

RESOLUTION NO. 25672

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO WESTINGHOUSE ELECTRIC COMPANY, LLC PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE, AND TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

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

WHEREAS, Westinghouse Electric Company, LLC (the "Company") intends to purchase and expand the manufacturing facility located at 401 River Terminal Road in Chattanooga, Hamilton County, Tennessee, and to purchase certain equipment and other tangible personal property, and, because of the substantial economic benefits to the City resulting from the project, the Company has asked the Corporation and the City to approve payments in lieu of ad valorem taxes; and

WHEREAS, the Company expects to invest approximately Sixteen Million Seven Hundred Thousand Dollars (\$16,700,000) in real property and Four Million Five Hundred Thousand Dollars (\$4,500,000) in personal property by February 13, 2011 in the purchase and expansion; and

WHEREAS, the Company expects that when the new Facility is completed and operational, the expansion will result in 52 new, full-time jobs with average annual wages, excluding benefits, of Eighty Five Thousand Dollars (\$85,000) during the five year period beginning February 14, 2008; and

WHEREAS, the Company has agreed that if its new investment in the Personal Property is less than the amounts described above, or if fewer full-time jobs than described above are created, the City and Hamilton County, Tennessee, shall each have the right to amend the terms of that certain Agreement for Payment of Lieu of Ad Valorem Taxes to be entered into by and among the Corporation, the City, the County, the City Trustee, and the County Assessor (the "Agreement") to reduce the tax abatements prospectively and require the repayment of taxes previously abated; and

WHEREAS, the Board of Commission has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Corporation'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 The Industrial Development Board of the County of Hamilton, Tennessee, be and is hereby authorized to negotiate and accept payments in lieu of ad valorem taxes from Westinghouse Electric Company, LLC, it being further noted that this authority is for this purpose and this project only; and

BE IT FURTHER RESOLVED, that the Mayor be and is hereby authorized to enter into an Agreement in substantially the form attached hereto, with such changes thereto as the Mayor shall approve.

ADOPTED: Sept. 30, 2008

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

**THIS AGREEMENT FOR PAYMENT IN LIEU OF AD VALOREM
TAXES** (this "Agreement") is made and entered into as of this ____ day of _____, 2008, by and among THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE (the "Board"); WESTINGHOUSE ELECTRIC COMPANY LLC, a Delaware limited liability company (the "Company"); the CITY OF CHATTANOOGA (the "City"); and HAMILTON COUNTY (the "County") and is joined in, for, among other reasons, the 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 Company is contemplating the purchase, expansion and equipping of an industrial plant on property located in Chattanooga, Hamilton County, Tennessee (the "Project"), resulting in (a) an investment of approximately Sixteen Million Seven Hundred Thousand Dollars (\$16,700,000) in real property and Four Million Five Hundred Thousand Dollars (\$4,500,000) in personal property over a three-year period from February 14, 2008 – February 13, 2011; and (b) an increase of employment of approximately fifty two (52) new, full time jobs having average annual wages, excluding benefits, of Eighty Five Thousand Dollars (\$85,000) over a five-year period from February 14, 2008 – February 13, 2013, (the "Investment and Jobs Projection"), and has requested the Board's assistance in the financing of the Project; and

WHEREAS, substantial economic benefits to the Chattanooga and County economies will be derived from the Project; and

WHEREAS, the Board has agreed to take title to certain real and personal property, as described in Exhibit A attached hereto (the "Property"), which Property is to be owned by the Board and leased or subleased to the Company; and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, §7-53-101, et seq., all such property will be exempt from ad valorem property taxes ("Property Taxes") normally paid to the City of Chattanooga, the County and any other taxing bodies, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, §7-53-305; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of Property Taxes that would otherwise be payable on the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the Property Taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth hereinafter; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of Property Taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions, including, without limitation, the requirement that the Board collect and expend such payments in furtherance of the public purposes for which the Board was created; and

WHEREAS, the Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Assessor its agent to appraise the Property and assess a percentage of its value, under certain circumstances, in the manner specified herein; and

WHEREAS, the Board wishes to designate the Trustee its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes, but shall not, in accordance with Section 11 of this Agreement, create a leasehold assessment for the Property so long as the Board owns the Property. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of Payments In Lieu of Taxes. The Board hereby designates the Trustee its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company and to disburse such payments to the City and the

County. On or about October 1st of said year, the Trustee shall compute the taxes which would be payable on the Property if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall, not later than December 31, send the Board and the Company a bill for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill but no later than March 1 of the year following the year to which the Tax Bill pertains, the Company shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the amount set forth below in Section 4. The In Lieu Payments shall be made by the Company in lieu of the property taxes which would otherwise be payable on the property if it were subject to Property Taxes.

4. Amount of Payments by the Company. For any period hereunder occurring before January 1, 2009 or after December 31, 2020, with respect to the Property, and, in each case, during which the Property is owned by the Board, the Company shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to the taxes that would have been payable on the Property if it were subject to Property Taxes.

With respect to that portion of the Property as described in Exhibit A that constitutes the "Project" (being the newly acquired real and personal property and improvements in connection with the 2008-2011 expansion of its Chattanooga manufacturing facility), the Company shall make In Lieu Payments in an amount equal to the following percentages of the taxes that would have been payable on the Property if it were subject to Property Taxes for the respective years indicated:

<u>Years</u>	<u>Percentage</u>	<u>plus HCDE</u>	<u>Total</u>
2009	0%	29.2%	29.2%
2010	25%	29.2%	54.2%
2011	40%	29.2%	69.2%
2012-2019	50%	29.2%	79.2%

Notwithstanding the foregoing, the percentage amount of taxes to be paid to the Hamilton County Department of Education ("HCDE") (currently 29.2% as of the effective date of this Agreement) shall be adjusted annually in accordance with the respective budgets and tax rates of the City and County.

