

ACTIONS
Board of Supervisors Meeting of March 6, 2024

March 7, 2024

AGENDA ITEM/ACTION	ASSIGNMENT	VIDEO
<p>1. Call to Order.</p> <ul style="list-style-type: none"> The Meeting was called to order at 1:00 p.m. by the Chair, Mr. Andrews. All BOS members were present. Also, present were Jeff Richardson, Steve Rosenburg, Claudette Borgersen, and Travis Morris. 		Link to Video
<p>4. Adoption of Final Agenda.</p> <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED final agenda. 		
<p>5. Brief Announcements by Board Members.</p> <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> Announced that the IVY MUC will be having household hazardous waste and other special collection days in April and encouraged community members to consult the rivanna.org website for specific dates. Remarked that April marked plant sales and garden tours, for which more information would be provided at the first meeting in April. <p><u>Mike Pruitt:</u></p> <ul style="list-style-type: none"> Congratulate Virginia on its participation in the Super Tuesday presidential election and the next was scheduled for June 18, with early in person voting beginning 45 days prior to that date. He encouraged everyone to exercise their right to vote. <p><u>Bea LaPisto-Kirtley:</u></p> <ul style="list-style-type: none"> Reminder community members about the Citizens Police Academy being held over the next three Saturdays and while class were full, additional classes may be offered in the fall. <p><u>Diantha McKeel:</u></p> <ul style="list-style-type: none"> Announced that the Charlottesville Area Alliance was hosting a One Stop Shop for individuals aged 50 and above on April 27, 2024, from 11:00 a.m. to 2:00 p.m. at Carver Recreation Center. Express her gratitude toward the Albemarle County Police Department for their efforts in addressing reckless driving and speeding in their community. She said that it was crucial for everyone to drive safely and adhere to traffic laws for the safety of both pedestrians and drivers in their community. <p><u>Jim Andrews:</u></p> <ul style="list-style-type: none"> Echoed Ms. McKeel's appreciation for Albemarle County Police Officers and commented on traffic enforcement concerns. He reminded community members that according to the law, drivers should move over, if possible, when encountering stopped patrol cars. Announced that budget town halls were approaching and there was one scheduled for BF Yancy in the Samuel Miller District on March 28 and others would be scheduled soon. 		
<p>6. Proclamations and Recognitions.</p> <p>a. Proclamation Celebrating Women's History</p>	(Attachment 1)	

<p>Month.</p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED proclamation and presented it to Brezhana (Bre) Reed. <p>b. Proclamation Recognizing March as Red Cross Month.</p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED proclamation and presented it to Bill Brent. 	(Attachment 2)	
<p>7. From the Public: Matters on the Agenda but Not Listed for Public Hearing or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.</p> <ul style="list-style-type: none"> • <u>George Stevens</u>, Chief of North Garden Volunteer Fire Station, asked the Board to fund NGVFD's request for 24/7 service staffing. 		
<p>8.2 Memorandum of Agreement between the County and the Albemarle County Parks Foundation.</p> <ul style="list-style-type: none"> • ADOPTED Resolution substantively approving the Memorandum of Agreement and AUTHORIZED the County Executive to sign the MOA once it has been approved as to substance and form by the County Attorney. 	<p><u>Clerk</u>: Forward copy of signed resolution to Parks and Recreation and County Attorney's office. (Attachment 3)</p> <p><u>County Attorney</u>: Provide Clerk with copy of fully executed agreement.</p>	
<p>8.3 SE202300035 Afton Scientific Loading Space Special Exception Request.</p> <ul style="list-style-type: none"> • ADOPTED resolution approving SE202300035 Afton Scientific Load Space. 	<p><u>Clerk</u>: Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 4)</p>	
<p>9. Work Session: FY 2025 Operating and Capital Budget.</p> <ul style="list-style-type: none"> • HELD. 		
<p>Recess.</p> <ul style="list-style-type: none"> • At 2:52 p.m., the Board recessed and reconvened at 3:10 p.m. 		
<p>Work Session: FY 2025 Operating and Capital Budget. (<i>continued</i>)</p> <ul style="list-style-type: none"> • HELD 		
<p>10. Presentation: S.L. Williamson Company, Inc. – Presentation of Claim.</p> <ul style="list-style-type: none"> • RECEIVED. 		
<p>11. Closed Meeting.</p> <ul style="list-style-type: none"> • At 4:49 p.m., the Board went into Closed Meeting pursuant to section 2.2-3711(A) of the Code of Virginia: • under subsection (1), to discuss and consider appointments to various boards and commissions including, without limitation, 5th & Avon Community Advisory Committee, Citizens Transportation Advisory Committee, Crozet Community Advisory Committee, Places 29 (North) Community Advisory Committee, Police Department Citizens Advisory Committee, Social Services Advisory Board, and Solid Waste Alternatives Advisory Committee; • under subsection (7), to consult with legal counsel and receive briefings by staff members pertaining to (i) actual litigation concerning the Ragged Mountain Natural Area, in the case styled <i>Board of Supervisors of the County of Albemarle, Virginia v. City Council of the City of Charlottesville, Virginia</i>, and (ii) probable litigation concerning a claim by S.L. Williamson, Inc. related to a construction project 		

