

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

ORDINANCE NO. 646

ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED FEE IN LIEU OF AD VALOREM TAXES AND INCENTIVE AGREEMENT TO PROVIDE A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE, INFRASTRUCTURE CREDITS AND OTHER INCENTIVES TO ENOR CORPORATION AND ENOR CORPORATION SC, LLC; THE EXECUTION AND DELIVERY OF DOCUMENTS NECESSARY TO EFFECT THE INTENT OF THIS ORDINANCE; AND OTHER RELATED MATTERS.

WHEREAS, Fairfield County, South Carolina (the “County”) acting by and through its County Council (the “County Council”) is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the “State”) and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally; and

WHEREAS, Enor Corporation, a New Jersey corporation authorized to do business in the State (referred to hereinafter as the “Company”), together with an affiliated entity, Enor Corporation SC, LLC (“Property Owner”), intends to invest in the establishment of a manufacturing facility through the acquisition of land, a building, and improvements thereon (the “Land and Building”); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, which would constitute a project within the meaning of the Act, the cost of which is estimated to be \$3,870,000 over five years (the “Project”); and

WHEREAS, by ordinance dated August 25, 2014, the County previously approved a Fee in Lieu of Taxes and Incentive Agreement (the “Original Fee Agreement”) between the Company and the County, but prior to the execution of the Original Fee Agreement, the Company determined that the optimal ownership structure of the Project includes the Company as the operating entity and the Property Owner as the owner of the real property components of the Project; and

WHEREAS, the Company and Property Owner have requested that the County approve of the Amended and Restated Fee in Lieu of Taxes and Incentive Agreement (the “Amended Fee Agreement”) to reflect the revised ownership structure of the Project;

WHEREAS, it appears that the Amended Fee Agreement, which is now before this meeting as Exhibit A, does not differ from the Original Fee Agreement except with respect to the

revised ownership structure described above, and is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Amended Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) The Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either.
- (e) 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.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Amended Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Amended Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Amended Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Amended Fee Agreement to be delivered to the Company. The Amended Fee Agreement is to be in

substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Amended Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council, or the Vice Chairman in the absence of the Chairman, the County Administrator, and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to execute such documents and take such further actions as may be necessary to complete the execution and delivery of the Amended Fee Agreement and the performance of all obligations of the County under and pursuant to the Amended Fee Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 6. 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.

(SIGNATURE PAGE TO FOLLOW)

Passed and approved the 8th day of December, 2014.

**FAIRFIELD COUNTY,
SOUTH CAROLINA**

Signature: *Carolyn S. Boberson*
Title: Chairman of County Council

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

I, the undersigned, Clerk to County Council of Fairfield County, South Carolina ("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 November 10, 2014, November 24, 2014, and December 8, 2014. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on December 8, 2014, and notice of the public hearing was published in *The Herald Independent* on November 21, 2014. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws, 1976, in connection with said meetings of County Council.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Fairfield County Council, South Carolina, as of this 2nd day of February, 2015.

Signature: *Shryll M. Brown*
Name: Shryll M. Brown
Title: Clerk to County Council

Exhibit A
Amended and Restated Fee in Lieu of Taxes and Incentive Agreement

AMENDED AND RESTATED
FEE IN LIEU OF TAXES AND INCENTIVE AGREEMENT

Among

FAIRFIELD COUNTY, SOUTH CAROLINA,

ENOR CORPORATION,

AND

ENOR CORPORATION SC, LLC

Dated as of December 8, 2014

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE IN LIEU OF TAXES AND INCENTIVE AGREEMENT (the "Fee Agreement") is made and entered into as of December 8, 2014 by and among FAIRFIELD COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Fairfield County Council (the "County Council") as the governing body of the County, ENOR CORPORATION, a corporation organized and existing under the laws of the State of New Jersey (the "Company"), and ENOR CORPORATION SC, LLC (the "Property Owner").

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act") authorizes the County (i) to induce industries to locate in the State; (ii) to 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) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property and covenants to accept fee payments in lieu of *ad valorem* taxes on the economic development property.

2. The Company and Property Owner are establishing a manufacturing facility in the County through the acquisition of land, a building, and improvements thereon, the construction of improvements thereon and therein; and the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture, the cost of which is estimated to be at least \$3,870,000;

3. The Company expects to create at least 151 new, full time jobs in the County in connection with the establishment of the manufacturing facility in the County;

4. The County Council has evaluated the Project (as defined herein) based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

5. Pursuant to Section 12-44-40(I)(1) of the Act, County Council, by Ordinance No. 634 ("Fee Ordinance"), determined that: (a) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

6. As authorized by the Fee Ordinance, the County, the Company, and Property Owner desire to enter into this Fee Agreement which classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.0 The terms that this section defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Clawback Minimum Requirements” shall mean an investment of at least \$3,870,000 in property subject to ad valorem taxation (in the absence of this Fee Agreement or the Industrial Development Park) by the Company, Property Owner, and any Sponsors and the creation of at least 151 new, full time jobs by the Company.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean ENOR CORPORATION and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Fairfield County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Fairfield County Council, the governing body of the County.

“Department” or “SCDOR” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described

in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT Payments,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean an industrial or business park created pursuant to the MCIP Act.

“Infrastructure” shall mean infrastructure serving the Project, including the Improvements, to the extent that the MCIP Act permits, provided that Infrastructure shall first be

deemed to include real property and infrastructure improvements prior to including any personal property, notwithstanding any presumptions to the contrary in the Act or otherwise.

“Infrastructure Credit” shall mean the annual infrastructure credit provided to the Company pursuant to the MCIP Act and Section 4.1(c) hereof, with respect to the Infrastructure.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Article VIII, Section 13(D) of the Constitution of the State of South Carolina, Section 4-1-170, 4-1-172, and 4-1-175 of the Code of Laws of South Carolina, 1976, as amended, and Section 4-29-68 of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and Real Property in the County that the Company and Property Owner determine to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2014 or thereafter. Existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation, shall not qualify for negotiated FILOT Payments hereunder, except as expressly permitted by Section 12-44-110 of the Act, but such property may qualify for Infrastructure Credits as described in Article IV.

“Real Property” shall mean real property that the Company or Property Owner uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consisting of the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto, and any improvements located thereon.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project.

“Streamlined FILOT Act” shall mean Title 4, Chapter 12 of the Code of Laws of South Carolina, 1976, as amended.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Section 1.1 Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has

obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in the State.

(d) The millage rate in Section 4.1 hereof is the lowest millage rate permissible under the Act, which the parties understand to be 403.5 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2013, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County has included the Project in the Industrial Development Park developed with Richland County, South Carolina and identified as the “I-77 Corridor Regional Industrial Park” and will take all reasonable action to maintain the Project in an Industrial Development Park through Fee Term.

Section 2.2 Representations, Warranties, and Agreements of the Company and Property Owner. The Company and Property Owner hereby represent, warrant, and agree as follows:

(a) The Company is in good standing under the laws of the State of New Jersey, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement. Property Owner is in good standing under the laws of the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company and Property Owner intend to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company and Property Owner intend to operate the Project as a toy manufacturing facility, and for such other purposes that the Act permits as they may deem appropriate.

(c) The Company and Property Owner will use commercially reasonable efforts to ensure that their investment in the Project will achieve the Clawback Minimum Requirements.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company and Property Owner intend to invest in Equipment, Improvements, and Real Property, which together comprise the Project. The Company intends to invest at least the Act Minimum Investment Requirement in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to FILOT Payments to the same extent as the Company's assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Administrator, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Fee Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Fee Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company's liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT Payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a

copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in an Industrial Development Park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make FILOT Payments to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under the Act, the County and the Company have negotiated the amount of the FILOT Payments in accordance therewith. The Company shall make FILOT Payments on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make FILOT Payments during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms-length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.

- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the lowest millage rate permissible under the Act, which the parties mutually understand to be the millage rate in effect on June 30, 2013, which is 403.5 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

The Company may request to have any real property valued at fair market value as provided in Section 12-44-50(A)(1)(c)(i) of the Act.

(b) The FILOT Payments shall be in lieu of all *ad valorem* tax payments and any other charges that would have appeared on the property tax bills otherwise generated by the County in the absence of this Fee Agreement.

In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum FILOT Payment applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

Subject to Section 6.8 hereof, in the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent hereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

the end of the Investment Period. In addition, the Company and Property Owner shall repay all Infrastructure Credits received. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) In the event the Company achieves the Act Minimum Investment but the Company and the Property Owner fail to satisfy the Clawback Minimum Requirements by the end of the Investment Period, then the Company and Property Owner shall be obligated to repay a prorated portion of SSRC-2 received through the end of the Investment Period and reduce the remaining SSRC-2 by the Clawback Percentage, calculated as follows:

$$\text{Investment Achievement Percentage} = \text{Investment Achieved} / \$3,870,000$$

$$\text{Jobs Achievement Percentage} = \text{Jobs Created} / 151$$

$$\text{Overall Achievement Percentage} = (\text{Investment Achievement Percentage} + \text{Jobs Achievement Percentage}) / 2$$

$$\text{Clawback Percentage} = 100\% - \text{Overall Achievement Percentage}$$

provided, however, the numerator used for the Investment Achieved or Jobs Created may not be greater than the respective Clawback Minimum Requirement.

For example, and by way of example only, if the Company and Property Owner collectively invested \$3,483,000, created 151 jobs, and claimed \$100,000 in Infrastructure Credits pursuant to SSRC-2, the repayment obligation would be calculated as follows:

$$\text{Investment Achievement Percentage} = \$3,483,000 / \$3,870,000 = 90\%$$

$$\text{Jobs Achievement Percentage} = 151 / 151 = 100\%$$

$$\text{Overall Achievement Percentage} = (90\% + 100\%) / 2 = 95\%$$

$$\text{Clawback Percentage} = 100\% - 95\% = 5\%$$

$$\text{Repayment Obligation} = 5\% \times \$100,000 = \$5,000$$

(c) If the Company achieves the Act Minimum Investment, but the Company and the Property Owner fail to satisfy the Clawback Minimum Requirements by the end of the Investment Period and do not achieve an Overall Achievement Percentage of at least 80%, then the Company and Property Owner are no longer entitled to receive SSRC-2 and shall be obligated to repay a prorated portion of SSRC-2 received through the end of the Investment Period, as calculated above.

(d) To determine the total number of jobs created and the investment achieved during the Investment Period, the Company and Property Owner shall use the jobs achieved and the investment made as of the last day of the Investment Period or as of the date the Company

(c) Property Owner intends to invest in certain real property that is not eligible for negotiated FILOT payments but nonetheless constitutes a part of the Project described herein (the “Non-Qualifying Property”). The County agrees to provide Infrastructure Credits sufficient to generate the same level of savings that this Fee Agreement would have generated with respect to the Non-Qualifying Property if the assessment ratio applicable to the Non-Qualifying Property were 6% (“SSRC-1”).

In addition, if the Company creates at least 100 new, full-time jobs within one year of the Commencement Date, then the County shall grant the Company and Property Owner 25% Infrastructure Credits against the FILOT Payments due under Section 4.1(a) of the Fee Agreement and the net payments-in-lieu of taxes due on the Non-Qualifying Property after application of SSRC-1 for a period of 10-years (“SSRC-2”) to offset the aggregate Infrastructure costs incurred. The Company and Property Owner shall certify, in a form acceptable to the County, creation of at least 100 jobs in the first year of the Investment Period prior to the County applying SSRC-2.

For example, and by way of example, if the FILOT Payments due on the Project were \$80,000 and the payments in lieu of tax for a particular year with respect to the Non-Qualifying Property were \$70,000, and SSRC-1 equaled \$40,000 for such year, then the Company and Property Owner would owe FILOT Payments and payments in lieu of taxes in the aggregate amount of \$82,500 calculated as follows

FILOT Payment

$$SSRC-2 = \$80,000 \times .25 = \$20,000$$

$$FILOT\ Payment = \$80,000 - \$20,000 = \$60,000$$

Payment in Lieu of tax

$$SSRC-2 = (\$70,000 - \$40,000) \times .25 = \$7,500$$

$$Payment\ in\ lieu\ of\ tax\ on\ Non-Qualifying\ Property = \$22,500$$

The Infrastructure Credits shall be applied as a setoff against the FILOT Payments or payments in lieu of taxes owed for the then current year.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the Company does not reach the Act Minimum Investment Requirement (without regard to depreciation) by the end of the Investment Period, this Fee Agreement shall terminate. In such event, the Company shall pay the County an amount (the “Additional Payment”) pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Economic Development Property by the County, municipality or municipalities, school district or school districts, and other political units as if this Fee Agreement were not in effect, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

and Property Owner certify to the County achievement of the Clawback Minimum Requirements in a form acceptable to the County.

(e) The remedies stated herein shall be the County's sole remedies for the failure of the Company and/or Property Owner to meet any required investment or job creation level.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act

Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project. However, the Company will not be required to make any retroactive payment such as the Additional Payment under Section 4.2.

Section 4.5 Place of Payments in Lieu of Taxes. The Company and Property Owner shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Economic Development Property. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the

Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. If Section 12-44-120 of the Act or any successor provision, or any other provision of law, requires consent to an assignment, the Company and Property Owner may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold. The Company and Property Owner agree to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company, Property Owner, nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company, Property Owner, or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses. The Company and Property Owner agree to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorneys' fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company and/or Property Owner a statement in writing indicating the amount of such expense and the reason for its incurrence. As used in this section, "Administration Expenses" shall include the reasonable and necessary out-of-pocket expenses, including attorneys' fees, incurred by the County with respect to the negotiation and approval of this Fee Agreement. Reimbursement for the County's attorneys' fees shall be at hourly rates for outside counsel to the County, not to exceed the standard hourly rates charged by such outside counsel, with the total of such fees not to exceed \$7,500.

Section 4.13 Indemnification.

(a) The Company and Property Owner shall and agree to indemnify and save the County harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the

Project during the term of this Fee Agreement, and Company and Property Owner further, shall indemnify and save the County harmless against and from all claims arising during the term of this Fee Agreement from (i) any condition of the Project, (ii) any breach or default on the part of the Company or Property Owner in the performance of any of their obligations under this Fee Agreement, (iii) any act of negligence of the Company, Property Owner, or any of their agents, contractors, servants, employees or licensees related to the Project, (iv) any act of negligence related to the Project of any assignee of the Company, Property Owner, or any agents, contractors, servants, employees or licensees of any assignee of the Company or Property Owner, (v) any environmental violation, condition, or effect related to the Project, (vi) the County's execution of this Fee Agreement, (vii) the performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or (viii) otherwise by virtue of the County having entered into this Fee Agreement. The Company and Property Owner shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company and Property Owner shall defend them or either of them in any such action, prosecution or proceeding.

(b) Notwithstanding the fact that it is the intention of the Parties that the County, its agents, officers, or employees, shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, or by reason of the performance of any act requested of it by the Company or Property Owner, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its agents, officers or employers should incur any such pecuniary liability other than as a result of their own negligence or willful or intentional misconduct, then in such event the Company or Property Owner shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company and Property Owner shall defend them in any such action or proceeding.

(c) These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

Section 4.14 Execution of Lease. The parties acknowledge that the intent of this Fee Agreement is to afford the Company and Property Owner the benefits of the FILOT Payments and Infrastructure Credits in consideration of the Company's decision to locate the Project within the County and that this Fee Agreement has been entered into in reliance upon the validity and enforceability of the Act. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or that this Fee Agreement or agreements similar in nature to this Fee Agreement are invalid or unenforceable in any material respect, or should the parties determine that there is a reasonable doubt as to the validity or enforceability of this Fee Agreement in any material respect, then the County, upon the provision by the Company and/or Property Owner of evidence acceptable to the County that the Project is free from environmental contamination and the conveyance of title to the Project to the County at the expense of the Company and/or

Property Owner, agrees to lease the Project to the Company and/or Property Owner pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company and Property Owner receive the benefits of the FILOT arrangement as contemplated by this Fee Agreement.

