

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )

ORDINANCE NO. 24-O-10

**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 COLLETON COUNTY, SOUTH CAROLINA AND CANADY SOLAR, LLC, AS SPONSOR, AND ONE OR MORE SPONSOR AFFILIATES, TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE AND CERTAIN SPECIAL SOURCE REVENUE CREDITS FOR THE BENEFIT OF A PROJECT IN THE COUNTY; TO FURTHER AMEND THE MULTI-COUNTY INDUSTRIAL/BUSINESS PARK AGREEMENT BETWEEN COLLETON COUNTY, SOUTH CAROLINA AND HAMPTON COUNTY, SOUTH CAROLINA, PROVIDING FOR THE DEVELOPMENT OF A JOINTLY OWNED AND OPERATED INDUSTRIAL/BUSINESS PARK, SO AS TO INCLUDE ADDITIONAL PROPERTY IN COLLETON COUNTY AS PART OF THE PARK; PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAXES PAID BY CANADY SOLAR, LLC, UNDER THE AGREEMENT FOR ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER RELATED MATTERS.**

WHEREAS, Colleton County (the "County"), acting by and through its County Council, is authorized and empowered (i) under and 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 agreements with qualifying companies to encourage investment in projects constituting economic development property through which the economic development of the State of South Carolina (the "State") will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State and to covenant with such industry to accept certain fee payments in lieu of *ad valorem* taxes ("FILOT") with respect to such investment; and (ii) to make and execute contracts pursuant to Section 4-9-30 of the Code of Laws of South Carolina, 1976, as amended; and

WHEREAS, pursuant to Title 4, Section 1, of the Code of Laws of South Carolina, 1976, as amended ("MCIP Act"), the County is authorized (i) to develop multi-county industrial or business parks in partnership with counties having contiguous borders with the County, (ii) to include within the boundaries of such parks the property of eligible companies; and (iii) further to grant credits against FILOT payments made by qualifying companies to offset qualifying infrastructure related expenditures pursuant to Sections 4-1-175, 4-29-68, and 12-44-70 of the Code of Laws of South Carolina 1976 as amended ("SSRC Act"); and

WHEREAS, in order to promote the economic welfare of the citizens of Colleton County and Hampton County (collectively, the "the Counties") by providing employment and other benefits to the citizens of the Counties, the Counties entered into an Agreement for Development for Joint County Industrial Park dated January 22, 2008 (the "Park Agreement"), to develop jointly

an industrial and business park (the “Park”), as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with the MCIP Act; and

WHEREAS, the Park Agreement was initially approved by Colleton County Council Ordinance 07-O-29; and the Park Agreement was initially approved by Hampton County Council Ordinance \_\_\_\_\_; and was further amended by the Counties from time-to-time to add property to the Park; and

WHEREAS, the Park Agreement contemplates the inclusion and removal of additional parcels within the Park from time to time; and

WHEREAS, Canady Solar, LLC, previously known to the County as Project Sun, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities, as Sponsor (collectively, “Company”) along with the owner or owners of the property upon which the Project may be located, and any additional Sponsor Affiliates (as defined under the Act and the Fee Agreement) that the Sponsor may designate in the future and have the County approve in accordance with the Act, contingent upon satisfaction of certain commitments made by and on behalf of the County as set forth herein and to be further set forth in future agreements to the extent allowed by law, plans to establish a utility scale solar facility in the County through the acquisition, lease, construction and purchase of certain real and personal property, including the Project Property (defined below), buildings, furnishings, fixtures, apparatuses, and equipment (the “Project”), which will result in approximately \$80,000,000 in new investment in real and personal property in the County (“Investment”) during the investment period; and

WHEREAS, by its Resolution adopted on June 18, 2024, the County identified the Project, as required by the Act; and

WHEREAS, the Project will comprise one or more parcels of real property or portions thereof, initially bearing Tax Map Number 095-00-00-008.000 with improvements thereon, a description of which is set forth on the attached Exhibit A (“Project Property”); and

WHEREAS, the County is authorized to include the Project Site within a multi-county industrial and business park pursuant to the MCIP Act and to provide special source revenue or infrastructure credits pursuant to the SSRC Act; and

WHEREAS, the Project is located entirely within Colleton County and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein; and

WHEREAS, in connection with the Project, the Company has requested the County enter into a fee in lieu of tax agreement to establish the commitments of (i) the Company and any Sponsor Affiliate(s) to make the Investment; and (ii) the County to provide certain incentives; and

WHEREAS, the County has determined: (i) to offer a FILOT arrangement and enter into a fee-in-lieu of *ad valorem* taxes agreement with the Company and, as applicable, any Sponsor Affiliate, the form of which is attached hereto as Exhibit B (“Fee Agreement”), with the principal terms as follows: a term of years for each Phase (as defined in the Fee Agreement) of the Project Property, anticipated to be thirty (30) years for each Phase, a 6.0% assessment ratio (subject to adjustment as described in the Fee Agreement), and a fixed millage rate equal to that millage rate

in effect at the Project Property, for all taxing entities, on July 1, 2024, which is further outlined in the Fee Agreement, for the entire term of the FILOT arrangement; (ii) to provide an annual credit for ten (10) years over the term of the Fee Agreement against those FILOT payments made by the Company and any of the Sponsor Affiliates to the County for the Project, or to increase the FILOT payments made by the Company and any of the Sponsor Affiliates to the County for the Project, in an amount equal to the difference between the Net FILOT Payment (as defined in the Fee Agreement) and the amount of FILOT payment that would otherwise be due under the Fee Agreement (each a “Special Source Revenue Credit” or “SSRC”); and (iii) any other incentives set forth in the Fee Agreement (collectively, the “Incentives”); and

WHEREAS, the parties recognize and acknowledge that the Company would not otherwise locate the Project in the County but for the delivery of the Incentives.

**NOW, THEREFORE, BE IT ORDAINED BY THE COLLETON COUNTY COUNCIL DULY ASSEMBLED THAT:**

**Section 1. Findings.** The County hereby finds and affirms, based on information provided by the Company: (i) 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; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; (iv) the benefits of the Project are greater than the costs; and (v) the Project will provide a substantial public benefit to the County.

**Section 2. Authorization to Execute and Deliver Fee Agreement.** The form, terms, and provisions of the Fee Agreement (which includes the provision of Special Source Revenue Credits) presented to this meeting and filed with the Clerk to County Council are hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee 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 officials of the County executing the same upon the advice of the County Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting. The Fee Agreement shall include customary terms providing: (i) for the recovery by the County, on a pro rata basis, of certain moneys if certain thresholds are not achieved (a “clawback” provision); (ii) that the Company will pay the County’s administrative expenses associated with the approval and administration of the SSRC; (iii) that under certain terms and conditions, the County will have access to certain information of the Company; and (iv) that the Company will indemnify and hold the County harmless for claims, losses, and damages with respect to the Project.

**Section 3. Inclusion and Maintenance of Project in Park.**

(a) The expansion of the Park boundaries is hereby authorized as part of the County's normal expansion procedures to include the Project Property, as described on the attached **Exhibit A**. The County Council agrees to use commercially reasonable efforts to place the Project into the Park and to maintain the Project in the Park (or a successor multi-county industrial or business park) for no less than the term of the Fee Agreement.

(b) The County will provide for [20 years] that the annual allocation of the FILOT payments generated by the Project will be distributed (after distribution of a portion of the FILOT payments to Hampton County in accordance with the Park Agreement) as follows:

- i. To the County, for providing the SSRCs, an amount equal to the annual SSRC provided in Section 2 of this Ordinance and in the Fee Agreement; and
- ii. Except as may otherwise be provided by ordinance of the County Council from time to time, the balance of the FILOT payments to the County and the other overlapping taxing entities, in the same relative percentages as the relative millage rates imposed by such taxing entities for the applicable tax year.

**Section 4. No Recapitulation Required.** Pursuant to Section 12-44-55(B) of the Act, the County hereby agrees that no recapitulation information, as set forth in Section 12-44-55(A) of the Act is required to be provided by the Company in the Fee Agreement, or in any other documents or agreements in connection with the fee-in-lieu of tax arrangement between the Company and the County, so long as the Company shall file a copy of the South Carolina Department of Revenue form PT-443, and any subsequent amendments thereto, and all filings required by the Act with the County after the execution of the Fee Agreement by the County and the Company.

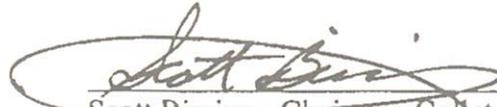
**Section 5. Further Acts.** The County Council authorizes the County Administrator, other County staff, and the County Attorney, along with any designees and agents who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an "Authorized Individual"), to take whatever further actions, and enter into whatever further agreements, as any Authorized Individual deems to be reasonably necessary and prudent to effect the intent of this Ordinance and induce the Company to locate the Project in the County.

**Section 6. General Repealer.** All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 7. Severability.** Should any part, provision, or term of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding or determination shall not affect the rest and remainder of the Ordinance or any part, provision or term thereof, all of which is hereby deemed separable.

This Ordinance takes effect and is in full force only after the County Council has approved this Ordinance following three readings and a public hearing.

COLLETON COUNTY, SOUTH CAROLINA

  
\_\_\_\_\_  
Scott Biering, Chairman Colleton County Council

(SEAL)

ATTEST

  
\_\_\_\_\_  
Danielle Murdaugh, Clerk to Council

First Reading:	June 18, 2024
Second Reading:	August 27, 2024
Third Reading:	January 7, 2025
Public Hearing:	January 7, 2025

**EXHIBIT A**

**PROJECT PROPERTY DESCRIPTION**

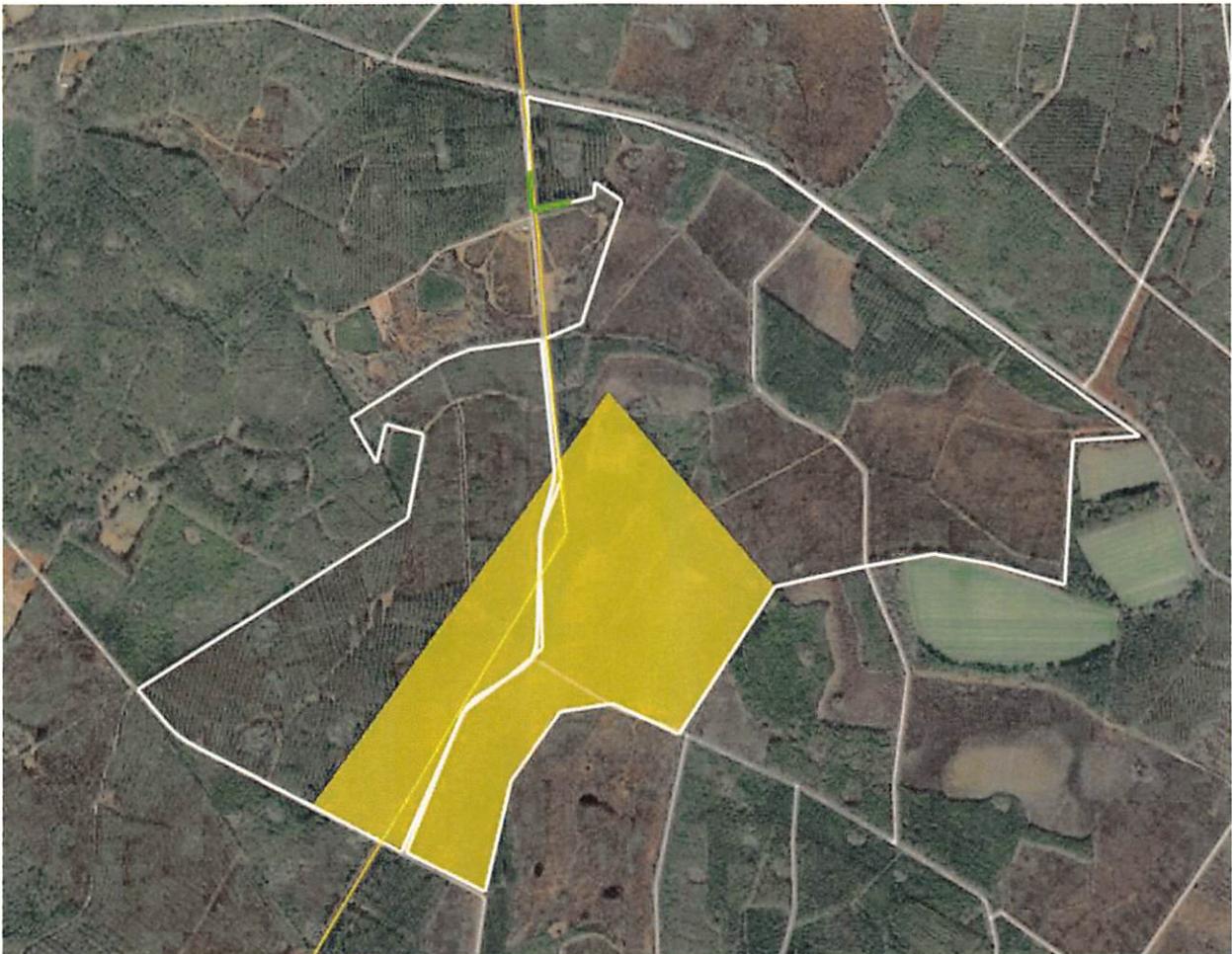
LOCATION: Colleton County, SC

Total Acreage: Approximately 800 acres out of 2,509 acres in total for Parcel No. 095-00-00-008.000

Parcel Numbers:

APN	Parcel Acreage	Option Area Acreage	Notes
<u>095-00-00-008.000</u>	2,509	800	Approximate Option Area boundaries shown in white on map below.
<b>Total</b>	<b>2,509</b>	<b>800</b>	

MAP OF PROPERTY



Legal Description:

Parcel 1

ALL that certain piece, parcel, or tract of land situate, lying and being in Colleton County, South Carolina, and containing a gross area of 2518.93 acres, more or less, with a net area (excluding area located within county roads) of 2509.11 acres, more or less, as shown on a plat thereof entitled **“Subdivision Plat creating a 2509.11 +/- acre tract, a portion of TMS 095-00-00-008, owned by MWV Community Development and Land Management, LLC”** dated July 16, 2013, prepared by Roy L. Green, PLS No. 7403B, and recorded in the Register of Deeds for Colleton County, South Carolina, in Plat Slide 883, at Page 5; said tract having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully appear.

Being a portion of the same property conveyed to MeadWestvaco Forestry, LLC, now known as MWV Community Development and Land Management, LLC, by deed of Westvaco Corporation, dated December 30, 2002, recorded April 11, 2003, in the Office of the Register of Deeds for Colleton County, in Book 1011 at Page 172.

Portion of TMS No. 095-00-00-008

**EXHIBIT B**

**FEE AGREEMENT**

[Attached]

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**FEE-IN-LIEU OF *AD VALOREM* TAXES AND  
SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

**BETWEEN**

**CANADY SOLAR, LLC**

**AND**

**COLLETON COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF JANUARY 7, 2025**

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- Exhibit A – Description of Property
- Exhibit B – Form of Joinder Agreement
- Exhibit C – Description of Special Source Revenue Credit

**SUMMARY OF CONTENTS OF  
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

<b>PROVISION</b>	<b>BRIEF DESCRIPTION</b>	<b>SECTION REFERENCE</b>
<b>Sponsor Name</b>	Canady Solar, LLC	1.1
<b>Project Location</b>	County of Colleton, South Carolina	Exhibit A
<b>Tax Map No.</b>		Exhibit A
<b>FILOT</b>		
• Phase Exemption Period	30 years	1.1
• Investment Commitment	\$45,000,000	1.1
• Jobs Commitment	N/A	
• Investment Period	5 years	1.1
• Assessment Ratio:	6%, subject to adjustment	4.1
• Millage Rate	360.69 mills	4.1
• Fixed or Five-Year Adjustable millage:	Fixed	4.1
• Claw Back information	Failure to invest \$45 million during the Investment Period terminates the Fee Agreement	6.1
<b>Multicounty Park</b>	Colleton – Hampton	1.1
<b>Special Source Revenue Credit</b>		
• Brief Description	Amount necessary to fix annual fee in-lieu-of-tax payment at \$2,500 per MWac based on an assumed Final Output of 80 MWac for the life of the agreement (i.e. a fixed payment of \$200,000 per year); provided if the actual Final Output is either less than 64 MWac or greater than 96 MWac, the annual fee in-lieu-of-tax payment shall be decreased or increased by the percentage which such actual Final Output falls short or exceeds the assumed Final Output of 80 MWac.	Exhibit C
• Credit Term	10 years	Exhibit C
• Claw Back information:	Failure to invest \$45 million during the Investment Period terminates the Fee Agreement	6.1
<b>Other information</b>		

**FEE-IN-LIEU OF AD VALOREM TAXES AND  
SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

THIS FEE-IN-LIEU OF AD VALOREM TAXES AND SPECIAL SOURCE REVENUE CREDIT AGREEMENT ("*Fee Agreement*") is entered into, effective, as of January 7, 2025, between Colleton County, South Carolina ("*County*"), a body politic and corporate and a political subdivision of the State of South Carolina ("*State*"), acting through the Colleton County Council ("*County Council*") as the governing body of the County, and Canady Solar, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Sponsor*"). Each party hereto may separately be referred to herein as a "*Party*" and collectively as the "*Parties*."

WITNESSETH:

(a) Title 12, Chapter 44, ("*Act*") of the Code of Laws of South Carolina, 1976, as amended ("*Code*"), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of ad valorem tax ("*FILOT*") with respect to Economic Development Property, as defined below;

(b) Sections 4-1-170, 4-1-175, 4-29-68 and 12-44-70 of the Code authorize the County to (i) create multi-county industrial parks in partnership with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County, which inclusion under the terms of Section 13 of Article VIII of the Constitution of the State of South Carolina makes such property exempt from ad valorem property taxes, therefore changing the character of the annual receipts from such properties from ad valorem property taxes to FILOT payments; and (iii) grant an annual tax credit against such FILOT payments in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the property of any company located within such multi-county industrial parks or for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a commercial enterprise located within such multi-county parks in order to enhance the economic development of the County;

(c) The Sponsor has committed to establishing a commercial enterprise ("*Facility*") in the County, consisting of investment in real and personal property of approximately \$80,000,000;

(d) By an ordinance enacted on January 7, 2025, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to locate its Facility in the County.

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

**ARTICLE I  
DEFINITIONS**

**Section 1.1** *Terms.* The defined terms used in this Fee Agreement have the meaning given below unless the context clearly requires otherwise.

From time to time herein, reference is made to the term taxes or ad valorem taxes. All or portions of the Project are or will be located in a Multicounty Park and, as such, are or will be exempt from ad valorem taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution and the MCIP Act (as defined herein). With respect to facilities located in a Multicounty

Park and not subject to this Fee Agreement, references to taxes or ad valorem taxes means the fees-in-lieu of ad valorem taxes provided for in the MCIP Act, as the context may require.

“*Act*” means Title 12, Chapter 44 of the Code, as the Act may be amended from time to time and all future acts successor or supplemental thereto.

“*Act Minimum Investment Requirement*” means an investment of at least \$2,500,000 in the Project by the Sponsor or a Sponsor Affiliate within five years of the Commencement Date, or a combined total investment of at least \$5,000,000 in the Project by the Sponsor and one or more Sponsor Affiliates, regardless of the amount invested by each such party, within five years of the Commencement Date.

“*Administration Expenses*” means the reasonable out-of-pocket expenses incurred by the County in the negotiation, approval and execution of this Fee Agreement for reasonable attorney’s fees; provided, however, that Administrative Expenses shall not exceed \$5,000.

“*Code*” means the Code of Laws of South Carolina, 1976, as the same may be amended from time to time.

“*Commencement Date*” means the last day of the property tax year during which Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2028.

“*County*” means Colleton 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 Colleton County Council, the governing body of the County.

“*Credit Term*” means the years during the Fee Term in which the Special Source Revenue Credit is applicable, as described in Exhibit C.

“*Department*” means the South Carolina Department of Revenue.

“*Diminution in Value*” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“*Economic Development Property*” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor or any Sponsor Affiliate in its annual filing of a PT-300S or comparable form with the Department (as such filings may be amended from time to time).

“*Equipment*” means machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“*Event of Default*” means any event of default specified in Section 7.1 of this Fee Agreement.

“*Fee Agreement*” means this Fee Agreement.

**"Fee Term"** means the period from the effective date of this Fee Agreement until the Final Termination Date.

**"FILOT Payments"** means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1. and before taking into account any Special Source Revenue Credit. For the avoidance of doubt, should any part or all of the Project not be eligible as Economic Development Property, the FILOT Payment shall also mean, in such case, the payments in lieu of taxes made as a result of the Project being located in a Multicounty Park.

**"Final Output"** has the meaning as described on Exhibit C.

**"Final Phase"** means the Economic Development Property placed in service during the last year of the Investment Period.

**"Final Termination Date"** means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement.

**"Fixed FILOT Payment"** has the meaning as described on Exhibit C.

**"Improvements"** means all improvements to the Real Property, including buildings, building additions and improvements, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

**"Infrastructure"** means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and (iii) personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, and such other items as may be described in or permitted under Section 4-29-68 of the Code.

**"Investment Period"** means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five (5) years after the Commencement Date; provided however, that the Investment Period may be extended for an additional five (5) years upon mutual agreement of the parties. For purposes of this Fee Agreement, the Investment Period, unless the Commencement Date is later than December 31, 2028, is expected to end on December 31, 2033, unless the parties mutually agree to extend the Investment Period an additional five (5) years.

**"MCIP Act"** means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

**"Multicounty Park"** means the multicounty industrial or business park governed by the Agreement for Development for Joint County Industrial Park dated January 22, 2008, by and between the County and Hampton County, South Carolina.

**"Net FILOT Payment"** means the FILOT Payment net of the Special Source Revenue Credit, as more particularly described in Exhibit C.

**"Phase"** means the Economic Development Property placed in service during a particular year of the Investment Period.

**"Phase Exemption Period"** means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

**"Phase Termination Date"** means, with respect to each Phase, the last day of the property tax year which is the 29<sup>th</sup> year following the first property tax year in which the Phase is placed in service.

**"Project"** means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

**"Real Property"** means real property that the Sponsor owns, leases, uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement and shall also include such land located in the County which shall be noted on schedules or supplements to Exhibit A, as may be provided by the Sponsor and approved by the County, provided that any requirement that the Sponsor provide such schedules or supplements with respect to future land may be satisfied by the Sponsor's (or Sponsor Affiliate's) filing with the Department of Form PT-300 with Schedule S attached listing such additional land, or such comparable form or schedule as the Department may provide in connection with projects subject to the Act.

**"Removed Components"** means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

**"Replacement Property"** means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

**"Special Source Revenue Credit"** means the special source revenue credit provided to the Sponsor pursuant to Section 4-1-175 of the MCIP Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Special Source Revenue Credits are to be used for the payment of the costs of the Infrastructure.

**"Sponsor"** means Canady Solar, LLC, 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 Sponsor under this Fee Agreement.

**"Sponsor Affiliate"** means an entity that participates in the investment at the Project and, following receipt of any required County approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

**"State"** means the State of South Carolina.

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.

The term "investment" or "invest" as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, in cash or in kind, to the extent such investments are or, but for the terms of this Fee Agreement and the Multicounty Park, would be subject to *ad valorem* taxes to be paid by the Sponsor.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

**Section 2.1**     ***Representations and Warranties of the County.*** The County represents and warrants 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 under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) 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; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" by adopting an inducement resolution, as defined in the Act, on June 18, 2024.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all commercially reasonable action to locate and maintain the Project in the Multicounty Park or another multicounty business park established pursuant to the MCIP Act for the term of this Fee Agreement or while the Project receives a Special Source Revenue Credit.

(f) To the extent permitted by law, the County will not take the position that the execution of this Agreement and the placement of the Project in the Multicounty Park, by itself and without more, result in a change in use of any Real Property classified as agricultural use property for South Carolina property tax purposes.

**Section 2.2**     ***Representations and Warranties of the Sponsor.*** The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, 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 Sponsor intends to operate the Project as a solar energy facility, and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) Neither the execution and delivery of this Fee Agreement nor the consummation and performance of the transactions described herein violate, or will, to its knowledge, conflict

with or result in a material breach of any of the material terms, conditions, or provisions of any agreement, restriction, law, rule, order, or regulation to which the Sponsor is now a party or by which it is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any judicial or administrative court or agency, public board, or body, pending or threatened, against or affecting the Sponsor which could materially adversely affect the Sponsor's obligations hereunder or the consummation of the transactions described herein.

(e) This Fee Agreement is a legal, valid, and binding obligation of the Sponsor enforceable against the Sponsor in accordance with its terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) To the Sponsor's knowledge, no event has occurred and no condition currently exists with respect to the Sponsor, which would constitute a default or an Event of Default.

(g) The Sponsor's execution and delivery of this Fee Agreement, and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(h) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT Payments and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

### **ARTICLE III THE PROJECT**

**Section 3.1** *The Project.* The Sponsor intends and expects to (i) construct or acquire the Project and (ii) make an investment with respect thereto of approximately \$80,000,000 within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2028. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the construction of the Project. However, Sponsor's failure to make a capital investment of at least \$45,000,000 in the Project within the Investment Period will result in the termination of the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement as provided in this Fee Agreement.

**Section 3.2** *Leased Property.* To the fullest extent that State law allows or is revised or construed to permit leased assets including real property, a building, or personal property to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement.

**Section 3.3** *Filings and Reports.*

(a) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(b) The Sponsor shall remit to the County copies of such records related to the calculation of the FILOT Payments and Fixed FILOT Payments due hereunder as the County would normally be entitled to in case the Project was subject to ad valorem taxation.

(c) In accordance with Exhibit C, the Sponsor shall report the Final Output to the County Administrator and County Auditor in writing contemporaneously with its report to the South Carolina Public Service Commission.

#### **ARTICLE IV FILOT PAYMENTS**

##### **Section 4.1 *FILOT Payments.***

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act, multiplied by
- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to the lowest legally allowed cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of July 1, 2024, which the parties believe to be 360.69 mills.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate, in accordance with and subject to the terms of Section 10.8, the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement.

**Section 4.2 *FILOT Payments on Replacement Property.*** If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

**Section 4.3 *Removal of Components of the Project.*** The Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise permanently removed from the Project with the intent that it no longer be used for the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee

Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes. To the extent required by Section 4-29-68(A)(2)(ii) of the Code, if the Sponsor claims Special Source Credits as reimbursement for investment in personal property, including machinery and equipment, if such property is removed from the Project during the term of this Fee Agreement, the amount of the FILOT Payments due from the Sponsor on such personal property for the year in which the personal property was removed from the Project also shall be due for the two (2) years following such removal.

#### **Section 4.4     *Damage or Destruction of Economic Development Property.***

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate all or part of this Fee Agreement. In the property tax year in which the damage or casualty occurs and continues, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to such taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

#### **Section 4.5     *Condemnation.***

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is 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 Sponsor, the Sponsor 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, the Sponsor may elect: (i) to terminate all or part of this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components with a corresponding pro rata downward adjustment of the Fixed FILOT Payment.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

**Section 4.6     *Calculating FILOT Payments on Diminution in Value.*** If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property

or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement. For the avoidance of doubt, the Special Source Revenue Credit shall remain applicable to such adjusted FILOT Payment.

**Section 4.7 Payment of Ad Valorem Taxes.** If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law, pursuant to this Fee Agreement, the Act, or otherwise, then the calculation of any *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions and exemptions that would have applied to the Economic Development Property as if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

**Section 4.8 Place of FILOT Payments.** All FILOT Payments shall be made directly to the County in accordance with applicable law.

## ARTICLE V ADDITIONAL INCENTIVES

**Section 5.1 Special Source Revenue Credits.** To assist in paying for costs of Infrastructure, and for so long as the Project is operated as a solar energy facility, the Sponsor is entitled to claim, and the County hereby grants a Special Source Revenue Credit as described in Exhibit C hereof to adjust any FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Special Source Revenue Credit is described in Exhibit C. In no event may the Sponsor's aggregate Special Source Revenue Credit claimed pursuant to this Section exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Special Source Revenue Credit is applicable ("Credit Term"), the County shall prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment, calculated in accordance with Exhibit C and reflecting the Special Source Revenue Credit.

## ARTICLE VI CLAW BACK

**Section 6.1 Claw Back.** In the event that the cost of the Project (without regard to depreciation) that the Sponsor acquires does not reach \$45,000,000 by the end of the Investment Period, this Fee Agreement shall terminate and the Sponsor shall pay the County an amount pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Sponsor would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of Net FILOT Payments the Sponsor has made with respect to the Economic Development Property through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to interest as provided in Section 12-54-25 of the Code. In the event that the Sponsor's investment in the Project attains the \$45,000,000 by the end of the Investment Period, but thereafter falls below the \$45,000,000 (without regard to depreciation) prior to the Final Termination Date, this Fee Agreement shall terminate.

**ARTICLE VII  
DEFAULT**

**Section 7.1** *Events of Default.* Subject in all events to Section 10.9 hereof, the following are "Events of Default" under this Fee Agreement:

(a) Failure by the Sponsor to make FILOT Payments due under this Agreement;

(b) If default shall occur in the due and punctual payment by the Sponsor of any other amount required under this Fee Agreement and such default shall continue for 30 days after Sponsor's receipt of written notice of default from the County;

(c) (i) A material representation or warranty made by the Sponsor is materially incorrect when made or deemed made; or (ii) a failure by the Sponsor to perform any of the material terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a) or (b), above), which failure under (i) or (ii) has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

(e) (i) A material representation or warranty made by the County is materially incorrect when made or deemed made; or (ii) a failure by the County to perform any of the material terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.<sup>1</sup>

**Section 7.2** *Remedies on Default.*

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) bring an action for collection of any amounts due hereunder; and/or terminate this Fee Agreement, upon 30 days written notice; or

(ii) take whatever action at law or in equity that may appear necessary or desirable to remedy the Event of Default under Section 7.1(b) plus legal fees and expenses under Section 7.4 hereof, and any penalty and interest required by statute; provided, however, that the Sponsor's liability under this Fee Agreement shall never, in any circumstance, exceed the benefits the Sponsor has received under the Fee Agreement from FILOT Payments made hereunder, any applicable Special Source Revenue Credit, plus any legal fees and expenses under Section 7.4 hereof.<sup>2</sup>

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

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<sup>1</sup> **Note to County** –any material rep or warranty breached by the County should also be an event of default under the FILOT for the Sponsor; otherwise, the County's reps are meaningless.

(ii) terminate this Fee Agreement; or

(iii) take such other action as is appropriate, including legal action, to recover its damages, to the extent allowed by law. For purposes of this Agreement, the Sponsor and any Sponsor Affiliate's damages under this Agreement for an Event of Default shall be limited to and never exceed, under any circumstance, the savings to be realized by the Sponsor and/or the Sponsor Affiliate as a result of the FILOT Payments and Special Source Revenue Credit provided herein, plus any legal fees and expenses under Section 7.4 hereof. Under no circumstances will the County ever be liable for any other damages hereunder or penalty or other interest.

(c) Although the Parties acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise any remedies provided by general law (Title 12, Chapter 49; Title 12, Chapter 51 of the Code) or any other statutory provision for tax collection of property taxes (the "Tax Statute") and the Act relating to the enforced collection of taxes, including an Event of Default under Section 7.1(a) hereof. The County's right to receive FILOT Payments shall have a first priority lien status pursuant to Section 12-44-90 of the Code and Chapters 4 and 54 of Title 12 of the Code. The Sponsor expressly acknowledges that in the event of its failure to make the required FILOT Payments when due the County is only required to give notice thereof in accordance with the Tax Statute, and that no further notice is required hereunder in order to enforce the remedies set forth in this paragraph (c).

**Section 7.3 *No Additional Waiver Implied by One Waiver.*** In the event any warranty, covenant, or agreement contained in this FILOT Agreement should be breached by the Sponsor or the County and thereafter waived by the other party to this FILOT Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

**Section 7.4 *Reimbursement of Legal Fees and Expenses and Other Expenses Upon Default.*** Upon the occurrence of an Event of Default hereunder by any Party, if any other Party employs attorneys or incurs other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the Party shall be entitled, within thirty (30) days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 7.5 *Remedies Not Exclusive.*** Unless expressly provided otherwise, no remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies described in this Agreement, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement.

## ARTICLE VIII PARTICULAR RIGHTS AND COVENANTS

**Section 8.1 *Right to Inspect.*** Subject to the Sponsor's safety policies and requirements, this Agreement does not limit any otherwise existing legal right of the County and its authorized agents, at any reasonable time on prior notice, to enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

**Section 8.2 *Confidentiality.*** The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as "*Confidential Information.*" Except as required by law, the

County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its commercially reasonable efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

**Section 8.3 *No Liability of County Personnel.*** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 8.4 *Assignment.*** The Sponsor 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 may be done by resolution; provided, however, that the County hereby expressly consents in advance to any such assignment of this Fee Agreement, in whole or in part, by the Sponsor to any entity, now existing or to be formed in the future, which controls, is controlled by, or is under common control with, the Sponsor. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

**Section 8.5 *No Double Payment; Future Changes in Legislation.*** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

**Section 8.6 *Administration Expenses.*** The Sponsor will reimburse the County for its Administration Expenses, which with respect to the initial review and approval shall not exceed \$5,000, on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

**Section 8.7 *Multicounty Park.*** The County will use its commercially reasonable efforts to cause the Real Property to be placed in the Multicounty Park by December 31, 2025, and to maintain the Real Property in the Multicounty Park or in some other multicounty industrial or business park within the meaning of the MCIP Act for at least as long as the Special Source Revenue Credit is to be provided to the Sponsor under this Fee Agreement.

**Section 8.8** *Limitation of Liability.* The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement.

**Section 8.9** *Indemnification.*

(a) Except as provided in paragraph (d) below, the Sponsor 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, except for claims by the Sponsor.

(b) The County is entitled to use counsel of its choice and the Sponsor 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 Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor 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 Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor's expense. The Sponsor 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 Sponsor 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 Sponsor is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability as required under this Section or this Fee Agreement (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; (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct; or (iii) if, upon receiving notice from the County of the County's intent to respond to or defend against a liability or claim as described in paragraph (a), Sponsor requests the County not to respond to or defend against such liability or claim and Sponsor terminates this Fee Agreement pursuant to Section 10.10(b) herein with respect to all of the Project, but only to the extent such asserted liability or claim will be completely extinguished by the Sponsor's termination of this Fee Agreement.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with written notice of the existence or threat of any claim or liability within 30 days of such claim or liability arising, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

**ARTICLE IX**  
**SPONSOR AFFILIATES**

**Section 9.1** *Sponsor Affiliates.* The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to

the County identifying the Sponsor Affiliate. The County hereby expressly consents to any designation by the Sponsor as a Sponsor Affiliate (i) any entity, now existing or to be formed in the future, which controls, is controlled by, or is under common control with, the Sponsor, (ii) any third party that the Sponsor may elect to involve in the investment in and ownership or financing of the Project, and (iii) the landowner(s) of the Real Property, currently Essex Farms, LLC, and its heirs, successors and assigns. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

**Section 9.2 Primary Responsibility.** Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement, arising and due as a result of the Project. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate. The Sponsor Affiliate's secondary obligation to make FILOT Payments under this Fee Agreement to the County shall be limited to the FILOT Payments due on the Sponsor Affiliate's Economic Development Property only and under no circumstances shall the Sponsor Affiliate be liable for any FILOT Payments relating to the Sponsor's Economic Development Property. Upon the joining of a Sponsor Affiliate to this Fee Agreement, the obligations of the Sponsor and Sponsor Affiliate as to making FILOT Payments will be allocated based on the Sponsor's and Sponsor Affiliate's proportionate share of ownership of Economic Development Property.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Notices.** Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is 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:

**IF TO THE SPONSOR:**

Canady Solar, LLC  
Attn: Soon Kwon  
13501 Katy Fwy, Suite 3200  
Houston, Texas 77079

**WITH A COPY TO (does not constitute notice):**

Nelson Mullins Riley & Scarborough, LLP  
Attn: Edward Kluiters  
1320 Main Street, 17th Floor  
Columbia, SC 29201

**IF TO THE COUNTY:**

Notices should be sent to the County Administrator, 109 Benson Street, Walterboro, SC 29488, with a copy Executive Director, Colleton County Economic Alliance, Inc., 403 B East Washington Street, Walterboro, SC 29488. Notices to the county attorney should go to Deputy

Administrator, Attn. County Attorney, 109 Benson Street, Walterboro, SC 29488.

**WITH A COPY TO (does not constitute notice):**

County Attorney  
PO Box 157  
Walterboro, South Carolina 29488

**Section 10.2 Provisions of Agreement for Sole Benefit of County and Sponsor.** Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor and any Sponsor Affiliates any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor and any Sponsor Affiliates.

**Section 10.3 Counterparts.** This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 10.4 Governing Law.** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement. All litigation arising under this Fee Agreement shall be litigated only in a nonjury hearing in the Court of Common Pleas, Fourteenth Judicial Circuit, Walterboro South Carolina.

**Section 10.5 Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

**Section 10.6 Amendments.** This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement in compliance with Section 12-44-40(k) of the Act.

**Section 10.7 Agreement to Sign Other Documents.** From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

**Section 10.8 Interpretation; Invalidity; Change in Laws.**

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done 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. It is expressly agreed that the Sponsor may add Economic Development Property, whether real (with the consent of the County) or personal, by including such property on the Sponsor's PT-300 Schedule S or successor form during the Investment Period to the fullest extent permitted by law.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to provide a special source revenue or Special Source Revenue Credit to the Sponsor (in addition to the Special Source Revenue Credit explicitly provided for above) to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

**Section 10.9 Force Majeure.** Other than requirements to make FILOT Payments and payment of Administrative Expenses, the Sponsor is not liable or responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, natural disasters, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10 Termination; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11 Entire Agreement.** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is 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 10.12 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 10.13 Business Day.** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

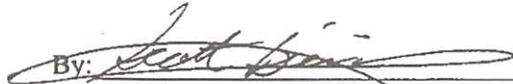
**Section 10.14 Agreement's Construction.** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**COLLETON COUNTY, SOUTH CAROLINA**

(SEAL)

By:   
\_\_\_\_\_  
County Council Chair  
Colleton County, South Carolina

**ATTEST:**

By:   
\_\_\_\_\_  
Clerk to County Council  
Colleton County, South Carolina

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes Agreement]*

**CANADY SOLAR, LLC**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes Agreement]*

**EXHIBIT A  
PROPERTY DESCRIPTION**

LOCATION: Colleton County, SC

Total Acreage: Approximately 800 acres out of 2,509 acres in total for Parcel No. 095-00-00-008.000

Parcel Numbers:

APN	Parcel Acreage	Option Area Acreage	Notes
<u>095-00-00-008.000</u>	2,509	800	Approximate Option Area boundaries shown in white on map below.
<b>Total</b>	<b>2,509</b>	<b>800</b>	

**MAP OF PROPERTY**



Legal Description:

**Parcel 1**

**ALL that certain piece, parcel, or tract of land situate, lying and being in Colleton County, South Carolina, and containing a gross area of 2518.93 acres, more or less, with a net area (excluding area located within county roads) of 2509.11 acres, more or less, as shown on a plat thereof entitled "Subdivision Plat creating a 2509.11 +/- acre tract, a portion of TMS 095-00-00-008, owned by MWV Community Development and Land Management, LLC" dated July 16, 2013, prepared by Roy L. Green, PLS No. 7403B, and recorded in the Register of Deeds for Colleton County, South Carolina, in Plat Slide 883, at Page 5; said tract having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully appear.**

**Being a portion of the same property conveyed to MeadWestvaco Forestry, LLC, now known as MWV Community Development and Land Management, LLC, by deed of Westvaco Corporation, dated December 30, 2002, recorded April 11, 2003, in the Office of the Register of Deeds for Colleton County, in Book 1011 at Page 172.**

**Portion of TMS No. 095-00-00-008**