council to appropriately reflect the issuance of such additional bond and the parity first lien status, all to the reasonable satisfaction of the Registered Owner; and (d) nothing in this Ordinance shall be construed to prevent the issuance of bonds by the County secured by Net FILOT Revenues on a basis which is expressly stated to be junior and subordinate to the lien upon the Net FILOT Revenues securing the Bond and any such additional parity first lien bonds.

ARTICLE VII FLOW OF FUNDS

Section 7.01 Revenue Fund.

The Treasurer shall create a special fund of the County to be designated as the “Newberry County Series 2021 Special Source Revenue Bond Revenue Fund” (the “Revenue Fund”), wherein all Net FILOT Revenues shall be deposited when received by the Treasurer. For as long as the Bond shall remain Outstanding, the provisions of this Article VII shall govern the distribution of Net FILOT Revenues in lieu of the provisions of Section 3.03(a)(ii) of the Park Agreement. Net FILOT Revenues are hereby designated as revenues "received and retained by the County" for purposes of Section 4-29-68(A) of the Act, and shall be disbursed as follows:

(a) Unless the Treasurer shall have received notice from the County in accordance with paragraph (b) below, and provided that no Event of Default shall have occurred and be continuing, annual amounts received as Net FILOT Revenues shall be disbursed by the Treasurer as follows:

(1) The Treasurer shall first determine the County’s pro-rata share, based on the proportion the County’s millage rate bears to the total millage rate, of Net FILOT Revenues received, without regard to any required funding of the Debt Service Fund (the “County Pro-Rata Share”).

(2) From the County Pro-Rata Share, the Treasurer shall then fund the Debt Service Fund in the manner provided in **Section 7.02** hereof, to the extent available.

(3) If the County Pro-Rata Share has been sufficient to enable the Treasurer to meet the required funding of the Debt Service Fund in accordance with said **Section 7.02**, the Treasurer shall then (A) pay to the County the amount determined pursuant to subparagraph (1) above, less the amount the Treasurer has deposited in the Debt Service Fund, and (B) distribute the remaining amount, if any, among the remaining applicable taxing entities (other than the County) (the “Applicable Non-County Taxing Entities”) in the same proportion as each such Applicable Non-County Taxing Entity’s millage rate bears to the total millage rate of all Applicable Non-County Taxing Entities.

(4) In the event the amount paid into the Debt Service Fund pursuant to subparagraph (2) above is not sufficient to meet the required funding obligation in accordance with said **Section 7.02**, the Treasurer shall fund the deficiency in the Debt Service Fund from the amount of Pledged Revenues otherwise allocable to the Applicable Non-County Taxing Entities, on a pro-rata basis, based on the proportion each such Applicable Non-County Taxing Entity’s millage rate bears to the total millage rate of all Applicable Non-County Taxing Entities. After such funding of the deficiency amount, the Treasurer shall distribute the remaining pro-rata allocable amounts to the Applicable Non-County Taxing Entities, based on the proportion each such Applicable Non-County Taxing Entity’s millage rate bears to the total millage rate of all Applicable Non-County Taxing Entities. All payments to Applicable Non-County Taxing Entities shall be used for operations, debt service or such other purpose, respectively, in the same respective ratios as ad valorem taxation for each respective Applicable Non-County Taxing Entity in that fiscal year.

(b) If the County shall have notified the Treasurer by March 18 of the applicable year as to the same, annual amounts received by the Treasurer as Net FILOT Revenues shall be applied first to fund the Debt Service Fund in the manner provided in **Section 7.02** hereof, and thereafter, except upon the occurrence and continuance of an Event of Default, any remaining balance after such funding of the Debt

Service Fund shall be divided by the Treasurer pro-rata among all applicable taxing entities in the County in the same proportion as each such taxing entity's millage rate bears to the total millage rate.

The Treasurer may direct the investment and reinvestment of amounts on deposit in the Revenue Fund in any investments which are authorized for funds of political subdivisions under the laws of the State.

Section 7.02 Debt Service Fund.

(a) The Treasurer shall establish a special fund of the County to be designated as the "Newberry County Series 2021 Special Source Revenue Bond Debt Service Fund" (the "Debt Service Fund"). The Debt Service Fund shall be maintained by the Treasurer as a segregated account held in trust for the Registered Owner of the Bond. Moneys on deposit in the Debt Service Fund shall be used and applied solely to the payment of the principal of and interest on the Bonds, all in accordance with the provisions of this Ordinance.