<p>undertaken by the County, where consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the County and the Board; and</p> <ul style="list-style-type: none"> • under subsection (8), to consult with legal counsel regarding specific legal matters requiring legal advice related to the foregoing claim of S.L. Williamson, Inc. 		
<p>12. Certify Closed Meeting.</p> <ul style="list-style-type: none"> • At 6:01 p.m., the Board reconvened into an open meeting and certified the closed meeting. 		
<p>13. Boards and Commissions:</p> <p>a. Vacancies and Appointments.</p> <ul style="list-style-type: none"> • APPOINTED, Mr. Matthew Seibert to the 5th & Avon Community Advisory Committee with said term to expire on September 30, 2025. • APPOINTED, Mr. Jose Gomez to the Citizens Transportation Advisory Committee (CTAC), with said term to expire on April 3, 2026. • APPOINTED, Mr. Peter Thompson to the Citizens Transportation Advisory Committee (CTAC), with said term to expire on April 3, 2025. • REAPPOINTED, Mr. Kostas Alibertis to the Crozet Community Advisory Committee with said term to expire on March 31, 2026. • APPOINTED, Ms. Christine Hirsh-Putnam to the Solid Waste Alternatives Advisory Committee (SWAAC), with said term to expire on May 31, 2028. • APPOINTED, Ms. Kaleigh Reno to the Solid Waste Alternatives Advisory Committee (SWAAC), with said term to expire on May 31, 2026. 		
<p>14. From the County Executive: Report on Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> • There were none. 		
<p>15. From the Public: Matters on the Agenda but Not Listed for Public Hearing or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.</p> <ul style="list-style-type: none"> • There were none. 		
<p>16. <u>Pb. Hrg.: SP202300006 Arbor Life Professional Tree Care.</u></p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED resolution approving SP202300006 ArborLife Professional Tree Care Landscape Contractor, with conditions. 	<p><u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 5)</p>	
<p>17. <u>Pb. Hrg.: ZMA202300011 4102 Dickerson Road.</u></p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED ordinance to approve ZMA202300011 4102 Dickerson Road. 	<p><u>Clerk:</u> Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 6)</p>	
<p>18. <u>Pb. Hrg.: Public Hearing to Consider Proposed Siting Agreement for Woodridge Solar Project.</u></p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED the revised resolution approving a Proposed Solar Siting Agreement Regarding Woodridge Solar Project. 	<p><u>Clerk:</u> Forward copy of signed resolution to County Attorney's office. (Attachment 7)</p> <p><u>County Attorney:</u> Provide Clerk with copy of fully executed agreement. (Attachment 8)</p>	
<p>19. From the Board: Committee Reports and Matters Not Listed on the Agenda.</p>		

