STATE OF SOUTH CAROLINA

COUNTY COUNCIL FOR NEWBERRY COUNTY

ORDINANCE NO. 09-19-18

AN ORDINANCE AUTHORIZING THE CONVERSION OF A LEASE ARRANGEMENT FOR FEE-IN-LIEU OF TAX PAYMENTS BETWEEN NEWBERRY COUNTY AND KISWIRE, INC. UNDER TITLE 4, CHAPTER 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, TO A FEE AGREEMENT UNDER TITLE 12, CHAPTER 44, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED; AND MATTERS RELATING THERETO.

WHEREAS, Newberry County (the “**County**”), a public body corporate and politic organized and existing under the laws of the State of South Carolina (the “**State**”) previously entered into a fee-in-lieu of taxes arrangement with Kiswire, Inc., a corporation organized and existing under the laws of the State of South Carolina (the “**Company**”) under Title 4, Chapter 12, South Carolina Code of Laws, 1976, as amended (the “**Old Act**”), pursuant to which the Company transferred title to certain real and personal property to the County and the County and the Company, in connection therewith, entered into an Inducement Agreement and a Millage Rate Agreement, each dated as of November 6, 1998 (collectively, the “**Inducement and Millage Rate Agreements**”), and a Lease Agreement, dated as of June 16, 1999, as modified by a First Amendment to Fee Agreements dated November 15, 2017 (collectively, the “**Lease**”), concerning certain real properties and improvements thereto and certain machinery, equipment, fixtures and other property (the “**Original Project**”);

WHEREAS, Section 12-44-170 of the Act provides that a company with property subject to an existing fee-in-lieu of property tax arrangement under the Old Act may elect with the consent of the county to convert from such Old Act arrangement to a fee agreement under the Act, and such property shall automatically be considered “economic development property” for purposes of the Act subject to:

(a) a continuation of the same fee payments required under the existing lease agreement;

(b) a continuation of the same fee payments only for the time required for payments under the existing lease agreement;

(c) a carryover of minimum investment or employment requirements of the existing arrangements to the new fee arrangement; and

(d) appropriate agreements and amendments between the company and the county continuing the provisions and limitations of the prior agreement.

WHEREAS, to the extent necessary or required under the Act, the County desires to consent to, approve and ratify such conversion by the Company of its facilities from an Old Act arrangement to an Act arrangement and to the fee agreement (the “**Conversion Fee Agreement**”) and other documents pursuant to which such conversion is to be made;

WHEREAS, there has been prepared and presented to this meeting the proposed form of the Conversion Fee Agreement; and

WHEREAS, it appears that the Conversion Fee Agreement, 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.

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

**Section 1.** With respect to the Project, pursuant to the Act, and based solely on information supplied to the County by the Company, the County Council 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 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) 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;

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

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

(f) 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, based on factual representations to the County by the Company, will be properly classified as economic development property.

**Section 2.** The County, pursuant to the Act, hereby expressly recognizes, consents to, approves and ratifies the conversion of the Company’s arrangement under the Old Act to an arrangement under the Act.

**Section 3.** The County consents to, approves and authorizes the transfer of title to all property, both real and personal, constituting the Original Project to the Company and to the cancellation of the Lease and the Inducement and Millage Rate Agreements (to the extent said agreements are not cancelled by operation of law) without further payment or penalty to the County under the Lease or the Inducement and Millage Rate Agreements.

**Section 4.** The form, terms and provisions of the Conversion Fee Agreement that is before this meeting and filed with County Council is hereby approved and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Conversion Fee Agreement was set out in this Ordinance in its entirety. The Chair of the County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the Conversion Fee Agreement to the Company. The Conversion Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not be materially adverse to the County, as approved by the officials of the County executing same, after consultation with legal counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Conversion Fee Agreement now before this meeting. The County agrees to take such other actions as may be reasonably necessary or appropriate for the cancellation of the Lease and Inducement and Millage Rate Agreements, and the execution of the Conversion Fee Agreement, deeds, bills of sale and any all other documents that the Company may reasonably request in order to convey to the Company title to any property that has been conveyed by the Company to the County pursuant to the Lease and to evidence the consent, approval and ratification described in this Ordinance.

**Section 5.** The Chair of County Council and the County Administrator, for and on behalf of the County, are hereby each authorized and directed to do any and all things reasonably necessary to effect the execution and delivery of the Conversion Fee Agreement, deeds, bills of sale and related documents and the performance of all obligations of the County under and pursuant to this Ordinance and the Conversion Fee Agreement.

**Section 6.** The consummation of all transactions contemplated by the Conversion Fee Agreement is hereby approved.

**Section 7.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 8.** The provisions of this Ordinance are hereof 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 hereof.

**Section 9.** 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.

***[Signatures Appear on Following Page]***

NEWBERRY COUNTY COUNCIL

By:

Its: Chair

Attest:

First Reading: October 3, 2018

Second Reading: October 17, 2018

Public Hearing: October 17, 2018

Third Reading: November 7, 2018

STATE OF SOUTH CAROLINA )

)

COUNTY OF NEWBERRY )

I, the undersigned, Clerk to County Council of Newberry County (“**County Council**”), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on three separate days. At least one day passed between first and second reading and at least seven days between second and third reading. At each meeting, a quorum of the County Council was present and remained present throughout the meeting.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Newberry County Council, South Carolina, as of this 7th day of November, 2018.

Clerk to County Council

Newberry County, South Carolina

~#4838-9204-9777 v.2~