

## **SOLAR FACILITY SITING AGREEMENT**

This Solar Facility Siting Agreement (“Agreement”), dated as of \_\_\_\_\_ (the “Effective Date”), is by and between Surry County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”) and Cavalier Solar A, LLC, a Delaware limited liability company (“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 (“Project”) on certain parcel(s) of land identified as Surry County Tax Map Parcels 53-3B, 53-3F, 53-4, 53-5, 53-6, 59-31, 60-1-1, 60-12, 60-17, 60-20, 60-21, 60-9, 61-1, 61-1-4, 61-1-5, 61-2, 61-2-1, 61-2-2, 61-2-3, 61-2-4, 61-2-5, 61-3, 61-4, 61-5 (collectively, the “Property”);

WHEREAS, Pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia titled “Siting of Solar Energy Facilities”, Applicant and the County may enter into a siting agreement (“Siting Agreement”) for solar facilities in those census tracts which meet the eligibility requirements for designation as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation to the Internal Revenue Service;

WHEREAS, the Property is located in census tract number 51181860200 within the County, and is eligible for a designation as an opportunity zone;

WHEREAS, pursuant to Virginia Code § 15.2-2316.6, the Project is eligible for a Siting Agreement;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement to mitigate certain potential impacts of the Project;

WHEREAS, pursuant to Virginia Code § 58.1-2636 the County has not adopted an ordinance assessing a revenue share of up to \$1,400.00 per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Solar Facility (“Revenue Share Ordinance”), but may choose to do so at a later date;

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

WHEREAS, until such time as the County adopts a Revenue Share Ordinance, such certified pollution control equipment will be subject to local machinery and tools taxation and exemptions as provided by state law and local ordinances, including section 58.1-3660(C) and (D), commonly known as the “Machinery and Tools Stepdown”;

WHEREAS, the Applicant has agreed to the payments and financial terms contained herein;

WHEREAS, pursuant to the requirement in Virginia Code § 15.2-2316.8 (B), the County has 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 Surry County Board of Supervisors ("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. CUP Conditions.** The Applicant acknowledges and agrees that it is subject to all the terms and conditions contained in any conditional use permit ("CUP") approved by the Board for the Project. The CUP approved by the Board on May 6, 2021 is attached hereto as Schedule B and is hereby incorporated herein. Violation by the Applicant or by any of Applicant's agents, assigns or successors in interest of any terms and conditions of the CUP or of any other applicable zoning requirements shall constitute a violation of this Agreement.

**2. Annual Valuation of Real Property.** As a condition precedent to County approval of this Agreement, Applicant agrees to provide County with current copies of any real property lease agreements for the Property associated with the Project. Applicant may redact any information deemed confidential tax information or proprietary/trade secrets. However, for any such leases, Applicant shall, at the minimum, provide the annual lease payment amounts for each parcel being leased for the Project. Thereafter, should the payment terms be amended in any such lease agreements, the Applicant shall forthwith provide such information to the County. Applicant further agrees to include as a condition in any agreements transferring ownership of the Project entered into by Applicant a requirement that any successor in interest shall provide such information to the County.

**3. Annual Valuation of Taxable Equipment; Updates.** Prior to the Commercial Operation Date, Applicant agrees to provide County with a detailed list of capital equipment, including but not limited to solar photovoltaic equipment proposed to be installed, whether or not it has yet been certified as pollution control equipment by the State Corporation Commission or Virginia Department of Environmental Quality, and lists of all other taxable tangible property. Thereafter, on an annual basis, Applicant shall provide County with any updates to this information, including but not limited to all new or replacement solar panels and all other equipment. Applicant agrees to provide the County all information it may in the future provide to the Virginia State Corporation Commission for the Commission's use in valuing such property for taxation purposes. In addition, prior to the Commercial Operation Date, Applicant shall provide proof of payment for all components of the Project installed prior to the Commercial Operation Date. Applicant shall further submit proof of payment for any additional or replacement component installed during the life of the Project, proof of which shall be updated

annually on or before the anniversary of the Commercial Operation Date, and if no such component is installed in any given year, notice of such shall also be filed with the County on or before the anniversary of the Commercial Operation Date.

**4. Decommissioning and Periodic adjustment of Surety Bond.** The Parties agree that a surety bond to cover the costs of decommissioning Applicant's facilities is required as a condition in the CUP. Further, the Applicant recognizes the protection this provides for the County taxpayers and does not desire to shift that expense to them should the Applicant or its successors or the landowner not be able to comply with the decommissioning requirements; and County recognizes that the surety bond is an expense to be incurred by the Applicant encumbering funds that could otherwise go directly towards investing in the Project or other potential projects. In recognition of these factors, the Parties desire for the bond and the costs for such to accurately reflect the associated decommissioning costs being insured. Therefore, the Applicant, or its successor, agrees to update the gross estimated costs of decommissioning every five years and to reimburse the County for an independent review and analysis by a licensed engineer. The bond or surety amount shall be adjusted accordingly to ensure it accurately reflects the costs associated with decommissioning.

**5. Right of Entry for Enforcement and Decommissioning.**

- a. **Enforcement.** Applicant shall execute an instrument satisfactory to the County Attorney that runs with and encumbers all parcels related to the Project until such time as terminated by the County (or the Project terminates, whichever comes first) and that provides the County, its personnel and duly authorized agents the express right of entry upon the Project parcels for the purposes of inspecting solar panels and all appurtenant facilities. The County shall provide forty-eight (48) hour notice to the Applicant prior to making such entry for any inspection or enforcement purposes. No prior notice shall be required to enter the Project in the event of an emergency that constitutes an immediate danger to life or property.
- b. **Decommissioning.** If the Applicant fails to decommission the Project, the County shall have unrestricted access to the Project to effect any and all tasks, as necessary, to decommission solar panels and all appurtenant facilities and restore the parcels to substantially the same condition that existed prior to construction of the solar facilities and as provided by Virginia Code § 15.2-2241.2, as it may be amended through the Termination Date as defined in this Agreement. Such access rights shall remain in effect through decommissioning regardless of whether Virginia Code § 15.2-2241.2 is repealed or otherwise limited in scope from the access rights it provides the County as of the date of execution of this Agreement.

**Article II**

**1. Payment Structure, Capital Payments.**

- a. After the Project has obtained Commercial Operation, except as otherwise provided herein, the Applicant shall make payments to the County as set forth on Schedule A attached hereto (each a "Payment" and collectively, the "Payments").

The Payments shall begin one month following the commencement of Commercial Operation of the Project, the “Commercial Operation Date”. The Payments shall continue on the anniversary of the first payment for each year thereafter until the earlier of the following (the “Termination Date”): (i) the Applicant’s commencement of the decommissioning of all or a material portion of the Project, (ii) the cessation of operation of the Project for a continuous period of longer than one (1) year, or (iii) the 35<sup>th</sup> calendar year of commercial electricity generation of the Project in which the final payment on Schedule A is shown. Should the Project continue to operate beyond 35 years, the County and the Applicant shall endeavor to mutually agree to modify the terms and conditions of this Agreement to account for the continued operation of the Project. The Parties acknowledge that the Applicant’s obligation to make Payments shall be conditioned upon the Project beginning Commercial Operation. The Payments shall be made to the County in any year in one lump sum payment during the term of this Agreement. The Payments are separate and distinct from the amounts owed pursuant to any machinery and tools taxes on equipment pursuant to Article 2, Chapters 35 and 36 of Title 58.1 of the Code of Virginia and applicable County Ordinances, and all real estate taxes owed pursuant to the Surry County Code of Ordinances. As used herein, “Commercial Operation” shall mean the date the Applicant commences the sale of electricity generated from the Project.

