

SOLAR FACILITY SITING AGREEMENT

This Solar Facility Siting Agreement (the “Agreement”), dated as of _____ (the “Effective Date”), is by and between Tazewell County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”) and Hera 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 a certain parcels of land identified as Tazewell County Tax Map Parcel 075 A 0004 (collectively, 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,” 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 may adopt 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, the County has not adopted a Revenue Share Ordinance, but may choose to do so at a later date;

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;

WHEREAS, if the County adopts a Revenue Share Ordinance, 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);

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WHEREAS, if the County does not adopt a Revenue Share Ordinance, such certified pollution control equipment exemption would be 80% of the assessed value, or in certain circumstances, the exemption would “step down” after five years of service to 70%, and then 60% for the remaining years of service, as provided by state law and local ordinances, including Virginia Code § 58.1-3660 (C), (D), and (F), commonly known as the Machinery and Tools Tax Stepdown (“M&T Taxes”);

WHEREAS, Applicant has agreed to the payments and financial terms contained herein, including payment of the M&T Taxes together with voluntary 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 Revenue Share Ordinance, regardless of whether the County actually adopts a Revenue Share Ordinance; and

Commented [DSF1]: Assuming the “greater of” regime, we will discuss first offer/various revenue models.

WHEREAS, as of the Effective Date of this Agreement, the County has not adopted a comprehensive zoning ordinance, but Applicant has agreed to incorporate certain terms into this Agreement to provide clear terms for the design, construction and operation of the Project.

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 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. **Visual impacts.** The Project shall minimize impacts on viewsheds, including from residential areas and areas of scenic, historical, cultural, archeological, and recreational significance. The Applicant recognizes and acknowledges that the Project shall occupy a parcel of real estate directly adjacent to Cavitt's Creek Park, which is an area of recreational significance owned by the County. The Project shall utilize only panels that employ anti-glare technology, antireflective coatings, and other available mitigation techniques, all that meet or exceed industry standards, to reduce glint and glare.
- c. **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.
- d. **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 fifty (50) feet from all external property lines and public rights of way. Additionally, no building or solar panel shall be located within fifty (50') of an off-site residential structure. No inverter or transformer shall be located within one hundred fifty (150) feet from the property line of any parcel ~~with a residential structure~~. Access, fencing, vegetative buffer, erosion and stormwater structures, and interconnection to the electrical grid outside the Project Area may occupy setback areas. The Applicant may obtain a variance to these conditions by presenting a written waiver to the County executed by the adjoining property owner for whose benefit these conditions would apply.
- e. **Fencing.** The Project Area shall be enclosed by security fencing not less than eight feet in height and equipped with appropriate anti-climbing device such as strands of barbed wire on top of the fence. Fencing must be installed on the interior of the vegetative buffer required so that it is screened from the ground level view of adjacent property owners. The fencing shall at all times be maintained while the Project is in operation and posted with appropriate safety messaging.

- f. **Vegetative Buffer.** A vegetative buffer sufficient to ~~mitigate-minimize the Project's~~ ~~the visual impact of the Project on viewsheds as described in Section 1(b)~~ will be established as depicted in the Concept Plan attached hereto as Exhibit C. The buffer shall consist of a landscaping strip, ~~consisting of one row of deciduous and evergreen trees,~~ and be located within the setbacks required under Article I Section D above. The buffer shall consist of existing vegetation and as needed, an installed landscaped strip consisting of a single row of staggered trees and other vegetation. This buffer should include vegetation a minimum of three (3) feet high at planting. Use of invasive plants is prohibited. Existing trees and vegetation must be maintained within such buffer areas except where dead, diseased or as necessary for development or to promote healthy growth, and such trees and vegetation may supplement or satisfy landscaping requirements as applicable and approved by the County Designee, as defined in Article 1, Section 2 below. If existing trees and vegetation are disturbed, new plantings shall be provided for the buffer at least three (3) feet tall at planting. The vegetative buffer shall be maintained for the life of the Project.
- g. **Height.** The solar energy generation equipment shall not exceed a height of 15 feet, which shall be measured from the highest natural grade below each solar panel. This limit shall not apply to utility poles and the interconnection to the overhead electric utility grid.
- h. **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.
- i. **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 Building Permit approval.
- j. **Performance of Decommissioning.**
- i. Within ~~twenty-twenty~~-four (24) months after the cessation of use of the Project for electrical power generation or transmission, the Applicant, at its sole cost and expense, shall decommission the Project in accordance with the decommissioning plan as provided in Section 2-(e) below. This period of time shall be extended by the County Administrator should the Applicant request an extension and provides reasonable justification, ~~which shall not be based in whole or in part upon economic obsolescence.~~ 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.

