



Patrick County Board of Supervisors Meeting Agenda Item

Meeting Date: February 12, 2024

Agenda Item Number: 6

Requester: Beth Simms

Job Title: County Administrator

Agenda Item: Fairy Stone Solar Siting Agreement - Schedule Public Hearing for February 26, 2024

Background & Summary of Topic:

Fairy Stone Solar Siting Agreement - Schedule Public Hearing for February 26, 2024

Recommended Board Action:

Staff recommends that the Board of Supervisors schedule a public hearing for the Fairy Stone Solar Siting Agreement for February 26, 2024.

Possible Board Actions:

Approve Motion: I move to schedule a public hearing for the Fairy Stone Solar Siting Agreement for February 26, 2024.

Deny Motion: I move to deny the scheduling of a public hearing for the Fairy Stone Solar Siting Agreement for February 26, 2024.

Table Motion: I move to table the scheduling of a public hearing for the Fairy Stone Solar Siting Agreement for February 26, 2024.

Attachment(s): Yes

No

SOLAR FACILITY SITING AGREEMENT

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

RECITALS

WHEREAS, Applicant intends to build a solar project (the “Project”) on certain parcels of land identified as Patrick County Tax Map Parcels 4811-37, 4911-72, 4811-88, and 4811-88-A (collectively, the “Property”);

WHEREAS, the Applicant shall develop the Project in substantial conformity with the Concept Plan;

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,” Applicant and the County may enter into a siting agreement for such facilities;

WHEREAS, pursuant to Virginia Code § 15.2-2316.7(B), said siting agreement may contain terms and conditions, including (i) mitigation of any impacts of such solar project or energy storage project; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the Applicant in the deployment of broadband, as defined in § 56-585.1:9, in such locality;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement to provide said financial compensation to the County and to address any impacts of the Project;

WHEREAS, pursuant to Virginia Code § 58.1-2636, the County has adopted an ordinance assessing a revenue share of (i) up to \$1,400.00 per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Project (“Revenue Share Ordinance”).

WHEREAS, pursuant to Virginia Code § 58.1-3660, “certified pollution control equipment” is exempt from state and local taxation pursuant to Article X, Section 6(d) of the Constitution of Virginia;

WHEREAS, solar photovoltaic (electric energy) systems and energy storage systems are certified pollution control equipment, and therefore, subject to certain qualified tax exemptions as provided in Virginia Code § 58.1-3660;

Patrick County – Fairy Stone Solar, LLC
Solar Facility Siting Agreement

WHEREAS, such certified pollution control equipment exemption is 100% of the assessed value, pursuant to Virginia Code § 58.1-3660(D) (for solar photovoltaic (electric energy) projects);

WHEREAS, because the County has not adopted a comprehensive zoning ordinance regulating solar photovoltaic (electric energy) systems, the Project will be developed in accordance with the terms of this Agreement, which shall be controlling;

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

NOW, THEREFORE, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia, 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. **Conditions for Development.** Applicant acknowledges and agrees that it shall be subject to the following terms and conditions for the development and operation of the Project.
 - a. **Project Terms.** The Project will occupy up to 211 acres of the Property as defined above and will be developed in general conformity with the plan for development attached hereto as **Exhibit C** (the “Concept Plan”). Areas within the security fence as provided below are referred to herein as the “Project Area” and areas within the area depicted on the Concept Plan are referred to herein as the “Site.”
 - b. **Setbacks.** All components of the Project within the Project Area, including the security fencing as provided below, shall be set back a distance of at least a minimum of 50 feet from all external property lines, public rights of way, main buildings on adjoining parcels, and adjacent property lines.
 - c. **Fencing.** The Project Area shall be enclosed by security fencing not less than eight feet in height and equipped with appropriate anticlimbing device such as strands of barbed wire on top of the fence. The fencing shall at all times be maintained throughout installation of the photovoltaic equipment, operation of the project and through decommissioning and posted with appropriate safety messaging.

