

DATE 11/9/21

Beriah S. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

CLARENDON COUNTY
ORDINANCE NO. 2021-07

AUTHORIZING, PURSUANT TO TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT BY AND BETWEEN CLARENDON COUNTY, SOUTH CAROLINA, AND A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT POWER, ACTING FOR ITSELF, ONE OR MORE CURRENT OR FUTURE AFFILIATES AND OTHER PROJECT COMPANIES (COLLECTIVELY, "COMPANY"); PROVIDING FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVES; AND OTHER MATTERS.

WHEREAS, Clarendon County, South Carolina ("County") acting by and through County Council is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended, (the "Act"), to enter into fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, and through said agreements the industry would pay fees-in-lieu-of taxes for qualified projects, through which powers the industrial development of the State of South Carolina ("State") and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally;

WHEREAS, a company identified for the time being as Project Power, acting for itself, one or more current or future affiliates and other project sponsors (collectively, "Company") proposes to invest in, or cause others to invest in, the expansion of power production and/or distribution operations in the County ("Project"), which the Company expects will result in investment of not less than \$10,000,000 in taxable property;

WHEREAS, the County, having determined that the Project would promote economic development and thus provide additional employment and investment opportunities within the County, desires to provide fee in lieu of tax incentives for Project Power, as described in greater detail on the attached Exhibit A ("Project Power Property");

WHEREAS, pursuant to an Inducement Resolution dated as of September 13, 2021, the County identified the Project as a "project" as provided in the Act;

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Fee in Lieu of *Ad Valorem* Taxes Agreement, attached as Exhibit B, by and between the County and the Company ("Fee Agreement"), which provides for fee in lieu of tax payments utilizing a 6% assessment ratio for a period of 30 years for the Project or each component thereof placed in service during the investment period; and

WHEREAS, it appears that the Fee Agreement, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended:

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

Section 1. Statutory Findings. Based solely on information provided to the County by the Company, it is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a "project" as that term is referred to and defined in the Act, and the County's actions herein will subserve the purposes and in all respects conform

to the provisions and requirements of the Act;

(b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based on all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County;

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

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

(e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes;

(f) The inducement of the location or expansion of the Project within the County and State is of paramount importance; and

(g) The anticipated benefits of the Project to the public will be greater than the costs.

Section 2. *Authorization of Fee Agreement.* To promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State by assisting the Company to expand or locate a commercial facility in the State, the Fee Agreement is authorized, ratified, and approved.

Section 3. *Approval of Form of Fee Agreement.* The form of the Fee Agreement presented at this meeting, as attached as Exhibit B, is approved, and all of the terms are incorporated in this Ordinance by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council, and the Clerk to County Council are each authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and to cause the executed Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, on the advice of Counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 5. *Authorization for County Officials to Execute Documents.* The Chairman of the County Council, and the Clerk to County Council, for and on behalf of the County, are each authorized and directed to do any and all things reasonably necessary and prudent to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 6. *General Repealer.* All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

[SIGNATURE PAGE AND TWO EXHIBITS FOLLOW]
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CLARENDON COUNTY, SOUTH CAROLINA



Chairman
Clarendon County Council

(SEAL)
ATTEST:



Clerk to Council

| | |
|-----------------|--------------------|
| First Reading: | September 13, 2021 |
| Second Reading: | October 11, 2021 |
| Public Hearing: | October 11, 2021 |
| Third Reading: | November 8, 2021 |

EXHIBIT A

DESCRIPTION OF PROJECT POWER PROPERTY

Each piece, parcel, or tract of land in which any asset is placed in service on and after June 30, 2021, provided, however, no property shall be considered as included under this Exhibit A unless and until the Company provides the County with notice of the property and a sufficiently clear description (formal legal description not required) so as to provide the County with notice of which property is included. As of the date of this Agreement, the following property is included under this Exhibit A:

