

Intergovernmental Agreement
No. SR-FY15-BC2015
BARNWELL COUNTY, SOUTH CAROLINA

RESOLUTION

WHEREAS, Barnwell County (hereinafter called the "County") has requested that the U.S. Department of Energy (hereinafter called "DOE") render financial assistance to the County in the form of a payment in lieu of taxes on real property acquired for atomic energy purposes; and

WHEREAS, Barnwell County has suffered ad valorem tax revenue losses by virtue of the removal from its taxable rolls certain real property owned by DOE and used for atomic energy purposes; and

WHEREAS, DOE is authorized and has agreed to aid the County by making a payment in lieu of taxes for the ad valorem tax revenue loss in tax year 2015 as a result of DOE's ownership provided the County will accept such payment in release of tax claims, if any, it may have against DOE or its management and operations contractors engaged in the performance of functions of DOE in Barnwell County; and

WHEREAS, the County is authorized to accept such financial assistance from DOE and to make contracts and execute instruments containing such terms and conditions as may be necessary for the purpose of obtaining such financial assistance;

NOW, THEREFORE, be it resolved by the Barnwell County Council of Barnwell County in a Special Called Meeting at Barnwell, South Carolina, on September 15, 2015, that the County Treasurer is hereby authorized to accept from DOE a partial payment in lieu of taxes for 2015 in the sum of \$250,000.00 against the total amount of PILT billed for 2015, \$4,765,868 and is authorized to accept further partial payments by DOE. Subject to the availability of funds and in full satisfaction and release of any claims against DOE or its management and operations contractors by the County on behalf of itself or any other governmental entity, including the School District, the Treasurer is hereby authorized to accept said amount in FY 2015.

BE IT FURTHER RESOLVED that the Chairman, Barnwell County Council of Barnwell County, is authorized to execute for and in behalf of the County the attached DOE Agreement, designated as Intergovernmental Agreement SR-FY15-BC2015, which is incorporated in and made a part of this resolution.



David Kenner, Chairman
STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

I, Kim Futrell , do hereby certify that I am the Clerk of the Barnwell County Council of Barnwell, South Carolina and that the above is a true and correct copy of a Resolution adopted by the said Council in a special called meeting held on September 15, 2015 of County Council as such Resolution appears on record in the minutes of said Council.


Clerk to Barnwell County Council

INTERGOVERNMENTAL AGREEMENT
(No. SR-FY15-BC2015)
BETWEEN THE U.S. DEPARTMENT OF ENERGY
SAVANNAH RIVER OPERATIONS OFFICE AND
THE COUNTY OF BARNWELL, SOUTH CAROLINA
FOR PAYMENT IN LIEU OF TAXES FOR TAX YEAR 2015

This Agreement is made and entered into this 15th day of September, 2015, by and between the UNITED STATES OF AMERICAN (hereinafter referred to as the "Government"), represented by the UNITED STATES DEPARTMENT OF ENERGY, SAVANNAH RIVER OPERATIONS OFFICE (hereinafter referred to as the "DOE"), and THE COUNTY OF BARNWELL, SOUTH CAROLINA (hereinafter referred to as the "County"), a political subdivision of the State of South Carolina.

Witnesseth That:

WHEREAS, the Government has acquired and owns land, including certain then existing improvements (hereinafter referred to as the "eligible real property"), that is eligible for payment in lieu of taxes (PILT) assistance under Section 168 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §2208), and that, together with subsequent improvements, is known as the Savannah River Site. Such eligible real property: is located in the County, is not subject to State or local taxation because it is owned by the Government; was taken off the tax rolls because it was acquired by the Government; and is used to carry out activities authorized by the Atomic Energy Act of 1954, as amended (herein after referred to as "Atomic Energy Act," 42 U.S.C. §2011, *et seq.*); and

WHEREAS, the activities of the Government in the County have been and are being carried on, in large part, through contractors engaged in the operation, construction, maintenance, or other utilization of said eligible real property in support of DOE's mission; and

WHEREAS, under the Constitution and laws of the United States and the existing laws of the State of South Carolina, the eligible real property, by reason of Federal ownership, is not subject to taxation by the County; and

WHEREAS, under and pursuant to the provisions of Section 168 of the Atomic Energy Act, in order to render financial assistance to the states and localities in which the activities of DOE are carried on, and in which DOE has acquired property previously subject to state and local taxation, DOE has been and is authorized, but not required, to provide PILT financial assistance with respect to such eligible real property; and

WHEREAS, the County has submitted the necessary information supporting its request for PILT assistance for tax year 2015; and

WHEREAS, the County represents that it is authorized to make contracts and execute instruments containing such terms and conditions as may be necessary, proper, or advisable for the purpose of obtaining financial assistance from Federal Agencies.