- b. In addition to the foregoing Payments, the Applicant shall pay the County an additional lump sum payment of \$500,000 (the “Additional Payment”) if the Project receives CUP approval on or before May 6, 2021. The Additional Payment shall be made within thirty days of the CUP approval. Following CUP approval, the County will endeavor to expedite site plan approval, provided that if the County refers the plan to a qualified consultant for review and comment, the Applicant shall reimburse the County for such consultant’s fees. Terms and conditions for payment of this referral shall be determined in advance of the referral with the Applicant.

**2. Statutory Structure of Payments; Statement of Benefit.** The Applicant agrees that by entering into this Agreement, pursuant to Virginia Code § 15.2-2316.6 *et seq.*, the Payments and the Additional Payment are authorized by statute and acknowledges, it is bound by law to make the Payments and the Additional Payment in accordance with this Agreement. The Parties acknowledge that this Agreement is fair and mutually beneficial to them both. As of the date of this Agreement, the County has not adopted a Revenue Share Ordinance as provided under Virginia Code § 58.1-3660 (D), and the Payments under this agreement are not conditioned upon the County adopting such ordinance. Should the County at a later date adopt a Revenue Share Ordinance, the County acknowledges that it shall not apply to this Project unless and until the County and the Applicant should mutually agree to modify this Agreement. The Parties agree that the funding provided pursuant to this Agreement is beneficial in that it will result in mutually acceptable, steady, predictable, accurate and reasonable payments to the County. Applicant acknowledges that this Agreement is beneficial to Applicant in allowing it to proceed with the installation of the Project with clear project design terms, which provide for mitigation of effects on the surrounding properties and the County community. Additionally, Applicant acknowledges that this Agreement provides for a clear and predictable stream of future payments to the County in values fair to both Parties.

**3. Use of Payments by the County.** The County plans to apply the Payments and the Additional Payments to critical infrastructure projects to improve citizen quality of life. All payments may be used, at the Board's discretion, for any or all of the following purposes: (a) to fund the capital improvement program (CIP) of the County (b) to meet needs of the current fiscal budget of the County, (c) supplement or establish any fund for which the County maintains a balance policy; or (d) support broadband funding, all as permitted § 15.2-2316.7.

**4. Conformance with Comprehensive Plan.** Upon approval of this Agreement by the Board, the Solar Facility shall be deemed to be "substantially in accord" with the "Surry County Comprehensive Plan", in all respects. No further finding shall be required by the County Planning Commission pursuant to Virginia Code § 15.2-2232(A).

## **5. Effect of Agreement**

- a. In accordance with Virginia Code § 15.2-2316.9(B), and as acknowledged and agreed to by the Parties, the terms of this Agreement shall control over any County ordinance(s) and/or regulation(s) that may be inconsistent with the terms of this Agreement. However, nothing shall be construed to exempt the Applicant from any applicable requirement to obtain approves and permits under federal, state, or local ordinances and regulations.
- b. In accordance with Virginia Code § 15.2-2316.8(A)(3), and acknowledged and agreed to by the Parties, this Agreement shall be binding upon the County, the Board, and enforceable against the Board and future governing bodies of the County in any court of competent jurisdiction.
- c. This Agreement is expressly conditioned upon the Board's approval of a CUP authorizing the use of the Property as a utility-scale solar facility pursuant to the County Solar Energy Ordinance on terms acceptable to the Applicant.

## **Article III**

### **Miscellaneous Terms**

**1. Term; Termination.** This Agreement shall commence on the Effective Date and shall continue until the Termination Date. The Applicant shall have no obligation to make Payments after the Termination Date. The Payment due for the year in which the Termination Date occurs 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.

**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. 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 Applicant has no obligation to develop the Project and this Agreement does not require any Payments until after the Commercial Operation Date. Any test energy or other energy produced prior to the Commercial Operation date shall not trigger payment under this Agreement. It is understood that development of the Project by Applicant is contingent upon a number of factors including, but not limited to, regulatory approvals, availability and cost of equipment and financing, and demand for renewable energy and renewable energy credits. No election by the 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 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, this Agreement will automatically be assumed by and be binding on the purchaser, transferee or assignee. 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 Attorney, shall be recorded in the land records of the Clerk's Office of the Circuit Court of the County of Surry, 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 to not develop the Project, in its sole discretion, the County shall execute 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:

Surry County, Virginia  
45 School Street  
Surry, Virginia 23883  
Attn: Melissa Rollins, County  
Administrator

With a copy to:

Danielle Powell/ Bill Hefty  
County Attorney  
100 West Franklin Street, Suite 300



Richmond, Virginia 23220

Cavalier Solar A, LLC  
c/o sPower, LLC  
4200 Innslake Drive  
Suite 302  
Glen Allen, Virginia 23060  
Attn: Ben Saunders

With a copy to:

Cavalier Solar A, LLC  
c/o sPower, LLC  
2180 South 1300 East  
Suite 600  
Salt Lake City, Utah 84106  
Attn: General Counsel

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 SURRY 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 OR 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 Board, 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 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 of this Agreement, certain Confidential Information may be 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 the 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 (i) knowingly or intentionally disclose or otherwise divulge any such confidential or proprietary information to any person, firm, governmental body or agency, or any other entity unless the request for Confidential Information is made under a provision of Local, State or Federal law. Upon receipt of such request but before transmitting any documents or information which may contain Confidential Information, the County will 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, and the Property and the 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.

**10. Entire Agreement.** This Agreement and any schedules or exhibits 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 any Party.

**12. Force Majeure.** Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not



include (a) financial distress nor 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.

**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. 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]*

**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.

**CAVALIER SOLAR A, LLC**

By: \_\_\_\_\_

Name:

Title:

**SURRY COUNTY, VIRGINIA**

By: \_\_\_\_\_

Name:

Title: Chair, Board of Supervisors

Approved as to form:

By: \_\_\_\_\_  
County Attorney

**SCHEDULE A**  
**Payment Calculator and Estimate**

Applicant shall make minimum payments, above and beyond its tax obligations, to the County at the annual rate of \$1,400.00 per megawatt as measured in alternating current (AC) generation capacity of the facility based on installed capacity as of the Commercial Operation date. The illustrative estimate below is based on \$1,400.00 for 180 megawatts AC for 35 years.

<b>Year</b>		<b>Revenue Share</b> <b>\$1400/mw (AC)</b>
<b>1</b>		\$252,000
<b>2</b>		\$252,000
<b>3</b>		\$252,000
<b>4</b>		\$252,000
<b>5</b>		\$252,000
<b>6</b>		\$252,000
<b>7</b>		\$252,000
<b>8</b>		\$252,000
<b>9</b>		\$252,000
<b>10</b>		\$252,000
<b>11</b>		\$252,000
<b>12</b>		\$252,000
<b>13</b>		\$252,000
<b>14</b>		\$252,000
<b>15</b>		\$252,000
<b>16</b>		\$252,000
<b>17</b>		\$252,000
<b>18</b>		\$252,000
<b>19</b>		\$252,000
<b>20</b>		\$252,000

<b>21</b>		\$252,000
<b>22</b>		\$252,000
<b>23</b>		\$252,000
<b>24</b>		\$252,000
<b>25</b>		\$252,000
<b>26</b>		\$252,000
<b>27</b>		\$252,000
<b>28</b>		\$252,000
<b>29</b>		\$252,000
<b>30</b>		\$252,000
<b>31</b>		\$252,000
<b>32</b>		\$252,000
<b>33</b>		\$252,000
<b>34</b>		\$252,000
<b>35</b>		\$252,000
<b>Totals</b>		\$8,820,000

**SCHEDULE B**  
**CONDITIONAL USE PERMIT/CONDITIONS**