Commented [CC2]: We may need to alter this somewhat based upon aesthetics, etc.

- ii. If Applicant fails to decommission the Project within ~~twenty-twenty-four~~ (24) months, 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. 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.
 - iii. Unless otherwise approved by the County, all solar panels, racking and inverters shall be recycled or disposed at a site located outside the county.
 - iv. Any reference to decommissioning the Project shall include the obligation to decommission all or a portion of the Project, whichever is applicable. 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.
- k. **Entrance Requirement.** Written confirmation from the Virginia Department of Transportation (VDOT) that all entrances satisfy applicable VDOT requirements, and all necessary Entrance Permits from VDOT shall be obtained.
- l. **Enhanced Stormwater and Erosion and Sediment Control Measures.** The following measures will be implemented, subject to final design approval by the Department of Environmental Quality and/Tazewell County, which exceed the current stormwater and erosion and sediment control design requirements. The project will comply with all other stormwater and erosion and sediment (E&S) control requirements applied by DEQ and the Tazewell County Erosion and Sediment Control Ordinance. The following measures are supplementary to, and shall not supplant, the E&S control requirements applied by DEQ and the Tazewell County Erosion and Sediment Control Ordinance.
- i. Design of ditches upstream of ponds: As a measure to help protect the ponds during construction and operations, additional ditches are proposed to be constructed immediately upstream of the ponds to capture the flow from the Solar Facility. These ditches will then be routed through an armored channel into the ponds.

- ii. Use of filter socks: Through the gentle sloping/sheet flow areas of the project, filter socks will be applied as needed in order to help reduce the potential for erosion before water reaches the sediment ponds. The filter socks will be placed perpendicular to the slope of the land to interrupt the flow and act similar to a check dam, absorbing the energy in the water to allow it to flow over the filter sock and proceed down-slope till the next filter sock.
- iii. Ditching through panels: In areas of the panels where concentrated flow is expected, engineered ditches will be proposed to help control and transport runoff from the panel areas into the sediment ponds. These ditches will be armored with a soft armoring erosion control matting. These ditches may include check dams to help reduce the energy in the water as it flows to the ponds, which will be included as necessary based on final engineering. These ditches will remain in place through the life of the project to also control concentrated flows during operations.

2. Plans and Studies. Applicant shall submit the following Plans and Studies to the person(s) designated by the County Administrator to review and ~~approve-consider of approval~~ Applicant’s final plans for the Project (“the County Designee”) prior to issuance of Building Permits for the Project. ~~The Once approved, the~~ content of these plans, unless amended by agreement with the County, shall be binding upon Applicant ~~and incorporated into this Agreement~~.

Commented [DSF3]: Discuss timing with County Staff.

- a. **Site Development Plan.** A detailed Site Development Plan which shall be in general conformity with the Concept Plan attached hereto as Exhibit C. The Site Development Plan shall incorporate the Erosion and Sedimentation and Stormwater Control plans as well as an electrical diagram signed, stamped and dated by a Virginia-licensed engineer, illustrating the electrical connections from the solar panels to the utility grid.
- b. **Landscaping Plan.** A detailed landscaping and screening plan with plant species, size, number, spacing, and height shall be required prior to the approval of the Site Development Plan. Applicant will work with the County Designee to ensure the County Park adjacent to the Project is adequately buffered to ensure any visual impact to the Park is prevented or appropriately mitigated.

Commented [DSF4]: Discuss further with County Staff

- c. **Construction Traffic Management Plan (CTMP)**. A detailed CTMP which shall be developed in consultation with the County Planning Staff, the Virginia Department of Transportation (“VDOT”), the Tazewell County Sheriff’s Office, and the Virginia State Police to identify and expeditiously resolve or mitigate traffic issues that arise during the construction or decommissioning of the Solar Facilities, including but not limited to (A) lane closures, (B) signage, and (C) flagging procedures. Employee and delivery traffic shall be scheduled and managed so as to minimize conflicts with local traffic. Permanent access roads and parking areas will be stabilized with gravel, asphalt or concrete to minimize dust and impacts to adjacent properties. Traffic control methods shall be coordinated with VDOT prior to initiation of construction. The CTMP will identify on-site areas suitable for parking for construction workers and for trucks to be unloaded and to turn around without having to back onto public roadways during construction and decommissioning.

- d. **Road Repair Plan**. Applicant shall develop a Road Repair Plan in consultation with VDOT to provide for repair of damage to public roads occurring within five hundred (500) feet of any entrance to the Project attributable to construction or decommissioning of the Solar Facilities. The Road Repair Plan shall provide that such repair to the roads be at least comparable to their conditions before the commencement of construction or decommissioning.

- e. **Decommissioning Plan and Surety**. 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 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 100% of the total projected cost of decommissioning, less the net salvage value of solar energy infrastructure, equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.

 - iv. The procedures and methods for decommissioning the Project including a plan for the disposal of the component materials, both above and below ground.

- v. The decommissioning plan and Decommissioning Cost Estimate will be updated upon the request of the County Designee or every five (5) years.
- vi. 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.
- vii. 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.

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 recognition that the Project may generate the possibility of additional responsibilities for certain County services, Applicant agrees to the financial payments set forth herein.

Commented [CC5]: This is where we would envision adding provisions pertaining to a reasonable filing & review fee on behalf of the County (\$2,000/plan, total of \$10,000).

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 Initial 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 earliest of the following (the “Termination Date”): (i) Applicant’s commencement of the decommissioning of all or a material portion of the Project; (ii) cessation of Commercial Operation of the Project for a continuous period of longer than one (1) year; or (iii) if not previously terminated by (i) or (ii), and the Project remains in Commercial Operation at the end of the thirty-fifth (35th) calendar year of Commercial Operation, the conclusion of the applicable subsequent calendar year as may follow the delivery of a termination notice as described 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.

Commented [DSF6]: Modify based on planned revenue streams.

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 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 thirty-fifth (35th) 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 written notice of termination is given by either Party, at least one year in advance of the Termination Date. The termination of this Agreement shall not limit 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 nor does termination of this Agreement relieve Applicant from any other obligation incurred during the term of this Agreement.

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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.

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 Tazewell, 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:

Tazewell County, Virginia
197 Main Street
Tazewell, Virginia 24651

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With a copy to:

Chase D. Collins
County Attorney
197 Main Street
Tazewell, Virginia 24651

Hera 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 TAZEWELL 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.

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9. Confidentiality. This Agreement, once placed on the docket for consideration by the Tazewell 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 Tazewell 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.

16. 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 Building Permits.

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.

HERA SOLAR, LLC

Signature

Title

TAZEWELL COUNTY, VIRGINIA

By: _____
Name: Shanna Plaster
Title: Chair, Board of Supervisors

By: _____
Name: C. Eric Young
Title: County Administrator

Approved as to form:

By: _____
County Attorney

EXHIBIT A

ILLUSTRATIVE SCHEDULE OF PAYMENTS

The following illustrative schedule of payments assumes an estimated Project nameplate capacity of 20 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 Equivalent.** The “Revenue Share Equivalent” is an annual payment amount determined by multiplying \$1,400 per MWac (the “Solar Revenue Share”) by an assumed nameplate capacity of 20 MWac.

(B) **Estimated M&T.** An estimate of the annual M&T Taxes (which will fluctuate in any given year, depending on the Project’s machinery and tools).

(C) **Supplemental Voluntary Payments.** In the years when the M&T Taxes are higher than the Revenue Share Equivalent, Applicant will pay only its annual M&T Taxes. In the years when the Revenue Share Equivalent is higher than the M&T Taxes, Applicant will pay its annual M&T Taxes plus a supplemental voluntary payment in order to provide the County a total annual payment that equates to the Revenue Share Equivalent, which shall be based on the Solar Revenue Share authorized under Special Session I in Chapters 49, 50 and 429, for the life of the Project, regardless of whether the County adopts a Solar Revenue Share Ordinance or not. The M&T Taxes shall be assessed pursuant to Chapters 35 and 36 of Title 58.1 of the Code of Virginia as applicable, and the County Ordinances in effect as of the date of this Agreement, for the life of the Project.

(D) **Additional Voluntary Payment.** An additional voluntary payment of One Hundred Thousand Dollars (\$100,000.00) shall be made to Tazewell County to assist with community capital needs. This payment shall be due upon the County’s issuance of the Project’s Building Permits.

