

## VOLUNTARY WAIVER AND PAYMENT AGREEMENT

This Voluntary Waiver and Payment Agreement (“Agreement”), dated as of June 18, 2020 (the “Effective Date”), is by and between the **County of Surry, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”) and **Spring Grove Solar III, LLC**, a Virginia limited liability company (“SGS”). The County and SGS are herein each a “Party” and collectively, the “Parties”.

WHEREAS, SGS intends to develop, install, build, and operate a ground-mounted solar photovoltaic electric generating facility (“Project”) on that certain parcel of land identified as Surry County Tax Map Parcel 26-4C, the (“Property”); and

WHEREAS, it is anticipated that approximately 60 megawatts of alternating current (AC) generation capacity of the nameplate capacity of the facility will be generated from the Property; and

WHEREAS, the solar photovoltaic (electric energy) systems associated with the Project are considered “certified pollution control equipment” under Va. Code Ann. § 58.1-3660; and

WHEREAS, Va. Code Ann. § 58.1-3660 exempts from local taxation eighty percent (80%) of the value of certified pollution control equipment used in solar projects having electricity generating capacity of over 20 MWAC for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization between January 1, 2015, and June 30, 2018 (the “Tax Exemption”); and

WHEREAS, SGS, in furtherance of the economic development of the County, desires to voluntarily waive a portion of its Tax Exemption and to make payments to the County upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Parties are aware that the Virginia General Assembly has made legislative changes concerning solar photovoltaic electric generating facilities and the Parties intend for those changes that may ultimately take effect to be accounted for and incorporated in this Agreement.

NOW, THEREFORE, 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 SGS do hereby agree as follows:

1. **Payments.** SGS shall make payments to the County as set forth on Schedule A attached hereto (each a “Payment” and collectively “Payments”). The Payments shall begin on August 1<sup>st</sup> of the first full calendar year following the commencement of commercial electricity generation of the Project. With the first Payment, SGS shall include an amount for the initial first partial year of operation prorated for the period from the Project’s commercial operation date until the end of that first partial year. The Payments shall continue on August 1<sup>st</sup> of each year thereafter until the earlier of (the “Termination Date”): (i) SGS’s commencement of the decommissioning of all or a material portion of the Project, or (ii) adoption of a revenue share ordinance by the County. The Payments shall be made to the County in any year in one lump sum payment during the term of this Agreement.

2. **Voluntariness of Payments; Statement of Benefit.** SGS agrees that, but for this Agreement, SGS is not presently legally obligated to make the Payments. SGS agrees that the Payments are voluntary and that it has agreed to make the Payments with the advice of its counsel.

The Parties acknowledge that this Agreement is fair and mutually beneficial to them both. The County acknowledges that SGS is waiving a portion of its Tax Exemption rights to the extent provided herein and that this Agreement is beneficial in that it will result in mutually acceptable, steady, predictable, accurate and reasonable revenue to the County. SGS acknowledges that this Agreement is beneficial to SGS to allow it to proceed with the installation of the Project with a predictable stream of future payments to the County and notwithstanding any future changes in applicable law.

3. **Adjustment to Payments.** If Section 6 applies (that is, a revenue share ordinance is adopted), SGS acknowledges and agrees it will pay the amount per megawatt as provided in the ordinance as authorized in Section 58.1-2636 of the Code of Virginia. This Agreement is not intended to affect, and will not preclude, assessments of general applicability by the County for real property taxes on the Property.

4. **Term; Termination.** This Agreement shall commence on the Effective Date and shall continue until the Termination Date. SGS shall have no obligation to make Payments after the Termination Date, unless termination is a result of the adoption of a revenue share ordinance by the County. If the Termination Date is prior to August 1 in any year, 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 SGS's legal obligation to pay all local taxes in accordance with applicable law at such time and for such period as the Project remains in operation.

5. **Tax Changes; Mutual Termination.** If during the term of this Agreement the Tax Exemption is changed or other similar local tax regulation is imposed, the Parties may mutually agree to amend or terminate this Agreement. Upon termination of this Agreement, SGS's obligations to make any future Payments pursuant to this Agreement shall terminate notwithstanding the continued operation of the Project but shall make payments as required by a revenue share ordinance if adopted by the County.

