

FIRST AMENDMENT OF FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

This First Amendment of Fee-in-Lieu of *Ad Valorem* Taxes Agreement (the “Fee Amendment”) is made and entered into as of _____, 2013, by and between Greenville County, South Carolina (“County”), a body politic and corporate and political subdivision of the State of South Carolina, and a company known to the County as Project Single, a Delaware corporation authorized to do business in South Carolina (the “Company”).

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined and described in the Fee Agreement (as that term is defined below), and if not defined therein shall have the meaning as defined in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Code”), and if not defined therein shall have the meaning as defined in Title 4, Chapters 1 and 29 of the Code (collectively, the “Act”); and

WHEREAS, the County and the Company previously entered into a Fee-in-Lieu of *Ad Valorem* Taxes Agreement dated December 1, 2009 (“Fee Agreement”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Company has changed its name from _____ to _____ and desires that the Fee Agreement reflect such name change; and

WHEREAS, the Fee Agreement currently provides for, among other things, a fee in lieu of benefit to the Company, as well as a special source revenue credit equal to 40% of the fee payments thereunder for a period of thirteen (13) years; and

WHEREAS, pursuant to the Fee Agreement, the Company is obligated to invest at least \$100,000,000 in the Project (as defined in the Fee Agreement) by December 31, 2016, which is the end of the Investment Period (as defined in the Fee Agreement) (the “Original Investment Requirement”); and

WHEREAS, the Company, as Sponsor, along with one or more existing, or to be formed or acquired subsidiaries, or affiliated or related entities, is planning to expand the Project and increase its investment commitment thereunder to ~~\$115,000,000~~ by December 31, 2019, which will be the end of the Investment Period, as extended by this Fee Amendment (the “Expanded Investment Requirement”); and

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WHEREAS, in connection with the Expanded Investment Requirement, the Company and the County desire to amend the Fee Agreement in order to waive the Original Investment Requirement and extend the investment period provided under the Fee Agreement by a period of three (3) years in order to provide for the Expanded Investment Requirement; and

WHEREAS, in connection with the Expanded Investment Requirement, the Company has further requested that the County amend the Fee Agreement to increase the special source revenue credit provided thereunder to forty-five percent (45%) and to extend the period for which such credits are being provided by a period of five (5) years; and

WHEREAS, with respect to the Inducement Agreement and Millage Rate Agreement with respect to the Project dated August 4, 2009 (“Inducement Agreement”), all of the terms found therein, to the extent that said terms reflect the terms found in the Fee Agreement and in the amendments made under this Fee Amendment, shall be construed such that their definitions are consistent with the defined terms of the Fee Agreement and the Fee Amendment; and

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WHEREAS, County has authorized this Fee Amendment by an Ordinance of County Council adopted November 5, 2013.

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NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and the Company agree as follows:

1. The Fee Agreement and any Exhibits thereto shall be and are hereby amended in all respects to reflect that the Company's name has changed from _____ to _____.
2. The Fee Agreement shall be and is hereby amended by amending the definition of the term "Threshold Date" in Section 1.01 thereof to mean December 31, 2019.
3. The Fee Agreement shall be and is hereby amended by striking the seventh and eighth recitals thereto and replacing the same with the following recitals:

"WHEREAS, based on representations by the Company that the Project will represent a capital investment in the County of not less than One Hundred Fifteen Million Dollars (\$115,000,000.00), and will create not less than fifty (50) new full time equivalent jobs, during the period beginning with the first day that real or personal property comprising the Project is purchased or acquired and ending on December 31, 2019, in order to enhance the economic development of the County, the County desires to assist the Company in locating the Project within the County; and

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WHEREAS, the County, pursuant to certain negotiations heretofore undertaken with the Company with respect to the Project as reflected in a Resolution duly adopted by County Council on August 4, 2009, as amended, has entered into the Inducement Agreement with the Company pursuant to which: (i) the County agreed to enter into a FILOT arrangement with the Company, and to provide special source revenue financing in the form of a credit to reimburse the Company for certain qualifying Infrastructure expenditures in connection with the Project (the "Project Infrastructure"); and (ii) the Company agreed to make payments-in-lieu of tax to the County ("FILOT Payments") with respect to the Project as authorized in the Act; and

WHEREAS, the County, pursuant to an Ordinance adopted November 5, 2013, authorized the amendment of this Agreement and the Inducement Agreement, the terms of which are set forth in that Fee Amendment dated October 1, 2013; and"

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4. The Fee Agreement shall be and is hereby amended by striking Section 2.02(e) and thereof and replacing the same with the following:

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"(e). The Company warrants to expend not less than One Hundred Fifteen Million and No/100 (\$115,000,000.00) Dollars for Costs of the Project and to create at least 50 new, full-time equivalent jobs, all prior to the end of the Investment Period."

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5. The Fee Agreement shall be and is hereby deemed to be amended so that any specific reference to the Company's investment of One Hundred Million Dollars (\$100,000,000) therein.

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including but not limited to Sections 4.01(a), 5.01(d), 5.01(f) and 10.02, hereafter deemed to read One Hundred ~~Fifteen Million Dollars (\$115,000,000).~~

6. In order to extend the period for taking special source revenue credits under the Fee Agreement for a period of five (5) additional years, the Fee Agreement shall be and is hereby amended by replacing Section 5.02(b) in its entirety, to read as follows:

“(b) Pursuant to Section 12-44-70 of the Act, the County authorizes and grants the Company an Infrastructure Credit for a period of eighteen (18) years. Unless the County is otherwise notified by the Company, the Infrastructure Credits hereunder shall be taken against the first eighteen (18) years of Net FILOT Payments paid by the Company hereunder. The Treasurer of the County shall display and subtract the Infrastructure Credit from the FILOT Payment statement sent to the Company for the duration of the Infrastructure Credit. For any Net FILOT Payments due prior to the effective date of the Fee Amendment, the Infrastructure Credit shall be in an amount of forty percent (40%) of the Company’s annual Net FILOT Payments in connection with the Project. With respect to any NET FILOT Payments due after the effective date of the Fee Amendment, the Infrastructure Credit shall be in an amount of forty-five percent (45%) of the Company’s annual Net FILOT Payment in connection with the Project as expanded. To the extent that the Infrastructure Credit due for property tax year 2013 in the amount of 45% is not reflected on County’s property tax bill due on January 15, 2014, the County shall pay upon written request by the Company a reconciliation payment for the additional amount of the Infrastructure Credit due for the 2013 property tax year.”

7. The Fee Agreement shall be and is hereby amended by adding the following paragraph to the end of Section 11.02:

“A failure to achieve the stated investment or job requirements as set forth in this Agreement shall not result in an Event of Default hereunder, but shall be subject, as applicable, to the payment obligations set forth in Section 5.01(f) and ~~the termination rights of the County as set forth in Section 10.02.~~”

8. The Fee Agreement shall be and is hereby amended by adding a new Section 12.11 as follows:

Section 12.11. State Grant; Carolina Investment Fund

In addition to any benefits being provided to the Company by the County pursuant to this Fee Agreement, the County has agreed to receive and administer or cause the receipt and administration of grants for the benefit of the Project in the aggregate amount of \$50,000 from AdvanceSC and the Carolina Investment Fund (Duke Energy). The terms of such grants may be more fully set forth in whatever ancillary agreements the respective parties deem appropriate.

9. Except as described in Sections 1 through 8 of this Fee Amendment, the Fee Agreement shall remain unchanged and in full force.

10. If any term, provision, or any portion of this Fee Amendment shall, to any extent and for any reason, be held by a court of competent jurisdiction to be invalid or unenforceable, the

Deleted: Twenty-Five Million Dollars (\$125,000,000) unless any specific reference to the investment of One Hundred Million Dollars (\$100,000,000) is set forth as part of any amended provisions in this Fee Amendment or as set forth in Section 5.01(d) of the Fee Agreement.

Deleted: 6. The Fee Agreement shall be and is hereby amended by replacing Sections 5.01(f) and 5.01(g) in their entirety, to read as follows:¶

¶ “(f) In the event the Company has invested at least One Hundred Million Dollars (\$100,000,000) but less than One Hundred Twenty-Five Million Dollars (\$125,000,000) or created less than 50 new, full-time equivalent jobs in the Project by the end of the Investment Period, the Company shall pay, on a pro-rata basis based on the actual number of jobs and investment achieved by the end of the Investment Period, the difference between the net fees actually paid to the County taking into account any Infrastructure Credit enjoyed by the Company at a value of forty-five percent (45%) of the Negotiated FILOT Payments), and the net fees which would have been paid had the Infrastructure Credits enjoyed been computed at a value of forty percent (40%) of the Negotiated FILOT Payments (a “Deficiency Amount”). The amount payable by the Company shall be equal to the Deficiency, as pro-rated based on an independent 50/50 (investment/jobs) calculation, and shall be subject to interest as provided in Section 12-54-25 of the Code.¶

¶ For example, assuming that the Company invested only \$110,000,000 (of the required \$125,000,000) and created only 25 (of the required 50) jobs in the Project by the end of the Investment Period, in order to calculate the Deficiency Amount and the applicable repayment amount as described above, the following for... [1]

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remainder of this Fee Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this Fee Amendment shall be valid and enforceable to the fullest extent permitted by the law. To the extent that any benefits for the Company provided under this Fee Amendment are held invalid or unenforceable, the County, to the extent permitted by the law, shall take whatever action required and permitted under the law to provide the Company with incentives that would afford the Company the same or substantially similar value of those benefits found invalid or unenforceable.

11. Counterparts. The parties may execute this Fee Amendment in counterparts, each of which is an original and all of which, together, constitutes one and the same Fee Amendment.

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IN WITNESS WHEREOF, Greenville County, South Carolina, has executed this Fee Amendment by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and its County Administrator and attested by the Clerk to the County Council, and the Company, as Sponsor, has executed this Fee Amendment by causing its corporate name to be hereunto subscribed by its authorized representatives, all being done as of the day and year first written above.

GREENVILLE COUNTY, SOUTH CAROLINA

Bob Taylor
County Council Chairman

Joe Kernell
County Administrator

ATTEST:

Theresa B. Kizer
Clerk to County Council

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Project Single

By: _____

Its: _____

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EXHIBIT A
Fee Agreement

PPAB 2142300v157

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6. The Fee Agreement shall be and is hereby amended by replacing Sections 5.01(f) and 5.01(g) in their entirety, to read as follows:

“(f) In the event the Company has invested at least One Hundred Million Dollars (\$100,000,000) but less than One Hundred Twenty-Five Million Dollars (\$125,000,000) or created less than 50 new, full-time equivalent jobs in the Project by the end of the Investment Period, the Company shall pay, on a pro-rata basis based on the actual number of jobs and investment achieved by the end of the Investment Period, the difference between the net fees actually paid to the County taking into account any Infrastructure Credit enjoyed by the Company at a value of forty-five percent (45%) of the Negotiated FILOT Payments), and the net fees which would have been paid had the Infrastructure Credits enjoyed been computed at a value of forty percent (40%) of the Negotiated FILOT Payments (a “Deficiency Amount”). The amount payable by the Company shall be equal to the Deficiency, as pro-rated based on an independent 50/50 (investment/jobs) calculation, and shall be subject to interest as provided in Section 12-54-25 of the Code.

For example, assuming that the Company invested only \$110,000,000 (of the required \$125,000,000) and created only 25 (of the required 50) jobs in the Project by the end of the Investment Period, in order to calculate the Deficiency Amount and the applicable repayment amount as described above, the following formula applies:

Step 1:

[Total Negotiated FILOT Payments actually made for all years up to the end of the Investment Period, taking into account the value of the 45% Infrastructure Credit] – [Total Negotiated FILOT Payments that would have been made for all years up to the end of the Investment Period, taking into account the value of a 40% Infrastructure Credit] = **Deficiency Amount**

Step 2:

[(Deficiency Amount) times (X) (\$110,000,000 / \$125,000,000) times (X) 50%]
+ [(Deficiency Amount) times (X) (25/50) times (X) 50%] = **repayment amount (plus interest)**

To the extent permitted by applicable law, with respect to personal property, the Deficiency Amount shall be calculated based on the assumption that the Deficiency Amount in the capital investment consists of equipment which is subject to depreciation at the rate of eleven percent (11%) per annum with a salvage value of ten percent (10%) throughout the term of this Agreement.

In addition to making the repayment amount as set forth above, the credit period as set forth in Section 5.02(b) shall be reduced from eighteen (18) years to thirteen (13) years and the value of the Infrastructure Credit for the remainder of the credit period shall be reduced from forty-five (45%) to forty (40%) prospectively.

(g) In the event the Company has invested less than One Hundred Million Dollars (\$100,000,000) in the Project by the end of the Investment Period, the portions of the Project previously subject to Negotiated FILOT Payments shall revert retroactively to normal *ad valorem* tax treatment (and all Infrastructure Credits shall cease); and the Company shall pay the difference between the fees actually paid (taking into account any Infrastructure Credit enjoyed by the Company), and normal *ad valorem* tax payments which would have been paid minus any statutory abatements to which the Company would have been entitled, if any (a "Super Deficiency Amount"), which such Super Deficiency Amount shall be subject to interest at the rate provided in Section 12-54-25 of the Code. To the extent permitted by applicable law, with respect to personal property, the Super Deficiency Amount shall be calculated based on the assumption that the Super Deficiency Amount in the capital investment consists of equipment which is subject to depreciation at the rate of eleven percent (11%) per annum with a salvage value of ten percent (10%) throughout the term of this Agreement.

Any amounts due the County under Section 5.01(f) and this Section 5.01(g) shall be due and payable on or before the date which is 120 days after the end of the Investment Period."

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8. The Fee Agreement shall be and is hereby amended by replacing Section 10.02 in its entirety to read as follows:

"The Company may terminate this Agreement at any time (subject to payment by the Company to the County of all amounts owing to the County hereunder as of such time), in which event the Project may be subject to *ad valorem* taxes from the date of termination. This Agreement shall automatically terminate pursuant to Section 5.01(g) if the Company fails to meet those minimum investment or job requirements in the Project by the end of the Investment Period as set forth therein."

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