

## PERFORMANCE AGREEMENT

This PERFORMANCE AGREEMENT ("Agreement") is made and entered this 13<sup>th</sup> day of June, 2019 ("Effective Date"), by and among the COUNTY OF CHARLES CITY, VIRGINIA (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), CHICKAHOMINY POWER LLC (the "Company"), a Virginia limited liability company, and the ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF CHARLES CITY (the "Authority"), a political subdivision of the Commonwealth.

### RECITALS

A. The Company plans to construct an estimated 1600 megawatt (net) natural gas power plant (the "Project") in the Locality, to be located on approximately 180 acres of land on Chambers Road currently owned by The Lexington Corporation and being part of Tax Map Parcel 8-1 and 8-2 in the Locality (the "Land"). The Company will operate the Project as an independent merchant power plant supplying electricity on a wholesale basis to the electricity markets in Virginia and surrounding regions.

B. The Company estimates that Project assets subject to taxation by the Locality will have a value in excess of \$600 million.

C. Construction of the Project is expected to start during the second quarter of 2019. Completion of the construction of the Project is expected to be during the second quarter of 2022. The "Project Completion Date" shall be the date the Company notifies the Locality in writing that the Project has reached commercial operations.

D. The Locality is willing to provide certain cash grants to the Authority with the requirement that the Authority, in turn, will provide such grants to the Company, provided that the Company meets certain criteria relating to a Minimum Assessment, as defined herein.

E. The Locality, the Authority and the Company desire to set forth their understandings and agreements as to the payout of the aforementioned grants and the obligations of the Company regarding the Minimum Assessment.

F. The stimulation of the additional tax revenue and economic activity to be generated by the Project constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the Grants.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**1. Definitions.**

For the purposes of this Agreement, the following terms shall have the following definitions:

"Grants" means, collectively, the cash grants to be paid to the Company by the Authority pursuant to the provisions of Section 2 below and other provisions of this Agreement, including, for the avoidance of doubt, the provisions regarding reimbursements described in Section 2(d).

"Local Taxes" means all local taxes paid by the Company to the Locality, including but not limited to, real property taxes, personal property taxes, machinery and tools taxes, and any other local taxes.

"Minimum Assessment" means an assessment of the value of the Project of at least \$400 million as determined by the Virginia State Corporation Commission (the "SCC") in.

**2. Incentives for the Project.**

Subject in all respects to Section 6(a) below, the Company will receive the following incentives from the Locality and/or the Authority, as the case may be, as an inducement to locate the Project in the Locality:

(a) Grants. The Authority shall make the following Grants to the Company in accordance with the terms hereof:

(i) During the first ten-year period following the Project Completion Date (the "First Ten-Year Period"), the Authority will make cash grants to the Company in an amount equal to twenty-five percent (25%) of all Local Taxes paid by the Company for the period in question. The Authority will make such cash grants within sixty (60) days after the Company makes such payments of Local Taxes to the Locality.

(ii) During the ten-year period following the First Ten-Year Period (the "Second Ten-Year Period"), the Authority will make cash grants to the Company in an amount equal to ten percent (10%) of all Local Taxes paid by the Company for the period in question. The Authority will make such cash grants within sixty (60) days after the Company makes such payments of Local Taxes to the Locality.

(b) Bifurcation of Real Estate Taxes. In the event that, subsequent to the Effective Date, the County adopts an ordinance to charge a higher rate for industrial and/or commercial real property taxes than residential real property taxes pursuant to authority duly granted by the Virginia General Assembly ("Bifurcation"), the following provisions shall apply:

(i) During the First Ten-Year Period, if an increase in real property taxes paid as a result of Bifurcation ("Increase") occurs, the Company shall be entitled to the following as a portion of the cash grants paid to the Company pursuant to the provisions of Section 2(b)(I) above;

(1) an amount equal to 25% of such Increase paid by the Company (which would occur automatically under the provisions of Section 2(b)(i) above); plus

(2) an amount equal to an additional 75% of such Increase paid by the Company (for a total of 100% of such Increase).

(ii) During the Second Ten-Year Period, if an Increase occurs, the Company shall be entitled to the following as a portion of the cash grants paid to the Company pursuant to the provisions of Section 2(b)(ii) above;

(1) an amount equal to 10% of such Increase paid by the Company (which would occur automatically under the provisions of Section 2(b)(ii) above); plus

(2) an amount equal to an additional 75% of such Increase paid by the Company (for a total of 85% of such Increase).

(c) Reimbursement of All Locality Fees. The Authority will make cash grants to the Company to reimburse the Company for all fees related to all permits to be issued by the Locality in connection with the initial construction of the Project, including but not limited to, building permits, water and sewer connection fees, etc. Such cash grants will be made by the Authority to the Company within sixty (60) days after the Project Completion Date.

(d) Fast-Tracking of Permits. The Locality will use its reasonable best efforts to fast-track all Locality permits related to the Project at no cost to the Company.

(e) Turn Lane Into Plant. Working with the Virginia Department of Transportation ("VDOT"), the Locality will use its reasonable best efforts to cause a turn lane and entrance into the Project to be constructed at no cost to the Company. Neither the Locality nor the Authority will have any responsibility to make any payments related to the construction of the turn lane.

### 3. Capital Investment Threshold.

(a) The Company shall be entitled to the Grants described in Section 2(b) above once: (i) the Project Completion Date has occurred; and (ii) the SCC has assessed the Project in an amount equal to or exceeding the Minimum Assessment on at least one occasion.

