

SOLAR FACILITY SITING AGREEMENT

This **Solar Facility Siting Agreement** (this “Agreement”), dated as of _____, 2023 (the “Effective Date”), is by and between **Albemarle County, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”) and **Hexagon Energy, LLC**, a Virginia limited liability company (the “Applicant”). The County and Applicant are herein each a “Party” and collectively, the “Parties.”

RECITALS

WHEREAS, the Applicant intends to develop, install, build, and operate a ground-mounted solar photovoltaic electric generating facility, commonly known as Woodridge Solar and identified by the County as Special Use Application SP 2022-015, which includes a proposed electrical substation that is a component of the facility, and is identified by Albemarle County as Special Use Permit Application SP 2022-014 (SP 2022-015 and SP 2022-014 are collectively, the “Project”), on certain parcels of land, located along or near Secretarys Road in the Scottsville Magisterial District of Albemarle County, Virginia, identified by the following Albemarle County Tax Map Parcel numbers:

Tax Map Parcel 114-51, containing 113 acres
Tax Map Parcel 114-55, containing 89 acres
Tax Map Parcel 114-56, containing 14.8 acres
Tax Map Parcel 114-58, containing 143.65 acres
Tax Map Parcel 114-65, containing 35.48 acres
Tax Map Parcel 114-68, containing 42 acres
Tax Map Parcel 114-69, containing 42 acres
Tax Map Parcel 114-70, containing 1728 acres
Tax Map Parcel 115-10, containing 48.5 acres

which are collectively referred to in this Agreement as the “Property;”

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

WHEREAS, on January 19, 2023 the Applicant gave written notice to the County pursuant to Virginia Code § 15.2-2316.7 (A) of Applicant’s intent to locate the Project in the County and requested a meeting to discuss and negotiate a Siting Agreement;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement so the Applicant can make a voluntary payment to the County above and beyond its tax obligations, as a meaningful way to be a community partner, to mitigate certain potential impacts of the Project, and to provide financial compensation to the County to address capital needs set out in (a) the County’s capital improvement plan, (b) the County’s current fiscal budget, or (c) the County’s fiscal fund balance policy; and to help the County achieve its goals toward deployment of broadband, all as permitted by Virginia Code §15.2-2316.7 (B).

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WHEREAS, pursuant to Virginia Code § 58.1-2636, the County has not adopted an ordinance assessing a revenue share of up to \$1,400 per megawatt (MW), as measured in alternating current (AC) generation capacity of the nameplate capacity of a solar facility (the “Solar Revenue Share”), but may elect to do so at a later date (any such ordinance adopted by the County in the future, a “Solar Revenue Share Ordinance”);

WHEREAS, pursuant to Virginia Code § 58.1-3660, if the County adopts a Solar Revenue Share Ordinance, the solar photovoltaic (electric energy) systems comprising the Project, which are considered “certified pollution control equipment and facilities,” will be exempt from all state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia;

WHEREAS, until such time as the County adopts a Solar Revenue Share Ordinance, the Project will be subject to taxation in accordance with state and local law;

WHEREAS, in the absence of a Solar Revenue Share Ordinance, such certified pollution control equipment would be subject to local machinery and tools taxation as provided by state law and local ordinances, including § 58.1-3660 (C) and (D), commonly known as the Machinery and Tools Tax Stepdown (“M&T Taxes”);

WHEREAS, the Applicant has agreed to the payments and financial terms contained herein, including payment of the M&T Taxes together with voluntary annual payments supplementing the M&T Taxes in amounts that would result in a total annual payment equal to the greater of the M&T Taxes or what would otherwise be due under a Solar Revenue Share Ordinance, regardless of whether the County actually adopts a Solar Revenue Share Ordinance; and

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

NOW, THEREFORE, pursuant to the Siting Agreement Legislation, 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. Project Features. The Project is a 138 megawatts (MW) ac solar photovoltaic (PV) facility expected to operate for 35-40 years or more. Generated power will likely be sold to a regional utility. The Project is expected to provide approximately 249 direct, indirect, and induced jobs during the construction phase, five direct, indirect, and induced jobs during its ongoing operation phase, and direct and indirect economic stimulation through purchase of local goods and services during construction and operations. The Project will provide quiet, clean, efficient, reliable energy for approximately 25,000 homes in Virginia. Additional specific details

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regarding the Project are contained in the Special Use Permit Application package SP 2022-015, submitted to the County on May 16, 2022 and resubmitted to the County on September 19, 2022, as such materials were further supplemented or amended prior to the Board of Supervisors taking final action on the Application (the “SUP Application”).

2. Special Use Permit Conditions. The Project is subject to all the terms and conditions contained in Special Use Permit 2022-015, approved by the Board of Supervisors for the Project (the “SUP”). Such conditions of approval will govern the development and operation of the Project, and are intended to mitigate any adverse impacts associated with the Project (the “Conditions of the SUP”). A certified Resolution of the Board of Supervisors approving the SUP is attached hereto as Exhibit A, and is hereby incorporated herein.

Article II

Payment Structure

1. Supplemental Payments.

(a) Until the County adopts a Solar Revenue Share Ordinance, the Applicant shall make a separate payment to the County (each, a “Supplemental Payment” and collectively, the “Supplemental Payments”) for each year the Estimated Solar Revenue Share exceeds the M&T Taxes. The amount of each Supplemental Payment shall equal the difference between the Estimated Solar Revenue Share and the M&T Taxes. Each Supplemental Payment shall be due at the same time the M&T Taxes are due and owing. No Supplemental Payment shall be made for any year when the M&T Taxes equal or exceed the Estimated Solar Revenue Share.

(b) If the County adopts a Solar Revenue Share Ordinance, no Supplemental Payment shall be made for the year in which such ordinance is adopted, or for any year thereafter.

2. Statutory Structure of Payment and Supplemental Payments; Statement of Benefit. The Parties acknowledge that this Agreement is fair and mutually beneficial to both Parties, as follows:

(a) The Applicant agrees that by entering into this Agreement, pursuant to Virginia Code § 15.2-2316.7, the Payment and, as applicable, Supplemental Payments are authorized by statute and acknowledges it is obligated to make the Payment and, as applicable, Supplemental Payments in accordance with this Agreement.

(b) The County acknowledges that the Payment and, as applicable, Supplemental Payments are authorized by statute.

(c) As of the Effective Date, the County has not adopted a Solar Revenue Share Ordinance, and the Payment is not conditioned upon the County adopting a Solar Revenue Share Ordinance; provided, however, if the County adopts a Solar Revenue Share Ordinance, then (i) the County acknowledges and agrees that the Project will be 100% exempt from state and local taxation pursuant to Virginia Code § 58.1-3660 (D), (ii) the County acknowledges and agrees that

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Supplemental Payments will cease pursuant to paragraph 1(b) of Article II, (iii) the Applicant agrees that the Project will be subject to any Solar Revenue Share Ordinance, and (iv) the Parties agree that any future amendments to Virginia Code §58.1-2636 to modify the Solar Revenue Share shall thereafter apply to the County's Solar Revenue Share Ordinance and thus to the Project and to this Agreement.

(d) The Parties acknowledge that the funding provided pursuant to this Agreement is beneficial in that it will result in mutually acceptable, predictable, and reasonable payments to the County.

(e) Applicant acknowledges that this Agreement is beneficial to Applicant in allowing it to proceed with development of the Project with clear SUP Conditions, including clear project design terms which prescribe design requirements to mitigate any potential impacts on the surrounding properties and the Albemarle County community. Additionally, Applicant acknowledges that this Agreement provides for a clear schedule of future payments to the County in amounts fair to both Parties.

3. Use of Payment and Supplemental Payments by the County. The County may use the Payment and, as applicable, the Supplemental Payments, for any of the following purposes, each as expressly permitted by Virginia Code §15.2-2316.7: (a) to mitigate any impacts of the Project; and (b) (i) to fund the capital improvement plan of the County; (b) to meet needs of the current fiscal budget of the County; (ii) to supplement or establish any fund for which the County maintains a balance policy; and (iii) to support broadband funding.

Article III**Miscellaneous Terms**

1. Term; Termination. The term of this Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with its terms, shall continue until the earlier of (i) the Applicant's commencement of decommissioning of all or a material portion of the Project; or (ii) the fortieth (40th) anniversary of the Commercial Operation Date (the "Termination Date"). The Applicant shall have no obligation to make the Payment and, as applicable, Supplemental Payments after the Termination Date. The Payment and, as applicable, any Supplemental Payment due for the year in which the Project or material part thereof is decommissioned shall be prorated as of the Termination Date. The termination of this Agreement shall not limit the Applicant's legal obligation to pay local taxes in accordance with applicable law at such time and for such period as the Project remains in operation, or to make payments to the County pursuant to any Solar Revenue Share Ordinance that it may elect in the future to adopt for such period as the Project remains in operation, subject always to the terms and conditions of paragraph 2(c) of Article II.

2. Mutual Covenants. The Applicant covenants to the County that it will not seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement. So long as Applicant is not in breach of this Agreement during its term, 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. No Obligation to Develop. The Parties acknowledge and agree that the Applicant

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has no obligation to develop the Project. The Payment and, as applicable, any Supplemental Payments hereunder are expressly contingent on the commencement of Commercial Operation of the Project. Any test energy or other energy produced prior to the Commercial Operation Date shall not constitute “Commercial Operation” or trigger any payment obligations hereunder. It is understood that development of the Project by Applicant is contingent upon a number of factors including, but not limited to, regulatory approvals, availability and cost of equipment and financing, and demand for and contracts to sell renewable energy, and renewable energy credits. No election by the Applicant to terminate, defer, suspend, or delay development of the Project shall constitute, or be deemed to be, a default or breach of Applicant under this Agreement. If Applicant decides to no longer develop the Project, the Applicant may provide written notice to the County terminating this Agreement, whereupon its obligations hereunder shall immediately terminate.

