

"Real Property" means the land identified on Exhibit A hereto, together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, to the extent such Improvements and fixtures become part of the Project under this Fee Agreement

"Replacement Property" means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

"Sponsor Affiliate" means an affiliate that joins with or is an affiliate of the Company whose investment with respect to the Project, if any, will qualify for Payments-in-Lieu-of-Taxes pursuant to Section 5.1 hereof and Section 12-44-30(A)(19) and Section 12-44-130 of the Act.

"Stage" in respect of the Project shall mean the year within which Equipment and Improvements, and Real Property, if any, are placed in service during each year of the Investment Period.

"State" means the State of South Carolina.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

ARTICLE II

LIMITATION OF LIABILITY; INDUCEMENT

SECTION 2.1 *Limitation of Liability.* Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

SECTION 2.2. *Inducement.* The County and the Company acknowledge that pursuant to the Act, upon execution of this Fee Agreement, no part of the Project will be subject to ad valorem property taxation in the State, and that this factor, among others, has induced the Company to enter into this Fee Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1 *Representations and Warranties of the County.* The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is

necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially affect the County's obligations hereunder or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) Based on information provided by the Company, the Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered economic development property under the Act.

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

SECTION 3.2. *Covenants by the County.* The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations in the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State. Except as reasonably believed to be required by the County in the performance of its duties under statute or law, the County will take no action with respect to the Project unless authorized or requested to do so by the Company.

(b) The County has agreed to grant the Company the five-year extension of time for the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act in order that the Company and/or the Sponsor Affiliate will have the maximum amount of time to complete the Project. In the granting such extension the County agrees to cooperate with the Company by

filing with the DOR a copy of such extension within 30 days of the date of execution thereof by the County.

SECTION 3.3. Representations and Warranties of the Company. The Company makes the following representations and warranties to the County:

(a) The Company is a South Carolina corporation. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The cost of the Project will exceed \$600 million.

(g) The Company will pay all reasonable costs of the County, including attorneys fees, incurred in connection with the authorization, execution and delivery of the Documents.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF THE PROJECT

SECTION 4.1. The Project. The Company has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain land, plant and buildings, improvements, fixtures, machinery, equipment, and other personal property which comprise the Project. The Project will consist of Real Property, plant and Equipment dedicated to generating electricity.

Pursuant to the Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property as defined under the Act, so long as such property meets the requirements of the Act.

Notwithstanding any other provision of this Fee Agreement, the Company or any Sponsor Affiliate may place real property and/or personal property into service at any time under this Fee Agreement.

SECTION 4.2. *Diligent Completion.* The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Fee Agreement to the contrary, neither the Company nor any Sponsor Affiliate shall be obligated to complete the acquisition of the Project and the Company or any Sponsor Affiliate may terminate this Fee Agreement with respect to all or portion of the Project as set forth in Article X herein.

SECTION 4.3. *Modifications to Project.* The Company and any Sponsor Affiliate may make or cause to be made from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

ARTICLE V

PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

SECTION 5.1. *Payments-in-Lieu-of-Taxes.* The parties acknowledge that under Article I, Section 3 of the South Carolina Constitution, the Project is exempt from ad valorem property taxes. However, the Company and the Sponsor Affiliates, as applicable, shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section 5.1. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company and, as applicable, the Sponsor Affiliates, shall make annual Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) The Company and, as applicable, the Sponsor Affiliates have agreed to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 4.0% and provide the Company and if applicable Sponsor Affiliates a fixed millage rate of 380.5 mills for thirty (30) years for the purpose of calculating fee payments.