<p><u>Mike Pruitt:</u></p> <ul style="list-style-type: none"> Requested that the public to act as their eyes and ears regarding best practices as additional solar fields came online since lived experiences on the ground often revealed new and significant discoveries. <p><u>Ned Gallaway:</u></p> <ul style="list-style-type: none"> Commented that the MPO (Charlottesville-Albemarle Metropolitan Planning Organization) had voted in favor of the Fontaine Avenue interchange agreement, which was then conveyed to VDOT for further action. Commented that the Regional Housing Partnership (RHP) had begun discussing whether that body could conduct a fiscal impact analysis of housing development and suggested that the RHP could take on that task for the six counties, which would provide valuable insights into the economic impact. <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> Added to the discussion about housing impacts and mentioned that there may be additional unmet costs for taxpayers for each new unit constructed, and that this topic was part of the broader discussion that she hoped would be addressed soon. Commented that the MPO learned that extra revenue funds, which they had hoped could have been allocated for a pedestrian crossover, would be returned to the general budget and they would not be able to implement this feature but hoped that their efforts would be successful in due course. 		
<p>20. Adjourn to March 11, 2024, 3:00 p.m. Room 241.</p> <ul style="list-style-type: none"> The meeting was adjourned at 7:27 p.m. 		

ckb/tom

- Attachment 1 – Proclamation Recognizing Women’s History Month
- Attachment 2 – Proclamation Recognizing March as Red Cross Month
- Attachment 3 – Resolution Approving the Memorandum of Agreement with the Albemarle County Parks Foundation
- Attachment 4 – Resolution to Approve SE202300035 Afton Scientific Loading Space
- Attachment 5 – Resolution to Approve SP202300006 ArborLife Professional Tree Care
- Attachment 6 – Ordinance No. 24-A(7) - ZMA202300011 4102 Dickerson Road.
- Attachment 7 – Resolution Approving a Proposed Solar Siting Agreement Regarding Woodridge Solar Project
- Attachment 8 – Solar Facility Siting Agreement

Proclamation Recognizing Women’s History Month

WHEREAS, Women’s History Week originated in the United States in 1978, launched in California during the week of International Women’s Day, and the movement spread across the country; and

WHEREAS, A consortium of women’s groups and historians successfully lobbied for national recognition of the week honoring women’s contributions to American history, until the first Presidential proclamation was issued by Jimmy Carter in 1980; and

WHEREAS, Subsequent presidents continued to proclaim a National Women’s History Week until Congress passed a law in 1987 designating March of each year as Women’s History Month, and authorized each President thereafter to issue an annual proclamation; and

WHEREAS, Albemarle County honors all the women, past and present, from our county, commonwealth and country whose invaluable contributions are often not recognized or recorded, and whose determination and leadership positively impacts our lives every day; and

NOW, THEREFORE, BE IT PROCLAIMED, that we, the Albemarle County Board of Supervisors, do hereby acknowledge and commemorate the month of March 2024 as Women’s History Month, with special recognition of the women who diligently lead our County to a brighter future for all.

Signed this 6th day of March 2024

Proclamation Recognizing March as Red Cross Month

WHEREAS, During American Red Cross Month in March, we recognize the compassion of people in Albemarle County and reaffirm our commitment to care for one another in times of crisis; and

WHEREAS, This generous spirit is woven into the fabric of our community and advances the humanitarian legacy of American Red Cross founder Clara Barton, one of the most honored women in our country's history, who nobly dedicated herself to alleviating suffering; and

WHEREAS, Today, kindhearted individuals in our community exemplify Barton's commitment as they step up through your American Red Cross, Central Virginia Chapter to provide a beacon of hope for our neighbors in need; and

WHEREAS, Through their voluntary and selfless contributions, they make a lifesaving difference in people's darkest hours. More than 250 Red Cross volunteers provided 134 Central Virginia families with shelter, food, and comfort after a home fire, helped collect and process more than 18,000 blood donations for hospital patients, supported hundreds of military families, veterans and caregivers through the unique challenges of service, and helped save lives through providing nearly 14,000 residents with first aid, CPR and other skills training.

NOW, THEREFORE, BE IT PROCLAIMED, that we, the Albemarle County Board of Supervisors do hereby recognize the month of March 2024 as Red Cross Month and encourage all residents of Albemarle County to reach out and support their humanitarian mission; and

BE IT FURTHER PROCLAIMED, that during this month of March, in honor of all those who lead with their hearts to serve people in need, we ask everyone to join in this commitment to strengthen our community.

Signed this 6th day of March 2024.

**RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT
WITH THE ALBEMARLE COUNTY PARKS FOUNDATION**

WHEREAS, the Albemarle County Parks Foundation (the “Foundation”) founded and formed on August 30, 2023, as a Virginia nonstock, not-for-profit corporation;

WHEREAS, the mission of the Foundation is to assist and support the County of Albemarle (the “County”) in its continued efforts to operate, maintain, and manage a system of high-quality parks, natural areas, greenways, blueways, community centers, and other recreational facilities throughout the County; and

WHEREAS, the Board finds it is appropriate to memorialize the Foundation’s intentions and operating relationship with the County in a Memorandum of Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, hereby approves the form of the Memorandum of Agreement attached hereto as Exhibit/Attachment A. The County Executive is authorized to execute and deliver the Memorandum of Agreement that is substantially in such form, containing such completions, omissions, insertions, and changes consistent with this resolution as approved by the County Executive and the County Attorney, whose approval shall be evidenced conclusively by their execution and delivery of the Memorandum of Agreement.

* * * * *



MEMORANDUM OF AGREEMENT
between
COUNTY OF ALBEMARLE, VIRGINIA
and
ALBEMARLE COUNTY PARKS FOUNDATION

This Memorandum of Agreement (“MOA”) is made by and between the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia (“County”), and Albemarle County Parks Foundation, a not-for-profit Virginia nonstock corporation (“Foundation”).

WHEREAS, the County, through its Parks and Recreation Department (“ACPR”), owns, operates, and maintains real estate, buildings, and a variety of different recreational facilities and park lands, and operates a variety of programs and services independently and with the Albemarle County Public Schools, the City of Charlottesville, and the Ivy Creek Foundation, Inc.; and

WHEREAS, one of the County’s goals is to operate, maintain, and manage a system of high-quality parks, natural areas, greenways, blueways, community centers, and other recreational facilities throughout the County; and

WHEREAS, ACPR’s vision is to create unparalleled outdoor and recreational experiences right here at home by providing a unique system of parks, trails, and recreational experiences, while being superior stewards of the environment; and

WHEREAS, the Foundation was founded and incorporated in 2023, for the purposes of (a) assisting and supporting the County by cultivating community relationships and facilitating a sustained supply of external resources, in order to help the County, through ACPR, best develop, operate, maintain, and manage public park lands, accelerate and optimize planned projects, and enable the development of innovative programs and projects, (b) obtaining and providing in-kind contributions and support services, guiding the exchange of management skills between the County and external stakeholders, and obtaining and donating financial resources, equipment, and/or materials, in order to help maximize the recreational potential, environmental sustainability and educational opportunities of, and overall visitor experiences at, ACPR facilities and lands, (c) promoting increased public awareness of the resources the County offers, through ACPR, to the Albemarle County community, and (d) recognizing ACPR staff and citizen-volunteers by acknowledging and celebrating outstanding performance and contributions throughout the community; and

WHEREAS, the Foundation operates as a legal entity separate from the County and is governed independently by a Board of Directors, the members of which are not employed by the County; and

WHEREAS, the County and the Foundation wish to cooperate to sustain and strengthen the successful operation, maintenance, and management of existing parks, recreational facilities, and recreational programs, and to expand and accelerate the development, delivery, and operation of the County's planned parks, greenways, blueways, community centers, and recreational programs by memorializing the Foundation's and the County's respective responsibilities.

NOW, THEREFORE, in consideration of the above and the mutual efforts of the County and Foundation, they agree as follows:

1. Operating Procedures.

a. In its efforts to obtain donations, the Foundation shall communicate the following information to prospective donors:

- i.** the Foundation is a separate legal entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit, support, and enhancement of the County's existing, future and planned parks, facilities, programs, and other recreational amenities;
- ii.** the Foundation's Board of Directors is responsible for the Foundation's governance, including the recruitment of volunteers, planning and management of projects, and investing of its endowment and other funds; and
- iii.** funds donated to the Foundation in support of any of the County's parks, facilities, or programs must be made to the Foundation and not to the County or ACPR.