- d. **Vegetative Buffer.** The Project shall utilize existing vegetation and incorporate additional planted vegetation to ensure the vegetative buffer is sufficient to mitigate the visual impact of the Project, in accordance with the Concept Plan attached hereto. In areas with insufficient existing vegetation, the Project shall utilize non-invasive plant species, pollinator friendly native plants, shrubs and up to two (2) rows of evergreen trees.
- e. **National Standards.** Project infrastructure shall comply with generally accepted national environmental protection and product safety standards for the use of solar panels for solar photovoltaic (electric energy) facilities, such as those developed for existing product certifications and standards including the National Sanitation Foundation/American National Standards Institute No. 457, International Electro technical Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No. 61730-2. A site development plan shall refer to the specific safety and environmental standards being met.
- f. **Panel Specifications.** Prior to issuance of Building Permits, Applicant shall provide documentation that the selected panels are “Tier 1” modules, as established by the most recent “PV Module Tier 1 List” issued by Bloomberg NEF or a similar third party analysis widely accepted in the solar industry. Additionally, the make and model of the selected panels initially installed and replaced on site must qualify, for disposal purposes only, as non-hazardous waste under applicable U.S. Environmental Protection Agency tests (e.g. “TCLP”).
- g. **Entrance Requirement.** Written confirmation from the Virginia Department of Transportation (VDOT) that all entrances satisfy applicable VDOT requirements.
- h. **Environmental, Historical, and Cultural Resources Review.** The Project shall undergo a thorough resource inventory pursuant to the Virginia Department of Environmental Quality Permit-By-Rule process and undergo consultation with the Department of Historic Resources to ensure proper protection of any potential cultural or historic resources. The Project has undergone a desktop Virginia Cultural Resources Information System review, which did not identify any resources within the Site that are listed on the National Register of Historic Places. The Project shall also conduct a Phase I survey and work with the Department of Historic Resources to address any potential impacts.
- i. **Wetlands and Streams.** The Project shall map wetlands and streams on Site to ensure Project design adequately avoids and protects such resources.

- j. **Water and Erosion and Sediment Control.** The Project's construction and operation phases will not require the withdrawal of any water. The Project shall be developed in accordance with the Virginia Erosion and Sediment Control Handbook. The Applicant shall utilize the planting of non-invasive grasses and pollinator habitat under the panels and within the Project Area to help improve rainwater absorption rates and improve local water quality.
- k. **Project Liaison.** The Applicant will designate at least one Project Liaison and provide the County a phone number, physical address and email address for communication with the Liaison during construction and operation of the Project. The Project Liaison will be established upon application for Final Site Plan Approval.
- l. **Safety.** Upon request by the County, but no more than once per calendar year, the Applicant will provide materials, education and/or training, in coordination with the County's Emergency Services staff, to all County and volunteer emergency services personnel regarding safe responses to on-site emergencies. A post-construction safety plan will be created by the Applicant and will be made available to both County and volunteer emergency services personnel as part of the applications for Building Permits.
- m. **Maintenance of Site Features.** All features within the Site such as landscaping, fencing, and stormwater management facilities shall be properly maintained throughout the life of the Project.

2. **Decommissioning Plan, Reclamation Plan and Decommissioning Surety.** Applicant shall submit a Decommissioning Plan and Reclamation Plan to the County Administrator when applying for approval of Building Permits for the Project, and satisfaction of the requirements herein shall be a condition of issuance of the Building Permits. The Decommissioning Surety shall be secured with the County as provided in Section 2(c)(i). The content of these plans, unless amended by agreement with the County, shall be binding upon Applicant and Applicant's successors and assigns.

a. **Decommissioning. Performance of Decommissioning.**

- i. Within twelve (12) months after the cessation of use of the Project for electrical power generation or transmission, the Applicant, at its sole cost and expense, shall commence decommissioning the Project in accordance with the decommissioning plan as provided in Section 2 (b) below. Following completion of decommissioning of the Project, the Decommissioning Surety, as defined below, shall be released and, if the County has called upon the Decommissioning Surety and taken control of any of its resources, any remaining resources held by the County shall be refunded to the Applicant. Temporary cessations of use of the Project

shall not trigger the decommissioning obligation provided that such cessation is due to an event of Force Majeure.

