

ORDINANCE 20-28

AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND ALLORA SOLAR, LLC, ALONG WITH ITS AFFILIATES AND RELATED ENTITIES AS SPONSOR, AND SPONSOR AFFILIATES, IF ANY, TO PROVIDE FOR AD VALOREM TAX INCENTIVES, CERTAIN SPECIAL SOURCE REVENUE CREDITS, AND THE AMENDMENT OF ORDINANCE NO. 95-12, AS AMENDED, SO AS TO INCLUDE THE RELATED PROJECT PROPERTY WITHIN THE PARK; AND MATTERS RELATING THERETO.

WHEREAS, Lexington County (“County”) acting by and through its County Council is authorized and empowered (i) under and pursuant to the provisions of (i) Title 12, Chapter 44 Code of Laws of South Carolina, 1976, as amended (“Act”) (a) to enter into agreements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State of South Carolina 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 (b) to covenant with such industry to accept certain fee payments in lieu of ad valorem taxes (“FILOT”) with respect to such investment; and (ii) pursuant to Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (“SSRC Act” and together with the Act, collectively, the “FILOT Acts”) to grant special source revenue credits (“SSRC”) against FILOT payments for certain qualifying infrastructure expenditures as defined in the SSRC Act;

WHEREAS, the County, a public body corporate and politic under the laws of the State of South Carolina has, by an Inducement Resolution adopted on November 24, 2020 (the “Resolution”), taken official action to identify the Project (as defined below) for purposes of the FILOT Acts, the statutes and regulations thereunder, and otherwise; and

WHEREAS, the County desires to enter into a FILOT and SSRC agreement (collectively, the “Fee Agreement”) with Allora Solar, LLC (the “Company”), which shall provide for FILOT payments for a project qualifying under the provisions of the Act and granting SSRCs against such FILOT payments for certain expenditures qualifying under the SSRC Act; and

WHEREAS, the County and the Company desire to enter into a Fee Agreement concerning the development of a facility in the County which will consist of certain personal property including all equipment, furnishings and other personal property required by the Company and any and all activities relating thereto (which properties constitute a project under the Act and are referred to herein as the “Project”). The Project is expected to provide significant economic benefits to the County and surrounding areas. In order to induce the Company to locate the Project in the County, the County has agreed to charge a fee-in-lieu of taxes with respect to the Project, to provide SSRCs against such FILOT payments, and otherwise make available to the Company the benefits intended by the FILOT Act; and

WHEREAS, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Fee Agreement between the County and the Company, which the County shall execute and deliver; and

WHEREAS, as further inducement to the Company, the County will utilize and existing Multi-County Industrial Park which will include the site of the Company’s property that is subject to the fee-in-lieu of tax agreement (the “MCIP”) under the provisions of Article VIII, Section 13 of the Constitution of the State of South Carolina of 1895, as amended (the “State Constitution”), and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (collectively, the “MCIP Law”); and

WHEREAS, the Company is planning an investment of approximately One Hundred Million and No/100 Dollars (\$100,000,000.00) in the Project in order to create a solar energy substation within the County; and

WHEREAS, it appears that the documents above referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

Section 1. *Findings.* Pursuant to the Act and particularly Section 12-44-40(H) and (I) thereof, the County Council has made and hereby makes the following findings:

- (a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;
- (b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$2,500,000.00;
- (e) The benefits of the Project to the public are greater than the costs to the public;
- (f) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and
- (g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. *Authorization to Execute.* In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement, which is attached hereto as Exhibit A, and shall be executed and filed with the Clerk to County Council and which comply with the terms of the aforementioned Resolution 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 Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company.

Section 3. *Authorization to Act.* The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement in a form substantially

identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 4. *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 5. *General Approval.* The consummation of all transactions contemplated by the Fee Agreement and a multi-county industrial park agreement are hereby approved. Subject to the approval of other appropriate governmental entities, the real property subject to this Fee Agreement shall be added to the Joint Park with Calhoun County.

Section 6. *Interpretation.* This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 7. *Severability.* The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 8. *General Repealer.* All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ADOPTED this _____ day of _____, 2020.

LEXINGTON COUNTY, SOUTH CAROLINA

M. Todd Cullum,
Chair of Lexington County Council

(SEAL)

ATTEST:

By: _____
Brittany Shumpert
Clerk to Lexington County Council

First Reading: November 24, 2020
Second Reading: June 22, 2021
Public Hearing: June 22, 2021
Third Reading: _____

EXHIBIT A

FILOT AGREEMENT

(attached)