

**A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE ALSTOM POWER, INC./ALSTOM POWER TURBOMACHINES, LLC PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.**

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WHEREAS, pursuant to Tennessee Code Annotated, Section 7-53-305(b) the City of Chattanooga (the "City") is permitted to delegate to The Industrial Development Board of the City of Chattanooga (the "Board") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board upon a finding by the City that such payments are deemed to be in furtherance of the Board's public purposes; and,

WHEREAS, Alstom Power, Inc. ("Alstom") and Alstom Power Turbomachines, LLC ("Turbomachines" and together with Alstom, the "Companies") are contemplating the acquisition of certain property in Chattanooga, Hamilton County, Tennessee, the construction of real property improvements thereon, the construction of new facilities and other real property improvements on existing land and the acquisition of certain machinery, equipment and other personal property for use as a power plant turbine rotor and boiler retrofit facility in the City (the "Project"), and, because of the substantial economic benefits to the City and Hamilton County resulting from the project, have asked the Board and the City Council to approve payments in lieu of ad valorem taxes; and

WHEREAS, the Companies anticipate that the development, construction and equipping of the Project will occur in three phases; and

WHEREAS, the Council has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Board's public purposes as set forth within Chapter 53 of Title 7 of the Tennessee Code Annotated;

**NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That we do hereby find that the Project is in the best interest of the City, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Board's public purposes.

BE IT FURTHER RESOLVED, That, having made such a finding in this instance, we do hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from the Companies, it being further noted that this delegation is for this purpose and this project only.

BE IT FURTHER RESOLVED, That the Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve.

ADOPTED: June 17, 2008

**AGREEMENT FOR PAYMENTS IN LIEU  
OF AD VALOREM TAXES**

**THIS AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES** (this "Agreement") is made and entered into as of this the \_\_\_\_ day of \_\_\_\_\_, 2008, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the "Board"); **ALSTOM POWER, INC.**, a Delaware corporation ("Alstom"); **ALSTOM POWER TURBOMACHINES, LLC**, a Delaware limited liability company ("Turbomachines" and together with Alstom, the "Companies"); the **CITY OF CHATTANOOGA, TENNESSEE** (the "City"); and **HAMILTON COUNTY, TENNESSEE** (the "County") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by **CARL E. LEVI** and his successors, acting in the capacity of **HAMILTON COUNTY TRUSTEE** ("Trustee"), and by **WILLIAM C. BENNETT** and his successors, acting in the capacity of **HAMILTON COUNTY ASSESSOR OF PROPERTY** ("Assessor").

**W I T N E S S E T H:**

**WHEREAS**, the Companies are contemplating the acquisition of certain property located in Chattanooga, Hamilton County, Tennessee, the construction of real property improvements thereon, the construction of new facilities and other real property improvements on existing land and the acquisition of certain machinery, equipment and other personal property for use as a power plant turbine rotor and boiler retrofit facility (the "Project"), and

**WHEREAS**, the Project will result in a total capital investment of approximately \$265,000,000, including a real property investment of approximately \$65,000,000 and a personal property investment of approximately \$200,000,000, and an increase of approximately 300 jobs during the period between July 5, 2007 and December 31, 2014, which jobs shall have an average annual salary (excluding benefits) equal to at least \$75,000 (collectively the "PILOT

Projections”), and the Companies have requested the Board’s assistance with the financing of the Project, and

**WHEREAS**, the Companies anticipate that the development, construction and equipping of the Project will occur in three phases (each such phase hereinafter called a “Phase” and collectively the “Phases”); and

**WHEREAS**, substantial economic benefits to the city and county economies will be derived from the Project; and

**WHEREAS**, the Board has agreed to take title to (i) the Turbomachines Real Property (as defined in that certain Lease Agreement (the “Turbomachines Lease”), dated \_\_\_\_\_, 2008, by and between the Board and Turbomachines), (ii) the Alstom Real Property (as defined in that certain Lease Agreement (the “Alstom Lease”), dated \_\_\_\_\_, 2008, by and between the Board and Alstom (the Turbomachines Real Property and the Alstom Real Property shall hereinafter collectively be referred to as the “Real Property”)), (iii) the Turbomachines Personal Property (as defined in the Turbomachines Lease), and (iv) the Alstom Personal Property (as defined in the Alstom Lease)(the Turbomachines Personal Property and the Alstom Personal Property shall hereinafter collectively be referred to as the “Personal Property”); and

**WHEREAS**, the Board agrees to lease the Turbomachines Real Property and the Turbomachines Personal Property to Turbomachines, and the Board agrees to lease the Alstom Real Property and the Alstom Personal Property to Alstom; and

**WHEREAS**, because the Real Property and the Personal Property (collectively, the “Property”) will be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, §7-53-101, *et seq.*, the Property will be exempt from ad valorem property taxes (“property taxes”) normally paid to the City and the County, so long

4. Phase I Project. No later than January 1, 2010, the Companies shall commence the acquisition, construction and equipping of the Real Property (the "Phase I Project"), which is estimated to require a capital investment in the amount of approximately \$65,000,000, provided however, that the parties hereto acknowledge and agree that the actual amount of capital investment for the Phase I Project may fluctuate, in the sole discretion of the Companies, so long as the aggregate capital investment for the Project amounts to approximately \$265,000,000.

