

## **SOLAR FACILITY SITING AGREEMENT**

This Solar Facility Siting Agreement (the “Agreement”), dated as of October 19, 2021 (the “Effective Date”), is by and between Dinwiddie County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”) and Lily Pond Solar, LLC a Virginia limited liability company (the “Applicant”). The County and Applicant are herein each a “Party” and collectively, the “Parties”.

### **RECITALS**

WHEREAS, the Applicant intends to develop, install, build, and operate a ground-mounted solar photovoltaic electric generating facility (the “Facilities” or the “Project”) on certain parcel(s) of land identified as Dinwiddie County Tax Map Parcels (Parcels 61-24A, 61-5, 61-6, 61-7, 62-20, 62-21, 62-22, 62-24, 62-3, 62-33, 62-33A, 62-4, 62-5, and 62-6); (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 (the “Siting Agreement”) for solar generating facilities;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement to provide financial compensation to the County to address any impacts of the Project and to provide community benefits that address capital needs set out in the County’s capital improvement plan, including but not limited to deployment of broadband, in the current fiscal budget or fiscal fund balance policy;

WHEREAS, as of the date of this Agreement, the County has not adopted an ordinance assessing a revenue share, pursuant to Virginia Code § 58.1-2636, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Project (the “Revenue Share”), but may choose to do so at a later date;

WHEREAS, the Applicant intends to build up to an 80-megawatt alternating current (MW AC) ground-mounted solar photovoltaic electric generating facility (the “Project”);

WHEREAS, until such time as the County adopts a Revenue Share Ordinance, the Facilities are certified pollution control equipment pursuant to Article X, Section 6 (d) of the Constitution of Virginia and will be subject to machinery and tools taxation as provided by Va. Code § 58.1-3508.6, subject to applicable depreciation schedules established by the State Corporation Commission (the “Machinery and Tools Tax”) and regardless of whether the County adopts a Revenue Share Ordinance, the Project will be subject to any other statutory tax regimes that might apply to the Project;

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

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WHEREAS, pursuant to the requirement of 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 Dinwiddie County Board of Supervisors approved this Agreement; and

WHEREAS, pursuant to Virginia Code § 15.2-2316.8 (A) (3), the County may enter into a siting agreement with an applicant that is binding upon the governing body of the host locality and enforceable against it and future governing bodies of the host locality in any court of competent jurisdiction by signing a siting 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. Conditional Use Permit Conditions.** The Applicant acknowledges and agrees that it is subject to all the terms and conditions contained in the Conditional Use Permit (“CUP”) approved by the Board of Supervisors for the Project. The CUP approved by the Board on October 19, 2021, is attached hereto as **Exhibit 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. Mitigation.** The Parties acknowledge that the County has certain capital needs important to the economic, physical and social wellbeing of the citizens and businesses within the County, including the Project, potentially including the deployment of broadband to underserved citizens and businesses. In addition, the Project may generate the possibility of additional responsibilities for certain County services, including Emergency Services and the attention of other County staff. In an effort to expedite those plans and support the provision of County services, the Applicant agrees to make the financial contributions as set out in Article II and permitted under Virginia Code § 15.2-2316.7.

## Article II

### **1. Payment Structure.**

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 include the Voluntary Payment which is a lump sum amount to be paid within ninety (90) days of commencement of commercial operation and the amounts owed pursuant to the County’s

Revenue Share Ordinance adopted pursuant to Virginia Code § 58.1-2636 or the Machinery and Tools Tax Virginia Code pursuant to § 58.1-3508.6. The Payments shall be made on or before December 1st each year thereafter until the earlier of the following (the “Termination Date”): (i) the Applicant’s commencement of the decommissioning of all of the Project; (ii) the cessation of commercial operation of the Project for a continuous period of longer than one (1) year, or (iii) pursuant to the automatic renewal described in Article III, Section 1 hereof, the conclusion of either the forty fifth (45th) calendar year of commercial operation of the Project, if applicable, or the conclusion of the applicable subsequent calendar year as may follow the delivery of termination notice as described in Article III, Section 1 hereof, all in accordance with Schedule A attached thereto. In the event a portion of the Project is decommissioned, however, the portion of the Project remaining in commercial operation shall continue to be subject to this Agreement for the Payments on a prorated basis in direct proportion to the portion of the Project that remains in 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 shall commence after commercial operation as otherwise set forth herein and as shown on **Exhibit A**. For purposes of this Agreement, “Commercial Operation” means the date upon which the Solar Facility is interconnected, integrated and synchronized with the transmission, distribution and generation facilities that are operated by PJM, any assignee or successor entity and terminating contemporaneously with the commencement of Decommissioning, as provided in the CUP, excluding test energy. The Parties acknowledge that except as otherwise provided herein, the Applicant’s obligation to make Payments shall be conditioned upon the Project commencing Commercial Operation.