| <u>Parcel ID</u> | <u>Physical Address</u> | <u>Description</u> |
|------------------|---|-------------------------------------|
| 216-00-02-029-00 | 1254 Mallett Road, Manning, SC 29102 | Manning Sub |
| 144-00-01-002 | 1600 Bill Davis Road, Summerton, SC 29148 | Davis Station Sub |
| 077-11-00-002-00 | | Summerton Sub/Old Switching Station |
| 196-00-03-002-00 | 12031 Highway 260, Manning, SC 29102 | North Dam Sub |
| 329-00-01-018-00 | 4741 Fire Tower Road, New Zion, SC 29111 | Union Crossroad Sub |
| 189-01-01-003-00 | 3191 Highway 260, Manning SC 29102 (3157 Hwy 260) | Manning Office |
| 141-00-01-004-00 | | |
| | | |
| 060-00-00-027-00 | 1021 Oaks Road, Summerton, SC 29148 | Prince Sub |
| 146-00-00-017 | 4567 M.W. Rickenbaker Road, Davis Station, SC 29148 | Bob Cooper Sub |
| 216-00-02-029-00 | 1254 Mallett Road, Manning, SC 29102 | New Manning Sub |
| 196-00-03-002-00 | 12031 Highway 260, Manning, SC 29102 | North Dam |
| 141-00-02-057-00 | 1936 Joe Rogers Jr Blvd | Clarendon County Industrial Park |

All recorded and unrecorded easements, whether in gross or appurtenant, including but not limited to utility easements, party easements, private easements, prescriptive easements, easements by necessity, easements by condemnation, and contractual easements and rights-of-way located within Clarendon County upon or under which the Company has located or intends to locate real property improvements or personal property, including, but not limited to all roadwork, water, sewer, drainage, power and utility facilities, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and the utility property, machinery and equipment and other personal property, and any additions or improvements to any of the foregoing, whether paid for by the Company directly, through lease payments, or acquired by contract.

EXHIBIT B
FORM OF FEE AGREEMENT

FEE AGREEMENT

Between

CLARENDON COUNTY, SOUTH CAROLINA

and

PROJECT POWER []

Effective: November 8, 2021

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE ANN. §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B)

FEE AGREEMENT

THIS FEE AGREEMENT (“Fee Agreement”) is made and entered into effective November 8, 2021, by and between CLARENDON COUNTY, SOUTH CAROLINA (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), acting by and through the Clarendon County Council (“County Council”) as the governing body of the County, and Project Power, a South Carolina corporation, formerly known as “Project Power,” together with along with one or more recently formed or to-be-created, affiliated entities (“Company”).

RECITALS

1. The County, acting by and through the County 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 (the “Act”): (i) to enter into agreements with certain investors to establish projects through which the economic development of the State will be promoted and trade developed, thus utilizing and employing the manpower, agricultural products, and natural resources of the State; and (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 payments, with respect to a project;

2. Pursuant to Section 12-44-40(I)(1) of the Act, based on the representations of the Company, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the general credit or taxing power of either the County or any incorporated municipality; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. Based on the representations of the Company, the County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. The County identified the Project as a “project” for purposes of the Act by resolution, adopted September 13, 2021.

5. An Ordinance that the County Council adopted contemporaneously with the effective date of this Fee Agreement (“Fee Ordinance”) authorizes the County and the Company to enter into a fee agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 The terms that this section defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

“Act Minimum Investment Requirement” means an investment of at least \$2,500,000 by the Company and any Sponsors and Sponsor Affiliates of property eligible as economic development property under the Act.

“Commencement Date” means the last day of the property tax year during which the Project or the first

Phase of this Fee Agreement is placed in service, which date must not be later than the last day of the property tax year which is 3 years from the year in which the County and the Company enter into this Fee Agreement.

“Company” means Project Power, a South Carolina corporation, together with one or more recently formed or to-be-created, affiliated entities, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“Compliance Period” shall mean the period commencing with the date of this Agreement, and ending on the fifth anniversary of the end of the property tax year in which the initial Economic Development Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required, that the initial Economic Development Property comprising all or a portion of the Project will be placed in service in the property tax year ending on June 30, 2022, and, in such event, the Compliance Period will end on June 30, 2027.

“County” means Clarendon County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” means the Clarendon County Council, the governing body of the County.

“Department” or “SCDOR” means the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project or any Phase of the Project means any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(b) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT Payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part of this Fee Agreement, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part of this Fee Agreement, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” means those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300T or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period. Economic Development Property does not include any items of real or tangible personal property used for the provision of any service other than electric generation, distribution, or transmission, or any combination of the foregoing, and more specifically does not include any items of real or tangible personal property used for the provision of broadband service, internet service, or telephone service (wired or wireless), or other similar services.

“Equipment” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) of this Fee Agreement.

