

SOLAR FACILITY SITING AGREEMENT

This Solar Facility Siting Agreement (the “Agreement”), dated as of _____, 2024 (the “Effective Date”), is by and between Sussex County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”) and Blackwater Solar, LLC, a Virginia Limited Liability Company, (the “Applicant”). The County and Applicant are herein each a “Party” and collectively, the “Parties”.

RECITALS

WHEREAS, Applicant intends to develop, install, build, operate, and maintain a hybrid facility, including a utility scale solar facility (the “Solar Facility”) and/or battery energy storage facility (the “BESS”), as approved by the Sussex County Board of Supervisors (the “Board”) pursuant to Conditional Use Permit # 2024-01 (collectively the “Project”) on certain parcels of land identified as County Tax Map Parcels listed on Exhibit A-1 attached hereto (collectively, the “Property”);

WHEREAS, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia (“Code”) titled “Siting of Solar Projects and Energy Storage Projects,” Applicant and the County may enter into a siting agreement for such facilities;

WHEREAS, pursuant to Code § 15.2-2316.7(B), said siting agreement may contain terms and conditions, including (i) mitigation of any impacts of such solar project or energy storage project; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the Applicant in the deployment of broadband, as defined in § 56-585.1:9, in such locality;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement to provide said financial compensation to the County and to address impacts of the Project;

WHEREAS, pursuant to Code § 58.1-2636, the County may adopt an ordinance assessing a revenue share of up to \$1,400.00 per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Project (“Revenue Share Ordinance”).

WHEREAS, the County has not adopted a Revenue Share Ordinance, but may choose to do so at a later date;

WHEREAS, until such time as the County adopts a Solar Revenue Ordinance, such certified pollution control equipment will be subject to local machinery and tools taxation as provided by state law and local ordinances.

WHEREAS, due to the rated nameplate capacities of both the Solar Facility and the BESS, which is in excess of 150MWac each, neither component of the Project qualifies for the exemption from state and local taxation provided by Article X, § 6 (d) of the Constitution and Code § 58.1-3660 (C) and as a result is subject to all applicable state and local taxes;

WHEREAS, Applicant has agreed to the payments and financial terms contained herein;

WHEREAS, pursuant to the requirement of Code § 15.2-2316.8(B), the County held a public hearing in accordance with subdivision A of Code § 15.2-2204 for the purpose of considering this Agreement, after which a majority of a quorum of the members of the Board approved this Agreement.

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the County and Applicant do hereby agree as follows:

Article I

Project Features, Conditions and Mitigation

1. CUP Conditions. Applicant acknowledges and agrees that it is subject to all the terms and conditions contained in the Conditional Use Permit (“CUP”) approved by the Board for the Project. The CUP approved by the Board on _____, 2024 is attached hereto as **Exhibit A** and hereby incorporated herein. Violation by the Applicant or by any of Applicant’s agents, assigns, or successors in interest of any terms and conditions the CUP or of any applicable zoning requirements shall constitute a violation of this Agreement.

2. Power Purchase Agreement. The Applicant shall provide the County and its legal counsel with notice of execution of a power purchase or offtake agreement and the associated term of such agreement within thirty (30) days of execution of the agreement.

3. Annual Capital Equipment Report. The Applicant shall provide the County with a list of capital equipment, including but not limited to solar photovoltaic equipment proposed to be installed, whether or not it has yet been certified as pollution control equipment by the State Corporation Commission or Virginia Department of Environmental Quality, and lists of all other taxable tangible property. Thereafter, on an annual basis, the Applicant shall provide the County with any updates to this information. Further, any information that is provided to the Virginia State Corporation Commission in the future, for the Commission's use in valuing such property for taxation purposes, shall also be provided to the County in a timely manner.

4. Effect of Agreement. This Agreement is expressly conditioned upon the Board’s approval of the Applicant’s CUP and Rezoning application authorizing the use of the Property for a utility-scale solar facility.

Article II

Payments

1. Payment Structure. The Applicant shall make payments to the County, in the amounts and at such times as set forth in **Exhibit B** (each a “Payment” and collectively, the

“Payments”). Applicant’s obligation to make the Payments shall be conditioned upon the Project achieving those milestones set forth in **Exhibit B**.

2. Effect of Adoption of Revenue Share. Applicant and County agree that if the County adopts a Revenue Share Ordinance, Applicant shall pay all obligations pursuant to that ordinance and shall be exempt from M&T Tax, with all other payments contained in Exhibit B remaining in full force and effect, payable at such values and times as contained in Exhibit B.

3. Statutory Structure of Payments; Statement of Benefit. Applicant agrees that, by entering into this Agreement, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code, the Payments are authorized by statute, and Applicant acknowledges that it is bound by law to make the Payments in accordance with this Agreement. The Parties acknowledge that this Agreement is fair and mutually beneficial to both Parties. Applicant acknowledges that this Agreement provides for a reasonably predictable stream of future payments to the County in amounts fair to both Parties.

4. Use of Payments by the County. The Payments may be used for any lawful purpose.

Article III

Miscellaneous Terms

1. Term; Termination. This Agreement shall commence on the Effective Date and shall continue until completion of decommissioning of the Project in accordance with the decommissioning plan for the Solar Facility or the BESS, as applicable (the “Termination Date”). If after approval of the CUP and execution of this Agreement but prior to the Commercial Operation Date as defined in **Exhibit B**, Applicant chooses not to develop the Project and provides the County notice of such intent (“Notice of Early Termination”), this Agreement and all obligations contained herein shall terminate, and the County shall execute a release of the Memorandum as provided by Article III, Section 6 below. Notwithstanding the foregoing, Applicant shall make the CUP payment to the County as provided in Exhibit B nor shall Applicant be relieved of any applicable milestone payments (e.g., Pre-Commercial and Site Plan Payments) as outlined in the schedule of payments outlined in Exhibit B prior to issuing a Notice of Early of Termination.

Failure of the Company or its successors or assigns to comply with any material terms or conditions of this Agreement, after being provided a 30-day written notice to cure such breach or defect, shall constitute a default for which, unless otherwise agreed to in writing by the County, the Company, or its successors or assigns, shall cease all operations at the facility.

2. Mutual Covenants. The Applicant covenants to the County that it will pay the County the amounts due hereunder when due in accordance with the terms of this Agreement, and will not seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement. The County covenants to the Applicant that it will not seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement.

3. Payments; No Obligation to Develop. Applicant agrees to make Payments in accordance with the schedule of payments as provided in Exhibit B attached hereto and incorporated herein. Applicant shall have no obligation to make Payments after the Termination Date. The Payment due for the year in which the Project or material part thereof is decommissioned shall be prorated as of the Termination Date. It is understood that this Applicant has no obligation to develop or construct the Project and the development of the Project and its respective Solar Facility and/or BESS components by Applicant is contingent upon a number of factors including, but not limited to, regulatory approvals, availability and cost of equipment and financing, and market demand for the Project's energy. No election by Applicant to terminate, defer, suspend, or modify plans to develop the Project or components thereof shall be deemed a default of Applicant under this Agreement.

Payments are separate and distinct from the amounts owed pursuant to any other fees or taxes due under state law or local ordinance, including but not limited to machinery and tools taxes on equipment pursuant to Article 2, Chapters 35 and 36 of Title 58.1 of the Code of Virginia and applicable County Ordinances, and all real property taxes and other applicable taxes owed pursuant to Chapter 28 of the Sussex County Code.

4. Successors and Assigns. This Agreement shall be binding upon the successors or assigns of Applicant, and the obligations created hereunder shall be covenants running with the Property. If Applicant sells, transfers, leases, or assigns all or a portion of its interests in the Project or the ownership of the Project in whole or in part (a "Transfer"), it is the intent of the Parties hereto that the Transfer agreement shall require this Agreement to be assumed by and be binding on the purchaser, transferee or assignee, and that such Transfer, upon full execution of the Transfer agreement, shall relieve Applicant of all obligations and liabilities under this Agreement accruing from and after the date of such Transfer, and the purchaser or transferee shall become responsible under this Agreement. Applicant shall execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

5. Execution of Agreement Deems Project "Substantially In Accord" with County's Comprehensive Plan. Pursuant to Code § 15.2-2316.9(C), approval of this Agreement deems the Project to be substantially in accord with the County's Comprehensive Plan in satisfaction of the requirements of Code § 15.2-2232.

6. Memorandum of Agreement. A memorandum of this Agreement, in a form substantially similar to that attached as **Exhibit C** hereto, shall be recorded in the land records of the Clerk's Office of the Circuit Court of the County of Sussex, Virginia. Such recordation shall be at Applicant's sole cost and expense and shall occur as soon as reasonably practicable after the Effective Date. If in Applicant's sole discretion, it chooses to not develop the Project, the County shall execute a release of the memorandum filed in the aforementioned Clerk's Office.

7. Notices. Except as otherwise provided herein, all notices required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, by recognized overnight courier, or by commercial messenger to:

If to the County:
Sussex County, Virginia

P.O. Box 1397
Sussex, Virginia 23884
Attn: County Administrator

With a copy to:

Danielle Powell, Sussex County Attorney
Hefty Wiley & Gore, P.C.
100 West Franklin Street, Suite 300
Richmond, Virginia 23220

If to the Applicant:

Blackwater Solar, LLC
c/o Clenera, LLC
999 W. Main Street, Suite 800
Boise, Idaho, 83702
Attn: Amanda Schaus, General Counsel

With a copy to:

D. Scott Foster, Jr., Esq.
Gentry Locke Attorneys
PO Box 780
Richmond, Virginia 23218

The County and Applicant, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices shall be sent.

8. Governing Law; Jurisdiction; Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO ANY OF ITS PRINCIPLES OF CONFLICTS OF LAWS OR OTHER LAWS WHICH WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. THE PARTIES HERETO (A) AGREE THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING, AS BETWEEN THE PARTIES HERETO, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT AND TRIED ONLY IN THE CIRCUIT COURT OF SUSSEX COUNTY, VIRGINIA, (B) CONSENT TO THE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, AND (C) WAIVE ANY OBJECTION WHICH ANY OF THEM MAY HAVE TO THE LAYING OF VENUE FOR ANY SUCH SUIT, ACTION, OR PROCEEDING IN SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION, OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER

JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

9. Confidentiality. This Agreement, once placed on the docket for consideration by the County Board of Supervisors, is a public document, subject to production under the Virginia Freedom of Information Act (“FOIA”). The County understands and acknowledges the Applicant, and as applicable, its associates, contractors, partners and affiliates, utilize confidential and proprietary “state-of-the-art” information and data in their operations (“Confidential Information”), and that disclosure of any such information, including, but not limited to, disclosures of technical, financial or other information concerning the Applicant or any affiliated entity could result in substantial harm to them and could thereby have a significant detrimental impact on their employees and also upon the County. The County acknowledges that during the development and negotiation of this Agreement, certain Confidential Information may be, or may have been, shared with the County by the Applicant. Applicant agrees to clearly identify any information it deems to be Confidential Information and not subject to mandatory disclosure under FOIA or other applicable law as Confidential Information at the time it provides such information to the County. The County agrees that, except as required by law and pursuant to the County’s police powers, neither the County nor any employee, agent, or contractor of the County will knowingly or intentionally disclose or otherwise divulge any such Confidential Information to any person, firm, governmental body or agency, or any other entity unless a request for such Confidential Information is made and granted under an applicable provision of local, state or federal law. Upon receipt of such a request but before transmitting any documents or information which may contain Confidential Information to the requestor, the County shall contact Applicant to review the request for information and associated documents to determine if any Confidential Information is at risk of disclosure. If Confidential Information exists, Applicant may intervene on behalf of the County and defend against disclosure of the Confidential Information. The County agrees to cooperate in this defense and to the extent allowed by law, work to protect the Confidential Information of the Applicant.

10. Severability; Invalidity Clause. Any provision of this Agreement that conflicts with applicable law or is held to be void or unenforceable shall be ineffective to the extent of such conflict, voidness, or unenforceability without invalidating the remaining provisions hereof, which remaining provisions shall be enforceable to the fullest extent permitted under applicable law. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party.

11. Entire Agreement. This Agreement and any exhibits or other attachments constitute the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Parties hereto with respect to the subject matter hereof. No provision of this Agreement can be modified, altered or amended except in a writing executed by all Parties hereto.

12. Construction. This Agreement was drafted with input by the County and the Applicant, and no presumption shall exist against any Party. The headings contained in this Agreement are for the convenience of the Parties and for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13. Force Majeure. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy (“Force Majeure”). For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a Party’s financial inability to perform its obligations hereunder.

14. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person shall have any right, benefit, priority, or interest in, under, or because of the existence of, this Agreement.

15. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument. A signed copy of this Agreement delivered by e-mail/PDF or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by the authorized representatives whose names and titles appear below.

BLACKWATER SOLAR, LLC

By: _____
Name: _____
Title: _____

SUSSEX COUNTY, VIRGINIA

By: _____
Name: Wayne O. Jones
Title: Chairman, Board of Supervisors

By: _____
Name: Richard Douglas
Title: County Administrator

Approved as to form:

By: _____
County Attorney

DRAFT

EXHIBIT A
CONDITIONAL USE PERMIT

DRAFT

EXHIBIT A-1

TAX PARCELS

Sussex County Tax Map Parcels: 132-A-2, 132-A-3, 78-A-17A, 78-A-18, 94-A-5, 60-A-15, 78-A-19, 78-A-11, 78-A-12, 95-A-1, 115-A-12, 115-A-19, 132-A-6, 77-A-8, 78-A-13, 96-A-12, 114-A-1, and 13-5

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EXHIBIT B

SCHEDULE OF PAYMENTS

I. Solar Facility Payments:

- (A) **Conditional Use Permit Payment:** Applicant shall make a one-time payment to the County of Nine Hundred Thousand Dollars (\$900,000.00) within ninety (90) days of approval of the CUP and this Agreement (the “Solar CUP Payment”). If the CUP and this Agreement are approved on different days, the due date for the Solar CUP Payment shall be calculated from the later approval. If an appeal is filed as a result of the Board’s approval of the CUP, Rezoning Application, or this Agreement in accordance with Virginia law, the Solar CUP Payment shall be made within thirty (30) days of the resolution of any such appeal, provided that the result of such appeal allows the Project to proceed. This provision shall not apply to any actions or suits initiated by Applicant.
- (B) **Certificate of Public Convenience and Necessity Payment:** Applicant shall make a one-time payment to the County of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) within ninety (90) days of approval of the CPCN for the Solar Facility by the Virginia State Corporation Commission (the “Solar CPCN Payment”). If an appeal to the CUP, Rezoning Application, or this Agreement, is pending at the time of CPCN approval, the Solar CPCN Payment shall be made within thirty (30) days of the resolution of any such appeal, provided that the result of such appeal allows the Project to proceed. This provision shall not apply to any actions or suits initiated by Applicant.
- (C) **Site Plan Approval Payment:** Applicant shall make a one-time payment to the County of Five Million Dollars (\$5,000,000.00) within ninety (90) days of approval of the final site plan for the Solar Facility (the “Site Plan Approval Payment.” In the event the site plan for the Solar Facility is divided into multiple site plans, the Site Plan Approval Payment will be made on a pro-rata basis upon the respective capacity of the portion of the Solar Facility, in MWac, associated issuance of each plan.
- (D) **Pre-Commercial Operation Payments:** On the first anniversary of the approval of the first Site Plan, Applicant shall pay to the County One Million Dollars (\$1,000,000.00) and on the second anniversary of the approval of the first Site Plan, Applicant shall pay to the County One Million Dollars (\$1,000,000.00), each a “Pre-Commercial Operation Payment.”
- (E) **Commercial Operation Payments:** Pursuant to the terms contained herein, Applicant shall pay the County a total of Five Million, Six Hundred Thousand Dollars (\$5,600,000.00), the “Total Commercial Operations Payment. Upon the Solar Facility achieving Commercial Operation, the Total Commercial Operations Payment shall be payable pursuant to the terms below. As used herein, “Commercial Operation” or “Commercial Operation Date” means the date on which all or a portion of the Solar

Facility becomes fully operational and begins selling power under the terms of a power purchase or offtake agreement. Generation of test energy shall not be deemed Commercial Operation. In the event the entire Solar Facility achieves Commercial Operation on a single Commercial Operation Date, the Total Commercial Operation Payment will be made in one lump sum within ninety (90) days of the Commercial Operation Date. In the event the Solar Facility achieves Commercial Operation in phases, the balance of the Total Commercial Operation Payment shall be made on a pro-rata basis based on the megawatt capacity of the individual phase of the Project achieving Commercial Operation relative to the total rated nameplate capacity of the Solar Facility, in MWac, (each a “Solar Commercial Operation Payment”). These pro-rata Solar Commercial Operation Payments shall be due within ninety (90) days of a given phase of the Solar Facility achieving Commercial Operation. By example and for the avoidance of doubt, three hundred (300) MWac phase of the Solar Facility achieves Commercial Operation, Applicant will pay the County a Solar Commercial Operation Payment of Two Million, Eight Hundred Thousand Dollars (\$2,800,000.00) within ninety days of the Commercial operation date of that phase. The remaining balance of the Total Commercial Operation Payment will be due as the remaining phase or phases of the Solar Facility achieves Commercial Operation.

Commercial operation payments for Solar Facilities (\$5.6M) shall be prorated based on the nameplate capacity of the facility. If the nameplate capacity of the Solar Facility is less than 600 MWac, then the Commercial Operation Payment shall be reduced proportionally to reflect the reduced capacity. In the event that nameplate capacity at any later date is increased for any portion of Solar Facility, then the Commercial Operation Payment shall be adjusted upward accordingly and Applicant shall make such payments to the County at that time.

- (F) **Lifetime Annual Payments:** Applicant shall make the “Solar Facility Lifetime Annual Payments” as described in the Exhibit B Schedule below. This payment shall be due and payable ninety (90) days following the Commercial Operation Date. The Solar Facility Lifetime Annual Payment due for the first year of Commercial Operation shall be prorated based on the Commercial Operation Date. The Solar Facility Lifetime Annual Payment shall terminate upon the commencement of decommissioning of the Solar Facility pursuant to the Decommissioning Plan required by the CUP. The Solar Facility Lifetime Annual payment due for the final year of Commercial Operation prior to the commencement of decommissioning shall be prorated based on the date of commencement of decommissioning pursuant to the Decommissioning Plan.

Lifetime Annual payments for the Solar Facility shall be prorated based on the nameplate capacity of the facility. If the nameplate capacity is less than 600 MWac for the Solar Facility, then the Lifetime Annual Payment shall be reduced proportionally to reflect the reduced capacity. In the event that nameplate capacity at any later date is increased for any portion of Solar Facility, then the Lifetime

Annual Payment shall be adjusted upward accordingly and Applicant shall make such payments to the County at that time.

- (G) **Solar Facility Estimated M&T.** As required by Virginia Code and Sussex County ordinance, Applicant will make annual payments of its Machinery and Tool Tax obligation (“M&T Taxes”) applicable to the Solar Facility. Estimates of the annual M&T Taxes attributable to the Solar Facility (which will fluctuate in any given year, depending on the Solar Facility’s machinery and tools) are described in the Exhibit B Schedule below. The Parties agree that any tax machinery and tools tax rate reduction or any reduction in real property tax rates as such rate relates to the effective machinery & tools tax rate on Company’s equipment under state law, whether such tax rate reduction is, due to a change in state law, the adoption of a lower tax rate by the County Board of Supervisors, or otherwise, shall result in a corresponding increase in the amount of Payments due under this Agreement to be paid by the Company, its successors or assigns in any year such reduction(s) occur.

II. BESS Payments:

- (A) **Conditional Use Permit Payment:** Applicant shall make a one-time payment to the County of One Hundred Thousand Dollars (\$100,000.00) within ninety (90) days of approval of the CUP for the BESS and this Agreement (the “BESS CUP Payment”). If the CUP and this Agreement are approved on different days, the due date for the BESS CUP Payment shall be calculated from the later approval. If an appeal is filed as a result of the Board’s approval of the BESS or this Agreement, the BESS CUP Payment shall be made within thirty (30) days of the resolution of any such appeal, provided that the result of such appeal allows the Project to proceed. This provision shall not apply to any actions or suits initiated by Applicant.

- (B) **Certificate of Public Convenience and Necessity Payment:** Applicant shall make a one-time payment to the County of Four Hundred Thousand Dollars (\$400,000.00) within ninety (90) days of approval of the CPCN for the Project. If an appeal to the BESS approval or this Agreement is pending at the time of the CPCN approval, the BESS CPCN Payment shall be made within thirty (30) days of the resolution of any such appeal, provided that the result of such appeal allows the Project to proceed. If for any reason the BESS component is not approved or is excluded from the CPCN for the Project for any reason, then the BESS CPCN Payment shall not be due and payable unless and until such approval is obtained. This provision shall not apply to any actions or suits initiated by Applicant.

- (C) **Commercial Operation Payment:** Applicant shall make a one-time payment to the County of One Million, Five Hundred Thousand Dollars (\$1,500,000.00), upon achieving Commercial Operation of the BESS (the “BESS Commercial Operation Payment”). As used herein, “Commercial Operation” or “Commercial Operation Date” means the date on which the BESS becomes fully operational and begins storing and

releasing electrical energy the grid. Generation of test energy shall not be deemed Commercial Operation.

Commercial operation payments for the BESS (\$1.5M) shall be prorated based on the nameplate capacity of the facility. If the nameplate capacity is less than 400 MWac for BESS, then the Commercial Operation Payment shall be reduced proportionally to reflect the reduced capacity. In the event that nameplate capacity at any later date is increased for the BESS, then Commercial operation payment shall be adjusted upward accordingly and Applicant shall make such payments to the county at that time.

(D) **Estimated M&T.** As required by Virginia Code and Sussex County ordinance, Applicant will make annual payments of its Machinery and Tool Tax obligation ("M&T Taxes") applicable to the BESS. Estimates of the annual M&T Taxes attributable to the BESS (which will fluctuate in any given year, depending on the BESS's machinery and tools) are described in the Exhibit B Schedule below. The Parties agree that any tax machinery and tools tax rate reduction or any reduction in real property tax rates as such rate relates to the effective machinery & tools tax rate on Company's equipment under state law, whether such tax rate reduction is, due to a change in state law, the adoption of a lower tax rate by the County Board of Supervisors, or otherwise, shall result in a corresponding increase in the amount of Payments due under this Agreement to be paid by the Company, its successors or assigns in any year such reduction(s) occur.

(Exhibit B continues on following page(s))

EXHIBIT B (CONTINUED)

This schedule assumes certain dates for the Payments outlined herein. All Payments will be made as the various thresholds are met pursuant to the terms above, and the dates included in this schedule are for illustrative purposes only.

(Schedule)

Payment	Siting Agreement - 600MW Solar	Siting Agreement - 400MW Battery Storage
CUP Approval	900,000.0	100,000.0
CPCN Approval	1,500,000.0	400,000.0
Site Plan Approval	5,000,000.0	
	1,000,000.0	
	1,000,000.0	
Commercial Operation	5,600,000.0	1,500,000.0
Lifetime Annual - Year 1	500,000.0	-
Lifetime Annual - Year 2	500,000.0	-
Lifetime Annual - Year 3	500,000.0	-
Lifetime Annual - Year 4	500,000.0	-
Lifetime Annual - Year 5	500,000.0	-
Lifetime Annual - Year 6	500,000.0	-
Lifetime Annual - Year 7	500,000.0	-
Lifetime Annual - Year 8	500,000.0	-
Lifetime Annual - Year 9	1,000,000.0	-
Lifetime Annual - Year 10	1,020,000.0	-
Lifetime Annual - Year 11	1,040,400.0	-
Lifetime Annual - Year 12	1,061,208.0	-
Lifetime Annual - Year 13	1,082,432.2	-
Lifetime Annual - Year 14	1,104,080.8	-
Lifetime Annual - Year 15	1,126,162.4	-
Lifetime Annual - Year 16	1,148,685.7	-
Lifetime Annual - Year 17	1,171,659.4	-
Lifetime Annual - Year 18	1,195,092.6	-
Lifetime Annual - Year 19	1,218,994.4	-
Lifetime Annual - Year 20	1,243,374.3	-
Lifetime Annual - Year 21	1,268,241.8	-
Lifetime Annual - Year 22	1,293,606.6	-
Lifetime Annual - Year 23	1,319,478.8	-
Lifetime Annual - Year 24	1,345,868.3	-
Lifetime Annual - Year 25	1,372,785.7	-
Lifetime Annual - Year 26	1,400,241.4	-
Lifetime Annual - Year 27	1,428,246.2	-
Lifetime Annual - Year 28	1,456,811.2	-
Lifetime Annual - Year 29	1,485,947.4	-
Lifetime Annual - Year 30	1,515,666.3	-
Lifetime Annual - Year 31	1,545,979.7	-
Lifetime Annual - Year 32	1,576,899.3	-
Lifetime Annual - Year 33	1,608,437.2	-
Lifetime Annual - Year 34	1,640,606.0	-
Lifetime Annual - Year 35	1,673,418.1	-

EXHIBIT C

FORM OF MEMORANDUM

Full exhibit follows

DRAFT

PREPARED BY AND RETURN TO:

Blackwater Solar Project, LLC

XXXX

County Tax Map ID Nos.:

[NOTE TO CLERK: SUSSEX COUNTY, VIRGINIA, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA, IS A PARTY TO THIS INSTRUMENT WHICH, ACCORDINGLY, IS EXEMPT FROM RECORDATION TAX PURSUANT TO VA. CODE SEC. 58.1-811.A.3.]

**MEMORANDUM OF SOLAR FACILITY
SITING AGREEMENT**

This Memorandum of Solar Facility Siting Agreement (this “Memorandum”), dated and effective as of _____, is made by and between **Sussex County, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”) and **Blackwater Solar, LLC**, a Delaware limited liability company (“Company”), with regard to the following:

1. Siting Agreement. The County and Company are parties to that Solar Facility Siting Agreement, dated _____ (the “Siting Agreement”), which describes the intent of Company to develop, install, build, and operate a solar facility (“Project”) on that certain parcel of land identified as County Tax Map Parcels _____ (the “Property”).
2. Authorization. The County’s execution of the Siting Agreement was authorized during that certain regular meeting of the Board of Supervisors of the County on _____.
3. Substantially in Accord. The Siting Agreement states, *inter alia*, that, pursuant to Virginia Code § 15.2-2316.9(C), by entering into the Siting Agreement, the County acknowledged that the Project is deemed to be substantially in accord with the County Comprehensive Plan under Virginia Code § 15.2-2232.
4. Obligations. The Siting Agreement sets forth, *inter alia*, certain obligations of Company to comply with the Special Use Permit approved by the County for the Project, and to make certain payments to the County.
5. Siting Agreement Controls. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Siting Agreement, and the County and Company executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Siting Agreement and the County’s and Company’s rights thereunder. The terms, conditions and covenants of the Siting Agreement are incorporated in this Memorandum by reference as though fully set forth herein.
6. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

WITNESS the following signature and seal:

SUSSEX COUNTY, VIRGINIA:

Name: Richard Douglas
Title: County Administrator

COMMONWEALTH OF VIRGINIA,
COUNTY OF _____, to-wit:

The foregoing Memorandum was acknowledged before me this _____, _____
2024, by Richard Douglas, County Administrator of Sussex County, Virginia.

Notary Public

My Commission expires:

WITNESS the following signature and seal:

SUSSEX COUNTY, VIRGINIA:

Name: Wayne O. Jones
Title: Chairman, Board of Supervisors

COMMONWEALTH OF VIRGINIA,
COUNTY OF _____, to-wit:

The foregoing Memorandum was acknowledged before me this _____, _____
2024, by Wayne O. Jones, Chairman of the Board of Supervisors of Sussex County, Virginia.

Notary Public

My Commission expires:

WITNESS the following signature and seal:

BLACKWATER SOLAR, LLC,
a _____ limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ }
 } }
CITY/COUNTY OF _____ }

Before me, a notary public in and for the jurisdiction aforesaid, this ____ day of _____, 2024, appeared _____, who acknowledged that they executed the foregoing instrument in their capacity as _____ of Blackwater Solar Project, LLC, a Delaware limited liability company, on behalf of said corporation.

Notary Public

My Commission expires: