RESOLUTION NO. 2023-2

BE IT APPROVED BY THE QUORUM COURT OF THE COUNTY OF GRANT, STATE OF ARKANSAS, A RESOLUTION TO BE ENTITLED

A RESOLUTION AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF AN INDUSTRIAL FACILITY WITHIN THE COUNTY

WHEREAS, Grant County, Arkansas (the "County"), is authorized under the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended ("Act 9"), to own, acquire, construct, equip and lease facilities within the County to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, Redfield PV I, LLC, a Delaware limited liability company (the "Company"), has evidenced its interest in developing, constructing and equipping an up to 100-megawatt solar generation facility, which may also include an up to 25-megawatt co-located battery energy storage facility (and maintenance and repair parts related thereto) (collectively, the "Project") to be located within the County on approximately 1,000 acres between US 270 and Princeton Pike (coordinates Lat: 34.161455, Long: -92.133390), if financing therefor can be provided through the issuance of a bond or bonds by the County under the authority of Act 9; and

WHEREAS, the County desires to assist the Company or an affiliate thereof in order to secure and develop industry within the County, and to aid in the financing of the Project under the provisions of Act 9; and

WHEREAS, it is desirable that the Company and the County enter into an Agreement to Issue Bonds for such purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE QUORUM COURT OF GRANT COUNTY, ARKANSAS, THAT:

Section 1. The County Judge be authorized and directed to enter into an Agreement to Issue Bonds in substantially the form and substance as follows:

AGREEMENT TO ISSUE BONDS

THIS AGREEMENT is made as of ____________________, 2023, by and between GRANT COUNTY, ARKANSAS, a political subdivision organized and existing under the laws of the State of Arkansas (the "County"), and REDFIELD PV I, LLC, a Delaware limited liability company (the "Company"), for the purpose of carrying out the purposes set forth in Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, as amended ("Act 9").

WITNESSETH

WHEREAS, the County is authorized by Act 9 to own, acquire, construct, equip, operate, maintain, sell, lease, contract concerning or otherwise deal in or dispose of any land, buildings, or facilities of any and every nature whatsoever that can be used in securing or developing industry within the County; and

WHEREAS, the County has determined that such purposes may be served by cooperation with the Company in financing the development, construction and equipping of an industrial solar generation facility and, to the extent the Company opts to also construct, a co-located battery energy storage facility (and maintenance and repair parts related thereto) (the "Project") to be located within the County on approximately 1,000 acres between US 270 and Princeton Pike (coordinates Lat: 34.161455, Long: -92.133390); and

WHEREAS, the County and the Company desire to cooperate in the development, construction and equipping of the Project and to have the costs of the Project financed from the proceeds of a revenue bond of the County (the "Bond") to be issued from time to time pursuant to Act 9 in an aggregate principal amount now estimated to be approximately $200,000,000; and

WHEREAS, the County and the Company contemplate that the Project will be leased by the County to the Company, with an option to purchase, and the rental payments therefor, together with other available moneys, shall be sufficient to pay debt service on the Bond and all related costs;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration under the mutual benefits, covenants, and agreements herein expressed, the County and the Company agree as follows:

1. **Proceedings**. All proceedings in connection with the issuance of the Bond shall be consistent with the requirements of Act 9, including notice to governmental entities and the publication of notice of public hearing as required by Arkansas law. All references to the issuance of the Bond contained herein shall be subject to compliance with the formalities of Act 9 when the facts required to do so are determined.

2. **Project**. The County and the Company will cooperate in causing to be commenced and continued the required development, construction and equipping of the Project, and the Company may provide, or cause to be provided, the necessary interim financing to permit such development, construction and equipping of the Project to commence pending the issuance of the Bond. Not later than the time of issuance of the Bond for any portion of the Project, the Company will convey or transfer or cause to be conveyed and transferred to the County, for an amount approximately equal to that amount then expended by the Company for the Project or portions thereof which are financed by the Bond then issued (including at the Company's option any costs of interim financing), the Project or portions thereof to be then financed. There shall also be conveyed to the County any easements and rights-of-way necessary to permit development, construction and equipping of the Project or such portion.

3. **Lease**. The County and the Company shall enter into a lease or leases under which the Company will lease, with an option to purchase, from the County, such Project or

portions thereof for a term of approximately thirty (30) years and will agree to make rental payments sufficient to pay the principal of and premium, if any, and interest on the Bond, together with all charges of any trustee and/or any paying agent for the Bond.

