

PUBLIC HEARING NOTICE

The Pittsylvania County Board of Supervisors will hold a Public Hearing on Tuesday, July 16, 2024, at 7:00 p.m., at the Board Meeting Room, 39 Bank Street, Chatham, Virginia 24531, to receive public comment on the potential consideration of a solar battery siting agreement for a potential solar project in Pittsylvania County, Virginia, as required by Virginia Code § 15.2-2316(B). Related documentation/information is available for public viewing at the County Administration Building, 1 Center Street, Chatham, Virginia 24531, Monday through Friday from 8:00 a.m. to 5:00 p.m., and on the County's website: www.pittsylvaniacountyva.gov.

SITING AGREEMENT

This **SITING AGREEMENT** (together with all exhibits appended hereto, this “*Siting Agreement*”) dated as of _____, 2024 (the “*Effective Date*”) is made by and between **Tupelo Storage, LLC**, a North Carolina limited liability company (“*Tupelo*”), and **THE COUNTY OF PITTSYLVANIA, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “*County*”). Tupelo and the County may each be referred to herein as “*Party*” and collectively, the “*Parties*.”

RECITALS:

WHEREAS, Tupelo is proposing to develop an approximately 55 megawatt (“*MW*”) alternating current (“*ac*”) Battery Energy Storage System (“*BESS*”) (the “*Project*”) on certain parcels of land located in the County and identified by the Tax Map Numbers set forth in Exhibit A hereto (collectively, the “*Property*”); and

WHEREAS, pursuant to *Code of Virginia* Chapter 22, Title 15.2, Article 7.3 (the “*Siting Agreement Statute*”), Tupelo and the County may enter into a siting agreement with respect to an energy generating facility proposed to be located in the County; and

WHEREAS, pursuant to *Code of Virginia* § 15.2-2316.7, Tupelo is required to provide the County with written notice of Tupelo’s proposed intent to locate the Project in Pittsylvania County and request a meeting to discuss and negotiate a Siting Agreement (such notification, discussion and negotiation being the “*Siting Agreement Process*”);

WHEREAS, prior to the date hereof, Tupelo commenced the Siting Agreement Process with respect to the Project;

WHEREAS, the Project has a nameplate electrical energy generating capacity of 55 MW(ac), as shown in the first application of Tupelo for interconnection of the Project with the applicable utility, and thus in no event would a statutory exemption from local machinery and tools (“*M&T*”) taxation (as provided by *Code of Virginia* § 58.1 – 3508.6 and local ordinance) apply to the Project;

WHEREAS, the County has not adopted an ordinance pursuant to *Code of Virginia* § 58.1-2636 assessing a revenue share of up to \$1400 per MW(ac) (a “*Revenue Share Ordinance*”), and thus in the absence of this Siting Agreement the obligation to pay one hundred percent (100%) of applicable M&T tax would apply to the Project;

WHEREAS, pursuant to authority granted in the Siting Agreement Statute, the County wishes to enter into this Siting Agreement with Tupelo pursuant to which the County sets forth financial obligations of Tupelo in lieu of any obligation of Tupelo to pay M&T tax in any amount over the life of the Project;

WHEREAS, as set forth herein, the parties have negotiated the terms and conditions of this Siting Agreement, the effectiveness of which is conditioned on the negotiation of a Ground Lease with the Danville-Pittsylvania Regional Industrial Authority authorizing the use of the Property for the Project;

WHEREAS, pursuant to the requirement of *Code of Virginia* §15.2-2316.8(B), the County has held a public hearing in accordance with *Code of Virginia* §15.2-2204(A) for the purpose of considering this Siting Agreement; and

WHEREAS, at a meeting of the Board of Supervisors of Pittsylvania County (the “**Board**”), a majority of a quorum of the members of the Board approved this Siting Agreement.

NOW, THEREFORE, pursuant to *Code of Virginia* Chapter 22, Title 15.2, Article 7.2, intending to be legally bound hereby and in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are conclusively acknowledged, the Parties hereby agree as follows:

1. CAPITAL PAYMENT OBLIGATION.

- (a) Payment Schedule. Tupelo will make the following payment (the “**Capital Payment**”) to the County at the milestones set forth below in the total amount of \$15,000 per megawatt:
 - (i.) Initial Capital Payment at Ground Lease: Within ninety days of the execution of the Ground Lease as set forth in Section 4(a), Tupelo will transfer by wire to the County the initial Capital Payment in the amount of \$41,250.00.
 - (ii.) Second Capital Payment on Lease Anniversary: On the first anniversary of the execution of the Ground Lease, Tupelo will transfer by wire to the County an additional Capital Payment of \$82,500.00.
 - (iii.) Third Capital Payment Upon County Approvals: Within thirty days of the County’s approval of a site plan and Erosion and Sediment Control Permit for the Project, Tupelo will transfer by wire to the County an additional Capital Payment of \$247,500.00.
 - (iv.) Fourth Capital Payment No Later Than Second Lease Anniversary: On the earlier of: (a) the second anniversary of the execution of the Ground Lease, or (b) the date of the third Capital Payment as set forth in Subsection (iii) above, Tupelo will transfer by wire to the County an additional Capital Payment of \$82,500.00
 - (v.) Fifth Capital Payment Upon Approval of State-Level Permits: Within thirty days of the State Corporation Commission’s approval of a Certificate of Public Convenience and Necessity or Department of Environmental Quality permit by rule for the Project, Tupelo will transfer by wire to the County an additional Capital Payment of \$247,500.00.
 - (vi.) Final Capital Payment at Commercial Operation Date: Within five days after the date that the Project begins commercial electrical production (“**COD**”), Tupelo will

transfer by wire to the County the final Capital Payment in the amount of \$123,750.00.

- (b) Use of Payment. The Capital Payment is intended to be used, at the County's sole discretion, to (a) assist the County in addressing capital needs set out in the County's (i) capital improvement plan, (ii) current fiscal budget or (iii) fiscal fund balance and/or (b) support broadband (as defined in *Code of Virginia* § 56-585.1:9) funding, all as permitted by *Code of Virginia* § 15.2-2316.7.
- (c) Distinguished from Real Estate Taxes and Other Obligations. The Capital Payment is separate and distinct from all real estate taxes owed pursuant to Section 6.1.1 of Chapter 6 of the Pittsylvania County Code, and other taxes, fees, and ordinances that may be validly applicable to the Property.
- (d) Invalidity of Siting Agreement. If this Siting Agreement for any reason is found unenforceable or invalid by a court of law or other authority, or otherwise is terminated, with the legal effect that Tupelo is obligated to pay M&T tax in any amount under *Code of Virginia* § 58.1 – 3508.6 and/or local ordinance, any Capital Payment that has been released or paid to the County by Tupelo shall be credited against Tupelo's M&T tax obligation when due until the total amount of paid Capital Payment is exhausted.

2. ANNUAL PAYMENTS

- (a) Payment Obligation and Schedule. Commencing at COD, Tupelo will be obligated to make annual payments to the County as set forth in Exhibit B hereto (each an "**Annual Payment**" and collectively, the "**Annual Payments**"). The Annual Payments shall begin no later than thirty (30) days after COD and each anniversary of COD thereafter. The obligation to make the Annual Payments shall cease (as applicable, the "**Termination Date**") upon: (i) Tupelo'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 20th calendar year of commercial electricity generation of the Project in which the final payment on Exhibit B is shown. The Parties acknowledge that Tupelo's obligation to make Annual Payments shall be conditioned upon the Project's COD. Each Annual Payment shall be made to the County in any year in one lump sum.
- (b) No M&T Tax Liability. In consideration of the Annual Payments described in Section 2(a) above, the County covenants and agrees that, notwithstanding *Code of Virginia* § 58.1 – 3508.6 and in light of the powers granted to the County under *Code of Virginia* Chapter 22, Title 15.2, Article 7.3, (i) no M&T tax is assessable or chargeable with respect to the Project, (ii) it will at no time during the operation of the Project assert that such M&T tax is due and payable, and (iii) it hereby waives any such right of assessment or collection.
- (c) Revenue Share Ordinance Waived. Pittsylvania County hereby waives the opportunity to apply a Revenue Share Ordinance to the Project, if such an ordinance is adopted in the future, and the Parties acknowledge and agree that they shall be bound by and

subject to the provisions the Annual Payments described in Section 2(a), except as may be modified in any amendment of this Siting Agreement agreed to by the Parties.

(d) Public Service Company Property. The Parties acknowledge and agree that if the Project is owned by a public service corporation (including as a result of an assignment made pursuant to Section 7 of this Siting Agreement), the provisions pertaining to the taxation of real and tangible personal property of public service corporations under *Code of Virginia* Chapter 26 of Title 58.1 shall apply to the Property. The Parties acknowledge and agree that pursuant to Section 2(b) of this Siting Agreement, the County M&T tax assessable or chargeable to the Project for purposes of *Code of Virginia* § 58.1 – 2606(C) shall be zero. Each Party further agrees to file, and to cooperate with the other Party in the filing of, any reports, returns or other information that must be filed with the Virginia Corporation Commission or the Virginia Department of Taxation for the purpose of carrying out the purpose of Section 2(b) of this Siting Agreement that no M&T tax will be assessable or chargeable with respect to the Project, including in the event the Project is owned by a public service corporation whose property is assessed centrally by the Virginia Corporation Commission or Virginia Department of Taxation.

3. STATEMENT OF BENEFIT. Tupelo acknowledges that this Siting Agreement is beneficial to Tupelo in assisting it to proceed with the installation of the Project and provides for future revenues to the County that are fair to both Parties. The County acknowledges that the funding provided pursuant to this Siting Agreement is beneficial in that it will result in mutually acceptable, predictable, and reasonable payments to the County.

4. PERMITS AND APPROVALS.

(a) Ground Lease. The Parties acknowledge that Tupelo is in the process of negotiating a Ground Lease from the Danville-Pittsylvania Regional Industrial Facility Authority (“RIFA”) in order to construct and operate the Project on the Property. Tupelo has submitted, or will submit (as applicable), a draft Ground Lease to RIFA authorizing the construction and operation of the Project on the Property.

(b) Limitation of Remedies. Notwithstanding anything to the contrary in the Ground Lease, this Siting Agreement, or otherwise, neither an actual or asserted breach of this Siting Agreement by Tupelo nor the voiding, termination or invalidation of this Siting Agreement shall be grounds for voiding, terminating or suspending the Ground Lease, provided that this subsection 4(b) shall not apply in the case of a willful or intentional breach of this Siting Agreement by Tupelo.

5. CONFORMANCE WITH COMPREHENSIVE PLAN. Upon approval of this Siting Agreement by the County and in accordance with *Code of Virginia* § 15.2-2316.9, the Project and all related transmission facilities shall be deemed to be “substantially in accord” with the “2010 Pittsylvania County Comprehensive Plan,” in all respects, to the extent that prior to such date of approval the County’s Planning Commission has not determined that the Project was “substantially in accord” with the Pittsylvania County’s Comprehensive Plan then in effect under *Code of Virginia* § 15.2-2232(A).

6. EFFECT OF SITING AGREEMENT

- (a) Supremacy of Siting Agreement. In accordance with *Code of Virginia* § 15.2-2316.9(B), and as acknowledged and agreed to by the Parties, the terms of this Siting Agreement shall control over any County ordinance(s) and/or regulation(s) that may be inconsistent with the terms of this Siting Agreement, including any ordinances, regulations, policies, and/or guidelines which are inconsistent with the design, construction, operation and/or maintenance of the Project as indicated in the Application as may be approved by the County, which approved Application will control.
 - (b) Binding Effect. In accordance with *Code of Virginia* § 15.2-2316.8(A)(3), and acknowledged and agreed to by the parties, this Siting Agreement shall be binding upon the County and enforceable against the governing body and future governing bodies of the County in any court of competent jurisdiction.
 - (c) Conditional Effect. This Siting Agreement is expressly conditioned upon, among other factors, RIFA approval of a Ground Lease authorizing the use of the Property as a BESS facility. Should RIFA fail to approve a Ground Lease on terms acceptable to Tupelo, and Tupelo elects not to proceed with the construction of the Project, then this Siting Agreement shall be null and void and of no effect, at Tupelo's election.
 - (d) No Obligation to Develop. The parties agree and acknowledge that Tupelo has no obligation to develop the Project, and this Siting Agreement does not require that any payment be made unless and until the COD occurs (except as set forth in Section 1 regarding Capital Payments due prior to COD). It is expressly understood that development of the Project is contingent upon a number of factors and no election by Tupelo, in its sole discretion, to terminate, defer, suspend, or modify plans to develop the Project shall be deemed a default by Tupelo under this Siting Agreement. The production of test energy, or any other energy, prior to COD does not trigger payment under this paragraph.
 - (e) Covenant to Pay. Tupelo covenants to the County that it will pay the County the amounts due hereunder when due in accordance with the terms of this Siting Agreement, and, in the absence of a breach or default by County of its obligations hereunder, will not seek to invalidate this Siting Agreement, or otherwise take a position adverse to the purpose or validity of this Siting Agreement.
7. ASSIGNMENT. This Siting Agreement may be assigned by Tupelo without the necessity of obtaining the County's consent, and the assignee shall have the same rights under this Siting Agreement as held by the assignor prior to the assignment, provided the assignee agrees to be bound by the terms of this Siting Agreement and a notice of assignment, in a form reasonably acceptable to the County, is, no more than thirty days following such assignment, delivered to the County evidencing the assignee's acknowledgement of the terms of this Siting Agreement and agreement to be bound hereby. If Tupelo sells, transfers, leases, or assigns all or substantially all of its interests in the Project or ownership of Tupelo, this Siting Agreement will automatically be assumed by and binding on the purchaser, transferee, or assignee.

8. REPRESENTATIONS. Each Party represents as follows:

- (a) It has the power and authority to enter into and perform this Siting Agreement; and that the execution, delivery and performance of this Siting Agreement has been duly authorized by all necessary corporate or governmental action, as applicable;
- (b) No suit, action, arbitration, legal, administrative, or other proceeding is pending or, to the best of its knowledge, has been threatened against it that would affect the validity or enforceability of this Siting Agreement or its ability to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on its performance of this Siting Agreement;
- (c) The execution, delivery, and performance of this Siting Agreement by it will not result in a breach of, default under or violation of any applicable law; and
- (d) This Siting Agreement constitutes a legal, valid, and binding obligation enforceable against it in accordance with its terms, except as the enforceability of such terms may be limited by applicable bankruptcy, reorganization, insolvency, or similar laws affecting the enforcement of creditors' rights generally.

9. MISCELLANEOUS

- (a) Governing Law; Jurisdiction; Venue. This Siting 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 Siting Agreement shall be brought and tried only in the Circuit Court of Pittsylvania County, Virginia ("Court"), (b) consent to the jurisdiction of the 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 the 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.
- (b) Confidentiality. Once public notice has been issued regarding the Board's scheduled consideration of this Siting Agreement at an upcoming meeting of the Board, this Siting Agreement shall be a public document, subject to production under the Freedom of Information Act (FOIA). The County understands and acknowledges Tupelo, and as applicable, their 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 Tupelo 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 Siting Agreement, certain

Confidential Information may be shared with the County by Tupelo. Tupelo agrees to clearly identify any information it deems to be Confidential and not subject to mandatory disclosure under the Virginia Freedom of Information Act 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 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 Tupelo to review the request for information and associated documents to determine if any Confidential Information is at risk of disclosure. If Confidential Information exists, Tupelo 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 Tupelo.

(c) Removal of Property. The County acknowledges that the final design of the Project will occur at a later date. Based on final design, Tupelo shall have the right to remove parcels from the Project without the consent of the County. Property that is not included in the Project will be considered withdrawn from this Siting Agreement without the need for further action by the Parties. The withdrawal of any parcels from this Siting Agreement shall not affect Tupelo's obligations under this Siting Agreement.

(d) Notices.

Any communication required or permitted by this Siting Agreement must be in writing except as expressly provided otherwise in this Siting Agreement.

Any communication under this Siting Agreement shall be sufficiently given and deemed given when delivered via email, by hand, or after being deposited in the mails by first-class certified mail, postage prepaid, and addressed as follows, or via such other means of communication as is mutually agreeable to both Parties:

If to Tupelo: Tupelo Storage, LLC
 c/o Adam Thompson
 Strata Clean Energy
 800 Taylor St #200
 Durham, NC 27701
 Phone: 301.785.0748
 Email: adam.thompson@stratacleanenergy.com

with a copy to Tupelo Storage, LLC
 800 Taylor St, Ste. 200
 Durham, NC 27701
 Attn: Legal Department
 Email: legal@stratacleanenergy.com

If to the County: County Administrator
Pittsylvania County, Virginia
1 Center Street
P.O. Box 426
Chatham, VA 24531
Attn: David Smitherman, County Administrator

With a copy to: J. Vaden Hunt, Esq.
1 Center Street
P.O. Box 426
Chatham, VA 24531
Email: vaden.hunt@pittgov.org

Any addressee may designate additional or different addresses for communications by notice given under this Section to each other.

- (e) Memorandum of Siting Agreement. A memorandum of this Siting Agreement (the “*Memorandum*”), in a form acceptable to the County, shall be recorded in the land records of the Clerk’s Office of the Circuit Court of Pittsylvania County, Virginia (the “*Clerk’s Office*”). Such recordation shall be at Tupelo's sole cost and expense and shall occur as reasonably practicable after the full execution of this Siting Agreement. If Tupelo chooses not to develop the Project, the Parties, at the request of either Party, shall execute a release of the Memorandum filed in the Clerk's Office and direct its recordation.
- (f) Non-Business Days. If the date for making any payment or performing any act or exercising any right is not a day when financial institutions are open for business in the Commonwealth of Virginia, such payment must be made or act performed or right exercised on or before the next business day such offices are open for public business.
- (g) Entire Agreement: Amendments. This Siting 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 Siting Agreement can be modified, altered, or amended except in a writing executed by all parties hereto. This Siting Agreement may not be changed except in writing signed by all parties.
- (h) Construction. This Siting Agreement was drafted with input by the County and Tupelo, and no presumption will exist against any Party.
- (i) Binding Effect. This Siting Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns. There are no other agreements or other conditions precedent to the binding nature of the respective obligations of Tupelo and the County.

- (j) Liability of Officers and Agents. No officer, agent, or employee of the County or Tupelo or its affiliates shall be subject to any personal liability or accountability by reason of the execution of this Siting Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- (k) Counterparts; Electronic Signatures. This Siting 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 one in the same instrument. A signed copy of this Siting Agreement delivered by facsimile, email/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 Siting Agreement. Electronic signatures using a nationally recognized service, such as DocuSign, shall be permitted for execution of this Siting Agreement.
- (l) Force Majeure. Any delay in the performance of any of the duties or obligations of either party hereunder (the “*Delayed Party*”) shall not be considered a breach of this Siting Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts; shortages of materials or energy; fires; explosions; floods; changes in laws governing international trade; or other unforeseeable causes beyond the control and without the fault or negligence of the Delayed Party. The Delayed Party shall give prompt notice to the other party of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as promptly as possible. No such event shall excuse the payment of any sums due and payable hereunder on the due date thereof except any payment due upon the occurrence of any act or event for which delayed performance is excused as provided above.
- (m) Severability; Invalidity. Any provision of this Siting 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 Siting 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 Siting Agreement so as to render the invalid provisions herein lawful, valid, and enforceable. If the Parties are unable to do so, this Siting 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 Siting Agreement did not exist. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Siting Agreement by a third party.
- (n) Third Party Beneficiaries. This Siting 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 Siting Agreement.

- (o) No Obligation to Develop Project. Tupelo and its successors and assigns are under no obligation to continue to develop the Project after the date of this Siting Agreement.

SEE ATTACHED SIGNATURE PAGES

IN WITNESS WHEREOF, the County has caused this Siting Agreement to be executed in its corporate name by an authorized person as of the date first written above.

COUNTY OF PITTSYLVANIA, VIRGINIA

By:
Name:
Title:
Date:

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IN WITNESS WHEREOF, Tupelo has caused this Siting Agreement to be executed in its corporate name by its duly authorized officer as of the date first above written.

TUPELO STORAGE, LLC

By: Strata Manager, LLC, its Manager

By:

Name: Markus Wilhelm

Title: Manager

Date:

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Exhibit A

Tupelo Tax Map Parcels

Item Parcel ID

1. 1367-30-1931

EXHIBIT B - Schedule of Payments

Tupelo Storage, LLC (55 Megawatts)	
Year	Revenue Share (\$)
1	\$84,700
2	\$84,700
3	\$84,700
4	\$93,170
5	\$93,170
6	\$93,170
7	\$93,170
8	\$93,170
9	\$102,487
10	\$102,487
11	\$102,487
12	\$102,487
13	\$102,487
14	\$112,736
15	\$112,736
16	\$112,736
17	\$112,736
18	\$112,736
19	\$124,009
20	\$124,009
Total	\$2,044,082