b. The Foundation agrees that in its efforts to solicit and accept donations of any kind, the Foundation shall:

- i.** coordinate its funding goals, programs, and campaigns with the County so that together the County and the Foundation can ensure the Foundation's efforts align with (A) ACPR's vision, mission, community needs assessment(s), priority projects, procedures and policies (collectively, "ACPR Guidance"), and (B) the County's vision, mission, strategic plan, comprehensive plan, current and future master plans,

and other internal plans, policies, and procedures (collectively, “County Guidance”);

- ii.** advise donors that any specified purpose, restriction, term, or condition the donor attaches to a donation requires written approval from the County prior to such donation being made or accepted; and
 - iii.** advise donors that any donation that includes a financial or contractual obligation binding on the County, including ongoing and future maintenance or capital improvement commitments, requires written approval from the County’s Board of Supervisors or its designee prior to such donation being made or accepted.
- c.** When a donation is made for a particular purpose or with conditions or restrictions, the Foundation shall be responsible for reporting to the donor how the donation was used.
- d.** In its efforts to provide financial support and in-kind contributions and services to parks programs and facilities, the Foundation agrees to:
 - i.** allow the County to use the Foundation’s name and logo in materials intended to promote the cooperation between the County and the Foundation, to assist the Foundation in soliciting donations of any kind, and to promote Foundation programs, activities, events, and projects;
 - ii.** register and maintain registration with the U.S. Internal Revenue Service as a charitable, non-profit organization and meet all state and local charitable solicitation requirements, including registration with the Virginia Department of Agricultural and Consumer Services;

- iii.** obtain all necessary permits, licenses, special insurance, equipment, and inspections for Foundation programs, activities, events, and projects, and pay all expenses incidental to the planning and conduct of such programs, activities, events, and projects;
 - iv.** plan, coordinate, and work with the County on specific park programs, projects, and funding opportunities, which the parties contemplate may require additional agreements from time-to-time, both between the County and the Foundation, and among the County, the Foundation and third parties;
 - v.** be solely responsible for recruiting, enrolling, instructing, and managing its members, volunteers, and contractors;
 - vi.** plan, coordinate, and work with the County on fundraising activities, including those activities to occur on park properties;
 - vii.** expend donations, both financial and in-kind, in support of Foundation operations and in furtherance of Foundation programs, activities, and projects, and events that are intended to benefit County parks programs and facilities; and
 - viii.** upon dissolution, apply all remaining funds designated to support a specific site, program, or project to the County to be used as designated for support of ACPR programs and facilities.
- e.** In consideration of the Foundation's contributions to and support of the County's parks, programs, and facilities, the County shall assist the Foundation, subject to and in alignment with ACPR Guidance and County Guidance, as follows:

- i.** advise the Foundation of a liaison or liaisons from the County to the Foundation, designated by the County Executive, to facilitate communications and to attend meetings of the Foundation's Board of Directors;
- ii.** suggest potential donors and grant sources to the Foundation;
- iii.** coordinate with the Foundation in its efforts to obtain grant awards appropriate to the County's parks, programs, and facilities;
- iv.** allow the Foundation to use the County's name (but not its seal) and ACPR's name and logo in its promotional and fund-raising materials, subject to the prior written approval of the County;
- v.** allow the Foundation to apply for special event permits to conduct fundraising programs and activities on County properties in coordination with the County without having to pay the County's special event permit application fees or County site/room reservation fees; and
- vi.** obtain the approval of the County Board of Supervisors of any grant or donation, including an in-kind donation of goods or services, in an amount equal to or greater than \$500,000.00 (the County Executive being expressly authorized, in the exercise of the County Executive's discretion, to accept any grant or donation less than \$500,000.00).

2. Record Keeping.

- a.** All Foundation correspondence, financial records, donor and prospective donor information, and records of every kind belong exclusively to and under the control of the Foundation. The Foundation must maintain such information and records separate and apart from all County records.

- b.** The Foundation shall maintain publicly available, updated, and current copies of its articles of incorporation, bylaws, and amendments to such governing documents. The Foundation shall provide to the County a photocopy of its IRS Form 990 (Return of Organization Exempt from Income Tax) without any accompanying documentation disclosing the names of any specific Foundation donors.
- c.** The Foundation shall prepare and reconcile on an annual basis a Treasurer's Report, which it will share with the County. Additionally, the Foundation will provide annually to the County a financial report prepared in accordance with *Statements of Financial Accounting Standards 117* (Financial Statements for Not-for-Profit Organizations). This financial report must be provided to the County on or before June 30 of each year, but it shall not contain any information disclosing the names of any specific Foundation donors.
- d.** Nothing in this MOA shall be construed to preclude the County from disclosing any records as and to the extent required by the Virginia Freedom of Information Act.

3. No Agency, Partnership, or Employment Relationship.

This MOA does not create a partnership between the Foundation and the County and creates no rights or duties arising from a partnership. Neither does this MOA create an agency relationship between the Foundation and the County. No rights of or entitlement to employment between the parties and their respective officers, directors, employees, agents, members, or volunteers arise by virtue of this MOA.

4. Insurance, Indemnification, and Hold Harmless.

- a. Prior to the commencement of any project or the conduct of any special event on County property, the Foundation shall provide to the County a certificate of insurance evidencing maintenance by the Foundation of (i) commercial general liability insurance, in an amount not less than \$1,000,000.00, covering all of the Foundation's operations relating to the performance (A) by the Foundation and its officers, directors, employees, agents, members, and volunteers of work under this MOA on County property, and (B) by the Foundation of its other obligations under this MOA, and (ii) directors and officers liability insurance, in an amount acceptable to the County. The County (and the City of Charlottesville, Virginia, if the performance concerns Darden Towe Park or Ivy Creek Natural Area), and their officers, employees, and agents shall be named as additional insureds. The certificate of insurance must provide, in a substantially similar form, that the insurance covered by the certificate shall not be canceled or materially altered except after thirty (30) days written notice provided to and received by the County. Such insurance coverage shall be primary and noncontributory. The Foundation defends, indemnifies, and holds harmless the County and the City of Charlottesville, as the case may be, and their officers, employees and agents from claims, suits, liability, damage, and expenses of any kind that might arise from the Foundation's or its officers', directors', employees', agents', members', or volunteers' negligence, recklessness, or intentional misconduct or the Foundation's failure to perform its obligations under this MOA. The provisions of this section shall survive termination of this MOA as to acts or omissions occurring prior to the effective

date of termination. Nothing in this MOA shall be construed to waive or limit the County's or the City of Charlottesville's sovereign immunity or to waive or limit any immunity the Foundation may enjoy under Virginia law as a charitable non-profit organization or by virtue of its work in County park facilities. By signing this MOA, the Foundation certifies that, as of the date of this MOA, it has no employees and is not subject to Workers' Compensation Insurance requirements under Title 65.2 of the Code of Virginia, 1950, as amended. If at any time hereafter the Foundation becomes subject to such Workers' Compensation Insurance requirements, then it must certify in writing its compliance with such requirements and provide to the County written verification of Workers' Compensation Insurance coverage.

- b.** If the Foundation organizes and provides services to the County under this MOA, the Foundation shall require all of its officers, directors, employees, agents, members and volunteers who provide such services under this MOA to sign an Assumption of Risk, Release of Liability, and Indemnification Agreement (each a "Release Form" and collectively, the "Release Forms") before providing such services. The Foundation must maintain all original Release Forms for at least three (3) years after the conclusion of a project covered by such Release Form and provide to the County a true copy or copies upon request. Parents, guardians, or legal custodians of members and volunteers under the age of eighteen (18) years must sign Release Forms on their own behalf and on behalf of the minor member or volunteer participating hereunder.

5. Term.

This MOA becomes effective upon execution by all parties. The initial term of this MOA shall expire on December 31, 2028. It may be renewed for subsequent five-year terms upon the written consent of both parties.

6. Termination.

Either party may terminate this MOA in whole or in part at will by delivering to the other party written notice of termination at least ninety (90) days prior to the effective date of any such termination.

7. Dispute Resolution.

If a dispute as to any provision of this MOA arises or if either party materially breaches or fails to perform its obligations under this MOA, the other party may give written notice of the dispute or material breach. The parties will meet to resolve the dispute or material breach within thirty (30) days of receipt of the notice. If the parties fail to resolve the dispute within sixty (60) days of such notice or a longer time upon which the parties might agree, the parties will enlist the services of a mediator to resolve the dispute.

8. Notice.

Any notice or notices required or permitted to be given under this MOA shall be given by certified mail, postage prepaid, to the following at the noted addresses. Any notice or notices provided shall also be delivered in a pdf format by email.

To the County:

Albemarle County Parks and Recreation
401 McIntire Road
Room 118
Charlottesville, Virginia 22902
Attention: Director
Email: bricke@albemarle.org

with a copy to: County of Albemarle
401 McIntire Road
Suite 228
Charlottesville, Virginia 22902
Attention: County Executive
Email: jrichardson3@albemarle.org

To the Foundation: Albemarle County Parks Foundation
109 Vincennes Road, Charlottesville, VA 22911
Attention: Lesley Hamilton
Email: teddyhamilton59@gmail.com

9. Mechanic's Liens.

During the term of this MOA, the Foundation will promptly remove or release any mechanic's or materialman's lien attached to or on any County property or any portion by reason of any act or omission of the Foundation, its contractors or its agents in connection with any activity performed by the Foundation. The Foundation will hold harmless the County and the City of Charlottesville, as the case may be, and their respective officers, employees, agents, and volunteers from any such lien or claim of lien. This provision shall survive termination, cancellation, or expiration of this MOA.

10. No Funding Obligations.

This MOA creates no fiscal or funding obligation on either party. Nothing in this MOA shall be construed to require either party, the Albemarle County Board of Supervisors, the Board of Directors of the Foundation, or any affiliate, agency, or department of the parties or respective boards to obligate or expend funds.

11. Ownership of Improvements.

Unless the parties otherwise agree in writing, all improvements made under this MOA belong to and are owned by the County, provided that any improvements made pursuant to this MOA at Darden Towe Park or Ivy Creek Park shall be jointly owned by the County

and the City of Charlottesville. The parties intend immunity from liability for damages arising from the installation, maintenance, and operation of any improvement hereunder, as provided in Virginia Code § 15.2-1809, as amended, and under Virginia common law and other statute, shall apply fully and without limitation.

12. Modification, Amendment, and Waiver.

Modification or amendment of this MOA and waiver of any of its provisions must be done only in writing executed by the party against whom such modification, amendment, or waiver is sought to be enforced.

13. Severability.

Any provision of this MOA which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the MOA's remaining provisions.

14. Governing Law and Venue.

This MOA and all matters related hereto shall be governed exclusively by the laws of the Commonwealth of Virginia and all questions arising with respect to the validity, interpretation, obligations, or performance under and pursuant to this MOA shall be determined in accordance with such laws. The Foundation shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted in the performance of its obligations set forth in this MOA. Any and all suits for any claim or for any and every breach of duty arising out of this MOA shall be maintained in the appropriate court of competent jurisdiction in the County of Albemarle, Virginia.

15. Entire Agreement.

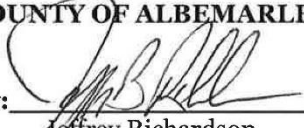
This writing constitutes the entire agreement of the parties and there may be no modification to this MOA except in a writing executed by the authorized representatives of the Foundation and the County.

16. Participation in Similar Activities.

This MOA is non-exclusive in that it does not restrict either party from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed by their duly authorized representatives as of the latest date noted below.

COUNTY OF ALBEMARLE, VIRGINIA

By: 
Jeffrey Richardson
County Executive

3/7/24
Date

Approved as to form:


County Attorney

ALBEMARLE COUNTY PARKS FOUNDATION

By: Lesley Hamilton Digitally signed by Lesley Hamilton
Date: 2024.03.02 16:02:11 -05'00'
Name: Lesley Hamilton
Title: President

03/02/2024
Date

**RESOLUTION TO APPROVE
SE202300035 AFTON SCIENTIFIC LOADING SPACE**

BE IT RESOLVED that, upon consideration of the staff reports prepared in conjunction with SE202300035 and the attachments thereto, including staff's supporting analysis, all of the comments received, and all of the relevant factors in Albemarle County Code §§ 18-4.12.13(f) and 18-33.9, the Albemarle County Board of Supervisors hereby finds that:

- a. the public health, safety or welfare would be equally or better served by the proposed modification;
- b. the proposed modification would not be a departure from sound engineering and design practice;
and
- c. the proposed modification would not otherwise be contrary to the purpose and intent of the Zoning Ordinance;

WHEREUPON, the Albemarle County Board of Supervisors hereby approves SE202300035 Afton Scientific Loading Space, to modify the minimum number of loading spaces otherwise required by Albemarle County Code § 18-4.12.13(c) on Parcel 07700-00-00-009A0 from two to one.

**RESOLUTION TO APPROVE
SP202300006 ARBORLIFE PROFESSIONAL
TREE CARE**

WHEREAS, upon consideration of the staff reports prepared for SP202300006 ArborLife Professional Tree Care and all of their attachments, including staff’s supporting analysis, the information presented at the public hearings, any comments received, and all of the relevant factors in Albemarle County Code §§ 18-10.2.2 and 18-33.8(A), the Albemarle County Board of Supervisors hereby finds that the proposed special use would:

1. not be a substantial detriment to adjacent parcels;
2. not change the character of the adjacent parcels and the nearby area;
3. be in harmony with the purpose and intent of the Zoning Ordinance, with the uses permitted by right in the Rural Areas zoning district, and with the public health, safety, and general welfare (including equity); and
4. be consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves SP202300006 ArborLife Professional Tree Care, subject to the conditions attached hereto.

* * * * *

SP202300006 ArborLife Professional Tree Care Special Use Permit Conditions

1. Development of the use must be in general accord with the conceptual plan titled “SP202300006 Concept Plan for ArborLife Professional Tree Care” drawn by Meridian Planning Group, last revised November 16, 2023. To be in general accord with the Conceptual Plan, development must reflect the following major elements essential to the design of the development:
 - a. Location of buildings;
 - b. Location of parking areas; and
 - c. Location of storage areas.Minor modifications to the plan that do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. Development of the site must comply with a minimum 50-foot setback for structures and must comply with the use buffer requirements of County Code §18-26.5(c) along the boundary with Parcel ID 07100-00-00-037J0.
3. The use of portable toilets and pump and haul are prohibited.
4. Prior to final site plan approval, a VSMP plan to address all prior or proposed land disturbance must be approved.

**ORDINANCE NO. 24-A(7)
ZMA 2023-00011**

**AN ORDINANCE TO AMEND THE ZONING MAP FOR
PARCEL 03200-00-00-009H0**

WHEREAS, Zoning Map Amendment application ZMA 2023-00011 was submitted to rezone Parcel 03200-00-00-009H0 from Rural Areas (RA) to Light Industry (LI); and

WHEREAS, on January 23, 2024, after a duly noticed public hearing, the Planning Commission recommended approval of ZMA 2023-00011;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA 2023-00011 and their attachments, the information presented at the public hearings, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code § 18-27.1, and for the purposes of public necessity, convenience, general welfare, and good zoning practices, the Board hereby approves ZMA 2023-00011.

**RESOLUTION APPROVING A PROPOSED SOLAR SITING
AGREEMENT REGARDING WOODRIDGE SOLAR PROJECT**

WHEREAS, following a duly-noticed public hearing, the Board finds that it is in the best interest of the County to enter into a Solar Facility Siting Agreement with Hexagon Energy, LLC and/or Woodridge Solar, LLC regarding the proposed Woodridge Solar Project, for the purposes described in *Virginia Code* § 15.2-2316.7(B).

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute a Solar Facility Siting Agreement with Hexagon Energy, LLC and/or Woodridge Solar, LLC, regarding the proposed Woodridge Solar Project, once the Agreement has been approved as to form and content by the County Attorney.

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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 on 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:
Valeric 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]

DRAFT & CONFIDENTIAL

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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

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