4. **Sale of Bond; Security**. The County will take such steps as are necessary to issue, sell and deliver, pursuant to the terms of Act 9, the Bond for the purpose of financing the Project in an aggregate amount necessary to furnish the permanent financing of all or any part of the costs of accomplishing the Project. It is presently estimated by the Company that the Bond will be issued in the aggregate principal amount of approximately $200,000,000. However, the County's commitment is to issue the Bond from time to time, pursuant to the terms of Act 9, in such amount as shall be requested by the Company for accomplishing all or any part of the Project, whether or not such amount is equal to or less than the above estimate and whether or not the facilities and improvements finally developed, constructed and equipped are identical to or different from the facilities presently expected to constitute the Project. The Bond shall mature in such amount and at such time or times and shall bear interest at such rate, to be payable on such date or dates, and to have such optional and mandatory redemption features and prices as are mutually agreed upon in writing by the County and the Company. Affiliates of the Company may be the purchaser(s) of the Bond. The County further agrees that it will enter into a lease and, if required, an indenture of trust with a bank or trust company qualified to exercise trust powers where necessary, for the purpose of providing rental payments sufficient, with other amounts available from the Company or directly or indirectly from the proceeds of the Bond, to pay the principal of and premium, if any, and interest on the Bond as they become due, together with the charges of any trustee and/or paying agent for the Bond, and pledging and/or otherwise securing the payment of such rental payments for the benefit of the owner(s) of the Bond. The lease, the indenture, other related documents and the Bond shall contain such customary terms and conditions as are agreed upon by the County and the Company. The County will cooperate in consummating the transactions so contemplated.

5. **Bond to be Special Obligation**. The County shall have no financial responsibility with respect to the Project, the Bond or the costs associated with either, and the Bond shall be a special obligation of the County and shall never constitute a general obligation, indebtedness or pledge of the credit of the County within the meaning of any constitutional or statutory provision and shall never be paid in whole or in part out of funds raised or to be raised by taxation or any other revenues or other funds of the County except those (including unexpended Bond proceeds) derived from or in connection with the sale or lease of the Project as provided for herein.

6. **Conditions of Issuance**. The Bond may be issued either at one time or in several series and/or issues from time to time, in such aggregate principal amount or amounts as the Company shall request in writing; provided, however, that all conditions of Act 9 shall have been met.

7. **Costs to be Financed**. The costs of the Project may include the costs permissible under Act 9, including, but not limited to, reasonable and necessary costs, expenses and fees incurred by the County in connection with the issuance of the Bond; attorney's fees and expenses; trustee fees and expenses; fees and expenses, if any, required in connection with the underwriting or placement of the Bond; recording costs; rating agency's fees, if any; legal publication costs; and printing costs. The County will upon request provide or cause to be

provided to the Company any data or information which may be reasonably required to verify any of the costs, expenses and fees enumerated above.

8. **Termination**. In the event that no portion of the Bond is sold within five years from the date hereof, this Agreement shall automatically terminate unless the parties hereto shall agree in writing to its extension for a further period of time specified in such writing. The Company may unilaterally terminate this Agreement without liability to the County (except for any amounts due and owing by the Company to the County arising out of the transactions occurring on or before the time of such termination, which shall be promptly paid by the Company to the County) by giving notice by ordinary mail, postage prepaid, to the County specifying therein the date of termination which may be the date of the notice.

9. **Protection to the County**. The Company shall pay all of the County's costs and expenses reasonably and necessarily incurred in connection with this Agreement or any other related documents or instruments. The Company will at all times indemnify and hold harmless the County against any and all losses, costs, damages, expenses and liabilities of whatsoever nature directly or indirectly resulting from, arising out of, or related to matters in connection with this Agreement or the County's interest under the Lease (including, without limitation, death or injury to a third party for which the County is named as a defendant); provided, however, that the Company shall not be liable for any losses of business opportunities, profits and the like (including incidental, indirect, special, consequential or punitive cost, expenses, loss or damage).

10. **Payment in Lieu of Taxes**. In consideration of the Company's plan to develop, construct and equip a substantial industrial solar generation and energy storage project within the County, the County desires to enter into an agreement for the Company or its affiliate to make payments in lieu of taxes. The County recognizes that under Article 16, Section 5, of the Arkansas Constitution, as interpreted under past decisions of the Supreme Court of Arkansas applicable to facilities financed pursuant to Act 9, including, particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W. 2d 663 (1960), and under the provisions of Arkansas Code Annotated §§14-164-701 to –704, the Project will be exempt from *ad valorem* taxation because it will be owned by the County and used for public purposes within the meaning of the applicable Constitutional and statutory provisions affording the exemption. The Company and the County agree, however, to enter into an agreement substantially in the form attached hereto as Exhibit A requiring the Company to make payments in lieu of taxes during the term of the lease in an amount equal to thirty-five percent (35%) of the aggregate amount of *ad valorem* taxes that would otherwise be due with respect to the Project property, but for the County's issuance of the Bond, with such amount to be distributed by the County as provided by law. The County and the Company agree to cooperate in sustaining the enforceability of the Agreement for Payments in Lieu of Taxes.