“Event of Default” means any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” means the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Extended Investment Period” shall mean, to the extent the Investment Period is extended beyond the Compliance Period, the period beginning on the sixth (6th) anniversary of the beginning of the property tax year, and ending on the tenth (10th) anniversary of the end of the property tax year, in which the initial Economic Development Property comprising all or a portion of the Project is placed in service.

“Extended Investment Period Obligation” shall mean investment in Economic Development Property, within the period commencing on the first day that Economic Development Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the tenth (10th) anniversary of the end of the property tax year in which the initial Economic Development Property comprising all or a portion of the Project is placed in service, by the Company and all Sponsor Affiliates, in the aggregate, of at least \$17,500,000 in property that, but for this Agreement, would have been subject to ad valorem property taxes (without regard to depreciation or other diminution in value), as reported by the Company and any Sponsor Affiliates, if any, on their respective Form PT-300T or comparable forms filed with the Department of Revenue. There shall be no Extended Investment Period Obligation if the Investment Period is not extended beyond the Compliance Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” “FILOT Payments,” or “Payments in Lieu of Taxes” means the amount paid or to be paid in lieu of ad valorem property taxes as provided herein under Section 4.1.

“Fee Agreement” means this Fee Agreement.

“Fee Term” means the period from the date of this Fee Agreement until the Termination Date.

“Improvements” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) of this Fee Agreement.

“Investment Period” initially means a period equal to the Compliance Period; provided, however, that if the Minimum Contractual Investment Requirement is satisfied by the end of the Compliance Period, then the Investment Period shall be automatically extended, without further action or proceedings of the County or the Council, by five (5) years beyond the Compliance Period to end on the tenth (10th) anniversary of the end of the property tax year in which the initial Economic Development Property comprising all or a portion of the Project is placed in service, all in accordance with Section 12-44-30(13) of the Act. In the event that the initial Economic Development Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on June 30, 2022, the Investment Period will end on June 30, 2027; provided, however, that if the Investment Period is extended by five (5) years beyond the Compliance in accordance with this definition, the Investment Period will end on June 30, 2032.

“Minimum Contractual Investment Requirement” shall mean investment in Economic Development Property, within the period commencing on the first day that Economic Development Property is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of the Compliance Period, by the Company and all Sponsor Affiliates, in the aggregate, of at least \$12,500,000 in property that, but for this Agreement, would have been subject to ad valorem property taxes (without regard to depreciation or other diminution in value), as reported by the Company and any Sponsor Affiliates, if any, on their respective Form PT-300T or comparable forms filed with the Department of Revenue.

“Non-Qualifying Property” means property that is not Economic Development Property.

“Phase” or “Phases” in respect of the Project means that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” means all the Equipment, Improvements, and/or Real Property in the County that the

Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service at the Project site in calendar year 2021 or thereafter. The Project shall not include, as Economic Development Property, existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, if any, and any machinery and equipment which have previously been subject to South Carolina ad valorem taxation, except as expressly permitted by Section 12-44-110 of the Act, provided, however, these items are considered Non-Qualifying Property.

“Real Property” means real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and consisting of the land identified on Exhibit A, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto, and any improvements located thereon.

“Removed Components” means the following types of components or Phases of the Project or portions of this Fee Agreement which are subject to FILOT Payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall thereafter constitute Non-Qualifying Property and will be subject to FILOT Payments as set forth in Section 4.1 of this Fee Agreement, but otherwise no longer be subject to the terms of this Fee Agreement: (a) components or Phases of the Project or portions of this Fee Agreement which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 of this Fee Agreement or otherwise; or (b) components or Phases of the Project or portions of this Fee Agreement which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor Affiliate” means an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project.

“Termination Date” means in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 29th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date means with respect to each Phase of the Project the end of the last day of the property tax year which is the 29th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make 30 annual FILOT Payments under Article IV of this Fee Agreement with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms of this Fee Agreement, the Termination Date is the date of such termination.

Section 1.2 Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.3 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to ad valorem taxes or FILOT Payments by the Company.

ARTICLE II **REPRESENTATIONS, WARRANTIES, AND AGREEMENTS**

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based on the representations of the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from ad valorem taxation in South Carolina.

(d) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of including the Project in an Industrial Development Park.

(e) The County will take all reasonable action to include the Project in the Industrial Development Park and ensure the Project remains in the Park until the Termination Date.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the state in which it is incorporated or organized, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date of this Fee Agreement. The Company intends to operate the Project for power production and/or distribution, and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

(d) The Company shall use commercially reasonable efforts to invest at least \$10,000,000 in taxable property based on original state income tax basis at the Project site.

ARTICLE III **COMMENCEMENT AND COMPLETION OF THE PROJECT**

Section 3.1 The Project. The Company shall invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which investment equals at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to FILOT Payments in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments to be made under Article IV of this Fee Agreement, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsor

Affiliates under any form of lease, then such property shall, at the election of the Company, be subject to FILOT Payments to the same extent as the Company's assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Council Chair, after consulting with legal counsel to the County, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Fee Agreement, removal, replacement, and termination, and such Sponsor Affiliate shall be deemed to be a party to this Fee Agreement provided, however, that no Sponsor Affiliate shall be liable for any payments pursuant to Section 4.1 of this Fee Agreement, which shall remain the Company's liability.

Pursuant to the Act, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT Payments and which the Company selects for such treatment by listing such assets in its annual PT-300T form (or comparable form for Economic Development Property) to be filed with the Department (as each may be amended from time to time) and that by listing such assets, such assets shall automatically become either Economic Development Property, as applicable, and therefore be exempt from all ad valorem taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in the Act.

Section 3.2 Diligent Completion. The Company agrees to use reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County Administrator, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery of this Fee Agreement to the Department.

(b) The Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County, and the Department within 30 days after the date of execution and delivery of this Fee Agreement by all parties hereto.

Section 3.4 Savings Reinvestment. In the interest of expanding economic development opportunities to its members within the County, the Company shall create a special fund, which the Company shall hold in trust for use in only the County for economic development-related expenditures, in which the Company shall deposit all property-tax related savings realized because of the existence of this Agreement. Before the Company may expend resources from the special fund, the County and the Company shall mutually agree on how to use the funds. Funds may be used, for example, to purchase, build, and develop economic development assets in the County in the Company's service territory, and provide cash grants and closing fund dollars for projects locating in the County in the Company's service territory. The Company shall provide the County with a quarterly report of the special fund showing the deposit and expenditure of monies.

ARTICLE IV
PAYMENTS IN LIEU OF TAXES

Section 4.1 FILOT Payments.

(a) the Company and, as applicable, any Sponsor Affiliate, are required to make FILOT Payments on all Economic Development Property comprising the Project and placed in service, with respect to each Phase of the Project, within the Investment Period.

(b) Payments in lieu of ad valorem taxes are to be calculated as follows:

Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Investment Period using (x) original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms-length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and (y) original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no *extraordinary* obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.

Step 2: Apply an assessment ratio of 6% to the fair market value in Step 1 to establish the assessed value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 29 years thereafter or such longer period of years in which the Act permits the Company to make annual an FILOT Payment.

Step 3: Multiply the assessed value determined in the preceding step by the millage rate in effect as of June 30, 2021, for the applicable tax district in which the particular piece of Economic Development Property is located, which applicable millage rate shall be fixed for the length of this Fee Agreement as set forth in **Exhibit B**.

(c) The FILOT Payments shall be in lieu of all ad valorem tax payments and any other charges that would have appeared on the property tax bills otherwise generated by the County in the absence of this Fee Agreement.

In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum FILOT Payment applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

Subject to Section 6.8 of this Fee Agreement, in the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent of this Fee Agreement and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the any portion of the Project is deemed to be subject to ad valorem taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular ad valorem taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted FILOT Payments to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of FILOT Payments the Company had made with respect to the Project pursuant to the terms of this Fee Agreement. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT Payments and ad valorem taxes for the same property over the same period in question.

Section 4.2 Extended Investment Period Obligation. Notwithstanding the formula set forth in Section 4.1(b) above for the calculation of FILOT Payments, in the event that the Investment Period is extended beyond the Compliance period, and in the further event that the Extended Investment Period Obligation is not satisfied by the end of the Extended Investment Period, then all FILOT Payments related to Economic Development Property placed in service during the Extended Investment Period shall revert retroactively to *ad valorem* taxes, and there shall be due and payable from, or at the direction of, the Company an amount equal to the difference between the FILOT Payments actually made with regard to such Economic Development Property, and the amount which would have been paid as *ad valorem* taxes, if any, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property, as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(a) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(b) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(b) of this Fee Agreement; provided, however, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place of Payments in Lieu of Taxes. The Company shall make the Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Economic Development Property. Subject, always, to the other terms and provisions of this Fee Agreement, the Company, in its sole discretion, shall be entitled to remove and dispose of components or Phases of the Project from the Project with the result that said components or Phases shall no longer constitute Economic Development Property, and will no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act. Economic Development Property is

disposed of only when it is scrapped or sold or it is removed from the Project.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT Payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to ad valorem taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes of this Fee Agreement, including, but not limited to, any amounts due by the Company to the County under Section 4.1 of this Fee Agreement.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu of this Fee Agreement, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT Payments as to all or any part of the tax year in which the taking occurs to the extent property subject to ad valorem taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein "Confidential Information") and that any disclosure of Confidential Information concerning the Company's operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent,

or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. If Section 12-44-120 of the Act or any successor provision requires consent to an assignment, the Company may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold. The Company agrees to notify the County and the Department of the identity of such transferee within 30 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to a Sponsor Affiliate or other financing related transfers, as described in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor Affiliate shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor Affiliate be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give consideration to such legislation.

Section 4.12 Administration Expenses. The Company shall pay the County's legal fees incurred with the preparation of this Fee Agreement and related documents, various conferences with County staff, and attendance at County meetings, and other related matters, in an amount not to exceed \$7,500. Such amount shall be paid within 30 days of the Company's receipt of an invoice for legal fees, which shall contain a basic, general (non-privileged) description of the services performed but need not include individual time entries and descriptions. This Section 4.12 shall in no way limit any rights of the County as contained in Section 5.3 or Section 6.15, hereof.

Section 4.13 Addition of Sponsor Affiliates. Upon request of and at the expense of the Company, the County may approve any future Sponsor Affiliate that qualifies under the Act for the benefits offered under this Fee Agreement and which agrees to be bound by the provisions hereof to be further evidenced by such future Sponsor Affiliate entering into a Joinder Agreement in a form substantially similar to that attached to this Fee Agreement, as Exhibit B, subject to any reasonable changes not materially adverse to the County.

ARTICLE V
DEFAULT

Section 5.1 Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" means, whenever used with reference to this Fee Agreement, any one or

more of the following occurrences:

(a) Failure by the Company to make the FILOT Payments described in Section 4.1 of this Fee Agreement; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes;

(b) Failure by the Company to maintain the Act Minimum Investment at the Project;

(c) A representation or warranty made by the Company which is deemed materially incorrect when deemed made;

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action;

(e) A cessation of operations at the Project;

(f) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

(i) terminate the Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate the Fee Agreement;

(iii) withhold so much of the payment as is in dispute with the County until such dispute is fully and finally resolved; or

(iv) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of

an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE SPONSOR: Project Power
 Attn :

WITH COPY TO: Nexsen Pruet, LLC
(does not constitute notice) Attn: Burnet R. Maybank III
 Andrew W. Saleeby
 1230 Main Street, Suite 700 (29201)
 P.O. Box 2426
 Columbia, South Carolina 29202
 Phone: (803) 253-8220

AS TO THE COUNTY: Clarendon County, South Carolina
 Attn: County Administrator
 411 Sunset Boulevard
 Manning, South Carolina 29102

WITH COPY TO: Michael E. Kozlarek, Esq.
(does not constitute notice) Kozlarek Law LLC
 Post Office Box 565
 Greenville, South Carolina 29602

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State, without regarding to any conflicts of law provisions that would necessitate the application of another jurisdiction's laws.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, with a view toward providing the Company with the benefits of such change in the Act or South Carolina laws.

The County agrees that in case the FILOT incentive described herein is found to be invalid or otherwise does not provide the Company with the economic benefit it is intended to receive from the County as an inducement to locate in the County, the savings lost as a result of such invalidity will be considered a special source credit or infrastructure improvement credit to the Company to the maximum extent permitted by law, and the County will provide a special source credit or infrastructure improvement credit against all FILOT Payments made or to be made by the Company equal to the amount that the Company would have saved if the FILOT had been valid, to the maximum extent permitted by law.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, pandemics, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; provided, however, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination, shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this Fee Agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Reserved.

Section 6.15 Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all liability or claims arising from the County's execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company's expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

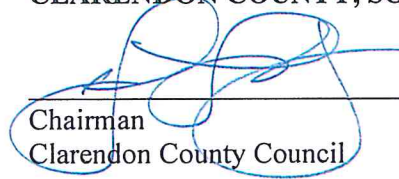
(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

Section 6.16 LIMITED OBLIGATIONS. ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT IS A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OR OTHER DEBT OF THE COUNTY OR A CHARGE AGAINST THE COUNTY'S TAXING POWER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL PREVENT THE COMPANY FROM ENFORCING ITS RIGHTS HEREUNDER BY SUIT FOR MANDAMUS OR SPECIFIC PERFORMANCE.

IN WITNESS OF THIS FEE AGREEMENT, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Council Chairman and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.




CLARENDON COUNTY, SOUTH CAROLINA



Chairman
Clarendon County Council

(SEAL)
ATTEST:



Clerk to Council

PROJECT POWER []

Signature: _____

Name: _____

Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

Each piece, parcel, or tract of land in which any asset is placed in service on and after June 30, 2021, through and including the end of the Investment Period, provided, however, no property shall be considered as included under this Exhibit A unless and until the Company provides the County with notice of the property and a sufficiently clear description so as to provide the County with notice of which property is included. As of the date of this Agreement, the following property is included under this Exhibit A:

| <u>Parcel ID</u> | <u>Physical Address</u> | <u>Description</u> |
|-------------------------|---|-------------------------------------|
| 216-00-02-029-00 | 1254 Mallett Road, Manning, SC 29102 | Manning Sub |
| 144-00-01-002 | 1600 Bill Davis Road, Summerton, SC 29148 | Davis Station Sub |
| 077-11-00-002-00 | | Summerton Sub/Old Switching Station |
| 196-00-03-002-00 | 12031 Highway 260, Manning, SC 29102 | North Dam Sub |
| 329-00-01-018-00 | 4741 Fire Tower Road, New Zion, SC 29111 | Union Crossroad Sub |
| 189-01-01-003-00 | 3191 Highway 260, Manning SC 29102 (3157 Hwy 260) | Manning Office |
| 141-00-01-004-00 | | |
| | | |
| 060-00-00-027-00 | 1021 Oaks Road, Summerton, SC 29148 | Prince Sub |
| 146-00-00-017 | 4567 M.W. Rickenbaker Road, Davis Station, SC 29148 | Bob Cooper Sub |
| 216-00-02-029-00 | 1254 Mallett Road, Manning, SC 29102 | New Manning Sub |
| 196-00-03-002-00 | 12031 Highway 260, Manning, SC 29102 | North Dam |
| 141-00-02-057-00 | 1936 Joe Rogers Jr Blvd | Clarendon County Industrial Park |

All recorded and unrecorded easements, whether in gross or appurtenant, including but not limited to utility easements, party easements, private easements, prescriptive easements, easements by necessity, easements by condemnation, and contractual easements and rights-of-way located within Clarendon County upon or under which the Company has located or intends to locate real property improvements or personal property, including, but not limited to all roadwork, water, sewer, drainage, power and utility facilities, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and the utility property, machinery and equipment and other personal property, and any additions or improvements to any of the foregoing, whether paid for by the Company directly, through lease payments, or acquired by contract.

EXHIBIT B
APPLICABLE MILLAGE RATES

The millage rate to be applied in accordance with Section 5.01(b)(ii) of this Agreement shall be as follows for each parcel of real property indicated below, and all business personal property located thereon:

- Clarendon County Tax District 10 400.100 Mills
- Clarendon County Tax District 20 373.300 Mills
- Clarendon County Tax District 30 534.500 Mills
- Clarendon County Tax District 40 436.000 Mills

EXHIBIT C
FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT

Reference is hereby made to that certain Fee Agreement effective November 8, 2021 (“Fee Agreement”), between Clarendon County, South Carolina (“County”) and Project Power [], a [] (“Company”).

1. Joinder to Fee Agreement. The undersigned hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement; (b) acknowledges and agrees that (i) in accordance the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project and such designation has been consented to by the County in accordance with the Act (as defined in the Fee Agreement); (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act; and (iii) the undersigned shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Fee Agreement.

2. Capitalized Terms. All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Fee Agreement.

3. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.

4. Notice. Notices under Section 6.1 of the Fee Agreement shall be sent to:

[]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

[JOINING COMPANY]

Signature: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Company consents to the addition of the above-named entity becoming a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

PROJECT POWER []

Signature: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the County consents to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

CLARENDON COUNTY, SOUTH CAROLINA

Signature: _____

Name: _____

Title: _____