4. **Successors and Assigns.** This Agreement will be binding upon the successors and assigns of the Applicant, and the obligations created hereunder shall be covenants running with the Property upon which the Project is developed. If Applicant sells, transfers, leases or assigns all or substantially all of its interest in the Project or the ownership of the Applicant, this Agreement will automatically be assumed by and be binding on the purchaser, transferee or assignee. Applicant may assign, without the County’s consent, this Agreement or any right or obligation hereunder. Upon such assumption, the sale, transfer, lease or assignment shall relieve the Applicant of all obligations and liabilities under this Agreement accruing from and after the date of sale or transfer, and the purchaser or transferee shall automatically become responsible under this Agreement. The Applicant shall execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

5. **Memorandum of Agreement.** A memorandum of this Agreement, in a form acceptable to the County and the Applicant, shall be recorded in the land records of the Clerk’s Office of the Circuit Court of the County of Albemarle, Virginia. Such recordation shall be at the Applicant’s sole cost and expense and shall occur as soon as reasonably practicable after the full execution of this Agreement. If the Applicant chooses, in its sole discretion, to not develop the Project, the County shall execute and deliver to Applicant a release of the memorandum filed in the aforementioned Clerk’s Office.

6. **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:

Albemarle County, Virginia
401 McIntire Road
Charlottesville, VA 22902
Attn: Jeff Richardson, County Executive

With a copy to:

County Attorney’s Office
401 McIntire Road
Charlottesville, VA 22911
Attn: County Attorney

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Hexagon Energy, LLC
321 E. Main Street, Suite 500
Charlottesville, VA 22902
Attention: Drew Price,
President

With a copy to:

Valerie W. Long
Williams Mullen, PC
323 2nd Street SE
Suite 900
Charlottesville, VA 22902

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

7. 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 ALBEMARLE 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 OF 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.

8. Confidentiality. This Agreement, once placed on the docket for consideration by the Albemarle County Board of Supervisors, is a public document, subject to production under the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.* The County understands and acknowledges (i) the Applicant, its affiliates and their respective employees, contractors, consultants, agents and representatives may furnish confidential or proprietary information and data to the County pertaining to its or their business, operations, or development plans (including the Project or other projects), including, but not limited to, technical, financial, business or other information (collectively, “Confidential Information”), and (ii) that disclosure of any such Confidential Information could result in substantial harm to them and could thereby have a significant detrimental impact on their business and operations. The County acknowledges that during the development of this Agreement, certain Confidential Information may be shared by the Applicant with the County. The Applicant agrees that any Confidential Information it submits to the County shall be clearly labeled as “Confidential Information,” and shall refer to the statute

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under which the Applicant is claiming that such information is exempt from disclosure. 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 Confidential Information to any person, firm, governmental body or agency, or any other entity unless the request for Confidential Information is properly made under and pursuant to applicable law. Upon receipt of such request, but before transmitting any documents or information which may contain any Confidential Information, 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.

9. 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. If, for any reason, including a change in applicable law, it is ever determined by any court or governmental authority of competent jurisdiction that this Agreement is invalid then the Parties shall, subject to any necessary County meeting vote or procedures, undertake reasonable efforts to amend and or reauthorize this Agreement so as to render the invalid provisions herein lawful, valid and enforceable. If the Parties are unable to do so, this Agreement shall terminate as of the date of such determination of invalidity. 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.

10. Entire Agreement. This Agreement and any schedules or exhibits attached hereto 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.

11. Construction. This Agreement was drafted with input by the County and the Applicant, and no presumption shall exist against either Party.

12. Force Majeure. Any delay or failure of performance by either party hereunder shall not constitute a breach or give rise to any claim if and to the extent such delay or failure is caused by an act, event, or condition beyond the Party's reasonable control, and in the event of such act, event, or condition, the time to perform any obligation hereunder, including payment obligations, will be extended on a day-for-day basis for the period of the delay or resulting actions caused by such act, event, or condition.

13. 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.

14. Satisfaction of Virginia Code Section 15.2-2232. Pursuant to §15.2-2316.9 (C) of the Virginia Code, approval of this Agreement by the County Board of Supervisors in

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accordance with §15.2-2316.8 (B) shall deem the Project to be substantially in accord with the 2015 Albemarle County Comprehensive Plan, in satisfaction of the requirements of §15.2-2232.

15. Counterparts; Electronic Signatures. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile, 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]

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

HEXAGON ENERGY, LLC,
a Virginia limited liability company

By: _____

Printed Name: _____

Title: _____

ALBEMARLE COUNTY, VIRGINIA

By: _____

Name: _____

Title: _____

[**Note:** Virginia Code Section 15.2-2316.8(B) states that a siting agreement shall be signed by the Chief Executive Officer of the host locality.]

Approved as to form:

By: _____
County Attorney

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EXHIBIT A

CERTIFIED RESOLUTION APPROVING SPECIAL USE PERMIT
INCLUDING LIST OF CONDITIONS OF APPROVAL

DRAFT & CONFIDENTIAL