5. Phase II Project. No later than January 1, 2011, the Companies shall commence the acquisition and installation of certain machinery, equipment and other personal property more particularly described on Exhibit A, attached hereto and incorporated herein (the "Phase II Project"). The Phase II Project is estimated to require a capital investment in the amount of approximately \$120,000,000, provided however, that the parties hereto acknowledge and agree that the actual amount of capital investment for the Phase II Project may fluctuate, in the sole discretion of the Companies, so long as the aggregate capital investment for the Project amounts to approximately \$265,000,000.

6. Phase III Project. No later than January 1, 2012, the Companies shall commence the acquisition and installation of certain machinery, equipment and other personal property more particularly described on Exhibit A, attached hereto and incorporated herein (the Phase III Project"). The Phase III Project is estimated to require a capital investment in the amount of approximately \$80,000,000, provided however, that the parties hereto acknowledge and agree that the actual amount of capital investment for the Phase III Project may fluctuate, in the sole discretion of the Companies, so long as the aggregate capital investment for the Project amounts to approximately \$265,000,000.

7. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Companies shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the amounts set forth below in Paragraph 8. The In Lieu Payments shall be made by the Companies in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

8. Amount of Payments by the Companies. Each Phase shall comprise a discrete fifteen (15)-year period in which the Companies shall pay In Lieu Payments rather than ad valorem property taxes with respect to such portion of the Project. For each of the fifteen (15) calendar years following the completion of each Phase, the In Lieu Payments for each such Phase shall be determined by the Assessor and the Trustee and shall be equal to one hundred percent (100%) of the real and personal property taxes collected on the Property within such Phase to support the County school system as if the Property within such Phase were subject to such real and personal property taxes. (The parties acknowledge that the amount of real and personal property taxes to support County schools currently represents twenty-nine and two-tenths percent (29.2%) of the total amount of the real and personal property taxes that would have been payable on the Property within such Phase if the Property within such Phase were subject to real and personal property taxes). With respect to the Property within each Phase, for any periods prior to or subsequent to such respective fifteen (15)-year periods, the Companies shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property within such Phase as if it were subject to property taxes.

9. Penalties and Late Charges. The Companies shall make the In Lieu Payments for each year before March 1 of the following year. All In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Companies fail to make any In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1.5%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1.5%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Companies should fail to pay all amounts and late charges due as provided hereinabove, then the Board, or the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees.

10. PILOT Projections Reporting.

(a) In order to determine the extent to which the Companies achieve the PILOT Projections, the Companies shall complete and deliver for each calendar year during the term of this Agreement an annual report in the form attached hereto as Exhibit "C" commencing after completion of the first full calendar year during which In Lieu Payments were paid by the Companies.

(b) If the Companies collectively fail to achieve the PILOT Projections, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder.

7. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Companies shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the amounts set forth below in Paragraph 8. The In Lieu Payments shall be made by the Companies in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

8. Amount of Payments by the Companies. Each Phase shall comprise a discrete fifteen (15)-year period in which the Companies shall pay In Lieu Payments rather than ad valorem property taxes with respect to such portion of the Project. For each of the fifteen (15) calendar years following the completion of each Phase, the In Lieu Payments for each such Phase shall be determined by the Assessor and the Trustee and shall be equal to one hundred percent (100%) of the real and personal property taxes collected on the Property within such Phase to support the County school system as if the Property within such Phase were subject to such real and personal property taxes. (The parties acknowledge that the amount of real and personal property taxes to support County schools currently represents twenty-nine and two-tenths percent (29.2%) of the total amount of the real and personal property taxes that would have been payable on the Property within such Phase if the Property within such Phase were subject to real and personal property taxes). With respect to the Property within each Phase, for any periods prior to or subsequent to such respective fifteen (15)-year periods, the Companies shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property within such Phase as if it were subject to property taxes.



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(a) If the Companies fail to make any In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1.5%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1.5%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Companies should fail to pay all amounts and late charges due as provided hereinabove, then the Board, or the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees.

10. PILOT Projections Reporting.

(a) In order to determine the extent to which the Companies achieve the PILOT Projections, the Companies shall complete and deliver for each calendar year during the term of this Agreement an annual report in the form attached hereto as Exhibit "C" commencing after completion of the first full calendar year during which In Lieu Payments were paid by the Companies.

(b) If the Companies collectively fail to achieve the PILOT Projections, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder.

(c) If the Companies close the Project or move the Project from the County during the term hereof, the City and the County reserve the right to require the partial repayment of amounts that would have been payable on the Property as if it were subject to property taxes.

11. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 7 hereof shall be disbursed to the general funds of the City and the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received shall be divided into two accounts, one for the use and benefit of the City and the other for the use and benefit of the County. The account for the use and benefit of the City shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. All disbursements to the general funds of the City and County shall be made by the Trustee subject to the requirement that all funds disbursed may be used by the City and the County only in furtherance of the public purposes of the Board, as described in Tennessee Code Annotated §7-53-102.

12. Contest by the Companies. The Companies shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payment. If the Companies contest any such appraisal or assessment, then such contesting party shall present evidence to the Assessor in favor of its position. Likewise, if the Companies contest any such computation, such party shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, the Companies shall make such payments under protest. The Companies and

the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the contesting party and the Assessor or the Trustee are unable to resolve a dispute, then Alstom or Turbomachines, as the case may be, may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

13. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

14. Leasehold Taxation. If the leasehold interest of the Companies should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder.

15. Notices, etc. All notices and other communications provided for hereunder shall be written, and mailed via registered or certified mail or delivered via overnight express carrier, to the following addresses:

If to the City:

Mr. Randall L. Nelson  
City Attorney  
Suite 400, Pioneer Bank Building  
Chattanooga, Tennessee 37402

If to the County:

Mr. Rheubin M. Taylor  
County Attorney  
Room 204  
County Courthouse  
Chattanooga, Tennessee 37402

If to Alstom:

Mr. David G. Breckinridge  
1119 Riverfront Parkway  
Chattanooga, Tennessee 37402

If to Turbomachines:

Mr. Stephane Cai  
1201 Riverfront Parkway  
Chattanooga, Tennessee 37402

With a Copy to:

Brian L. Eftink, Esq.  
Miller & Martin PLLC  
Suite 1000, Volunteer Building  
832 Georgia Avenue  
Chattanooga, Tennessee 37402-2289

If to the Trustee:

Trustee  
Hamilton County Courthouse  
Chattanooga, Tennessee 37402

If to the Assessor:

Assessor  
Hamilton County Courthouse  
Chattanooga, Tennessee 37402

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall be deemed delivered as follows: (i) when mailed via overnight courier service, one business day after mailing, and (ii) when depositing in the United States mail by registered or certified mail, postage prepaid, return receipt requested, three days after deposit.

16. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

17. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

18. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

20. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

21. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

22. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF CHATTANOOGA

ATTEST:

BY: \_\_\_\_\_  
Chairman

BY: \_\_\_\_\_  
Secretary

**ALSTOM POWER, INC.**

**BY:** \_\_\_\_\_

**PRINT  
NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ALSTOM POWER TURBOMACHINES, LLC**

**BY:** \_\_\_\_\_

**PRINT  
NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**CITY OF CHATTANOOGA, TENNESSEE**

**BY:** \_\_\_\_\_  
Mayor

**HAMILTON COUNTY, TENNESSEE**

**BY:** \_\_\_\_\_  
County Mayor

**CARL E. LEVI**

**BY:** \_\_\_\_\_  
Hamilton County Trustee

**WILLIAM C. BENNETT**

**BY:** \_\_\_\_\_  
Hamilton County Assessor of Property

EXHIBIT "A"

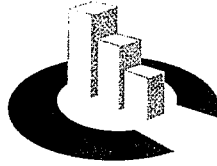
REAL PROPERTY LEGAL DESCRIPTION

EXHIBIT "B"

PERSONAL PROPERTY



EXHIBIT "C"



**CHATTANOOGA**  
AREA CHAMBER OF COMMERCE

**Annual Report for Payment-In-Lieu-of-Tax  
(PILOT) Program for Chattanooga and Hamilton  
County Tennessee**

**Company Information**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City and Zip: \_\_\_\_\_  
Company Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Company's Commitment (commitment agreement attached)**

Real Property Investment Amount: \_\_\_\_\_  
Personal Property Investment Amount: \_\_\_\_\_  
Number of Net New Jobs: \_\_\_\_\_  
Average Wages per New Job: \_\_\_\_\_

**Capital Investment as of December 31, 20\_\_**

Real Property Investment Amount: \_\_\_\_\_  
Personal Property Investment Amount: \_\_\_\_\_

**Job Creation as of December 31, 20** \_\_\_\_\_

(Number of jobs at beginning of PILOT: \_\_\_\_\_ ).

No. of Net New Jobs Created: \_\_\_\_\_

**Average Wages as of December 31, 20** \_\_\_\_\_

Average Wages of New Jobs Above<sup>1</sup>: \_\_\_\_\_

<sup>1</sup> Wages may include overtime, but must exclude benefits.

**Comment on Progress Toward Performance Goals**

\_\_\_\_\_

**Submit Completed Information To:**

Mr. J. Steven Hiatt, Director of Existing Business  
Chattanooga Area Chamber of Commerce  
811 Broad Street, Suite 100 • Chattanooga, TN 37402  
FAX: (423) 763-4044  
EMAIL: [shiatt@chattanooga-chamber.com](mailto:shiatt@chattanooga-chamber.com)

I certify that the information and attachments provided are true and accurate to the best of my knowledge and belief:

\_\_\_\_\_  
Print name and title of authorized representative of applicant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax