

PAYMENT IN LIEU OF TAXES AGREEMENT

(3/22/2017 DRAFT)

THIS AGREEMENT is made and entered into this the _____ day of _____, 2017, by and _____ (herein “Developer”); THE COUNTY COMMISSION OF JEFFERSON COUNTY, West Virginia (herein the “Commission”); the BOARD OF EDUCATION OF THE COUNTY OF JEFFERSON, West Virginia (herein the “County Board”); the SHERIFF OF JEFFERSON COUNTY, WEST VIRGINIA, (herein the “Sheriff”) and the ASSESSOR OF JEFFERSON COUNTY, WEST VIRGINIA, (herein the “Assessor”).

RECITALS

1. Developer desires to develop a _____ (the “Facility”) on an approximately _____ (____) acre parcel of land (the “Land”) located in the City of Ranson, Jefferson County, West Virginia, and more particularly described in Exhibit A attached hereto and made a part hereof, which Land may be purchased by Developer pursuant to an option it holds.
2. The costs of acquiring and developing the Land and the Facility and the cost of equipping the Facility, including the acquisition and installation of new machinery and equipment therein (the “Equipment), (the Land, Facility and Equipment, are collectively referred to herein as the “Project”) will be financed through certain loans issued by certain private lenders (the “Loans”), and by equity investment arrangements with certain private investors.
3. The obligations under the Loans will be secured by certain liens, deeds of trusts and other security instruments executed by Longview Power and encumbering the Project (the “Liens”).
4. In furtherance of the Project, Developer has entered into a certain Facility Development Agreement, dated _____, __, 2017 (“FDA”) with the Jeffersonn County Development Authority (“JCDA”) and the Commission, the performance of which FDA is subject to certain conditions precedent - including the execution of this Agreement.
5. Pursuant to the FDA, legal title in the Project will be acquired by JCDA from Developer to hold during the construction period, subject to the Liens and a repurchase option reserved by Developer.
6. Also pursuant to the FDA, the Project will be leased by JCDA back to Developer pursuant to a Lease Agreement to be entered into upon commencement of construction of the Project (“the Lease”).
7. Also Pursuant to the Lease, Developer will be required to pay, as additional rent, all costs in connection with the acquisition and construction of the Facility and the installation of the Equipment, which additional rent will be paid by Developer’s remittance directly to the contractors and vendors of such sums it may owe them for providing the same; and, in addition, Developer will be solely responsible for repayment of the Loans.

8. During the term of the Lease, JCDA will own the real and personal property which comprises the Project, subject to the Liens, Lease and other rights and interests aforesaid.

9. Pursuant to the Lease, title to any property constituting improvements, repairs, alterations, renewals, substitutions and replacements of, and additions and appurtenances to, the Project or any part thereof, when made or installed in or about the Project shall, subject to the Lease, the Liens and the other rights and interests, immediately become vested in JCDA without further action on its part.

10. During the term of the Lease, JCDA's freehold interest in the real and personal property which comprise the Project, and which is covered by the Lease, will be, by law, exempt from ad valorem property taxes.

11. Upon completion of the construction and equipping of the Facility, the Project will be conveyed by JCDA, by deed, subject to the Lease, the Liens and the other rights and interests, to the Commission for a term of years during which the Commission will succeed JCDA as the lessor under the Lease.

12. Pursuant to the term of years conveyance of the Project by JCDA to the Commission, title to any property constituting improvements, repairs, alterations, renewals, substitutions and replacements of, and additions and appurtenances to, the Project or any part thereof, when made or installed in or about the Project shall, during its term of years ownership, and subject to the Lease, the Liens and the other rights and interests, immediately vest in the Commission without further action on its part.

13. The parties acknowledge that by virtue of the agreement by the Commission and the County Board to the acquisition, construction and equipping of the Project and the terms of this Agreement, during the term of years ownership by the Commission, all of the real and personal property which comprise the Project, and any leasehold interest therein, shall be, by law, exempt from ad valorem property taxes.

14. Developer has agreed to make payments of certain amounts in lieu of ad valorem property taxes and the Commission and the County Board have agreed to the acquisition, construction and equipping of the Project.

NOW, THEREFORE WITNESSETH, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
REPRESENTATIONS AND WARRANTIES, ETC.

Section 1.01. Commission Representations, Warranties, Agreements and Findings.

The Commission hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The Commission is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia (the "State"), validly created and

existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement.

(b) The Commission has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of Jefferson County.

(c) The execution of this Agreement and the consummation of the transactions in connection herewith and therewith, have been approved by the Commission at one or more duly called and constituted meetings, throughout which quorums of duly elected, qualified and acting members of the Commission were present and acting. The Commission's agreement to the acquisition, construction and equipping of the Project and its authorization for the execution of this Agreement are embodied in a Resolution adopted on _____, 2017.

Section 1.02. County Board Representations, Warranties, Agreements and Findings.

The County Board hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The County Board is a public corporation of the State of West Virginia and has the power and authority to enter into the transaction contemplated by this Agreement.

(b) The County Board has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the public school students in Jefferson County.

(c) The agreement to the acquisition, construction and equipping of the Project, and the authorization for the execution of this Agreement, by the County Board are embodied in a Resolution adopted on _____, 2017

Section 1.03. Sheriff Representations, Warranties, Agreements and Findings.

The Sheriff hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code §§ 11A-1-1 et. seq., he is the officer responsible for collecting ad valorem property taxes levied in Jefferson County, West Virginia, and for disbursing the payments provided for in this Agreement.

(b) The Sheriff has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Sheriff, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Sheriff is required as a condition precedent to the execution, delivery or performance of this Agreement

by the Sheriff or as a condition precedent to the performance by the Sheriff of his duties contemplated hereby.

Section 1.04. Assessor Representations, Warranties, Agreements and Findings.

The Assessor hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code § 11-3-1 et seq., he is the officer responsible for assessing properties in Jefferson County, West Virginia, for ad valorem property tax purposes.

(b) The Assessor has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Assessor, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Assessor is required as a condition precedent to the execution, delivery or performance of this Agreement by the Assessor or as a condition precedent to the making of the findings by the Assessor of the matters regarding the assessment of property for taxation purposes contemplated hereby.

Section 1.05. Developer Representations, Warranties and Agreements.

Developer represents, warrants and agrees that:

(a) It is a _____duly organized, validly existing and in good standing under the laws of _____, and is duly qualified and authorized to conduct affairs or do or transact business in the State of West Virginia, with full power and legal right to enter into this Agreement and to perform its obligations hereunder.

(b) The making and performance of this Agreement and all documents, agreements and instruments in connection herewith, on Developer's part, are not prohibited under and have been duly authorized in accordance with, and will not violate the terms and provisions of, Developer's organizing documents, and are not prohibited by, and will not violate or conflict with or constitute a default under, any statute, order, governmental rule or regulation, agreement, instrument or document by which Developer or any of its properties are bound.

ARTICLE II

AD VALOREM PROPERTY TREATMENT OF THE
PROJECT DURING THE CONSTRUCTION PERIOD
AND WHILE JCDA LEASES IT TO DEVELOPER

Section 2.01. JCDA's Freehold Interest in Property Comprising the Project Shall be Exempt
from Property Taxes.

During the term of the Lease, the freehold interest of J-CDA, in all of the real and personal property which comprise the Project, shall not be subject to any ad valorem property taxes, the same being exempt by operation of law.

Section 2.02. Commission's Term of Years Interest in Property Comprising the Project Shall be Exempt from Property Taxes.

During its term of years interest, the ownership interest of the Commission in all of the real and personal property which comprise the Project, shall not be subject to any ad valorem property taxes, the same being exempt by operation of law.

Section 2.03. Leasehold Interest Assessed and Taxed at Nominal Value.

Except as described in this Section 2.03, the leasehold interest of Developer created by the Lease, and of any assignees or sub-lessees thereunder, shall be subject to assessment, and shall be entered accordingly on the property books of Jefferson County, provided however, that the assessed values of such interests shall be the nominal value of only One Dollar (\$1.00) for each such interest under the Lease or any sublease or interest thereunder, it being the understanding, agreement and finding of the parties that: (i) the rents, to be paid under the Lease by Developer (which rents shall include, without limitation, sums sufficient to fully construct and equip the Facility and all costs of maintaining and insuring the Project), constitute rental payments that equal, or significantly exceed, fair market rental payments for such property during the entire term of the Lease; (ii) under the Lease, the leasehold interest of Developer is not freely assignable; and (iii) the Lease does not constitute a "bargain lease" to Developer which would increase any assessment of the said leasehold interest above the said nominal value.

ARTICLE III

ACQUISITION AND CONSTRUCTION
OF THE PROJECT AND PAYMENT IN LIEU OF TAX

Section 3.01. Acquisition, Construction and Equipping of the Facility.

The Commission and the County Board each hereby agrees to the acquisition, construction, and equipping of the Project pursuant to the terms of the Facility Development Agreement, provided that Developer shall be solely responsible for such acquisition, construction and equipping of the Project.

Section 3.02. Tax Exemption.

The Commission and the County Board recognize that under West Virginia law, all real and personal property owned by the Commission which is part of the Project, is exempt from ad valorem property taxation.

Section 3.03. Payment in Lieu of Taxes.

Once actual, physical construction of the Facility begins, Developer shall make only the payments in lieu of taxes in the amounts, if any, shown on Attachment A, PILOT Payment Schedule attached hereto and made a part hereof, during the period that this Agreement remains in effect as provided in Section 4.02 below. The amount of the payments due under this Agreement will be based on stated graduated percentages of the taxes that would be imposed, if the Facility were fully taxable, on its real estate (starting with 0% for the first five years), and

designated as Equivalent Tax, and, after the first seven years, on the salvage value of the Equipment and any other tangible personal property situate at the Facility, determined by rules applicable to the same for property tax purposes, and designated as Salvage Value, all as shown in Attachment A, PILOT Payment Schedule.

Developer hereby agrees to make each annual payment in lieu of taxes, if and when shown to be due on Attachment A, to the Sheriff who shall distribute each such payment to the Commission, the City of Ranson and the County Board in proportion to the applicable combined levy rates (including regular and special levies, if any), for each tax year during the term of this Agreement in which such payments are made.

Section 3.04. Payment in Lieu of Tax Payable in Installments.

Developer may pay each payment in lieu of tax payable under Subsection 3.03 in two equal installments per year, the first installment of which shall be paid by each March 1 and the second installment of which shall be paid by each September 1, as shown on Attachment A, or Developer may pay the entire annual payment amount due in a particular calendar year on or before March 1, provided however, that the final payment in lieu of tax, shall be payable in full on or before March 1 of the year in which that payment is due.

Section 3.05. Events of Default: Remedies.

If Developer shall fail to pay any payment in lieu of taxes to the Sheriff at the times and in the amounts as prescribed herein, and such failure to pay continues for a period of 30 days after written notice thereof has been sent to Developer, then and in such event, the County Commission may take whatever action at law or in equity may appear necessary or desirable to enforce its rights and the rights of the County Board under this Agreement, including, without limiting the generality of the foregoing, immediately terminating this Agreement, conveying the Project to Developer and causing the assessment and collection by the Assessor and Sheriff of ad valorem taxes thereon. The County Commission shall not be obligated to do any of the acts hereinabove authorized, but, in the event that the County Commission elects to do any such act, all costs and expenses incurred by the County Commission in doing any such act shall be owed by Developer hereunder. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time, as often as may be deemed expedient.

ARTICLE IV
GENERAL AND MISCELLANEOUS PROVISIONS

Section 4.01. Expenses and Costs.

Except as otherwise expressly provided in the FDA, each party will bear its own respective legal and other costs and expenses associated with this Agreement and all documents, instruments and agreements in connection herewith, and the consummation of the transactions set forth herein and therein.

Section 4.02. Term of This Agreement.

Unless terminated sooner by the express provisions hereof, this Agreement shall remain in effect for (a) a period of nine (9) years from the date Developer commences construction of the Facility, (b) for the entire term of the Lease, and any renewals thereof, or (c) until the date that this final payment in lieu of tax is paid, in accordance with Attachment A, whichever is the shortest period of time. Beginning with the first tax year after the termination hereof, and for each tax year thereafter, so long as Developer has an interest in the Facility, it shall pay the full amount of the ad valorem property taxes on the real and personal property which comprise the Facility, as determined by applicable law, regardless of whether held fee simple title to the Project. This provision shall survive the termination of this Agreement.