In addition to and notwithstanding the foregoing paragraph, the County shall not be obligated to perform any of its obligations or promises under this Section 4.13 unless the Company and Property Owner have otherwise complied with or provided satisfactory evidence to the County that they intend to comply with their obligations and responsibilities under this Fee Agreement.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company or Property Owner to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however,* that the Company and/or Property Owner shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company or Property Owner which is deemed materially incorrect when deemed made; or

(c) Failure by the Company or Property Owner to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company or Property Owner specifying such failure and requesting that it be remedied, unless the Company or Property Owner shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company or Property Owner is diligently pursuing corrective action; or

(d) A cessation of operations by the Company including a closure of the manufacturing facility in the County or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months; or

(e) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently

pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company or Property Owner shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions with respect to the party in default:

- (i) terminate the Fee Agreement; or
- (ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company or Property Owner be liable to the County or otherwise for monetary damages resulting from a failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company or Property Owner may take one or more of the following actions:

- (i) bring an action for specific enforcement;
- (ii) terminate the Fee Agreement;
- (iii) withhold so much of the payment as is in dispute with the County until such dispute is fully and finally resolved; or
- (iv) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party

shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Enor Corporation
Attn: Steven Udwin
245 Livingston Street
Northvale, NJ 07647

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: Gary W. Morris
P.O. Box 11889
Columbia, SC 29211

IF TO PROPERTY OWNER:

Enor Corporation SC, LLC
Attn: Steven Udwin
245 Livingston Street
Northvale, NJ 07647

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: Gary W. Morris
P.O. Box 11889
Columbia, SC 29211

IF TO THE COUNTY:

Fairfield County, South Carolina
Attn: County Administrator
P.O. Drawer 60
Winnsboro, SC 29180

WITH A COPY TO:

Parker Poe Adams & Bernstein LLP
Attn: Michael E. Kozlarek
1201 Main Street
Suite 1450
Columbia, SC 29201

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, Property Owner, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina, exclusive of the conflict of law provisions which would refer the governance of this Fee Agreement to the laws of another jurisdiction.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company and/or Property Owner, to the extent any expense is incurred, the County agrees to execute and deliver to the Company and/or Property Owner such additional instruments as the Company and/or Property Owner may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company and Property Owner with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company and Property Owner the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or State laws eliminates or reduces any of the restrictions or limitations applicable to the Company, Property

Owner, and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, with a view toward providing the Company and Property Owner with the benefits of such change in the Act or State laws.

The County agrees that in case the FILOT incentive described herein is found to be invalid or otherwise does not provide the Company with the economic benefit it is intended to receive from the County as an inducement to locate in the County, the savings lost as a result of such invalidity will be considered a special source revenue credit or infrastructure improvement credit to the Company (in addition to the Infrastructure Credits explicitly provided for above) to the maximum extent permitted by law, and the County will provide a special source revenue credit or infrastructure improvement credit against all FILOT payments or fee payments made or to be made by the Company equal to the amount that the Company would have saved if the FILOT had been valid, to the maximum extent permitted by law.

Section 6.9 Force Majeure. The Company and Property Owner shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond their reasonable control.

Section 6.10 Termination by Company. The Company and Property Owner are authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however,* that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination, shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this Fee Agreement. The obligation of the Company to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company and Property Owner from enforcing their rights hereunder by suit for *mandamus* or specific performance.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the Chairman of County Council and to be attested by the Clerk of the County Council; the Company has caused this Fee Agreement to be executed by its duly authorized officer; and Property Owner has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**FAIRFIELD COUNTY,
SOUTH CAROLINA**

Signature: Carolyn B. Tolson
Title: Chairman of County Council

ATTEST:

Signature: Shryll M. Brown
Name: Shryll M. Brown
Title: Clerk to County Council

ENOR CORPORATION

Signature: _____
Name: _____
Title: _____

ENOR CORPORATION SC, LLC

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

Approximately 13.79 acres in Fairfield County, South Carolina, being commonly referred to as the Ruff & Tuff property, #1 Quality Lane, Winnsboro, South Carolina, Fairfield County Tax Map # 145-03-02-015-000.