Year	Real Estate Tax (Reassessed)	Revenue Share	Estimated M&T	Initial Voluntary Payment	Annual Voluntary Payment (difference of estimated M&T and revenue share)	Total Annual Revenue
1	\$ 17,400.00	\$ 28,000.00	\$ 120,000.00	\$100,000.00	\$ 102,600.00	\$ 237,400.00
2	\$ 17,400.00	\$ 28,000.00	\$ 108,000.00		\$ 90,600.00	\$ 125,400.00
3	\$ 17,400.00	\$ 30,800.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
4	\$ 17,400.00	\$ 30,800.00	\$ 84,000.00		\$ 66,600.00	\$ 101,400.00
5	\$ 17,400.00	\$ 30,800.00	\$ 72,000.00		\$ 54,600.00	\$ 89,400.00
6	\$ 17,400.00	\$ 30,800.00	\$ 90,000.00		\$ 72,600.00	\$ 107,400.00
7	\$ 17,400.00	\$ 30,800.00	\$ 72,000.00		\$ 54,600.00	\$ 89,400.00
8	\$ 17,400.00	\$ 33,880.00	\$ 72,000.00		\$ 54,600.00	\$ 89,400.00
9	\$ 17,400.00	\$ 33,880.00	\$ 72,000.00		\$ 54,600.00	\$ 89,400.00
10	\$ 17,400.00	\$ 33,880.00	\$ 72,000.00		\$ 54,600.00	\$ 89,400.00
11	\$ 17,400.00	\$ 33,880.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
12	\$ 17,400.00	\$ 33,880.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
13	\$ 17,400.00	\$ 37,268.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
14	\$ 17,400.00	\$ 37,268.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
15	\$ 17,400.00	\$ 37,268.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
16	\$ 17,400.00	\$ 37,268.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
17	\$ 17,400.00	\$ 37,268.00	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
18	\$ 17,400.00	\$ 40,994.80	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
19	\$ 17,400.00	\$ 40,994.80	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
20	\$ 17,400.00	\$ 40,994.80	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
21	\$ 17,400.00	\$ 40,994.80	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
22	\$ 17,400.00	\$ 40,994.80	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
23	\$ 17,400.00	\$ 45,094.28	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
24	\$ 17,400.00	\$ 45,094.28	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
25	\$ 17,400.00	\$ 45,094.28	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
26	\$ 17,400.00	\$ 45,094.28	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
27	\$ 17,400.00	\$ 45,094.28	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
28	\$ 17,400.00	\$ 49,603.71	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
29	\$ 17,400.00	\$ 49,603.71	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
30	\$ 17,400.00	\$ 49,603.71	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
31	\$ 17,400.00	\$ 49,603.71	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
32	\$ 17,400.00	\$ 49,603.71	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
33	\$ 17,400.00	\$ 54,564.08	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
34	\$ 17,400.00	\$ 54,564.08	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
35	\$ 17,400.00	\$ 54,564.08	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
36	\$ 17,400.00	\$ 54,564.08	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
37	\$ 17,400.00	\$ 54,564.08	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
38	\$ 17,400.00	\$ 60,020.49	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
39	\$ 17,400.00	\$ 60,020.49	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00

40	\$ 17,400.00	\$ 60,020.49	\$ 96,000.00		\$ 78,600.00	\$ 113,400.00
Total	\$ 696,000.00	\$ 1,697,085.79	\$ 3,738,000.00	\$ 100,000.00	\$ 3,042,000.00	\$ 4,534,000.00

EXHIBIT B

Tazewell County – Hera Solar, LLC
Solar Facility Siting Agreement
21362/6/11245770v1

FORM OF MEMORANDUM

Full exhibit follows

PREPARED BY AND RETURN TO:

Hera Solar, LLC
1201 Wilson Boulevard, Suite 2200
Arlington, VA 22209

Formatted: French (France)

Tazewell Tax Map ID No.075 A 0004

[NOTE TO CLERK: TAZEWELL 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 **Tazewell County, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”) and **Hera Solar, LLC** a Virginia limited liability company (“Hera Solar”), with regard to the following:

1. Siting Agreement. The County and Hera Solar are parties to that Solar Facility Siting Agreement, dated _____ (the “Siting Agreement”), which describes the intent of Hera Solar to develop, install, build, and operate a solar facility (“Project”) on that certain parcel of land identified as Tazewell County Tax Map Parcel 075 A 0004 (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 Tazewell County Comprehensive Plan under Virginia Code Ann. § 15.2-2232.
4. Obligations. The Siting Agreement sets forth, *inter alia*, certain obligations of Hera Solar 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 Hera Solar executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Siting Agreement and the County’s and Hera Solar’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 deemed an original and all of which when taken together shall constitute one and the same document.

Tazewell County – Hera Solar, LLC
Solar Facility Siting Agreement
21362/6/11245770v1

WITNESS the following signature and seal:

TAZEWELL COUNTY, VIRGINIA:

Name: Shanna Plaster
Title: Chair, Board of Supervisors

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

The foregoing Memorandum was acknowledged before me this _____,
2023, by Shanna Plaster, Chair of the Board of Supervisors of Tazewell County, Virginia.

Notary Public

My Commission expires:

Approved as to Form:

By: _____
County Attorney

WITNESS the following signature and seal:

HERA 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 Hera Solar, LLC, a Virginia limited liability company, on behalf of said corporation.

Notary Public

My Commission expires:

EXHIBIT C

CONCEPT PLAN