NOW, THEREFORE, the parties hereto agree as follows:

1. For the purpose of rendering financial assistance to the County, but subject to the availability of funds, DOE will pay to the County the sum of \$4,765,868.00 as a payment in lieu of taxes for the Barnwell County tax year 2015.

2. PILT assistance for the Savannah River Site will be made to the County by electronic funds transfer. The County will submit electronic funds transfer information to the Oak Ridge Financial Center on DOE's "Vendor Banking Data Form" which is available on-line at <http://www.orfse.doe.gov/homepage.html> under "Payment Services," then "Forms".

3. Such PILT assistance payment, when made, shall constitute full satisfaction of any and all County claims, for itself or on behalf of any other governmental entity, including the School Districts, of any nature whatsoever, against DOE or its contractors for real estate taxes related to DOE's eligible real property for County tax year 2015; *provided*, that the County's acceptance of such payment shall not prejudice its eligibility for any special burdens assistance in accordance with Section 168 of the Atomic Energy Act.

4. PILT assistance payments under this Agreement are subject to suspension during the pendency of any lawsuit filed by the County that seeks from the Federal Government any real property taxes or their equivalent with respect to such eligible real property and/or to improvements made thereon after such property was acquired by the Federal Government.

5. No member of or delegate to Congress or resident commissioner shall receive any share or part of this Agreement, or any benefit that may arise from this Agreement except to the extent that PILT assistance granted to Barnwell County hereunder may generally benefit all citizens or residents of the County.

6. The County agrees that DOE and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the County involving transactions related to this Agreement until the expiration of three (3) years after final payment pursuant to this Agreement; *provided, however*, that at any time during the later of such three-year period or any extension period DOE shall have the authority to extend or further extend the time for such access and examination. Nothing in this Agreement shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this Agreement.

7. Any requirement for the payment or obligation of funds by DOE pursuant to this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, nor shall anything herein be construed to imply that the Congress will appropriate funds to satisfy PILT assistance payments in accordance with this Agreement.

8. DOE's current policy is to make annual PILT assistance payments, at levels reflected in the existing and the most recent Intergovernmental Agreement(s), if the PILT assistance applicant certifies that no salient facts have changed. That policy and DOE's actions pursuant to it, does not create an entitlement to PILT assistance which by statute (Sec. 168, *supra*) is entirely discretionary; nor do they create a contractual obligation with respect to such assistance.

Subject to the foregoing, the availability of funds and subject to Section 9 of this Agreement, DOE will in the interim years between tax year 2007 and the new or revised PILT application required by Section 9 of this Agreement, make annual PILT assistance payments to the County as provided in Section 168 and this Agreement if such policy or a similar policy remains in effect and has not been superseded. Such recurring PILT assistance will be contingent upon DOE's receipt from the County of a request for such subsequent assistance together with a certification that for the applicable tax year, the salient facts underlying such assistance payment are the same as they were with respect to tax year 2007; *provided however*, that although jurisdiction-wide adjustments to tax assessments or to tax rates shall be fully disclosed to DOE, such adjustments will not require the filing of an initial application for PILT assistance, but will only require the County to file an application or request to change the basis for or amount of a PILT assistance payment under this agreement, and

If the current salient facts are not the same as the tax year 2007 facts, the County shall file an initial application for PILT assistance if it continues to desire such financial assistance.


9. The County will provide DOE with a new or revised PILT application no later than three (3) years after the end of its next assessment cycle. The new or revised application will contain a professionally generated appraisal. Section 168 of the Atomic Energy Act provides the Secretary of Energy the discretion to unilaterally terminate this Agreement upon reasonable notice. Failure by the County to submit anew or revised PILT application, including the professionally generated appraisal, within the specified time period shall constitute such reasonable notice and may result in termination of this Agreement.

10. DOE's PILT assistance is not an entitlement, and nothing in this Agreement, nor in the conduct of DOE under or relating to this Agreement, shall be interpreted to preclude or place any limitations, modifications, or conditions on the discretionary authority given to the Secretary of Energy by Section 168 of the Atomic Energy Act to make, modify, or unilaterally discontinue such payments. Said funds are subject to legislative or administrative reductions in funding levels.

11. Payment of funds by DOE in lieu of property taxes constitutes financial assistance within the meaning of 10 CFR Part 1040, Nondiscrimination in Federally Assisted Programs, Appendix A, and the County acknowledges that it is subject to and will comply with such regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Contracting Officer
Savannah River Operations Office
Office of Contracts Management
U.S. Department o



David Kenner, Chairman
Barnwell County Council
County of Barnwell, South Carolina