11. **Purpose and Effect**. The Bond is to be issued, sold and delivered under the authority of Act 9, and all related actions and documents shall be in conformity therewith.

12. **Assignment**. The rights of the Company pursuant to this Agreement may be assigned to any affiliate of the Company that is authorized and willing to assume the obligations of the Company hereunder and under the documents referenced herein, and is willing to lease the Project for the purposes described herein.

IN WITNESS WHEREOF, Grant County, Arkansas, acting pursuant to a resolution of its Quorum Court, has caused its name to be hereunto subscribed and the Company has caused its name to be subscribed hereto by one of its duly authorized officers, all as of the year and date first above written.

GRANT COUNTY, ARKANSAS

By:____________________________________
Name: Randy Pruitt
Title: County Judge

REDFIELD PV I, LLC,
a Delaware limited liability company

By:________________________________
Name: T. Christopher Elrod
Title: CEO

Section 2. This Resolution shall be in full force and effect from and after its adoption.

DATE PASSED: 4/17, 2023

DATE APPROVED: 4/17, 2023

By: Randy Pruitt
County Judge

ATTEST:

By: [signature]
County Clerk

(SEAL)

4858-2627-4635.5

EXHIBIT A

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

Grant County, Arkansas
Sheridan, Arkansas

Ladies and Gentlemen:

Redfield PV I, LLC, a Delaware limited liability company (the "Company"), has requested Grant County, Arkansas (the "County"), pursuant to the provisions of Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas, approved January 21, 1960, as amended ("Act 9"), to assist the Company in the development, construction and equipping of a certain 100-megawatt solar generation facility, which may also include an up to 25-megawatt co-located battery energy storage facility (and maintenance and repair parts related thereto) to be located within the corporate boundaries of the County (the "Project"). Specifically, the Project will be located within the County on approximately 1,000 acres between US 270 and Princeton Pike (coordinates Lat: 34.161455, Long: -92.133390) and shall consist of the acquisition and installation of various items of machinery and equipment described in Exhibit A hereto to be located on the real property described in Exhibit B hereto. To provide for the permanent financing of the Project, the County has agreed to issue up to $200,000,000 of its taxable industrial development revenue bond (the "Bond") under the authority of Act 9 and other applicable law.

The Bond will be secured by a pledge of revenues derived from the Project, including particularly lease rentals to be paid by the Company to the County under a Lease Agreement dated as of ___________ 1, 20__ (the "Lease Agreement"), and having a term ending on December 31, 20__ [THIRTY YEAR TERM].

The Lease Agreement will obligate the Company to pay all taxes and assessments, general and special, levied and assessed on the Project during the term of the Lease Agreement, as well as water and sewer charges, assessments and other governmental charges and impositions. The Company and the County understand and agree that, notwithstanding such provisions in the Lease Agreement, under Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to Act 9, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), and under the provisions of Arkansas Code Annotated §§14-164-701 to –704, the Project will be exempt from *ad valorem* taxes because it will be owned by the County and used for public purposes within the meaning of the applicable Constitutional provisions affording the exemption.

Although the County makes no representations as to the continued precedential value of such past decisions concerning the exemption from *ad valorem* taxation of industrial facilities financed pursuant to Act 9, the Company and the County agree that the Company, as lessee of the Project owned by the County, will have no *ad valorem* taxes to pay under the provisions of the Lease Agreement. The County has indicated a reluctance to lose all tax revenues which would otherwise be received if the properties involved were privately owned. Therefore, to induce the County to proceed with the issuance of the Bond and as an inducement for the development, construction, equipping and operation of the Project within the County, which will inure to the benefit of the Company (and fulfill a public purpose of the County), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the County, the Company agrees with the County as follows:

1. (a) In lieu of *ad valorem* taxes that would otherwise be assessed on the Project personal property during the term of the Lease Agreement, the Company will make annual payments to the County in an amount equal to 35% of the amount that would otherwise be due with respect to such Project personal property (as determined pursuant to Arkansas Code Annotated Section 14-164-704) during such year were such property not exempt from the levy of *ad valorem* taxes, with the first such payment to be due on or before the 10th day of October, 20__, with reference to tax year 20__, and subsequent annual payments to be due on or before October 10th of each year thereafter, with the final payment due on or before October 10, 20__, with reference to tax year 20__. [THIRTY YEAR TERM BEGINNING IN YEAR OF LEASE COMMENCEMENT]

(b) The Company and the County hereby affirm the provisions of the Lease Agreement permitting the removal of Project machinery and equipment by the Company and the substitution of other machinery and equipment having equal or greater utility in the operation of the Project, and it is agreed that such substituted machinery and equipment shall become part of the Project and shall likewise be exempt from the payment of *ad valorem* taxes for the balance of the years of the exemption period of the replaced machinery and equipment. Such substituted machinery and equipment will be subject to payments in lieu of *ad valorem* taxes on the same basis as provided under subsection (a) above.

2. Payments to be made hereunder are not intended to be in lieu of any license, occupation or privilege taxes or fees imposed upon the Company for or with respect to its right to carry on its business in the State of Arkansas. The payments to be made by the Company to the County pursuant to this Agreement are intended to be in lieu of all *ad valorem* taxes that would have to be paid on the Project by the Company to the State of Arkansas, the County and/or all other political subdivisions of the State of Arkansas entitled thereto (the "taxing authorities") if the Project was not exempt from *ad valorem* taxation under the provisions of Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to Act 9, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), and under the provisions of Arkansas Code Annotated §§14-164-701 to –704.

3. The County agrees to distribute each payment made by the Company hereunder among the applicable taxing authorities in the proportion that the millage levied by each bears to the total millage levied by all taxing authorities during the year of distribution.

4. The County and the Company agree to cooperate in sustaining the enforceability of this Agreement. However, if by reason of a change in the Constitution of the State of Arkansas, or a change by the Supreme Court of the State of Arkansas in its interpretation of the

Constitution, a change in statutory law by the General Assembly of the State of Arkansas or otherwise, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of taxes and need only pay the difference to the taxing authorities. Furthermore, inasmuch as the payment herein agreed to be made by the Company is intended to be in lieu of taxes, it is agreed that said payment shall not as to any year be in an amount greater than would otherwise be payable for such year in *ad valorem* taxes, in the aggregate, on account of its ownership of the Project.

5. It is recognized by the County and the Company that the payments described in Section 1(a) hereof are to be calculated on the basis of annual amounts that would otherwise be payable as *ad valorem* taxes under Arkansas law on the Project property if such property were on the tax rolls. Accordingly, because the valuation of such property is a key factor in calculating said payments, the County agrees to reasonably cooperate with the Company in any assessment of the valuation assigned to the Project property.

6. Except with respect to the provisions regarding the final payment due by the Company as described in Section 1(a) above, this Agreement shall terminate and be of no further force and effect from and after the date that the Lease Agreement shall terminate for any purpose other than a default on the part of the Company. If such termination shall be at a point constituting a portion of a tax year, the Company shall pay for the year in which termination occurred that portion of the specified annual payment that the number of days in such tax year that the Company was lessee of the Project prior to the termination bears to 365 days.

7. This Agreement may be amended in writing at any time by the Company and the County for any purpose permitted by Arkansas law, including the provision of different payment terms from those presently set forth herein, either during the original term of the Lease Agreement or during any extension thereof.

8. This Agreement may be assumed by successors to the Company and may be assigned by the Company, and shall be binding upon said successors and assigns, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the County.

9. This Agreement may be executed in counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas.

If the foregoing is acceptable, please so indicate by executing the acceptance set forth below, and by returning this instrument to the Company, whereupon this instrument shall constitute a valid and binding contract between the Company and the County.

DATED: _______________, 20__

REDFIELD PV I, LLC,
a Delaware limited liability company

By:_______________________________
Name:
Title:

ACCEPTED:

GRANT COUNTY, ARKANSAS

By:_______________________________
Name: Randy Pruitt
Title: County Judge

[SIGNATURE PAGE FOR AGREEMENT FOR PAYMENT IN LIEU OF TAXES]

EXHIBIT A

PROJECT MACHINERY AND EQUIPMENT

[ADD EQUIPMENT LIST]

EXHIBIT B

PROJECT LOCATION

The following described real estate situated in Grant County, Arkansas, to-wit:

[LEGAL DESCRIPTION TO BE PROVIDED]