Section 4.03. Notices.

All notices to Developer, the Commission, the County Board, the Sheriff and the Assessor with respect to this Agreement, shall be deemed to be completed upon mailing by registered or certified mail, postage prepaid, addressed as follows or to such other address as shall be furnished in writing by any party to the remaining parties hereto:

- a) If to Developer, as follows:

- b) If to the Commission, as follows:

President, Jefferson County Commission

Charles Town, West Virginia 25414

- c) If to the Assessor, as follows:

Assessor of Jefferson County

Charles Town, West Virginia 25414

- d) If to the Sheriff, as follows:

Sheriff of Jefferson County

Charles Town, West Virginia 25414

- e) If to the Board, as follows:

Superintendent, Jefferson County Schools

Charles Town, West Virginia 25414

Section 4.04. Credit for Payments Made.

In the event that any amounts are paid by Developer, its successors or assigns, as ad valorem property taxes levied by the Commission or the County Board on their leasehold interests in the Project, such amounts shall be fully credited against and reduce the payments in lieu of taxes otherwise due pursuant to Article III herein, and Longview Power, its successors or assigns, shall, likewise, be entitled to a refund of the same by virtue of any overpayment thereof resulting from such credit and reduction.

Section 4.05. Use of Payments in Lieu of Taxes.

Developer shall not have any responsibility or liability for the application or expenditure by the Sheriff, the County Board or by the Commission of any amount paid to the Sheriff by Developer pursuant to this Agreement. The Sheriff alone shall be responsible for the proper disposition of any amount paid in lieu of tax by Developer, and of any ad valorem property taxes determined to be due with respect to the Project. Subject to the Constitution and laws of the State of West Virginia, Developer is hereby indemnified and held harmless, by the other parties hereto, from any lawsuit or legal action, and any liability, arising from or relating to the manner in which the Sheriff distributes or the County Board or the Commission applies, expends or otherwise distributes or disposes of any such amount paid by Developer under this Agreement.

Section 4.06. Construction.

It is the intention of the parties in entering into this Agreement to provide for certainty in the assessment of ad valorem property taxes with respect to the Project, to provide an inducement for Developer to invest in the Project in Jefferson County, West Virginia, to clarify ambiguities as to the appropriate assessment of leasehold interests in the Project during the period it is leased by JCDA, and to provide for payments in lieu of taxes as an inducement for the Commission, the County Board, the Sheriff and the Assessor to enter into this Agreement. It is the intention of the parties that this Agreement be construed liberally in order to effect the aforesaid intent of the parties.

Section 4.07. Miscellaneous.

Neither this Agreement nor any provision hereof may be amended, modified, waived, discharged or terminated orally, except by an instrument in writing signed by the parties hereto. With the written consent of the Commission, which consent shall not be unreasonably withheld or delayed, this Agreement may be assigned by Developer and the provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto. The captions in this Agreement are for the convenience of reference only and shall not define or limit the provisions hereof.

Section 4.08. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

Section 4.09. Severability.

The parties hereby agree that in the event one or more portions of this Agreement shall be declared to be invalid by appropriate authority, the remaining provisions of this Agreement shall continue in full force and effect, provided, however, that should the aggregate ad valorem property taxes charged to Developer, its successors or assigns, by the Sheriff, with respect to the Project, or the leasehold interests in it, in any one year after the tax year 2017, exceed the payments in lieu of taxes provided for in Article III herein (prior to the adjustment as provided in Section 4.04 herein), for that year, then, at the election of Developer, in its sole discretion, this Agreement may be canceled and rendered void and of no further force and effect from and after the earlier of the dates on which such taxes are paid to the Sheriff or the ownership interests of both JCDA and the Commission are terminated.

Section 4.10. Condition to Agreement Becoming Effective.

Notwithstanding any other provision herein, this Agreement shall not become effective unless and until Developer acquires the Land and title and transfers ownership in and to the Project to the JCDA. In the event that Developer does not acquire the Land or ownership of the Project is not held by either the JCDA or the Commission, it is expressly agreed that this Payment in Lieu of Taxes Agreement shall terminate and be null and void.

Section 4.11. Indemnification.

Developer agrees, whether or not the transactions contemplated by this Agreement, the FDA or the Lease shall be consummated, to protect, indemnify and save the Commission, the County Board, the Sheriff and the Assessor (hereinafter individually called "Indemnified Party" and collectively called the "Indemnified Parties") harmless from and against all liability, losses, damages, costs, reasonable expenses (including reasonable counsel fees), taxes, causes of action, suits, claims, demands and judgments of any nature or form, by or on behalf of any person arising in any manner from the transactions of which this Agreement is a part or arising in any manner in connection with the Project, and, without limiting the generality of the foregoing, arising from (i) this Agreement [except the obligations expressly undertaken by the Indemnified Parties hereby], (ii) the design, acquisition, construction, installation, operation, use, occupancy, maintenance, ownership or leasing of the Project; (iii) any written statements or representations made or given by Developer or any of its officers, employees or agents to any person, with respect to Developer, the Project, and any financing therefor, including, but not limited to, statements or representations of facts, financial information or corporate affairs; (iv) damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; (v) any breach or default on the part of Developer in the performance of any of its obligations under this Agreement; (vi) any violation of contract, agreement or restriction by Developer relating to the Project; or (vii) any violation of law, ordinance or regulation affecting the Project or any part thereof or the ownership or occupancy or use thereof.

In the event that any action or proceeding is brought against any of the Indemnified Parties by reason of any such claim, such action or proceeding shall be defended against by counsel to such Indemnified Party or Indemnified Parties or by Developer, as the Indemnified Party or Indemnified Parties, upon advice of counsel, shall determine. In the event such defense

is by counsel to the Indemnified Party or Indemnified Parties, Developer shall indemnify the Indemnified Party or Indemnified Parties for reasonable costs of counsel allocated to such defense and charged to the Indemnified Party or Indemnified Parties. Developer, upon notice from an Indemnified Party, shall resist and defend such an action or proceeding on behalf of such Indemnified Party.

The provisions of this Section shall apply to any claim or liability not resulting from an Indemnified Party's own negligence, but shall not apply to any claim or liability resulting from an Indemnified Party's negligence, bad faith, fraud or deceit or for any claim or liability which Developer was not given the opportunity to contest.

The provisions of this Section 4.11 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

DEVELOPER

By: _____
Its: _____

**THE COUNTY COMMISSION OF
JEFFERSON COUNTY, WEST VIRGINIA**

By: _____
Its: _____

Clerk of the County Commission
of Jefferson County, West Virginia

**ASSESSOR OF JEFFERSON COUNTY,
WEST VIRGINIA**

By _____

**SHERIFF OF JEFFERSON COUNTY,
WEST VIRGINIA**

By _____

**THE BOARD OF EDUCATION OF
JEFFERSON COUNTY, WEST VIRGINIA**

By: _____

Its: _____

EXHIBIT A

[Property Description]

Attachment A - PILOT Payment Schedule

<u>Payment Date</u>	<u>Real Estate</u>	<u>Personal Property</u>
March 1, 2018	\$ 0	\$0
September 1, 2018	\$ 0	\$0
March 1, 2019	\$ 0	\$0
September 1, 2019	\$ 0	\$0
March 1, 2020	\$ 0	\$0
September 1, 2020	\$ 0	\$0
March 1, 2021	\$ 0	\$0
September 1, 2021	\$ 0	\$0
March 1, 2022	\$ 0	\$0
September 1, 2022	\$ 0	\$0
March 1, 2023	20% of ET*	\$0
September 1, 2023	20% of ET*	\$0
March 1, 2024	40% of ET*	\$0
September 1, 2024	40% of ET*	\$0
March 1, 2025	60% of ET*	SV**
September 1, 2025	60% of ET*	SV**

March 1, 2026

80% of ET* SV**

September 1, 2026

80% of ET* SV**

* - Equivalent Tax (ET) which shall be equal to one-half of the amount of *ad valorem* property tax that would be charged against the real property of the Project were it fully taxable to the Developer.

** - Salvage Value (SV) which shall be equal to one-half of the amount of *ad valorem* property tax chargeable against the tangible personal property of the Project were it fully taxable and appraised under the applicable rules for the determination of salvage value for similar property.