(b) If the aggregate investment in the Project during the Investment Period does not equal or exceed \$600 million, the Project will still qualify as a FILOT arrangement under the Applicable Statute and the FILOT payment will thereafter be calculated based upon an assessment ratio of 6%. Such FILOT agreement will then be for a reduced term of twenty (20) years and the fixed millage rate shall continue to be based upon the lower of the cumulative property tax millage rates legally levied by or on behalf of all taxing entities within which the subject property is to be located that is applicable during the period beginning on the thirtieth day of June preceding the calendar year in which a millage agreement or a fee agreement is executed, as required under the Act, which millage rate is 380.5 mills, and ending on the date this Fee Agreement is executed, as required under the Act.

Subject in all events to the provisions of the Act, the fair market value estimate determined by the DOR will be as follows:

- (i) for real property, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; provided, however, if real property is constructed for the fee or is purchased in an arm's length transaction, fair

market value equals the original income tax basis; otherwise, the DOR will determine fair market value by appraisal; and

- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

(c) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project property, if it were otherwise subject to ad valorem property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(d) The Company and, as applicable, the Sponsor Affiliates, shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the tax year following the year property is first placed in service. The Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for ad valorem property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(e) The County agrees that beginning with the first year that the Company makes a Payment-in-Lieu-of-Taxes to provide the Company with a special source revenue credit in the amount of twenty (20%) percent of the Payments-in-Lieu-of-Taxes ("Credit") on the Project during the first twenty (20) years that any such Payments-in-Lieu-of-Taxes are made.

(f) The County hereby agrees that beginning with the first year the Sponsor Affiliate makes a Payment-in-Lieu-of-Taxes to provide the Sponsor Affiliate with a Credit on the Project during the first twenty (20) years that any such Payments-in-Lieu-of-Taxes are made, provided, however, that the twenty-year Credit period begins to run with respect to all potential Credits with the first Payment-in-Lieu-of-Taxes, irrespective of whether that payment is made by the Sponsor or by any Sponsor Affiliate, *i.e.*, the addition of a Sponsor Affiliate does not re-start the twenty-year period.

(g) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding 30 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same property tax year that the Replacement Property is placed in service. More than one piece of property can replace a single piece of property. Replacement Property does not have to serve the same function as the property it is replacing. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Act were not allowed. Replacement Property is entitled to the fee payment pursuant to this Section 5.1 for the period of time remaining on the 30-year fee period for the property which it is replacing.

SECTION 5.2. *Disposal of Property; Replacement Property.*

(a) In any instance where the Company or any Sponsor Affiliate in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part,

inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company or any Sponsor Affiliate may remove such item (or such portion thereof as the Company or any Sponsor Affiliate shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefore. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section. Subject to the provisions of Section 5.1(g) and this Section with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Section 5 hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section.

(b) The Company or any Sponsor Affiliate may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to Section 5.2(a) hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, such property shall be treated as Replacement Property.

SECTION 5.3. *Fee Term.* Except as adjusted pursuant to Section 5.1(b), the applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which the Project is placed in service in that Stage through the last day of the property tax year which is the twenty-ninth year following such year; provided, that the maximum term of this Fee Agreement shall not be more than 30 years from the end of the last year of the Investment Period. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the earlier to occur of (a) payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1 hereof, or (b) exercise by the Company of its option to terminate pursuant to Section 10.1 hereof.

SECTION 5.4. *Maintaining Minimum Investment.* If at any time during the term of this Fee Agreement following the period of time in which the minimum investment must be made under the Act, the investment of any entity comprising the Company or of any Sponsor Affiliate, based on income tax basis without regard to depreciation, falls below such minimum investment level, such entity shall no longer qualify for the Payments-in-Lieu-of-Taxes provided herein if and as provided in Section 12-44-140(C) of the Act.

SECTION 5.5. *Multi-County Industrial and Business Park.* The County agrees to use its best efforts to enter into or amend an existing multi-county industrial and business park agreement (the "Multi-County Industrial and Business Park Agreement") with one or more counties to create a Multi-County Industrial and Business Park to include the Project pursuant to the MCIP Law at the site of the Project and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish the establishment of such a Multi-County Industrial and Business Park.