**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 are authorized by statute and that it acknowledges, 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 them both. 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 Dinwiddie County community. Additionally, Applicant acknowledges that this Agreement provides for a clear and predictable stream of future payments to the County in amounts fair to both Parties.

**3. Use of Payments by the County.** The Payments may be used for any lawful purposes including any 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; (d) support broadband funding, all as permitted § 15.2-2316.7.

### **Article III**

#### **Miscellaneous Terms**

**1. Term; Termination.** This Agreement shall commence on the Effective Date and

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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 Project or material part thereof is decommissioned shall be prorated as of the Termination Date. Following the conclusion of the forty-fifth (45th) calendar year of Commercial Operation of the Project, for each subsequent year of Commercial Operation, this Agreement shall automatically renew for additional terms 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 the Applicant's legal obligation to pay local taxes, including but not limited to Revenue Share or Machinery and Tool Taxes in accordance with applicable law at such time and for such period as the any part of 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 paragraph. 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 or the ownership of the Applicant, 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. Execution of Agreement deems Project "Substantially In Accord" with County's Comprehensive Plan.** The Zoning Ordinance does not require a substantial in accord determination. However, pursuant to Va. Code §15.2-2316.9(C), approval of this Agreement deems the Project to be substantially in accord with the County's Comprehensive Plan pursuant to the requirements of Va. Code § 15.2-2232.

**6. 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 Dinwiddie, 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.

**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:

W. Kevin Massengill  
County Administrator  
Dinwiddie County  
P.O. Drawer 70  
14010 Boydton Plank Road  
Dinwiddie, VA 23841

With a copy to:

Tyler C. Southall  
Michael H. Drewry  
County Attorneys  
Dinwiddie County  
P.O. Drawer 70  
14010 Boydton Plank Road  
Dinwiddie, VA 23841

And

Lily Pond Solar, LLC  
c/o Itamar Sarussi  
Energix US, LLC  
2311 Wilson Blvd., Suite 640  
Arlington, Virginia 22201

With a copy to:

John G. "Chip" Dicks  
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 DINWIDDIE 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.

**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 or any revenue stream pursuant to it is invalidated or unenforceable, including, without limitation, because of a judicial ruling or legislative change, 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.

**10. Entire Agreement.** This Agreement including Exhibits constitute the entire agreement and supersede 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.**

A. "Force Majeure Event" means the occurrence of:

(i) an act of war (whether declared or not), hostilities, 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 solar facility, 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 Dinwiddie County during the twenty (20) years prior to the Effective Date;

(iv) tempest, earthquake, or any other natural disaster of overwhelming proportions; disruption of operations resulting from any plane crashing into the solar facility to the extent that all or a substantial portion thereof is unable to generate electricity sufficient to meet Applicant's payment obligations hereunder;

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

(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, including quarantines ordered by competent governmental authority in the event of a public health emergency, 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 the 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 following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination 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 subcontractors 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 paragraph (A) apply as a result of a single Force Majeure Event for a continuous period of more than 180 days then the parties must endeavor to agree to any modifications to this Agreement (including without limitation, determination of new revenue sharing payments) that are equitable having 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, 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.

**LILY POND SOLAR, LLC**

By: Energix US, LLC  
Its: Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DINWIDDIE COUNTY, VIRGINIA**

By: \_\_\_\_\_  
Name: Brenda K. Ebron-Bonner  
Title: Chair, Board of Supervisors

Approved as to form:

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

## EXHIBIT A

**Applicant agrees to provide the following community benefits and make the following payments pursuant to the terms of this Agreement:**

**Voluntary Payment.** A one-time payment to the County in the amount of One Million and Eighteen Thousand Dollars (\$1,018,000) within ninety (90) days of Commercial Operation.

**Machinery and Tools Taxes or Revenue Share Payments.**

- (i) Pay all M&T Payments pursuant to Article 2, Chapters 35 and 36 of Title 58.1 of the Code of Virginia and applicable County Ordinances, in effect as of the date of this Agreement, for the life of the Project, or
- (ii) Pursuant to Va. Code § 58.1-2636, if the County adopts a revenue share ordinance at any time during the term of this Agreement, pay the revenue share annual payment schedule for each year of project operation, in accordance with Chapters 49, 50, 429 of the 2021 Special Session I of Acts of the Assembly, based upon the installed nameplate capacity of the Project.

**SCHEDULE B**  
**CONDITIONAL USE PERMIT**