

Background on Siting Agreements

In early 2021, the Virginia legislature passed House Bill 2201, which requires any applicant for a solar project over 5 megawatts to negotiate a Siting Agreement with the host locality. The Siting Agreement may include financial compensation for capital needs as well as the mitigation of any project impacts.

The proposed Siting Agreement for the Sowego Energy Facility would require the Project to do the following:

- Grant a conservation easement over the project land after reaching commercial operation (extinguishing the land's residential development rights)
- Make annual payments to the County over the life of the Project, in addition to the rollback tax, real estate taxes, and personal property taxes.

The following page includes an estimate of expected County revenues from the Project, assuming a Project capacity of 80 megawatts.

Project Revenues Estimate

Year	Revenue Estimates (based on 80MWac Project)	
	Real Estate	Personal Property Siting Agreement
0 (rollback)	\$130,000	
1	\$30,000	\$146,119
2	\$30,600	\$146,119
3	\$31,212	\$146,119
4	\$31,836	\$146,119
5	\$32,473	\$146,119
6	\$33,122	\$219,178
7	\$33,785	\$219,178
8	\$34,461	\$219,178
9	\$35,150	\$218,423
10	\$35,853	\$214,722
11	\$36,570	\$281,068
12	\$37,301	\$275,548
13	\$38,047	\$269,703
14	\$38,808	\$263,469
15	\$39,584	\$256,877
16	\$40,376	\$249,896
17	\$41,184	\$242,493
18	\$42,007	\$234,667
19	\$42,847	\$226,322
20	\$43,704	\$217,522

Real Estate	Personal Property Siting Agreement
\$1,942,059	\$6,301,282
	\$3,520,000

Total Payments

\$11,763,342

Year	Revenue Estimates (based on 80MWac Project)	
	Real Estate	Personal Property Siting Agreement
21	\$44,578	\$208,171
22	\$45,470	\$198,267
23	\$46,379	\$187,779
24	\$47,307	\$176,642
25	\$48,253	\$164,855
26	\$49,218	\$152,321
27	\$50,203	\$139,073
28	\$51,207	\$125,013
29	\$52,231	\$110,141
30	\$53,275	\$94,328
31	\$54,341	\$77,605
32	\$55,428	\$59,876
33	\$56,536	\$41,076
34	\$57,667	\$32,471
35	\$58,820	\$32,471
36	\$59,997	\$32,471
37	\$61,197	\$32,471
38	\$62,421	\$32,471
39	\$63,669	\$32,471
40	\$64,942	\$32,471

Real Estate	Personal Property Siting Agreement
\$1,942,059	\$6,301,282
	\$3,520,000

Total Payments

\$11,763,342

SOLAR FACILITY SITING AGREEMENT

This Solar Facility Siting Agreement (“Agreement”), dated as of _____, 2022 (the “Effective Date”), is by and between Fauquier County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”) and Sowego Energy Facility, 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 Fauquier County PINs 7839-84-9885-000, 7839-63-8827-000, and 7849-11-3813-000 (collectively, the “Property”);

WHEREAS, Pursuant to Title 15.2, Chapter 22, 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;

WHEREAS, pursuant to Virginia Code § 15.2-2316.7, 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, the Applicant has agreed to the payments and financial terms contained herein;

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 Fauquier County Board of Supervisors (the “Board”) approved this Agreement;

NOW, THEREFORE, pursuant to Title 15.2, Chapter 22, 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. Special Exception Conditions. The Applicant acknowledges and agrees that a Special Exception approved by the Board is required for the Project, and that Applicant and the Project shall be subject to all the terms and conditions contained in any such Special Exception. Any such Special Exception shall require, as a condition thereof, Applicant’s compliance with and performance of its obligations under this Agreement. Violation by the Applicant or by any of

Applicant's agents, assigns, or successors in interest of any terms and conditions of the Special Exception or of any other applicable zoning requirements shall constitute a violation of this Agreement.

Article II

1. Conservation Easement. The Applicant hereby agrees to grant a conservation easement over the Property immediately after the Commercial Operation Date to the County. Such conservation easement to allow the commercial operation and maintenance of the Project, but to prohibit any other uses or division of the Property, other than agricultural and open space uses, upon such terms as are mutually agreeable to the Parties. For the avoidance of doubt, agricultural uses shall include the construction and occupation on the Property of a single-family dwelling and agricultural structures.

2. Payment Structure, Capital Payments. 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 on June 15th of the first calendar year following the commencement of Commercial Operation of the Project, the "Commercial Operation Date". The Payments shall continue on June 15th of 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 commercial operation of the Project for a continuous period of longer than one (1) year, or (iii) the 40th calendar year of commercial electricity generation of the Project in which the final payment on Schedule A is shown. The Parties acknowledge that, except as otherwise provided herein, 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 Article XI, Chapter 8 of the Code of Fauquier County, Virginia. In the event of the grant of a conservation easement over the Property, or any portion thereof, the Applicant agrees to waive any Special Assessment that might otherwise be available to it pursuant to Article III, Chapter 8 of said Code with respect to any portion of the Property with respect to which this Agreement has not Terminated.

For purposes of this Agreement, "Commercial Operation Date" shall mean the date upon which the Project first generates electricity for which compensation is received by the Applicant, or its successors or assigns in title to the Project, or any portion thereof.

3. Statutory Structure of Payments; Statement of Benefit. The Applicant agrees that by entering into this Agreement, pursuant to Virginia Code § 15.2-2316. et seq., the Payments are authorized by statute and that it 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 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 Fauquier County community. Additionally, Applicant acknowledges that this Agreement provides for a clear and

predictable stream of future payments to the County in values that the Parties hereby agree is fair.

4. Use of Payments by the County. The County plans to apply the Payments to critical infrastructure projects to improve citizen quality of life, including but not limited to expanding educational opportunities, funding to facilitate the purchase of conservation easements through the County Conservation Easement Service District provided for in Article XVII of Chapter 8 of the Fauquier County Code, health care (telehealth) and economic development through significant investments in broadband deployment throughout the County. Notwithstanding the above, the Payments may be used for 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 in § 15.2-2316.7.

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 Project, or material part thereof, is decommissioned shall be prorated as of the Termination Date. The termination of this Agreement shall not limit the obligation of any then owner of the Property to pay such local property taxes as may then be applicable.

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 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, and inure to the benefit of, the successors and assigns of the Applicant and of owners of the Property or any portion thereof, and the obligations created hereunder shall be covenants running with the Property, or portions thereof, 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 Property, or any portion thereof, 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 with respect to such transferred interests, accruing from and after the date of sale or transfer, and the purchaser or transferee shall automatically become responsible under this Agreement with respect to such transferred interests. The Applicant shall execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

5. 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:

County:
Fauquier County Board of Supervisors
10 Hotel Street, Suite 208
Warrenton, VA 20186

With a copy to:

Tracy Gallehr
County Attorney
10 Hotel Street, 2nd Floor
Warrenton, VA 20186

Applicant:
Sowego Energy Facility, LLC
c/o Travis Haggard
230 Court Square, Suite B102
Charlottesville, Virginia 22902

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

6. 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 Fauquier 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 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.

7. Severability; Invalidation 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.

8. Entire Agreement. This Agreement and any schedules or exhibits hereto constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, between the Parties 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.

9. Construction. This Agreement was drafted with input by the County and the Applicant, and no presumption shall exist against any Party.

10. 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 of 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 Fauquier County during the twenty (20) years prior to the Effective Date;

(iv) tempest, hurricane, tropical storm, earthquake, flood, tornado, or any other natural disaster of overwhelming proportions; disruption of operations resulting from any aircraft or vehicle 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 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 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. The Parties will consult together in relation to the above matters following the occurrence of a Force Majeure Event.

E. 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 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.

11. 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.

12. 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.

SOWEGO ENERGY FACILITY, LLC

By: _____
Name:
Title:

**THE BOARD OF SUPERVISORS OF
FAUQUIER COUNTY, VIRGINIA**

By: _____
Name:
Title: Chairman, Board of Supervisors

Approved as to form:

By: _____
County Attorney

SCHEDULE A

Applicant agrees to make the following Payments, above and beyond its tax obligations, starting from the Commercial Operation Date. The payments shall be based on the Project's capacity in megawatts (AC), as set forth below:

Years Following Commercial Operation Date	Annual Payment per megawatt (AC)
1-10	\$800.00
11-20	\$1,000.00
21-30	\$1,200.00
31-40	\$1,400.00

By way of example, if the Project's capacity is 80 megawatts, the sum of the Payments shall be \$3,520,000.00.