(b) Not later than September 15, 2021, the Treasurer shall fund the Debt Service Fund from amounts in the Revenue Fund in an amount sufficient to pay the scheduled payment of interest on the Bond on October 1, 2021.

(c) Not later than March 18 of each year, commencing March 18, 2022, the Treasurer shall fund the Debt Service Fund from amounts in the Revenue Fund in an amount sufficient to pay the scheduled payments of principal of and accrued interest on the Bond on the immediately succeeding April 1 and October 1 (the "Annual Debt Service Requirement").

(d) In addition to payment of the Annual Debt Service Requirement, the Treasurer shall at any time, as necessary, fund the Debt Service Fund from amounts in the Revenue Fund to fund amounts sufficient to pay the principal of and accrued interest on the Bond payable as a result of any prepayment or acceleration of the Bond.

(e) The Treasurer may direct the investment and reinvestment of amounts on deposit in the Debt Service Fund in any investments which are authorized for funds of political subdivisions under the laws of the State.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.01 Events of Default; Acceleration; Waiver.

Each of the following events is hereby declared an Event of Default:

(i) default shall be made in the due and punctual payment of any installment of the principal of the Bond; or

(ii) default shall be made in the due and punctual payment of any installment of interest on the Bond; or

(iii) the County shall fail duly and punctually to perform any covenant, condition, agreement or provision contained in this Ordinance on the part of the County to be performed, other than as referred to in the subsections (i) and (ii) of this **Section 8.01**, which failure shall continue for a period of 30 days after written notice by the Registered Owner specifying such failure and requesting that it be remedied is given to the County by first class mail, unless the Registered Owner

shall agree in writing to an extension of time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Registered Owner shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the County within the applicable period and diligently pursued until the Default is corrected; or

(iv) any representation or warranty made by the County under this Ordinance or any documents or information delivered to any Registered Owner was, when made, untrue or materially misleading; or

(v) the County shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of the County or any of their respective properties or assets, (ii) fail or admit in writing the inability of the County to pay the County's debts generally as they become due, (iii) make a general assignment for the benefit of its creditors or have an order for relief entered against the County in any proceeding under the federal bankruptcy code or (iv) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors, or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute or an answer admitting the material allegations of a petition filed against the County in any proceeding under any such law, or if corporate action should be taken by the County for the purpose of effecting any of the foregoing.

Section 8.02 Legal Proceedings by the Purchaser.

Upon the happening and continuance of any Event of Default, then and in every such case the Registered Owner in its discretion may:

- (a) accelerate all amounts due on the Bond;
- (b) by mandamus, or other suit, action or proceeding at law or in equity, enforce all of its rights and require the County to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Ordinance;
- (c) bring suit upon the Bond;
- (d) by action or suit in equity require the County to account for the Pledged Revenues as if it were the trustee of an express trust for the Registered Owner; or
- (e) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

Section 8.03 Remedies Not Exclusive.

No remedy in this Ordinance conferred upon or reserved to the Purchaser or to the Registered Owner of the Bond is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or now or hereafter existing at law or in equity or by statute.

Section 8.04 Nonwaiver.

No delay or omission of the Purchaser or of the Registered Owner of the Bond to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default, or an acquiescence therein.

Section 8.05 Application of Moneys Upon Event of Default.

Any moneys received by the Registered Owner upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings and second, to the amounts due under the Bond in such order as elected by the Registered Owner.

**ARTICLE IX
MISCELLANEOUS**

Section 9.01 Continuing Disclosure; Remedies.

(a) The County covenants to:

(i) So long as the Bond is Outstanding provide in each year to the Registered Owner of the Bond audited financial statements of the County, within 270 days after the close of each fiscal year; and

(ii) Provide to the Registered Owner of the Bond, event specific information within thirty (30) days of receipt of notice by the County of an event adversely affecting more than five percent of the Net FILOT Revenues.

(b) The only remedy for failure by the County to comply with the covenants set forth in **Section 9.01(a)** above shall be an action for specific performance of such covenants; and failure to comply with such covenants shall not constitute a Default or an Event of Default under this Ordinance. However, any Registered Owner may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the County to comply with its obligations under this **Section 9.01**.

Section 9.02 Severability.

If any one or more of the covenants or agreements provided in this Ordinance on the part of the County or any fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Ordinance.

[Remainder of page intentionally left blank]

DONE, RATIFIED AND ENACTED this ____ day of ____, 2021.