With respect to the portion of Property other than what is described above as the "Project," the Company shall make In Lieu Payments for the years 2009-2019 in an amount equal to the taxes that would have been payable on said portion of the Property if it were subject to property taxes.

5. Penalties and Late Charges. The Company 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 Company fails 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 (1-1/2%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half

percent (1-1/2%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County must, in order to enforce a lien against the Property as contemplated in Section 9, bring suit in the Chancery Court of Hamilton County to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees.

6. PILOT Projections Reporting.

(a) In order to determine the extent to which the Company achieves the Investment and Jobs Projections upon which the In Lieu Payments have been calculated, Company shall complete and deliver for each calendar year during the term of this Agreement an Annual Report in the form attached hereto as Exhibit B commencing after completion of the first full calendar year during which In Lieu Payments were paid by the Company.

(b) If the Company fails to achieve the Investment and Jobs Projections, then the City and the County reserve the right, after providing to the Company written notice and an opportunity to cure, to terminate the benefits of this Agreement for any years remaining hereunder.

(c) If the Company closes the Project for twelve (12) months or longer or moves it 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 if it were subject to property taxes. Such repayment requirement, if implemented, shall be proportionate to the time period during the term during which the Project was closed or relocated.

7. Disbursements by Trustee. All sums received by the Trustee pursuant to Section 3 shall be disbursed to the general funds of the City and the County in accordance with this Section 7 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 (2) 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.

8. Contest by the Company. The Company 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 Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if the Company contests any such computation, it 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 Company shall make such payments under protest. The Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith and with best efforts to resolve within sixty (60) days any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute within such sixty (60) day period (as such period may be extended by

the mutual written agreement of the parties), then the Company 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. If a court of competent and final jurisdiction finds in favor of the Company and such judgment results in a lower appraisal, assessment or computation, the Company shall be entitled to a refund of In Lieu Payments as appropriate under the circumstances, with interest paid on such refund as if such refund were a refund of property taxes, in accordance with the Constitution, the laws of the State of Tennessee and any applicable local ordinances. If such a refund, including interest, is owed to the Company, the Company, at its option, may elect to forego the refund and take a credit in the amount of the refund (plus interest) against the next subsequent In Lieu payment due.

9. Lien on Property and Right of Redemption. 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 (i) there has been a judicial finding by a court of competent and final jurisdiction in accordance with Section 5(b) of this Agreement that such payment is owed and has not been timely made in accordance with this Agreement; and (ii) a court of competent and final jurisdiction has issued a ruling allowing for such enforcement of the lien against the Property. The City, County, Trustee and Assessor acknowledge and agree that if a lien is enforced against the Property in accordance with this Section 9, the Company or the Board, as the case may be, shall be re-vested with title to the Property affected by the lien if the Company repays the amount of the lien plus 10% interest no later than one (1) year from the date such lien is enforced.

10. Term. This Agreement shall become effective on the date that the Board attains title to the Property and shall continue for so long as the Board holds title to any of the Property or the Company has made all payments required hereunder, whichever shall later occur.

11. Leasehold Taxation. The parties hereto acknowledge and agree that the acquisition by the Company of a leasehold interest in the Property as is contemplated by this Agreement is not appropriate for the creation of a leasehold assessment in accordance with the Constitution, the laws of Tennessee and any applicable local ordinances. If the leasehold interest of the Company should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder or, if no such In Lieu Payments are due, then the Company shall be entitled to a refund of any prior In Lieu Payments paid in an amount equal to the ad valorem taxation due attributable to such leasehold assessment.

12. 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 courier, or sent via facsimile transmission to the following addresses:

If to the City: Mr. Randall L. Nelson
Suite 400, Pioneer Bank Building
Chattanooga, Tennessee 37402

If to the County: Mr. Rheubin M. Taylor
County Attorney
Hamilton County Government
Room 204
County Courthouse
Chattanooga, Tennessee 37402

If to the Board: Mr. Ross I. Schram III
Baker, Donelson
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450

If to the Company: Ms. Michele M. Gutman
Westinghouse Electric Company, LLC
4350 Northern Pike
Monroeville, Pennsylvania 15146-2886

With copy to: Kurt J. Faires
Chambliss, Bahner & Stophel, P.C.
1000 Tallan Building
Two Union Square
Chattanooga, Tennessee 37402

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, when mailed by registered and certified mail, return receipt requested, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

13. 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.

14. 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.

15. 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.

16. 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.

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

18. 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.

(signature page follows)

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 COUNTY OF HAMILTON,
TENNESSEE

BY: _____
Chairman

WESTINGHOUSE ELECTRIC COMPANY LLC

BY: _____
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
TO PILOT AGREEMENT FOR
WESTINGHOUSE ELECTRIC COMPANY LLC

REAL PROPERTY

401 River Terminal Road in the City of Chattanooga, Hamilton County, Tennessee

PERSONAL PROPERTY

All newly-acquired personal property placed by the Company in its manufacturing plant located on the real property described above in connection with its 2008-2011 expansion.

EXHIBIT B



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 Above¹: _____

¹ 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@chattanoogachamber.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