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Tarrytown Office

March 29, 20223

Chairman Joseph Lupia
and Members of the Planning Board
Town of Manlius
301 Brooklea Drive
Fayetteville, New York 13066

RE: Meltwater Solar, LLC Solar Farm
6101 Kirkville Road North, Kirkville, New York 13082
Response to Planning Board re: Underground Utility Relocation

Dear Chairman Lupia
and Members of the Planning Board:

We represent Meltwater Solar, LLC (“Meltwater”) in connection with its efforts to obtain approval for certain field changes to the Ground-Mounted Solar Energy System (“Project”) approved by the Planning Board on May 23, 2022 and to be located at the above-referenced property. The proposed field changes relate to the spacing of the utility poles at the Point of Interconnection (“POI”) and were necessitated by a meeting with National Grid—the incumbent utility with final authority to approve or deny a given POI pole lineup. On February 13, 2023 we appeared before the Planning Board to explain the necessity for the proposed changes and provide a comparison of the original POI pole lineup with the proposed revisions. At that meeting the Planning Board asked for additional information as to why the transmission utility lines cannot be placed underground. Please allow this correspondence, in addition to the accompanying correspondence of Project Developer Bernardo Urdaneta (“Urdaneta Letter”), to serve as a response to the Board’s request for additional information.

Section 155-27.2(D)[5] of the Town’s Solar Law indicates that “on-site utility and transmission lines shall, **to the extent feasible**, be placed underground.” (emphasis supplied). We respectfully submit that, for the following reasons, relocation of the POI utility lines underground is not feasible within the meaning of Section 155-27.2(D)[5].

The utility poles at the POI support not only utility transmission lines but also additional equipment (“Additional Equipment”) that must be located above ground by its very nature. This Additional Equipment provides two of the essential functions of a POI lineup which are: i) to track and meter the amount of electricity generated; and ii) to disconnect the facility for either emergency or maintenance purposes. Therefore, even if the utility transmission lines could be buried underground, this Additional Equipment would need to remain above ground on concrete pads. These additional concrete pads would require the preparation and Town Approval of a new Stormwater Pollution Prevention Plan (“SWPPP”) as well as revisions to the existing negative declaration under the State Environmental Quality Review Act. As more fully set forth in the Urdaneta Letter, the pad-mounted Additional Equipment would create a greater visual impact than the proposed revisions to the POI poles.

Moreover, requiring underground transmission lines will introduce significant delays and costs that would be potentially fatal to the Project. As such, we respectfully submit that the requested revisions are not “feasible” within the meaning of Section 155-27.2(D)[5] of the Solar Code.

In reliance upon the Planning Board’s May 23, 2022 Approval, which did not require an underground POI, Meltwater has ordered approximately \$215,000.00 worth of pole-mounted equipment. Pad-mounted equipment is not the industry standard and so must be custom-ordered. Relocating the transmission lines underground would therefore create significant new costs and risks resulting from canceling and replacing the current purchase orders for pole-mounted equipment and reassessing delivery timelines for the new, custom-made, pad-mounted equipment. Custom pad-mounted equipment orders have much longer delivery lead times.

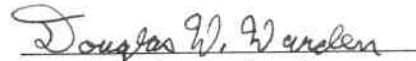
Meltwater’s engineering, procurement, and construction (“EPC”) contractors and subcontractors are planning to begin work in June with equipment deliveries based on a June start date. Any material delay (more than a month) in obtaining the Building Permit in May will require Meltwater to find costly storage solutions for all equipment acquired to date and is likely to cause the Project to lose subcontractors slated to begin work in June. Meltwater will need to pay a premium to retain or replace the subcontractors at a later date and potentially compensate subcontractors already retained based upon the existing timeline. It is impossible to quantify the losses that will result at this time, but material delays have triggered \$300,000.00 to \$500,000.00 in additional costs for similar projects.

The additional delays and costs noted above would jeopardize not only the viability of the Project itself but also the significant amounts Meltwater has agreed to provide the Town in connection with the Project. The attached executed Host Community Agreement between Meltwater and the Town entails a payment of \$95,500.00 to the Town to be paid upon Substantial Completion of the Project. The attached Payment in Lieu of Taxes (“PILOT”) Agreement commits Meltwater to annual PILOT payments over fifteen years totaling \$54,679.00.

To summarize, Meltwater has reasonably and justifiably relied upon the May 23, 2022 Approval Resolution, which did not require underground utility lines and expended significant financial resources in that reliance. Imposing underground utilities at this stage in the Project would impose massive additional costs and delays that we believe render the proposed revisions not “feasible” within the meaning of Section 155-27.2(D)[5] of the Solar Code.

We thank you for your consideration and look forward to discussing this matter with you further at the Planning Board’s next regularly scheduled meeting.

Respectfully submitted,
SNYDER & SNYDER, LLP


Douglas W. Warden, Esq.

DWW/bto
cc: Meltwater Solar, LLC

Exhibit A

MELTWATER SOLAR, LLC
TOWN OF MANLIUS – HOST COMMUNITY AGREEMENT

THIS HOST COMMUNITY AGREEMENT (“Agreement”) is entered into by and between, **TOWN OF MANLIUS**, having a principal business address of 301 Brooklea Drive, Fayetteville, New York, 13066, a municipal corporation organized and existing under the laws of the State of New York acting by and through its town board (the “Town”), and **MELTWATER SOLAR, LLC**, a Delaware limited liability company, with an address of 3402 Pico Boulevard, Santa Monica, CA 90405 (the “Company”).

RECITALS

WHEREAS, the Company wishes to locate an approximately 5 MW AC solar photovoltaic facility at 6101 Kirkville Rd. North, Manlius, NY 13082 (“Project”), in accordance with and pursuant to applicable state laws and regulations, and such approvals as may be issued by the Town in accordance with its zoning laws, the Town’s Uniform Development Code (“UDC”) and other applicable regulations; and

WHEREAS, the Company desires to provide certain benefits to the Town in the event that it is able to develop and operate the Project and receives all local permits and approvals from the Town.

NOW, THEREFORE, in consideration of the mutual covenants and promises as set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Company hereby agree as follows:

AGREEMENT

1. The Parties agree that the above recitals are true and accurate and that they are incorporated herein and made part hereof.
2. Within thirty (30) days of the Project achieving Substantial Completion, which shall occur when the system is capable of delivering energy for four (4) continuous hours using such

instruments and meters as have been installed for such purposes, and the Project has been approved for interconnected operation by the local distribution company). Company shall provide to the Town a donation of funds ("Fund"), which Fund the Town agrees to accept. If the Project never achieves Substantial Completion, Company shall not be obligated to make a donation of funds.

3. The Fund will be a set payment of \$95,500. The Town will provide a receipt to the Company of the payment. The Town shall use the Fund in its sole discretion but shall make a good faith effort to allocate said Fund to off-set costs related to road and other infrastructure systems, fire protection services, inspection services, public health and consulting services, as well as unforeseen impacts upon the Town.
4. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one integrated and sole agreement. Facsimile and electronic signatures affixed to this Agreement shall have the same weight and authority as an original signature.

Signature Pages Follow

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth below.

TOWN OF MANLIUS

By: *John T Deer*
Name: John Deer
Title: Town Supervisor
Date: 11/17/2022

MELTWATER SOLAR, LLC

By: DocuSigned by:
Geoff Johnson
536AA40AG84042D...
Name: Geoff Johnson
Title: Authorized Person
Date: 1/12/2023

Exhibit B

PAYMENT IN LIEU OF TAXES AGREEMENT
FOR SOLAR ENERGY SYSTEMS

between

Town of Manlius

and

Meltwater Solar, LLC

Dated as of January 12, 2023

RELATING TO THE PREMISES LOCATED AT 6101 KIRKVILLE
ROAD NORTH, MANLIUS, NY 13082 (SBL: 313889 071.-02-09.0)
IN THE TOWN OF MANLIUS, ONONDAGA COUNTY, NEW
YORK.

PAYMENT IN LIEU OF TAXES AGREEMENT
FOR SOLAR ENERGY SYSTEMS PURSUANT TO REAL PROPERTY TAX LAW § 487

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY, effective as of the date on the cover page, above, by and between Meltwater Solar, LLC (the "Owner"), a Delaware limited liability company, with a principal place of business located at 3402 Pico Boulevard, Santa Monica, CA 90405; and the Town of Manlius (the "Taxing Jurisdiction" or "Town"), a municipal corporation duly established in Onondaga County with a principal place of business located at 301 Brooklea Drive, Fayetteville, NY 13066. Owner and the Taxing Jurisdiction are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party."

RECITALS

WHEREAS, Owner has submitted a Notice of Intent to the Taxing Jurisdiction that it plans to build and operate a "Solar Energy System" as defined in New York Real Property Tax Law ("RPTL") Section 487 (1)(b) (herein the "Project") with an expected nameplate capacity ("Capacity") of approximately five (5) Megawatts AC on a portion of a parcel of land located within the physical boundaries of the Taxing Jurisdiction at 6101 Kirkville Rd. North, Manlius, NY 13082 (SBL: 313889 071.-02-09.0) as more particularly described in Exhibit A (herein the "Property"); and;

WHEREAS, the Taxing Jurisdiction has not opted out of RPTL Section 487; and

WHEREAS, pursuant to RPTL Section 487 (9)(a), the Taxing Jurisdiction has indicated its intent to require a Payment in Lieu of Taxes ("PILOT") Agreement with the Owner, under which the Owner (or any successor owner of the Project) will be required to make annual payments to the Taxing Jurisdiction for each year during the term of this Agreement; and

WHEREAS, the Owner has submitted or will submit to the assessor of the Town a RP-487 Application for Tax Exemption of Solar or Wind Energy Systems or Farm Waste Energy Systems, demonstrating its eligibility for a real property tax exemption pursuant to RPTL Section 487; and

WHEREAS, the Parties intend that, during the term of this Agreement, the Project will be placed on an exempt portion of the assessment roll and the Owner will not be assessed for any statutory real property taxes for which it might otherwise be subjected under New York law with respect to the Project.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Representations of the Parties.

(a) The Owner hereby represents, warrants, and covenants that, as of the date of this Agreement:

i. The Owner is duly organized, and a validly existing Delaware limited liability company duly authorized to do business in the State of New York, has requisite authority to conduct its business as presently conducted or proposed to be conducted under this Agreement, and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.

ii. All necessary action has been taken to authorize the Owner's execution, delivery, and performance of this Agreement and this Agreement constitutes the Owner's legal, valid, and binding obligation enforceable against it in accordance with its terms.

iii. Upon information and belief, none of the execution or delivery of this Agreement, the performance of the obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any provision of the Owner's Certificate of Incorporation, Certificate of Formation, bylaws or other organizational documents or of any restriction or any agreement or instrument to which the Owner is a party and by which it is bound; (ii) conflict with, violate, or result in a breach of any applicable law, rule, regulation, or order of any court or other taxing jurisdiction or authority of government or ordinance of the State or any political subdivision thereof; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any mortgage, indenture, or any other agreement or instrument to which it is a party or by which it or any of the Owner's properties or assets are bound. To the best of the Owner's knowledge there is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Owner, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Owner's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

(b) The Taxing Jurisdiction hereby represents, warrants, and covenants that, as of the date of this Agreement:

i. The Taxing Jurisdiction is duly organized, validly existing, and in good standing under the laws of the State of New York and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.

ii. All necessary action has been taken to authorize the Taxing Jurisdiction's execution, delivery, and performance of this Agreement, and this Agreement constitutes the Taxing Jurisdiction's legal, valid, and binding obligation enforceable against it in accordance with its terms.

iii. No governmental approval by or with any government authority is required for the

valid execution, delivery, and performance under this Agreement by the Taxing Jurisdiction except such as have been duly or will be obtained or made.

iv. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Taxing Jurisdiction, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Taxing Jurisdiction's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

2. Tax Exemption; Payment in Lieu of Real Property Taxes.

(a) Tax-Exempt Status of the Project. Pursuant to RPTL 487 the Parties hereto agree that the Project shall be placed by the Taxing Jurisdiction as exempt upon the assessment rolls of the Taxing Jurisdiction. A Real Property Tax Exemption Form (RP 487) has or will be filed with the Assessor responsible for the Taxing Jurisdiction and the Project is eligible for exemption pursuant to RPTL 487 (4).

(b) Owner agrees to make annual payments (the "Annual Payments") to the Taxing Jurisdiction which the Taxing Jurisdiction agrees shall be in lieu of real property taxes for the Project for a period of fifteen (15) consecutive fiscal tax years; Annual Payments may not exceed the amounts that would otherwise be payable in connection with the Project but for the RPTL 487 exemption. Such 15-year term shall commence on the first taxable status date selected by Owner following the date when the Project is mechanically complete (the "Completion Date"), and shall end the fifteenth fiscal year following the Completion Date. Each Annual Payment shall be as set forth in Exhibit B, unless adjusted as set forth in Section 3 below. Each Annual Payment will be paid to the Taxing Jurisdiction in accordance with Section 4 of this Agreement; and the Annual Payment amount and payment date will be noted on an annual bill in accord with Exhibit B issued by the Taxing Jurisdiction to the Owner.

(c) Owner agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor or reduction in the Taxing Jurisdiction tax rate, and the Taxing Jurisdiction agrees that the payments in lieu of taxes will not be increased on account of an inflation factor or increase in the Taxing Jurisdiction tax rate, all of which factors have been considered in arriving at the payment amounts reflected in this Agreement.

3. Change in Capacity After Mechanical Completion: Adjustments to Annual Payments. If after the Completion Date the Capacity is increased or decreased, the Annual Payments set forth in Exhibit B shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

4. Payment Collection. Annual Payments shall be made payable to Town of Manlius and mailed thereto, c/o Town Supervisor located at 301 Brooklea Drive, Fayetteville, NY 13066, and are due January 31 of each calendar year. All late payments shall accrue interest at the statutory rate for late tax payments under New York Law. Owner shall pay the reasonable attorney fees, court and other costs incurred by the Taxing Jurisdiction in the collection of the unpaid amounts. All payments by the Owner hereunder shall be paid in lawful money of the United States of America.

5. Tax Status. Separate Tax Lot. The Taxing Jurisdiction agrees that during the term of this Agreement, the Taxing Jurisdiction will not assess Owner for any real property taxes with respect to the Project to which Owner might otherwise be subject under New York law, and the Taxing Jurisdiction agrees that this Agreement will exclusively govern the payments of all such taxes, provided, however, that this Agreement is not intended to affect, and will not preclude the Taxing Jurisdiction from assessing or Owner from challenging, any other taxes, fees, charges, rates or assessments which the Owner is obligated to pay, including, but not limited to, special assessments or special district assessments, fees, or charges for services provided by the Taxing Jurisdiction to the Project.

6. No Assignments Without Prior Notice; Binding Effect.

(a) This Agreement may not be assigned by Owner without the prior written consent of the Taxing Jurisdiction; such consent may not be unreasonably withheld if the Assignee has agreed in writing to accept all obligations of the Owner. Notwithstanding the foregoing, in the event that (i) this Agreement is assumed by a third party in connection with any change in control of the ownership interests of the Owner or (ii) this Agreement is assigned in connection with the sale of all or substantially all of the Owner's assets to a third party, the consent of the Taxing Jurisdiction shall not be required. If Owner assigns this Agreement with the advance written consent of the Taxing Jurisdiction, or in connection with any assignment which does not require the consent of the Taxing Jurisdiction, the Owner shall be released from all obligations under this Agreement upon assumption hereof in writing by an assignee. A Notice of this Agreement may be recorded by Owner and the Taxing Jurisdiction shall cooperate in the execution of required Assignments with the Owner and its successors. Owner may, with advance written notice to the Taxing Jurisdiction and without prior consent, assign this Agreement to an affiliate of Owner or to any party who has provided or is providing financing to Owner for the construction, operation and/or maintenance of the Project.

(b) Binding Effect. This PILOT Agreement shall inure to the benefit of, and shall be binding upon, the Taxing Jurisdiction, the Owner and their respective successors and assigns.

7. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement have been negotiated in good faith in recognition of and with due consideration of the full and fair taxable value of the Project.

8. Additional Documentation and Actions. Subject to applicable laws and regulations, each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such reasonable additional instruments and documents as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement.

9. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, by hand, or by certified mail, return receipt requested. Such notices shall be addressed or delivered to the

Parties at their respective addresses shown below.

If to Owner:

Meltwater Solar, LLC
c/o Cypress Creek Renewables
3402 Pico Boulevard, Suite 300
Santa Monica, CA 90405
Attn: Geoff Johnson

If to the Taxing Jurisdiction:

Town of Manlius
301 Brooklea Drive
Fayetteville, NY 13066
Attn: Town Supervisor

With a copy to:

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

10. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the State of New York. Owner and the Taxing Jurisdiction each consent to the jurisdiction of the New York courts in and for the County in which the Project is located regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Accordingly, any litigation arising hereunder shall be brought solely in such courts.

11. Termination Rights of the Owner. Owner may terminate this Agreement at any time by Notice to the Taxing Jurisdiction. Upon receipt of the Notice of Termination, the Project shall be placed on the taxable portion of the tax roll effective on the next taxable status date of the Taxing Jurisdiction. Owner shall be liable for all PILOT payments due in the year of termination, except that if Owner is required to pay any part-year real property taxes, the PILOT payment for that year shall be reduced pro rata so that the Owner is not required to pay both PILOT payments and real property taxes for any period of time.

12. Termination Rights of Taxing Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Taxing Jurisdiction may terminate this Agreement on thirty (30) days written notice to Owner if:

(a) Owner fails to make timely payments required under this Agreement, unless such payment is received by the Taxing Jurisdiction within the 30-day notice period referenced in Section 12 above with interest as stated in this Agreement; or

(b) Owner has filed, or has had filed against it, a petition in Bankruptcy, or is otherwise insolvent.

13. Remedies: Waiver And Notice.

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any breach of an obligation hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as otherwise authorized by this Agreement and/or controlling law or authorities.

(c) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

14. Entire Agreement. The Parties agree that this is the entire, fully integrated Agreement between them with respect to payments in lieu of taxes for the Project.

15. Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

16. No Third Party Beneficiaries. The Parties state that there are no third-party beneficiaries to this Agreement.

17. Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

18. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Signature Page Follows)

Executed by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

MELTWATER SOLAR, LLC

DocuSigned by:
Geoff Johnson

3321140AC640420...
By: Geoff Johnson.

Its: Authorized Person

1/12/2023

Date

TOWN OF MANLIUS

John T. Dever
By

Its: Town Supervisor

11/17/2022

Date

EXHIBIT A

Meltwater Solar, LLC

Description of Land – TBD

[6101 Kirkville Rd. North, Manlius, NY / SBL: 313889 071.-02-09.0]

Ref: Title report

EXHIBIT B

ANNUAL PAYMENTS TO TOWN

Year	Payment
1	\$ 3,162
2	\$ 3,225
3	\$ 3,290
4	\$ 3,355
5	\$ 3,422
6	\$ 3,491
7	\$ 3,561
8	\$ 3,632
9	\$ 3,705
10	\$ 3,779
11	\$ 3,854
12	\$ 3,931
13	\$ 4,010
14	\$ 4,090
15	\$ 4,172