NEWBERRY COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, County Council of
Newberry County, South Carolina

ATTEST:

Clerk to County Council,
Newberry County, South Carolina

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the County Council of Newberry County will conduct a public hearing on the proposed enactment of an ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF A NEWBERRY COUNTY, SOUTH CAROLINA, SPECIAL SOURCE REVENUE BOND (INDUSTRIAL PARK PROJECT) IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$5,500,000 IN ONE OR MORE SERIES; THE APPLICATION OF THE PROCEEDS OF SAID BONDS TO DEFRAY, FOR ECONOMIC DEVELOPMENT PURPOSES, THE COSTS OF CERTAIN INFRASTRUCTURE IMPROVEMENTS AND OF ACQUIRING CERTAIN PROPERTY IN NEWBERRY COUNTY; TO REFUND OUTSTANDING AMOUNTS OF THE COUNTY'S SERIES 2006 SPECIAL SOURCE REVENUE BONDS; AND OTHER MATTERS RELATING THERETO" (the "Ordinance") on Wednesday March 3, 2021 in the County Council Chambers, 1309 College St., Newberry, South Carolina, at 7:00 p.m. The proceeds from the sale of the Bond will be used to defray a portion of the cost of the acquisition of and improvement of certain unimproved real estate located on the east side of Highway 773 between I-26 and U.S Highway 76 for industrial park use, and issuance costs. All interested persons are invited to attend in person and speak; social distancing will be observed. A live-stream of the hearing will be available for viewing through the County's website, www.newberrycounty.net.

NEWBERRY COUNTY, SOUTH CAROLINA

NEWBERRY-GREENWOOD PARK AGREEMENT

FORM OF BOND

**NEWBERRY COUNTY, SOUTH CAROLINA
SPECIAL SOURCE REVENUE BOND
(INDUSTRIAL PARK PROJECT)
SERIES 2021**

No. ____

\$_____

KNOW ALL MEN BY THESE PRESENTS that **NEWBERRY COUNTY, SOUTH CAROLINA** (hereinafter called the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), for value received promises to pay, but only from the Pledged Revenues and as hereinafter provided, to the order of

TRUIST BANK

(hereinafter, together with its successors and assigns, called the “Payee”) at its principal office in the City of Charlotte, North Carolina (or at such other office of the Payee as the Payee shall direct) the principal sum of

FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000)

, and in like manner to pay interest on the unpaid principal amount hereof from time to time outstanding from the date of delivery of this Bond until April 1, 2037 or earlier upon prior redemption hereof, at the rate per annum described below, such principal to be payable on April 1 of the years and in the respective amounts, as follows:

<u>April 1</u>	<u>Principal Amount</u>	<u>April 1</u>	<u>Principal Amount</u>
2022	\$251,269.33	2030	\$346,394.38
2023	275,041.02	2031	357,998.60
2024	284,254.90	2032	369,991.54
2025	293,777.44	2033	382,386.26
2026	303,618.98	2034	395,196.20
2027	313,790.22	2035	408,435.28
2028	324,302.18	2036	422,117.86
2029	335,166.32	2037	436,259.49

This Bond bears interest at a rate of Three and thirty-five hundredths percent (3.35%) per annum. Interest hereon shall be payable each April 1 and October 1, commencing October 1, 2021. All unpaid principal and accrued interest hereon shall be due and payable on April 1, 2037.

If any installment of principal or interest is not paid on or before its due date, such unpaid installment shall bear interest from its due date until fully paid at the rate hereunder.

Principal of and interest on this Bond is payable by check or draft or wire transfer of collected funds of the United States of America, which at the respective times of payment is legal tender for the payment of public and private debts. All installments of principal and interest hereon shall be paid by check or draft (via first class mail) or wire transfer of collected funds to the registered owner at his address last appearing on the Bond Register (hereinafter defined). Presentment of this Bond is hereby waived.

This Bond is issued by the County for the purpose of defraying costs related to the Project, as defined in the Ordinance, refunding a portion of the County's Series 2006 Special Source Revenue Bond, and paying costs of issuance hereof. This Bond is authorized to be issued and is issued under, pursuant to and in full compliance with the Constitution and statutes of the State of South Carolina, including particularly Section 4-1-175, Code of Laws of South Carolina 1976, as amended. This Bond is also authorized to be issued and is issued under and pursuant to an Ordinance of the County Council of Newberry County duly enacted on _____, 2021 (the "Ordinance").

The Ordinance contains provisions defining terms, including the properties comprising the Project to be financed with the proceeds of this Bond; sets forth the revenues pledged for the payment of the principal of and interest on this Bond; sets forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the relative rights and remedies of the registered owner hereof with respect thereto; sets forth the terms and conditions upon which this Bond is issued and sets forth the rights, duties and obligations of the County thereunder. Additional Bonds (as such term is defined in the Ordinance) may be issued upon the terms set forth in the Ordinance. Reference is hereby made to the Ordinance for all of the provisions of which any registered owner of this Bond by the acceptance hereof thereby assents. The provisions of the Act and the Ordinance shall be a contract with the registered owner of this Bond.

This Bond and the interest thereon are special obligations of the County payable solely from, and secured equally and ratably by a pledge of and lien upon, the Pledged Revenues (as such term is defined in the Ordinance) derived by the County under the Ordinance which are pledged to the payment thereof. **THIS BOND, INCLUDING INTEREST THEREON, IS PAYABLE SOLELY FROM THE PLEDGED REVENUES HERETOFORE MENTIONED AND THE COUNTY IS UNDER NO OBLIGATION TO PAY THE SAME EXCEPT FROM SUCH SOURCES. THIS BOND SHALL NOT CONSTITUTE A DEBT OF THE COUNTY, NOR A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE COUNTY, OR ON ANY INCOME, RECEIPTS OR REVENUES THEREOF, OTHER THAN THE AFORESAID PLEDGED REVENUES PLEDGED THERETO. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THIS BOND OR THE INTEREST THEREON AGAINST THE GENERAL FUND OF THE COUNTY AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE COUNTY SHALL BE DEEMED TO BE PLEDGED THERETO. THE FULL FAITH, CREDIT AND TAXING POWERS OF THE COUNTY ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND.**

This Bond is transferable, as provided in the Ordinance, only upon the books of the County for that purpose at the principal office of the Registrar (as defined in the Ordinance) by the registered owner in person or by his duly authorized attorney upon surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney. Thereupon a new fully registered Bond shall be issued to the transferee in exchange therefor as provided in the Ordinance. The County and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of or on

account of the principal or redemption, premium, if any, hereof and interest due hereon and for all other purposes.

If any payment of principal of or interest on this Bond falls due on a day which is not a Saturday or Sunday or legal holiday or a day on which banking institutions in the State of South Carolina are authorized or required by law to close (a "Business Day"), then such due date shall be extended to the next succeeding Business Day, and interest shall be payable in respect of such extension.

This Bond is prepayable in whole, but not in part, at any time at a price of 101% of the principal amount to be redeemed, plus accrued interest to the date of redemption, upon fifteen (15) days prior written notice to the Registered Holder.

Under the laws of the State of South Carolina, the principal of, premium, if any and interest on this Bond are exempt from any and all State, county, municipal and other taxation under the laws of the State of South Carolina except estate and transfer taxes and certain franchise fees.

Any registered owner of this Bond shall have the right to institute any suit, action or proceeding for the enforcement of the Ordinance or this Bond as provided in the Ordinance. In certain events, on the conditions, in the manner and with the effect set forth in the Ordinance, the outstanding principal balance of this Bond may be declared due and payable before the stated maturity thereof, together with interest accrued hereon.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and statutes of the State to exist, to happen and to be performed precedent to and in the issuance of this Bond, do exist, have happened, and have been performed in due time, form and manner as required by law; that this Bond does not exceed any constitutional or statutory limitation of indebtedness; and that provision has been made for the payment of the principal of and interest on this Bond, as provided in the Ordinance.

IN WITNESS WHEREOF, Newberry County, South Carolina, has caused this Bond to be executed in its name by the manual signature of the Chairman of the County Council and attested by the manual signature of its Clerk to County Council under the seal of the County impressed, imprinted or reproduced hereon, all as of the ____ date of _____, 2021.

NEWBERRY COUNTY, SOUTH CAROLINA

Chairman of the County Council
Newberry County, South Carolina

(SEAL)

ATTEST:

Clerk to County Council
Newberry County, South Carolina

[Closing Date]

Newberry County, South Carolina
Newberry, South Carolina

Haynsworth Sinkler Boyd, P.A.
Columbia, South Carolina

Compass Municipal Advisors LLC
Columbia, South Carolina

Re: \$[AMOUNT] Special Source Revenue Bond, Series 2021

Ladies and Gentlemen:

The undersigned, on behalf of [Name of Bank], as Purchaser of the above-referenced Special Source Revenue Bond (the “**Purchaser**”), has agreed to make a loan to Newberry County, South Carolina (the “**County**”). In accordance with South Carolina law, the loan will be made in the form of a Special Source Revenue Bond issued by the County and registered in the name of the Purchaser (the “**Bond**”).

The Purchaser hereby represents to you that:

- (1) The Bond is being purchased solely for the account of the Purchaser and for the purpose of investment, and not with a present view for the resale, distribution, subdivision, or fractionalization thereof; no other person will upon the purchase of the Bond by the Purchaser have any direct or indirect ownership or interest in the Bond; and the Purchaser has no present intention of reselling, distributing, subdividing or fractionalizing the Bond or any portion thereof either currently or after the passage of a fixed period of time, or upon the occurrence or nonoccurrence of any predetermined event or circumstances, although the Purchaser reserves the right to dispose of the Bond or any of its interest therein.
- (2) Transfer of the Bond is restricted to transferees which are financial institutions or similar to financial institutions, and may be made only through participation or syndication. Any such transferee must execute and deliver to the above-named addressees a letter substantially similar to this letter and satisfactory to such addressees prior to any such transfer.
- (3) The loan made by the Purchaser to the County is represented solely by the Bond and by the bond ordinance adopted by the County Council of Newberry County, the governing body of the County, authorizing the issuance of the Bond (the “**Ordinance**”), both of which will, upon the delivery of the Bond and the making of the loan, constitute a contract between the County and the Purchaser.
- (4) The Bond has not been rated by any credit rating agency.
- (5) The Bond has not been assigned a CUSIP number.
- (6) Assignment of Purchaser’s rights under the Bond is subject to the terms and conditions of the

Bond, the Ordinance and this Written Confirmation of Purchaser.

- (7) There is no agreement facilitating creation of a market for trading, such as a marketing or remarketing agreement or continuing disclosure agreement, with respect to the Bond or any obligations of the County thereunder.
- (8) The rights and obligations of the Purchaser under the Bond will be those of the Purchaser, not the securities affiliate of the Purchaser or any other separately identifiable department or division of the Purchaser.
- (9) The Purchaser will treat the Bond as a loan, not a security, for accounting and regulatory purposes.
- (10) Registration of the Bond shall be in physical form, in name of the Purchaser.
- (11) The Purchaser has sufficient knowledge and experience in financial and business matters, including those involving loans to public bodies, to be able to evaluate the risks and merits of the credit represented by its decision to make a loan to the County in the form of the Bond.
- (12) The Purchaser understands that no official statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the County and the Bond is being issued, and that, in due diligence, it has made its own inquiry and analysis with respect to the County, the Bond, and other material factors affecting the security for and payment of the County's obligations under the Bond.
- (13) The Purchaser acknowledges that it has either been supplied with or has access to information, including financial statements and other financial information, regarding the County, to which a reasonable lender would attach significance in making credit decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the County, the Bond and the security therefor, so that as a reasonable lender, it has been able to make its decision to make the loan represented by the Bond and the Ordinance.
- (14) The Purchaser understands that the scope of engagement of Haynsworth Sinkler Boyd, P.A., as Bond Counsel, with respect to the Bond has been limited to matters set forth in its opinion based on its view of such legal proceedings as it deems necessary to approve the validity of the Bond. The County is Bond Counsel's sole client in connection with the sale and issuance of the Bond.

TRUIST BANK

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I, the undersigned, Clerk to the County Council of Newberry County, South Carolina **DO HEREBY CERTIFY:**

That the foregoing constitutes a true, correct and verbatim copy of an ordinance duly enacted by the County Council of Newberry County (the "Council") pursuant to readings of the same held at meetings of the Council duly held on _____, 2021, _____, 2021, and _____, 2021, the original of which ordinance is duly entered in the permanent records of minutes of meetings of the Council, in my custody as such Clerk.

That said meetings were duly called, and all members of Council were notified of the same, and all/a majority of the members were present at each of said meetings and remained throughout the proceedings incident to the readings of said ordinance.

In accordance with the South Carolina Freedom of Information Act, at least 24 hours prior to the commencement of each meeting shown above, the agenda for such meeting, including the time, date and place of such meeting, and including as an item the consideration of the Ordinance was (a) posted on prominent place open to the public in the Newberry County administrative office, (b) posted on the County's public website, and (c) provided to news media and others requesting such notification.

IN WITNESS WHEREOF, I have hereunto set my Hand this ___ day of _____, 2021.

Clerk to the County Council of
Newberry County, South Carolina

First Reading: _____, 2021
Second Reading: _____, 2021
Third Reading: _____, 2021
Public Hearing: _____, 2021