- ii. If Applicant fails to decommission the Project within twelve (12) months (unless extended for an event of Force Majeure pursuant to Section a(i) above), the County shall have the right, but not the obligation, to commence decommissioning activities and shall have access to the property, access to the full amount of the decommissioning surety, and the rights to remove the solar energy equipment and materials on the property.
- iii. Prior to issuance of Building Permits for the Project, Applicant and the owner of the Property, as applicable, shall deliver a legal instrument to the County granting the County the right to access the property so the County can complete the decommissioning, should it choose to do so, upon the Applicant's default. Such instrument shall bind the Applicant and owners of the Property and their successors, heirs, and assigns. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant and owner of the Property.
- iv. Any reference to decommissioning the Project shall include the obligation to decommission all or a portion of the Project, whichever is applicable with respect to a particular situation. If decommissioning is triggered for a portion, but not the entire Project, then the partial decommissioning shall be completed in accordance with the decommissioning plan and this section for the applicable portion of the Project.

b. Decommissioning Plan: This plan shall include the following terms and procedures

- i. Procedures and requirements for removal of all solar energy infrastructure, equipment, facilities, or devices of the Project and its various structures and foundations at the end of the useful life of the Project or if it is deemed abandoned.
- ii. The anticipated life of the Project.
- iii. The procedures and methods for decommissioning the Project including a plan for the disposal of the component materials, both above and below ground. It is understood and agreed that component materials shall not be disposed of within the Patrick County without express written permission from the Patrick County Administrator.

- iv. The estimated overall cost of decommissioning the Project in current dollars and the methodology for determining such estimate prepared by a professional engineer licensed in the Commonwealth with experience in preparing decommissioning cost estimates (the “Decommissioning Cost Estimate”). The Decommissioning Cost Estimate shall include the net cost of decommissioning, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.
- v. The decommissioning plan and Decommissioning Cost Estimate will be updated upon the request of the County Designee but not less than once every five (5) years.

c. Reclamation Plan: This plan shall include the following terms and procedures:

- i. A Reclamation Plan including, at a minimum:
 - 1. All above ground and underground infrastructure shall be removed and recycled or reused, unless a written request is received from the owner of the Property proposing the retention of any infrastructure, and the request is approved by the County.
 - 2. Final land surface conditions, including but not limited to grass, trees, cropland, pasture, including the status of on-site gravel roads if such roads remain on the property.

d. Decommissioning Surety:

- i. Applicant shall provide financial assurance of decommissioning in the form of certified funds, cash escrow, bond, letter of credit or parent guarantee in a form acceptable to the County Attorney, in a value equal to the Decommissioning Cost Estimate (the “Decommissioning Surety”). The Decommissioning Surety shall be secured prior to the Project receiving its certificate of completion, or equivalent, from the County to operate the use. If the Property is owned by any other person or entity other than the Applicant, the owner of the Property shall be listed as an additional insured of the Decommissioning Surety. The Decommissioning Surety shall be periodically updated according to the Decommissioning Cost Estimate as provided above.

e. Cost Reimbursement:

- i. Applicant will reimburse to the County within thirty (30) days of the date of each invoice from the County all reasonable costs and fees incurred for professional services engaged for purposes of assisting the

County during the application process and during construction, including, but not limited to, legal fees and consulting fees, however legal fees shall not be assessed to Applicant after construction commences except as applicable pursuant to Section below. The total amount of costs and fees reimbursed by Applicant to the County shall not exceed Fifty Thousand Dollars (\$50,000.00), and the obligation to reimburse such expenses shall terminate upon Commercial Operation of the Project, as provided herein. The purpose of the reimbursement payments is to defray the costs and expenses incurred by the County in connection with (i) the negotiation and execution of this Agreement and other matters related to this Agreement, (ii) the zoning and permitting processes related to the approval of the Solar Facility, (iii) the permitting process with federal and state agencies, as applicable, and (iv) the construction of the Solar Facility, including, but not limited to, fees incurred to employ professionals to assist with inspections.”

Article II

Payments

1. Purpose. The Parties acknowledge that the County has certain capital needs important to the economic, physical, and social well-being of the citizens and businesses within the County. In response to those needs, Applicant agrees to the financial payments set forth herein.