(b) Once the Minimum Assessment has been achieved, the Grants shall be paid as set forth in Section 2(b) above without regard to whether the Minimum Assessment is achieved thereafter.

4. **Use of Grants by the Company.**

The Company may use the Grants for any lawful purpose, in the sole discretion of the Company.

5. **Notices.**

Formal notices and communications between the parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, or (iii) mailing utilizing a certified or first-class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the third business day following deposit in the United States mail.

Such written notices and communications shall be addressed to:

if to the Company, to:

Chickahominy Power LLC  
13800 Coppermine Road, Suite 115  
Herndon, VA 20171  
Attention: Managing Member

with a copy to:

John K. Byrum, Jr.  
Woods Rogers, PLC  
Riverfront Plaza, West Tower  
901 East Byard Street, Suite 1550  
Richmond, VA 23219

if to the Locality, to:

County of Charles City, Virginia  
10900 Courthouse Road  
P.O. Box 128  
Charles City, Virginia 23030  
Attention: County Administrator

with a copy to:

County of Charles City, Virginia  
10900 Courthouse Road  
P.O. Box 128  
Charles City, Virginia 23030 Attention: County  
Attorney

if to the Authority, to:

Economic Development Authority of  
the County of Charles City  
P.O. Box 128  
Charles City, Virginia 23030  
Attention: Chairman

with a copy to:

Economic Development Authority of the  
County of Charles City  
P.O. Box 128  
Charles City, Virginia 23030 Attention: County  
Administrator

6. Miscellaneous.

(a) Limited Obligations of Authority; No Personal Liability. Any and all payments of Grants or reimbursement of locality fees by the Authority to the Company are conditioned, in amount and timing, upon the Authority's receipt of funds from the Locality for purposes of making such payments ("Locality Funding"). The Grants are payable by the Authority solely and exclusively from Locality Funding, and the Authority shall have no other obligation or liability with respect to the Grants. Nothing herein shall be deemed to authorize the Company to obligate the Authority, without its consent in each instance, to the payment of any moneys or the performance of any acts in connection with the Project, except for the payment of Grants solely and exclusively from Locality Funding received by the Authority. No director, officer, employee or agent of the Authority shall be personally liable for the payment of Grants or any other obligation incurred by the Authority under or in connection with this Agreement or the Project.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCE (WHETHER LEGAL OR OTHERWISE) SHALL THE AUTHORITY HAVE ANY LIABILITY HEREUNDER OR IN ANY WAY RELATING TO THE PROJECT TO ANY PERSON NO MATTER THE CLAIM, REGARDLESS OF WHETHER SUCH CLAIM IS BROUGHT BY, THROUGH, ON BEHALF OF OR FOR THE BENEFIT OF THE LOCALITY, THE COMPANY OR ANY SUCCESSOR, ASSIGN OR COUNTERPARTY OF EITHER OR ANY OTHER PERSON WHATSOEVER, EXCEPT TO THE EXTENT OF ANY OF THE LOCALITY FUNDING AND ONLY INSOFAR AS IT IS THEN CURRENTLY HELD IN THE HERINAFTER DEFINED CONTROL ACCOUNT WHICH MONEYS SHALL BE THE SOLE RECOURSE.

(b) Control Agreement. At the request of the Authority, the Locality and the Authority shall enter into a deposit account control agreement, in a form and substance reasonably acceptable to the Locality and the Authority, for the purpose of depositing Locality Funding and disbursing payments of Grants to the Company. The account governed by such agreement (the "Control Account") shall be in the name of the Authority and for the benefit of the Company. The Locality shall pay the cost of setting up and maintaining such account.

(c) Indemnification. The Company agrees to indemnify and save harmless the Authority and its officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages") including, without limitation:

i. all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees by reason of the acts or omissions of the Applicant;

ii. all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnitees and related to the Project;

iii. any judgments, penalties, fines, damages, assessments, indemnities or contributions against the Indemnitees related to the Project; and

iv. the reasonable fees of attorneys, auditors, and consultants incurred by the Authority as a result of actions or omissions of the Applicant in the operation of the Project.

(d) Entire Agreement; Amendments. This Agreement constitutes the entire agreement by, between and among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may assign its rights and obligations under this Agreement to any purchaser of the Project without any consent of the Locality or the Authority.

(e) Governing Law; Venue. This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Charles City, Virginia and such litigation shall be brought only in that court.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall be one and the same instrument.

(g) Severability. If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(h) Electronic Signatures. The parties agree that electronic (or digital) copies of signature pages to this Agreement shall be deemed to be sufficient as originals of such signature pages.

(i) Subject to Appropriation. All Grants contemplated herein shall be subject to annual appropriation by the Board of Supervisors of the Locality.

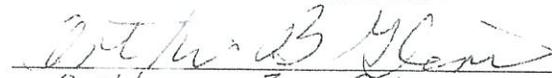
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IN WITNESS, WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

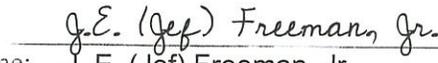
COUNTY OF CHARLES CITY, VIRGINIA

By:   
Name: Michelle Johnson  
Title: County Administrator

ECONOMIC DEVELOPMENT AUTHORITY  
OF THE COUNTY OF CHARLES CITY

By:   
Name: Arthur B. Glend  
Title: Chairman

CHICKAHOMINY POWER LLC

By:   
Name: J. E. (Jef) Freeman, Jr.  
Title: Director - Development

[Signature Page to Performance Agreement]