

AN ORDINANCE

AUTHORIZING AN AMENDMENT TO A FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT BY AND BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA, AND A COMPANY KNOWN TO THE COUNTY AS PROJECT SINGLE TO PROVIDE FOR AN EXTENSION OF THE INVESTMENT PERIOD AND AN INCREASE AND EXTENSION OF THE SPECIAL SOURCE REVENUE CREDIT BENEFITS THEREUNDER; AND TO ENTER INTO SUCH OTHER NECESSARY AGREEMENTS OR AMENDMENTS TO EFFECT THE INTENT OF THIS ORDINANCE; AND OTHER RELATED MATTERS.

WHEREAS, pursuant to the provisions of Title 12, Chapter 44 and Title 4, Chapters 1 and 29, Code of Laws of ~~South~~-South Carolina 1976, as amended (collectively, the “Act”), Greenville County (“County”) and _____ (“Company”) previously entered into a Fee-in-Lieu of *Ad Valorem* Taxes Agreement dated December 1, 2009 (the “Fee Agreement”), a copy of which is attached 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 ~~\$125,000,000~~-115,000,000 by December 31, 2019, which will be the end of the Investment Period, as extended by the Fee Amendment (as defined below) (the “Expanded Investment Requirement”); and

WHEREAS, the Company has requested that the County amend the Fee Agreement in order to modify 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, the County understands that Duke Energy, its affiliates and related entities (“Duke”), plan to provide one or more monetary grants for the benefit of the Project, as expanded, in the County (“Utility Grants”), the funds of which will be received and administered by the County, or its affiliates, as grantee, for the benefit of the Project; and

WHEREAS, the County has determined (i) to enter into any reasonably required agreements with Duke or the Company, including but not limited to a grant award agreement, performance agreement or utility tax credit agreement (“Utility Grant Agreements”); and (ii) to accept, receive and administer the Utility Grants for the benefit of the Project, as expanded, in the County; and

WHEREAS, the County Council desires to cause the Fee Agreement to be amended, through a First Amendment of Fee-in-Lieu of *Ad Valorem* Taxes Agreement, to reflect the provision of the above referred to changes, a copy of which is attached to this Ordinance as Exhibit B (the “Fee Amendment”); and

WHEREAS, County Council has determined to cause the County to enter into such other agreements and amendments with the Company, and its subsidiaries and affiliated or related entities, to effect the intent of this Ordinance.

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

Section 1. *Name Change.* The County Council hereby acknowledges and accepts the Company’s name change and approves any modifications to the Fee Agreement to reflect such name change.

Section 2. *Extension of the Investment Period.* In connection with the Expanded Investment Requirement, the County Council hereby authorizes an extension of the investment period provided in the Fee Agreement by a period of three (3) years.

Section 3. *Expansion and Extension of Special Revenue Source Credit Benefits.* In connection with the expanded Investment Requirement, the County Council hereby authorizes the increase and extension of the special source revenue credit under the Fee Agreement, the terms of which are further set forth in the Fee Amendment.

Section 4. *Authorization to Execute and Deliver the Fee Amendment.* The Chair of County Council and the County Administrator are authorized and directed to execute the Fee Amendment, with any minor modifications and revisions thereto as are made, upon advice of counsel to the County, which shall not be materially adverse to the County. Any such changes shall be deemed approved by such officers’ execution of the Fee Amendment. The Clerk to County Council is authorized and directed to attest such execution; and the Chair of County Council and the County Administrator are further authorized and directed to deliver the executed Fee Amendment to the Company.

Section 5. *Authorization to Receive and Administer the Utility Gants and Execute and Deliver Agreements related thereto.* The County Council authorizes each Authorized Individual (defined below), to take whatever further actions, and enter into whatever further agreements, including the Utility Grant Agreements, as any Authorized Individual, upon advice of counsel to the County, deems to be reasonably necessary and prudent to accept and receive the Utility Grants and to thereafter administer the funds of the Utility Grants for the benefit of the Project, as expanded.

Section 6. *Use of Utility Grants.* The County Council authorizes and approves the expenditure of the Utility Grants for the Project, as expanded, for eligible purposes set forth in the Utility Grant Agreements.

Section 7. *Further Acts.* The County Council authorizes the Chair of the County Council, the County Administrator, other County staff, and the County Attorney, along with any designees and agents

who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an “Authorized Individual”), to take whatever further actions, and enter into whatever further agreements or amendments to agreements, as any Authorized Individual deems to be reasonably necessary and prudent to effect the intent of this Ordinance and induce the Company to locate the Project, as expanded, in the County.

Section 8. General Repealer. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, only, hereby repealed.

Section 9. Severability. Should any part, provision, or term of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding or determination shall not affect the rest and remainder of the Ordinance or any part, provision or term thereof, all of which is hereby deemed separable.

This Ordinance shall take effect and be in full force as of such time as the County Council has approved this Ordinance upon three readings hereof.

Adopted November ~~19~~5, 2013.

GREENVILLE COUNTY,
SOUTH CAROLINA

By: Bob Taylor
Its: County Council Chairman

By: Joe Kernell
Its: County Administrator

ATTEST:

Theresa B. Kizer
Clerk to County Council

READINGS:

First Reading: September 17, 2013
Second Reading: October 15, 2013
~~Second~~ Third Reading: November 5, 2013
~~Third Reading:~~ ~~November 19, 2013~~
Public Hearing: ~~November 5~~ October 15, 2013

Exhibit A
Fee Agreement

Exhibit B
Fee Amendment