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DATE 12/19/16
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

CLARENDON COUNTY
ORDINANCE NO. 2016-05

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CLARENDON COUNTY, SOUTH CAROLINA ("COUNTY") AND ONE OR MORE INVESTORS IDENTIFIED FOR THE TIME BEING AS PROJECT GORDON I OPERATING COMPANY AND PROJECT GORDON I LANDOWNER, EACH ACTING FOR ITSELF, ONE OR MORE CURRENT OR FUTURE AFFILIATES, AND OTHER PROJECT SPONSORS, PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY ("PROJECT"); (2) CERTAIN SPECIAL SOURCE REVENUE CREDITS WITH RESPECT TO THE PROJECT; (3) THE ENLARGEMENT OF THE BOUNDARIES OF AN EXISTING MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO INCLUDE THEREIN CERTAIN ADDITIONAL PROPERTY IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

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BEULAH B. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

WHEREAS, Clarendon County, South Carolina ("County"), acting by and through its County Council ("Council"), is authorized and empowered, under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof ("Code"), particularly Title 12, Chapter 44 thereof ("Negotiated FILOT Act") and Title 4, Chapter 1 of the Code ("Multi-County Park Act" or, as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, Special Source Act") (collectively, "Act"), and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to establish projects through which the economic development of the State of South Carolina ("State") will be promoted and trade developed, thus utilizing and employing the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments including, but not limited to, negotiated FILOT ("Negotiated FILOT") payments, with respect to a project; and (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with certain infrastructure and other qualifying property related to a project; (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park to allow certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits;

WHEREAS, one or more investors identified for the time being as Project Gordon I Operating Company and Project Gordon I Landowner, each acting for itself, one or more current or future affiliates and other project sponsors (collectively, the "Companies") propose to invest in, or cause others to invest in, the establishment of certain facilities to be operated primarily for the production of electricity from solar energy and related facilities, at one or more locations in the County (the "Project"), which the Companies expect will result in aggregate investment of at least $100,000,000 in the Project; and

WHEREAS, based on information provided to the County by the Companies, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Companies to locate the Project in the County, the Council adopted a Resolution on August 8, 2016 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, the County and the Companies have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Companies with respect to the Project (the "Project Gordon I Incentive Agreement"), the form of which is presented to this meeting, which Project Gordon I Incentive Agreement is to be dated as of _____, 2016, or such other date as the parties may agree; and

WHEREAS, it appears that the Project Gordon I Incentive Agreement now before this meeting are in appropriate forms and are appropriate instruments to be executed and delivered by the County for the purposes intended.; and

WHEREAS, pursuant to the Park Act, the County and _____ County entered into that certain **[Agreement for Development of a Joint County Industrial and Business Park]** dated as of _____, _____, (as amended, modified, and supplemented, collectively, the "Clarendon Park Agreement") whereby the County and _____ County agreed to develop a Park eligible to include property located in either the County or _____ County (the "Clarendon Park"); and

WHEREAS, pursuant to the Multi-County Park Act and the Clarendon Park Agreement, the County has determined, to the extent not already located therein, to enlarge the boundaries of the Clarendon Park to include the land upon which the Project is anticipated to be located ("Project Land"); and

WHEREAS, it is presently anticipated that the Project will be comprised of, and located on, land that is or will be subject to that certain Development Agreement by and between one or more Companies and the County, further described and defined in the Project Gordon I Incentive Agreement as the "Development Agreement."

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Project Gordon I Incentive Agreement, the terms and provisions of this Ordinance and the Project Gordon I Incentive Agreement shall control. Capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed thereto in the Project Gordon I Incentive Agreement.

Additionally, based on information provided to the County by the Companies with respect to the Project, the County makes the following findings and determinations:

(a) The Project will constitute a "project" within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County's actions herein, will subserve the purposes of the Negotiated FILOT Act; and

(c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and

(e) The purposes to be accomplished by the Project are proper governmental and public purposes; and

(f) The benefits of the Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Project Gordon I Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Companies will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the "Negotiated FILOT"), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Project Gordon I Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(a)(1)(d) of the Negotiated FILOT Act, as set forth in greater detail in the Project Gordon I Incentive Agreement, and which, based on the property comprising the Land as of the original execution and delivery of the Project Gordon I Incentive Agreement, the County and the Companies believe to be [____] mills, and which millage rate or rates shall be fixed in accordance with Section 12-44-50(A)(1)(b) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT, all as set forth in greater detail in the Project Gordon I Incentive Agreement; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and

such other terms and conditions as are or will be specified in the Project Gordon I Incentive Agreement including, but not limited to, that the Companies and the Project shall be entitled to the maximum benefits allowable under the Negotiated FILOT Act with respect to the disposal and replacement of Project property.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in the Project Gordon I Incentive Agreement, up to an aggregate of forty (40) years.

(iii) As authorized in, and subject to the provisions of, Section 12-44-50(A)(3) of the Negotiated FILOT Act, the County hereby approves the Companies' request to calculate the Negotiated FILOT payments due with respect to the Project based on an alternative payment method yielding over the thirty-year Negotiated FILOT payment period for each annual increment of investment in the Project, a payment stream which has the same net present value as the payment stream which would be generated using the standard negotiated FILOT calculation provided under Section 12-44-50(A)(1) of the Negotiated FILOT Act and the factors set forth in Section 2(b)(i) hereof. Such net present value calculations shall be determined using a discount rate which is equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which the Project Gordon I Incentive Agreement is executed. If no yield is available for the month in which the Project Gordon I Incentive Agreement is executed, the last published yield for the appropriate maturity available must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity.

Section 3. As an additional incentive to induce the Companies to undertake the Project, and as reimbursement for investment in Special Source Improvements, and subject to the requirements of the Special Source Act, the County hereby agrees, that each Credit Eligible Entity shall be entitled to receive, and the County shall provide, Special Source Credits against each Negotiated FILOT Payment due from each such Credit Eligible Entity with respect to the Project, for the full term of the Negotiated FILOT, in an amount equal to sixty-eight percent (68%) of each such Negotiated FILOT Payment, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project, all in accordance with, and as further detailed in, the Project Gordon I Incentive Agreement. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the

aggregate cost of Special Source Improvements funded from time to time in connection with the Project. Notwithstanding the foregoing provisions of this Section 3, (i) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, in calculating any Negotiated FILOT payment due with respect to the Project, is less than 5%, the above-described initial Special Source Credits percentage (68%) otherwise applicable against such Negotiated FILOT payment shall be increased by an amount sufficient so that such net Negotiated FILOT payment due after application of such increased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (68%); and (ii) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act, is more than 5%, the above-described initial Special Source Credit percentage (68%) otherwise applicable against such Negotiated FILOT payment shall be decreased by an amount sufficient so that such net Negotiated FILOT payment due after application of such decreased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (68%).

Section 4. As further reimbursement for investment in Special Source Improvements, and in addition to the Special Source Credits set forth in Section 3 hereof, the County does hereby agree that each Credit Eligible Entity shall be entitled to receive, and the County shall provide, Special Source Credits against each net Negotiated FILOT Payment due with respect to the Project, after application of the Special Source Credits set forth in Section 3 hereof, for the full term of the Negotiated FILOT, in an annual amount sufficient to fully offset any business license fees hereafter imposed by the County against each Credit Eligible Entity with respect to, or in connection with, the Project in excess of the maximum fee to be agreed to by the Companies and the County under, and pursuant to, the Development Agreement.

Section 5. The enlargement of the Clarendon Park boundaries to include the Project Land, as described on the attached Exhibit A and, accordingly, the remaining Project property located thereon is hereby approved. Pursuant to the terms of the Clarendon Park Agreement, the expansion **[is complete as of the enactment of this Ordinance and a confirming Resolution by _____ County Council.]** The County will use its best efforts to ensure that the Project Land and accordingly, the remaining Project property located thereon, will remain within the boundaries of a Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide the Companies and the Project with any additional jobs creation tax credits afforded by the laws of the State for projects located within a Park and on terms which, and for a period of time sufficient to, facilitate the receipt by the Companies of the Special Source Credits referenced in Sections 3 and 4 hereof.

Section 6. The form, provisions, terms, and conditions of the Project Gordon I Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Project Gordon I Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Project Gordon I Incentive Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Project Gordon I

Incentive Agreement to the Companies. The Project Gordon I Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Project Gordon I Incentive Agreement now before this meeting.

Section 7. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Project Gordon I Incentive Agreement.

Section 8. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 9. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this **12th** day of **December**, 2016.

CLARENDON COUNTY, SOUTH CAROLINA

By: _____
Dwight L. Stewart, Jr., Chairman, County Council,
Clarendon County, South Carolina

[SEAL]

Attest:

By: _____
Dorothy M. Levy, Clerk to County Council,
Clarendon County, South Carolina

First Reading: August 8, 2016
Second Reading: October 10, 2016
Public Hearing: December 12, 2016
Third Reading: December 12, 2016

EXHBIT A

Project Land Description

[To be inserted]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

CERTIFIED COPY OF ORDINANCE NO. 2016-05

I, the undersigned, being the duly qualified and acting Clerk to County Council of Clarendon County, South Carolina (the "County"), do hereby certify that attached hereto is a copy of Ordinance No. 2016-05 enacted by the County Council of the County at a meeting duly called and held on December 12, 2016, at which a quorum was present and acting throughout, which Ordinance has been compared by me with the original thereof, and that such copy is a true, correct and complete copy thereof, and that such Ordinance has been duly enacted, including the required number of readings, and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof in the form attached hereto.

In witness whereof, I have hereunto set my hand as of the 12th day of December, 2016.

Dorothy M. Levy

Clerk to County Council, Clarendon County, South Carolina