6. **Legislative Changes.** If the County adopts an ordinance establishing a per megawatt revenue share assessment under Virginia Code § 58.1-2636, SGS shall "opt-in" and the revenue share imposed by the revenue share ordinance shall retroactively apply to the Project as authorized by Section 58.1-2636 of the Code of Virginia. Upon the County's adoption of such revenue share ordinance, such ordinance shall apply to the Project and this Agreement shall terminate.

7. **Mutual Covenants.** SGS 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 its payment and performance obligations hereunder, or otherwise take a position adverse to the purpose or validity of this Agreement. So long as SGS is not in breach of this Agreement during its term, the County covenants to SGS that it will not seek to invalidate this Agreement, except as provided for herein, or its payment and performance obligations hereunder or otherwise take a position adverse to the purpose or validity of this Agreement.

8. **No Obligation to Develop.** SGS has no obligation to develop the Project and this Agreement does not require any Payments until after the Project has commenced electricity generation. It is understood that development of the Project by SGS 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 SGS to terminate, defer, suspend or modify plans to develop the Project shall be deemed a default of SGS under this Agreement. Likewise, the County has no obligation to approve a conditional use permit for the Project or any amendment thereto. Approval of a conditional use permit for the Projects is contingent upon a number of other factors unrelated to the Tax Exemption and Payments.

9. **Successors and Assigns.** This Agreement may be assigned by SGS to any party to whom SGS sells, transfers, leases or assigns all or substantially all of its interest in the Project or the ownership of SGS without the consent of the County. Otherwise, any assignment of this Agreement shall require the consent of the County, which consent may be subject to such assurances as the County deems appropriate, in its discretion, that SGS's payment obligations will be assumed by the assignee. This Agreement will be binding upon the successors and assigns of SGS, and the obligations created hereunder shall be covenants running with the Property upon which the Project is developed. SGS shall execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

10. **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 SGS's sole cost and expense and shall occur as soon as reasonably practicable after the full execution of this Agreement. If SGS chooses to not develop the Project, the County shall consent to a release of the memorandum filed in the aforementioned Clerk's Office.

11. **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:

IF TO THE COUNTY:

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

IF TO SGS:

Spring Grove Solar III LLC  
337 Log Canoe Circle  
Stevensville, MD 21666  
Attn: Compliance

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

12. **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.

13. **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 the validity of this Agreement, or the payment obligations hereunder, by any third party.

14. **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.

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

16. **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.

17. **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.

**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.

Type text here

**SPRING GROVE SOLAR III, LLC**

By: *E. Franklin DePew*  
E. Franklin DePew, Manager

**COUNTY OF SURRY, VIRGINIA**

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

Name: Robert L. Elliott, Jr.

Title: Chairman, Board of Supervisors

Approved as to form:

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

County Attorney

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

SGS shall make minimum payments 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 submissions by the facility owner to the interconnecting utility for the Project. Further, SGS agrees to be subject to legislation that may result in an increase of revenue share payments.

The illustrative estimate below is based on \$1,400 for 60 megawatts AC for 35 years. The megawatts approved for the Project and the Project life may vary from this estimate.

Year	Revenue Share at \$1400 per mw AC (est. 60mw)
1	\$84,000.00
2	\$84,000.00
3	\$84,000.00
4	\$84,000.00
5	\$84,000.00
6	\$84,000.00
7	\$84,000.00
8	\$84,000.00
9	\$84,000.00
10	\$84,000.00
11	\$84,000.00
12	\$84,000.00
13	\$84,000.00
14	\$84,000.00
15	\$84,000.00
16	\$84,000.00
17	\$84,000.00
18	\$84,000.00
19	\$84,000.00
20	\$84,000.00
21	\$84,000.00
22	\$84,000.00
23	\$84,000.00
24	\$84,000.00
25	\$84,000.00
26	\$84,000.00
27	\$84,000.00
28	\$84,000.00
29	\$84,000.00
30	\$84,000.00
31	\$84,000.00
32	\$84,000.00
33	\$84,000.00
34	\$84,000.00
35	\$84,000.00
<b>Totals</b>	<b>\$2,940,000.00</b>