2. Payment Structure. The Applicant shall make payments to the County, in the amounts and at such times as set forth in **Exhibit A** (each a “Payment” and collectively, the “Payments”). The Voluntary Payment (defined in **Exhibit A**), shall be made no later than six (6) months following the Commercial Operation Date (defined hereinbelow). All other Payments shall be due and payable on or before December 1st each year (and shall be prorated accordingly for the number of months of Commercial Operation prior to December 1 of the first year), until the Termination Date as defined in Article III, Section 1 hereof. Applicant’s obligation to make the Payments shall be conditioned upon the Project commencing Commercial Operation. As used herein, “Commercial Operation” or “Commercial Operation Date” means the date on which the Project becomes fully operational and begins selling power under the terms of a power purchase or offtake agreement. Applicant will provide the County with notice of the Commercial Operation Date within fourteen (14) days of Commercial Operation. Generation of test energy shall not be deemed Commercial Operation.

3. Statutory Structure of Payments; Statement of Benefit. Applicant agrees that, by entering into this Agreement, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Virginia Code, the Payments are authorized by statute, and Applicant acknowledges that it is bound by law to make the Payments in accordance with this Agreement. The Parties acknowledge that this Agreement is fair and mutually beneficial to both Parties. Applicant acknowledges that this

Agreement provides for a reasonably predictable stream of future payments to the County in amounts fair to both Parties.

4. Use of Payments by the County. The Payments may be used for any lawful purpose.

Article III

Miscellaneous Terms

1. Term; Termination. This Agreement shall commence on the Effective Date and shall continue until the completion of decommissioning of the Project in accordance with the Decommissioning Plan (“Termination Date”). Applicant shall have no obligation to make Payments after the Termination Date. The Payment due for the year in which the Project or material part thereof is decommissioned shall be prorated as of the Termination Date. Following the conclusion of the fortieth (40th) calendar year of Commercial Operation of the Project, and for each subsequent year of Commercial Operation, this Agreement shall automatically renew for an additional term of one year, from January 1 to December 31 of each calendar year, until the Termination Date. The termination of this Agreement shall not limit Applicant’s legal obligation to pay local taxes in accordance with applicable law nor does termination of this Agreement relieve Applicant from any other obligation incurred during the term of this Agreement.

2. Mutual Covenants. The Applicant covenants to the County that it will pay the County the amounts due hereunder when due in accordance with the terms of this Agreement, and will not seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement. 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. Applicant has no obligation to develop or construct the Project. It is understood that development of the Project by Applicant is contingent upon a number of factors including regulatory approvals, availability and cost of equipment and financing, and market demand for the Project’s energy. No election by Applicant to terminate, defer, suspend, or modify plans to develop the Project shall be deemed a default of Applicant under this Agreement.

4. Successors and Assigns. This Agreement shall be binding upon the successors or assigns of Applicant, and the obligations created hereunder shall be covenants running with the Property. If Applicant sells, transfers, leases, or assigns all or substantially all of its interests in the Project or the ownership of the Applicant (a “Transfer”), the Transfer agreement shall require this Agreement to be assumed by and be binding on the purchaser, transferee or assignee. Such Transfer, upon full execution of the Transfer agreement, shall relieve Applicant of all obligations and liabilities under this Agreement accruing from and after the date of such Transfer, and the purchaser or transferee shall become responsible under this Agreement. Applicant shall provide notice to the County of any Transfer and execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

Patrick County – Fairy Stone Solar, LLC
Solar Facility Siting Agreement

5. Execution of Agreement Deems Project “Substantially In Accord” with County’s Comprehensive Plan. Pursuant to Va. Code § 15.2- 2316.9(C), execution of this Agreement deems the Project to be substantially in accord with the County’s Comprehensive Plan in satisfaction of the requirements of Va. Code § 15.2-2232.

6. Memorandum of Agreement. A memorandum of this Agreement, in a form substantially similar to that attached as **Exhibit B** hereto, shall be recorded in the land records of the Clerk’s Office of the Circuit Court of the County of Patrick, Virginia. Such recordation shall be at Applicant’s sole cost and expense and shall occur as soon as reasonably practicable after the Effective Date. If in Applicant’s sole discretion, it chooses to not develop the Project, the County shall execute a release of the memorandum filed in the aforementioned Clerk’s Office.

7. 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:

Beth Simms
County Administrator
106 Rucker Street
Stuart, Virginia 24171

With a copy to:

Jim Guynn, Jr.
County Attorney
415 S. College Avenue
Salem, Virginia 24153

Fairy Stone Solar , LLC
c/o General Counsel
1201 Wilson Boulevard, Suite 2200
Arlington, Virginia 22209

With a copy to:

D. Scott Foster, Jr.
Gentry Locke
PO Box 780
Richmond, Virginia 23218

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

8. 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 PATRICK 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 FOR 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.

9. Confidentiality. This Agreement, once placed on the docket for consideration by the Patrick County Board of Supervisors, is a public document, subject to production under the Virginia Freedom of Information Act (“FOIA”). The County understands and acknowledges the Applicant, and as applicable, its associates, contractors, partners and affiliates, utilize confidential and proprietary “state-of-the-art” information and data in their operations (“Confidential Information”), and that disclosure of any such information, including, but not limited to, disclosures of technical, financial or other information concerning the Applicant or any affiliated entity could result in substantial harm to them and could thereby have a significant detrimental impact on their employees and also upon the County. The County acknowledges that during the development and negotiation of this Agreement, certain Confidential Information may be, or may have been, shared with the County by the Applicant. Applicant agrees to clearly identify any information it deems to be Confidential Information and not subject to mandatory disclosure under FOIA or other applicable law as Confidential Information at the time it provides such information to the County. 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 such Confidential Information to any person, firm, governmental body or agency, or any other entity unless a request for such Confidential Information is made and granted under an applicable provision of local, state or federal law. Upon receipt of such a request but before transmitting any documents or information which may contain Confidential Information to the requestor, 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.

10. 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, and the Property and Project will thereafter be assessed and taxed as though this Agreement did not exist. 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.

11. Entire Agreement. This Agreement and any exhibits or other attachments 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.

12. Construction. This Agreement was drafted with input by the County and the Applicant, and no presumption shall exist against any Party. The headings contained in this Agreement are for the convenience of the Parties and for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13. Force Majeure.

A. “Force Majeure Event” means the occurrence of:

(i) an act of war (whether declared or not), hostilities, insurrection, invasion, act of foreign enemies, terrorism or civil disorder;

(ii) a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), in each case affecting on a general basis the industry related to the construction, operation, or maintenance of the Project, as for example but not in limitation, the interruption in the supply of replacement solar panels, and which is not attributable to any unreasonable action or inaction on the part of Applicant or any of its subcontractors or suppliers and the settlement of which is beyond the reasonable control of all such persons;

(iii) specific incidents of exceptional adverse weather conditions in excess of those required to be designed for that are materially worse than those encountered in Patrick County during the twenty (20) years prior to the Effective Date;

(iv) tempest, earthquake, or any other natural disaster of overwhelming proportions and the disruption of operations resulting therefrom;

(v) discontinuation of electricity supply, or unanticipated termination of a power purchase agreement;

(vi) quarantines ordered by competent governmental authority in the event of a public health emergency;

(vi) other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected Party to take precautions and which the affected Party cannot avoid even by using its best efforts, which in each case directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

B. Neither Party will be in breach of its obligations under this Agreement or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Agreement) if and to the extent it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred.

C. As soon as reasonably practicable after the start of a Force Majeure Event, and within a reasonable time after the end of a Force Majeure Event, any Party invoking it will submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.

D. Applicant will, and will ensure that its contractors will, at all times take all reasonable steps within their respective powers and consistent with good operating practices (but without incurring unreasonable additional costs) to:

- (i) prevent Force Majeure Events affecting the performance of Applicant's obligations under this Agreement;
- (ii) mitigate the effect of any Force Majeure Event; and
- (iii) comply with its obligations under this Agreement.

E. The Parties will consult together in relation to the above matters following the occurrence of a Force Majeure Event.

F. Should a single Force Majeure Event occur for a continuous period of more than 180 days, then the Parties shall endeavor to agree on any modifications to this Agreement (including

without limitation, determination of new Payments) that are equitable, having due regard to the nature of the ability of Applicant to continue to meet its financial obligations to the County.

G. For the avoidance of doubt, a Force Majeure Event shall not include (a) financial distress or the inability of either Party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a Party's financial inability to perform its obligations hereunder, except such occurrences (a)-(c) that arise from a Force Majeure Event.

14. No 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.

15. Violations and Remediation. All activities conducted in connection with the Project shall conform with all applicable federal, state and local laws, regulations and ordinances. Any material violation of this Agreement that continues for more than 60 days from the date a written notice of violation ("NOV") is emailed, regular mail, and mailed by certified receipt requested, to the Applicant's designated point of contact as provided in writing to the Zoning Administrator or their designee (the "Cure Period"), may result in the initiation of legal proceedings by the County to bring the Project into compliance. However, no such proceeding will be initiated as long as the Applicant has met with the County Designee, submitted a plan to remediate the issues raised by the NOV, the plan has been approved by the County, and the Applicant is in compliance with the plan. With respect to any road repairs necessitated by Project construction activities, any such repairs shall be made within a reasonable period of time following the Project's receipt of VDOT's written approval for such repairs.

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

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

FAIRY STONE SOLAR, LLC

Signature

Title

PATRICK COUNTY, VIRGINIA

By: _____

Name: Brandon Simmons

Title: Chairman, Board of Supervisors

By: _____

Name: Beth Simms

Title: County Administrator

Approved as to form:

By: _____

County Attorney

DRAFT

EXHIBIT A

ILLUSTRATIVE SCHEDULE OF PAYMENTS

The following illustrative schedule of payments assumes an estimated Project nameplate capacity of 12 MWac, and all payments shall be adjusted proportionally if the nameplate capacity of the constructed Project differs from such estimate. **Exhibit A** lists payment amounts based on the following assumptions and calculations:

(A) **Revenue Share.** The “Revenue Share” is an annual payment amount determined by multiplying \$1,400 per MWac (the “Solar Revenue Share”) by an assumed nameplate capacity of 12 MWac.

(D) **Voluntary Payment.** A voluntary payment Ten Thousand Dollars (\$16,500.00) per MWac of rated nameplate capacity of the constructed Project shall be made to Patrick County to assist with needs identified in its Capital Improvement Plan. This payment shall be within ninety (90) days of the Project achieving Commercial Operation as defined in Article II, Section 2.

Calendar Year	Operations Year	Revenue Share	Estimated Real Estate Tax	Estimated One Time Voluntary Payment	Annual Total
2026	1	\$18,480	\$16,425	\$198,000	\$232,905
2027	2	\$18,480	\$16,425	\$0	\$34,905
2028	3	\$18,480	\$16,425	\$0	\$34,905
2029	4	\$18,480	\$16,425	\$0	\$34,905
2030	5	\$20,328	\$16,425	\$0	\$36,753
2031	6	\$20,328	\$16,425	\$0	\$36,753
2032	7	\$20,328	\$16,425	\$0	\$36,753
2033	8	\$20,328	\$16,425	\$0	\$36,753
2034	9	\$20,328	\$16,425	\$0	\$36,753
2035	10	\$22,356	\$16,425	\$0	\$38,781
2036	11	\$22,356	\$16,425	\$0	\$38,781
2037	12	\$22,356	\$16,425	\$0	\$38,781
2038	13	\$22,356	\$16,425	\$0	\$38,781
2039	14	\$22,356	\$16,425	\$0	\$38,781
2040	15	\$24,600	\$16,425	\$0	\$41,025
2041	16	\$24,600	\$16,425	\$0	\$41,025
2042	17	\$24,600	\$16,425	\$0	\$41,025
2043	18	\$24,600	\$16,425	\$0	\$41,025
2044	19	\$24,600	\$16,425	\$0	\$41,025
2045	20	\$27,060	\$16,425	\$0	\$43,485
2046	21	\$27,060	\$16,425	\$0	\$43,485
2047	22	\$27,060	\$16,425	\$0	\$43,485
2048	23	\$27,060	\$16,425	\$0	\$43,485
2049	24	\$27,060	\$16,425	\$0	\$43,485
2050	25	\$29,760	\$16,425	\$0	\$46,185
2051	26	\$29,760	\$16,425	\$0	\$46,185
2052	27	\$29,760	\$16,425	\$0	\$46,185
2053	28	\$29,760	\$16,425	\$0	\$46,185
2054	29	\$29,760	\$16,425	\$0	\$46,185
2055	30	\$32,736	\$16,425	\$0	\$49,161
2056	31	\$32,736	\$16,425	\$0	\$49,161
2057	32	\$32,736	\$16,425	\$0	\$49,161
2058	33	\$32,736	\$16,425	\$0	\$49,161
2059	34	\$32,736	\$16,425	\$0	\$49,161
2060	35	\$36,012	\$16,425	\$0	\$52,437
2061	36	\$36,012	\$16,425	\$0	\$52,437
2062	37	\$36,012	\$16,425	\$0	\$52,437
2063	38	\$36,012	\$16,425	\$0	\$52,437
2064	39	\$36,012	\$16,425	\$0	\$52,437
2065	40	\$39,612	\$16,425	\$0	\$56,037
Total:		\$1,077,792	\$657,000	\$198,000	\$1,897,887

Patrick County – Fairy Stone Solar, LLC
Solar Facility Siting Agreement

EXHIBIT B

FORM OF MEMORANDUM

Full exhibit follows

DRAFT

PREPARED BY AND RETURN TO:

Fairy Stone Solar, LLC
1201 Wilson Boulevard, Suite 2200
Arlington, VA 22209

Patrick County Tax Map ID Nos. _____

[NOTE TO CLERK: PATRICK COUNTY, VIRGINIA, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA, IS A PARTY TO THIS INSTRUMENT WHICH, ACCORDINGLY, IS EXEMPT FROM RECORDATION TAX PURSUANT TO VA. CODE SEC. 58.1-811.A.3.]

**MEMORANDUM OF SOLAR FACILITY
SITING AGREEMENT**

This Memorandum of Solar Facility Siting Agreement (this “Memorandum”), dated and effective as of _____, is made by and between **Patrick County, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”) and **Fairy Stone Solar, LLC** a Virginia limited liability company (“Fairy Stone”), with regard to the following:

1. Siting Agreement. The County and Fairy Stone are parties to that Solar Facility Siting Agreement, dated _____ (the “Siting Agreement”), which describes the intent of Fairy Stone to develop, install, build, and operate a solar facility (“Project”) on that certain parcel of land identified as Patrick County Tax Map Parcels 4811-37, 4911-72, 4811-88, 4xxx-xx-A (the “Property”).
2. Authorization. The County’s execution of the Siting Agreement was authorized during that certain regular meeting of the Board of Supervisors of the County on _____.
3. Substantially in Accord. The Siting Agreement states, *inter alia*, that, pursuant to Virginia Code Ann. § 15.2-2316.9(C), by entering into the Siting Agreement, the County acknowledged that the Project is deemed to be substantially in accord with the Patrick County Comprehensive Plan under Virginia Code Ann. § 15.2-2232.
4. Obligations. The Siting Agreement sets forth, *inter alia*, certain obligations of Fairy Stone to comply with the approval by the County for the Project, and to make certain payments to the County.
5. Siting Agreement Controls. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Siting Agreement, and the County and Fairy Stone executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Siting Agreement and the County’s and Fairy Stone’s rights thereunder. The terms, conditions and covenants of the Siting Agreement are incorporated in this Memorandum by reference as though fully set forth herein.
6. Counterparts. This Memorandum may be executed in counterparts, each of which shall be

Patrick County – Fairy Stone Solar, LLC
Solar Facility Siting Agreement

deemed an original and all of which when taken together shall constitute one and the same document.

WITNESS the following signature and seal:

PATRICK COUNTY, VIRGINIA:

Name: C. Clayton Kendrick, Jr.
Title: Chairman, Board of Supervisors

COMMONWEALTH OF VIRGINIA,
COUNTY OF _____, to-wit:

The foregoing Memorandum was acknowledged before me this _____,
2023, by C. Clayton Kendrick, Jr., Chairman of the Board of Supervisors of Patrick County,
Virginia.

Notary Public

My Commission expires:

Approved as to Form:

By: _____
County Attorney

WITNESS the following signature and seal:

FAIRY STONE SOLAR, LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA,
COUNTY OF _____, to-wit:

The foregoing Memorandum was acknowledged before me this _____, 2023, by _____, who acknowledged that they executed the foregoing instrument in their capacity as _____ of Fairy Stone Solar, LLC, a Virginia limited liability company, on behalf of said corporation.

Notary Public

My Commission expires:

EXHIBIT C
CONCEPT PLAN

DRAFT