

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

<b>TO:</b> SUN TRIBE SOLAR, LLC	<b>DATE ISSUED:</b>	JULY 29, 2021
107 5 <sup>TH</sup> STREET SE	<b>CONTRACT NO:</b>	21-DES-R-284
CHARLOTTESVILLE, VIRGINIA 22902	<b>CONTRACT TITLE:</b>	SOLAR POWER PURCHASE AGREEMENT

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**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

The contract documents consist of the terms and conditions of AGREEMENT No. 21-DES-R-284 including any attachments or amendments thereto.

**EFFECTIVE DATE:** JULY 29, 2021

**EXPIRES:** FEBRUARY 28, 2022

**RENEWALS:** THREE (3) ONE-YEAR RENEWAL OPTIONS FROM MARCH 1, 2022 TO FEBRUARY 28, 2025

**COMMODITY CODE(S):** 29082

**LIVING WAGE:** N

**ATTACHMENTS:**

AGREEMENT No. 21-DES-R-284

**EMPLOYEES NOT TO BENEFIT:**

**NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.**

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**VENDOR CONTACT:** TAYLOR BROWN

**VENDOR TEL. NO.:** (XXX) XXX-XXXX

**EMAIL ADDRESS:** [TAYLOR.BROWN@SUNTRIBESOLAR.COM](mailto:TAYLOR.BROWN@SUNTRIBESOLAR.COM)

**COUNTY CONTACT:** DEMETRA MCBRIDE (DES - OS)

**COUNTY TEL. NO.:** (703) 228-XXXX

**COUNTY CONTACT EMAIL:** [DMCBRIDE@ARLINGTONVA.US](mailto:DMCBRIDE@ARLINGTONVA.US)

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**PURCHASING DIVISION AUTHORIZATION**

Sy Gezachew Title: Procurement Officer Date: July 29, 2021

## **Agreement for Solar Power Purchase Agreement Services**

This Agreement for Solar Power Purchase Agreement Services (“Agreement”) dated July 13, 2021 (“Effective Date”) is made and entered into by Sun Tribe Solar, LLC (“Sun Tribe”), and the County Board of Arlington (“County”). Sun Tribe and County may hereinafter be referred to individually as a “Party,” and collectively as the “Parties.” (collectively, the “Parties”).

WHEREAS, on September 13, 2019, Henrico County, Virginia issued Request for Proposal No. 19-1919-9JOK (“RFP”), titled “Solar Power Purchase Agreement Services”;

WHEREAS, pursuant to Section V(FF) of the RFP and in accordance with Va. Code § 2.2-4304(B), the RFP specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies;

WHEREAS, Sun Tribe submitted a proposal dated October 17, 2019 in response to the RFP and Henrico County selected Sun Tribe as the successful offeror to provide goods and services in accordance with the RFP and accordingly awarded to Sun Tribe Contract #1919A (“Contract 1919A”), dated February 1, 2020, which contract provides in its Section (6) terms for the cooperative procurement by other public bodies;

WHEREAS, pursuant to Virginia Code § 2.2-4304, the County now wishes to utilize Contract 1919A with Sun Tribe for solar power purchase agreement services;

WHEREAS, the Parties now wish to enter into a definitive agreement for the delivery of the goods and services.

NOW, THEREFORE, the Parties agree as follows:

- (1) **Agreement Documents** – This Agreement and the Exhibits shall be the “Agreement Documents.” Any Power Purchase Agreements and Site Lease Agreements (together, a “PPA”) the Parties enter into after the Effective Date will be substantially in the form provided in Exhibit A.

Exhibit A – Form of Solar Power Purchase Agreement and Site Lease Agreement.

- (2) **Compensation** – As applicable, the County will pay Sun Tribe compensation as set forth in any applicable PPA.
- (3) **Initial Sites** –Where applicable, Sun Tribe will initially complete solar installations at the following sites identified by the County (the “Initial Sites”): Lubber Run Community Center. The Parties will enter into PPAs for each of the Initial Sites.
- (4) **New Sites** – In addition to any Initial Sites, the County may request Sun Tribe to identify and evaluate other prospective sites upon the County’s request in accordance with the methods established in the Agreement Documents (each, a “New Site”). Upon the County’s request, Sun Tribe will perform a solar feasibility study and cash flow analysis

for each New Site. If the County opts to proceed with a New Site, Sun Tribe will offer pricing equal to or less than the pricing listed in the table below, provided that Sun Tribe shall retain the sole discretion not to enter into a PPA for a New Site based on anticipated costs, technical feasibility, or other reasons. In its discretion, Sun Tribe will take the conditions and characteristics of the New Site into consideration in determining whether to offer pricing less than the pricing listed below. Sun Tribe will provide a certificate of insurance to the County naming it as an additional insured before performing any work on any County site.

<b>Annual Escalator</b>	<b>Type of New Site</b>	<b>Year 1 Electricity Price</b>
0%	Carport	\$0.143/kWh
	Rooftop	\$0.106/kWh
	Ground Mount	\$0.104/kWh
1%	Carport	\$0.129/kWh
	Rooftop	\$0.097/kWh
	Ground Mount	\$0.095/kWh
2.5%	Carport	\$0.113/kWh
	Rooftop	\$0.086/kWh
	Ground Mount	\$0.085/kWh

- (5) **Term** – The Agreement term shall be from the Effective Date through February 28, 2022, with three (3) one (1) year renewal options which the County may exercise in its sole discretion, subject to Henrico County renewing its Contract 1919A. The County shall provide Sun Tribe with at least ninety (90) days prior written notice in the event it elects to renew or not renew. At any time during the term of this Agreement (including any renewals), the County may enter into additional PPAs with terms not to exceed thirty (30) years. The expiration of this Agreement will not affect the validity of any PPAs entered into while this Agreement is in effect.
- (6) **Cooperative Contract** – Pursuant to the RFP, this Agreement is a cooperative contract. Accordingly, and only with Sun Tribe’s consent, the County may propose immaterial changes to the PPA (Exhibit A) to accommodate the County’s local policy or practice. Venue for disputes shall be deemed to be the state courts of the County.
- (7) **Sovereign Immunity** – The County neither waives nor abrogates its sovereign immunity hereunder, in part or in whole, in any manner, under any theory.
- (8) **Merger** – The Agreement Documents supersede all prior communications and negotiations. This Agreement may be modified only in writing, signed by both the County and Sun Tribe.
- (9) **Severability** – If any provision of the Agreement Documents is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement

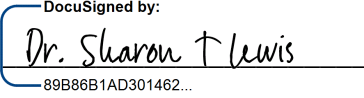
Documents shall not be affected thereby and each other provision of the Agreement Documents shall be valid and enforceable to the fullest extent permitted by law.

- (10) **Controlling Law and Venue** – The Agreement shall be governed by the applicable laws of the Commonwealth of Virginia without regard to conflicts of law principles. Any dispute arising out of the Agreement, its interpretations, or its performance shall be litigated only in the Circuit Court of the County.
- (11) **Claims** – All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the County Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the County Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution.

*[SIGNATURES ON THE FOLLOWING PAGE]*

WHEREFORE, the Parties hereby execute this Agreement as evidenced by the signatures below as of the Effective Date.

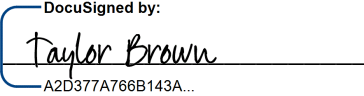
**County:** County Board of Arlington

**Signature:** 89B86B1AD301462...

**Name:** Dr. Sharon T Lewis

**Title:** Purchasing Agent

**Sun Tribe Solar, LLC**

**Signature:** A2D377A766B143A...

**Name:** Taylor Brown

**Title:** Chief Technical Officer

**SOLAR POWER PURCHASE AGREEMENT**

This SOLAR POWER PURCHASE AGREEMENT (Agreement ID: ARLI-001) is entered into as of July 13, 2021 (the "Effective Date") by and among Sun Tribe Solar, LLC ("STS"), organized under the laws of the Commonwealth of Virginia (hereinafter "Generator"), and County Board of Arlington ("County"). Generator and County may hereinafter be referred to individually as a "Party," and collectively as the "Parties."

**RECITALS**

**WHEREAS**, County operates governmental facilities, and uses electricity in the conduct of its operations;

**WHEREAS**, Generator is in the business of designing, developing, installing, owning and maintaining solar photovoltaic (PV) electric generation systems (hereinafter "System"), and selling the electricity generated by such Systems;

**WHEREAS**, the County of Henrico, Virginia and the County School Board of Henrico County, Virginia ("Issuers") issued Request for Proposals 19-1919-9JOK dated September 13, 2019 for Solar Power Purchase Agreement (PPA) Services, pursuant to which it requested proposals for third parties to install, own and operate PV electricity generating systems at County's facilities located in Virginia, and to sell the electricity generated by such systems to the County for use in such facilities ("the RFP");

**WHEREAS**, pursuant to Section V(FF) of the RFP and in accordance with Va. Code § 2.2-4304(B), the RFP specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies;

**WHEREAS**, in furtherance of the RFP, Issuers awarded to Generator Contract #1919A, dated February 1, 2020 and still in effect as of Effective Date, which provides in its Section (6) terms for the cooperative procurement by other public bodies, including nonmaterial changes to the form PPA;

**WHEREAS**, pursuant to Virginia Code § 2.2-4304 and Section (6) of Contract #1919A, County wishes to utilize Issuers' resulting contract for Solar Purchase Agreement Services; and

**WHEREAS**, County now wishes to procure solar services under the RFP award.

**AGREEMENT**

**NOW, THEREFORE**, and in consideration of mutual premises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties hereby agree as follows:

## ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 1.1 **Definitions.** The following terms, when capitalized, shall have the meanings indicated in this Section 1.1 when used in this Agreement, including in any recital, schedule, exhibit or appendix hereto.

“**Agreement**” means this Solar Power Purchase Agreement, including all terms and conditions, exhibits, appendices and schedules that have been executed and are attached hereto.

“**Business Day**” means any day other than Saturday, Sunday, or a day that is observed by County as a holiday.

“**Change in Law/Regulation**” means that, after the Effective Date, an applicable law or regulation is amended, suspended, nullified, modified, found unlawful or changed in any material respect.

“**Commercial Operation Date**” (COD) means the date on which the Parties have signed a certificate of final completion as provided in Section 6.14.

“**Installation Period**” means the period commencing on the date County provides a Notice to Proceed with Installation and ending on the Commercial Operation Date.

“**Contract #1919A**” means that certain Agreement for Solar Power Purchase Agreement Services of Generator and Henrico County and Henrico County Public Schools described in the Recitals.

“**Default**” means any event or circumstance which, would constitute an Event of Default under Article XVI.

“**Development Tasks**” has the meaning established in Section 4.1.1.

“**Dispute**” has the meaning established under Article XXII.

“**Effective Date**” means the date that is first shown in the preamble to this Agreement.

“**Electricity**” means the net amount electrical energy generated by one or more Systems to be delivered to County.

“**Environmental Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur

hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Benefits. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“Environmental Incentives” means any and all subsidies, payments, rebates, credits or other incentives that relate to the self-generation of Electricity, the use of technology incorporated into the System and other similar programs available.

“Event of Default” has the meaning established in Article XVI.

“Existing Electrical System” means the County's existing electrical systems at the Premises, excluding any components owned by VEPCO.

“Fair Market Value” is the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, tax credit recapture, tax depreciation recapture, the age, condition and performance of the System and advances in solar technology.

“Final Design” means the Initial Design, including any modifications or changes (if any) that is satisfactory to both Parties.

“Force Majeure Event” has the meaning established in Section 18.1.

“Generator” means Sun Tribe Solar, LLC, and its successors and assigns.

“Initial Design” has the meaning established in Section 4.1.2.

“Initial Term” means the length of time as set forth in Schedule A beginning at the System's Commercial Operations Date.

“kWh” means kilowatt hour of Electricity.



“Lender” or “Lenders” means the commercial entities, banks, financial institutions, suppliers offering payment terms for a System or other investors providing debt or equity for a System.

“Meter” means the standard instrument(s) and equipment installed at the Site by Generator as part of the System to be used to measure and record the Output delivered to County.

“Metering Device” has the meaning established in Section 8.3.

“MWh” means megawatt-hour.

“Notice to Proceed with Installation” means the written notice described in Section 4.3.

“Notice to Proceed with Design” means the written notice described in Section 4.1.1.

“Original Condition” means the state of condition when the System is placed into service. This condition includes any modifications or additions performed to the existing property, including but not limited to: tree clearing, grubbing, civil grading, stormwater features, and roof modifications.

“Output” means the Electricity produced by the System delivered by Generator to County.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, estate, governmental authority or agency.

“PPA Pilot Requirements” means the requirements imposed on either County or Generator, or both, set forth in (i) Chapter 382 of the 2013 Virginia Acts of Assembly that created Virginia’s solar power purchase agreement pilot program (including any successor legislation), (ii) the Virginia State Corporation Commission’s guidelines, as they may be updated from time to time (the guidelines were last updated on June 29, 2017 in PUE-2013-00045), and (iii) the amended and restated agreement for the provision of electric service to municipalities and counties of the Commonwealth of Virginia between VEPCO and VEPGA, as it may be amended from time to time. For any public body that obtains its electrical service from an entity other than VEPCO, “PPA Pilot Requirements” means any similar requirements applicable to that other entity.

“Premises” means County’s property, as described in Schedule B.

“Project Schedule” means the mutually agreed schedule pursuant to which Generator will complete the tasks required by the Agreement related to a System as described in Section 4.1.7.

“Renewal Period” has the meaning established in Schedule A.

“RFP” has the meaning established in the Recitals.

“Site” means the area(s) on the Premises Generator will lease and on which Generator will install the System. Once the Final Design is completed, Schedule B will be updated as necessary.

“Site Lease” means the Site Lease Agreement included in Appendix A to this Agreement pursuant to which County will lease a portion of its property to Generator.

“Site Meteorological Adjustment Factor” The annual temperature-corrected performance factor between 0% and 100%, as measured at the Site, equal to the ratio of the as designed expected annual generation (kWh), including annual degradation, under the Temperature-Corrected Theoretical AC Energy generation (kWh) and derived by application of the method defined by equation (9), Section 5 – Determine Corrected Measured PR within NREL’s technical report: ‘Weather Corrected Performance Ratio’ NREL/TP-5200-57991, dated April 2013.

“System” means the photovoltaic (PV) solar modules, DC/AC inverters, Meters, tools, wiring, facilities, materials, equipment and any other property now or hereafter installed, operated, controlled or owned by Generator for the purpose of, or useful to, the delivery of Electricity to County. Each System is described more particularly in Schedule A. For the avoidance of doubt, the System specifically excludes any part of the Existing Electrical System.

“Taxes” means any federal, state and local ad valorem, property, occupation, generation, sales, use, consumption, excise, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Generator’s revenues due to the sale of Electricity under this Agreement.

“Tax Benefits” means all tax credits, tax grants, tax deductions and other tax benefits available to taxpayers, including but not limited to any modifications or replacements to such tax credits, tax grants, tax deductions or tax benefits.

“Term” has the meaning established in Section 3.1.

“Termination Fee” means the fee listed in Schedule C.

“VEPCO” means County’s incumbent electric utility provider, the Virginia Electric Power Company, doing business as Dominion Energy Virginia.

“VEPGA” means the Virginia Energy Purchasing Governmental Association, a joint powers association that contracts with VEPCO on behalf of its government entity members, including the Issuers.

“Weather Adjusted Output” means the Output multiplied by the Site Meteorological Adjustment Factor.

Section 1.2 Interpretation. In this Agreement, unless the context requires otherwise, words singular and plural in number shall be deemed to include the other and pronouns having masculine or

feminine gender shall also be deemed to include the other; references to sections, regulations or statutes shall be construed to include all regulatory or statutory provisions succeeding, replacing, amending, or supplementing the section, regulation or statute; references to a Party to this Agreement include their successors and permitted assigns; references to a document or agreement, including this Agreement, includes a reference to that document or agreement and all subsequent amendments and other modifications to such instruments.

## ARTICLE II. PURCHASE AND SALE

Section 2.1 Purchase and Sale. County agrees to purchase from Generator, and Generator agrees to sell to County, all of the Electricity generated by the System(s) at the Electricity prices set forth in Schedule A and in accordance with the terms set forth in this Agreement including all appendices and schedules.

Section 2.2 Pricing and Escalation. Schedule A sets forth the price of Electricity for the first year of the applicable Term and an annual escalation rate. Upon each annual anniversary of the Commercial Operation Date of a System, the applicable Electricity price will increase by the annual escalation rate set forth in Schedule A.

## ARTICLE III. TERM & RENEWAL PERIODS

Section 3.1 Term. This Agreement shall be effective as of the Effective Date and shall continue in effect for a period of thirty (30) years after the COD, unless terminated or renewed in accordance with the terms of the Agreement (the "Initial Term"). If County elects to renew the Agreement for a Renewal Period, the terms and conditions of this Agreement will continue to govern.

Section 3.2 Renewal Periods. County may elect to renew the Agreement for the Renewal Period set forth in Schedule A by providing written notice to Generator at least ninety (90) days in advance of the end of the applicable Initial Term or Renewal Period.

Section 3.3 Service Agreement. The Parties intend for this Agreement to be a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

## ARTICLE IV. CONDITIONS TO OBLIGATIONS AND COMMENCEMENT

Section 4.1 System Conditions Precedent to Parties' Obligations. The Parties' obligations to buy and sell power hereunder are conditioned upon the satisfaction of the conditions set forth below, unless waived by either Party and subject to the terms and conditions of the Agreement. The Parties shall use reasonable efforts to satisfy the following conditions:

Section 4.1.1 Development Tasks. Following receipt of a Notice to Proceed with Design (if applicable), Generator shall use commercially reasonable efforts to complete the following: (i) submit, obtain and pay for any zoning, land use and building permits or any other local approvals

required to construct the System, and (ii) submit, obtain and pay for any agreements and approvals from the applicable utility and other authorities having jurisdiction necessary to interconnect the System to the utility's electric distribution system (the hereinafter "Development Tasks"). County's execution of the Agreement will serve as its "Notice to Proceed with Design" unless stated otherwise on the signature page to this Agreement. County may later provide a Notice to Proceed with Design if, for example, at the time the Agreement is executed, the applicable Site is under construction or it is otherwise inconvenient for the Development Tasks to proceed. If the Agreement calls for a separate later Notice to Proceed with Design, the Parties will develop a schedule for Generator to perform the Development Tasks. In the event that any of the permits, agreements or authorizations are required to be in the County's name, County agrees to take actions as Generator may reasonably require to apply for and obtain them, and Generator will reimburse County for its applicable actual costs.

Section 4.1.2 Initial Design. Upon completion of the Development Tasks, Generator shall deliver to County a design setting forth a general description of the panel inverter and warranties System, including the site plan, system design, equipment specifications, equipment location, metering equipment, roof modifications (if necessary), and integration of the System with the building's existing fixtures and Existing Electrical System (hereinafter "Initial Design").

Section 4.1.2.1 Structural and Roof Analysis. Applicable to roof mounted systems only. County shall provide a copy of the existing roof warranty for the Site within thirty (30) days of the Effective Date. Generator will cause a licensed engineer to perform a full structural load analysis for each Site and perform a complete inspection of the roof systems at each Site. The Initial Design will detail any structural modifications that must be performed at the Site in order for the System to be installed. The Initial Design will also include an itemized list of repairs or modifications that must be performed to the roof. If structural modifications or repairs to the roof systems are required, Generator will obtain at least two proposals from entities licensed to perform the required scopes of work. County has the option to cover the costs of these scopes of work, perform the work with its own contractor, or County may elect to have the Generator cover the costs of these scopes of work and will adjust the price of Electricity accordingly and the Parties will memorialize such adjustment in an amendment to this Agreement.

Section 4.1.3 Modifications to the Initial Design. County shall have fifteen (15) Business Days to review and request any modifications to the Initial Design. If County requests modifications to the Initial Design, Generator will modify the Initial Design to both Parties' satisfaction. Among other details, the Final Design will accurately identify the portions of the Premises that will comprise the Site, construction staging areas, routes of access for a given System. Upon County's written approval of any modifications, the Initial Design shall be deemed final and binding on both Parties and Schedule B and Attachment A will be updated accordingly (hereinafter "Final Design").

Section 4.1.4 Failure to Agree on the Final Design. Following good faith efforts, if the County and Generator are unable to agree on the Final Design within fifteen (15) Business Days after Generator provides a revision to the Initial Design that addresses County's comments, then either Party may terminate the Agreement by written notice to the other Party. If this Agreement is

terminated, County shall reimburse the reasonable and necessary expenses incurred by the Generator to perform the Development Tasks.

Section 4.1.5 Due Diligence. Generator shall have had the opportunity to complete due diligence and physical inspection with respect to County and the Premises, including technical, legal and accounting reviews. Such due diligence shall also include visits by Generator to the Premises and other measures deemed reasonably necessary by Generator to perform its obligations contained herein. Generator must obtain County's prior consent before performing any due diligence that requires entry onto County's property.

Section 4.1.7 Project Schedule. Generator will update the sample project schedule included in its Proposal and prepare a proposed Project Schedule for County's review and approval (not to be unreasonably withheld).

Section 4.1.8 Prevention of Unauthorized Access. Prior to the Commercial Operation Date, Generator shall develop, implement and provide County with a copy of written policies, systems and practices to prevent unauthorized access to and trespass on the System and to prevent harm and damage to the System.

Section 4.2 Failure to Meet System Conditions Precedent. If Generator is unable to complete its due diligence and the Development Tasks set forth in this Article IV by the later of (a) four hundred fifty (450) days after the date of the Agreement, or (b) one hundred and eighty (180) days after the Notice to Proceed with Design if applicable, then either Party shall have the option to terminate this Agreement upon forty-five (45) days written notice to the other Party without triggering the default provisions of this Agreement or any liability under this Agreement. Notwithstanding the foregoing, if Generator is unable to complete the Development Tasks due to an action or inaction by the County, and the Generator terminates the Agreement, the County shall reimburse Generator for actual costs incurred.

Section 4.3 Commencement of the Construction Period. Generator will notify County in writing when the conditions set forth in this Article IV have been satisfied and County will issue a notice to proceed with installation promptly thereafter, unless the Parties agree to delay the Installation Period ("Notice to Proceed with Installation"). The Installation Period associated with a System will commence on the date of the applicable Notice to Proceed with Installation. Generator will commence installation of the applicable System promptly thereafter and in accordance with the Project Schedule.

## ARTICLE V. ACCESS RIGHTS

Section 5.1 Access during Installation. The Site Lease requires that during the Installation Period, County shall provide Generator space on the Premises for Generator's installation of the System, including staging and laydown areas as depicted in Schedule B. Generator shall consult with County in advance of the beginning of the Installation Period about the required laydown areas.

Section 5.2 Access Rights for Generator. Pursuant to each Site Lease, County will grant to Generator the right to use the Site, and such other locations as may be reasonably required by Generator, to fulfill its obligations under this Agreement, including to develop, design, install, operate, maintain, replace and repair the System.

Section 5.3 Liens and Encumbrances. County represents, warrants and covenants that County has lawful title to the Premises free and clear of all liens and encumbrances except for such Permitted Encumbrances as set forth in this Section, and that Generator will have quiet and peaceful use, enjoyment and possession of the rights granted hereunder and under the Site Lease.

Section 5.4 Access by County to Site. The Parties acknowledge that County will continue have access to the Site at all times, provided County does not materially interfere with or obstruct the System as provided in this Agreement or the Site Lease.

Section 5.5 Internet Access. County shall make available to Generator during the Installation Period and the Initial Term (plus any Renewal Periods) internet access at the Site necessary for Generator's equipment to continuously monitor the System performance. Generator acknowledges that such internet access may experience occasional interruptions and County will not be responsible for any such outages. Generator shall comply with County's reasonable system information technology security measures, as they may be updated from time to time.

## ARTICLE VI. INSTALLATION OF SYSTEM

Section 6.1 Installation of System. During the Installation Period, Generator shall:

Section 6.1.1 install, service, maintain and test each System consistent with requirements of this Agreement, in a good and workmanlike manner, in accordance with all applicable laws and regulations, and within the time provided by the Project Schedule; and

Section 6.1.2 obtain the policies of insurance as set forth herein.

Section 6.2 Location of System(s). Each System shall be situated on the Site as described in Schedule B, the Site Lease, and in strict accordance with the applicable Final Design.

Section 6.3 Installation Schedule. Generator will give County at least fifteen (15) Business Days' notice prior to the commencement of installation, together with a proposed schedule for the Installation Period for County's review and approval. Generator will coordinate installation activities with County to minimize interference with normal operations at the Site. Generator will complete installation and place the System into service within the time provided in the Project Schedule.

Section 6.4 County Obligations. At all times through the Installation Period, County shall provide, at no cost to Generator, one or more temporary laydown areas, designated for Generator's exclusive use for the storage of equipment, facilities and materials to be incorporated into the System, along with any installation and testing equipment and materials to be used in the installation and testing of the

System. Schedule B and the Site Lease will designate the location of the temporary laydown areas. Generator acknowledges that its use of such areas is at its own risk and that County will not be responsible for any damage or loss Generator sustains in connection with its use of such areas. Generator shall keep all temporary laydown areas clean and orderly and shall restore them to their Original Condition, except ordinary wear and tear.

Section 6.5 Installation Period Electricity. Generator or its contractors may test the System and deliver all Output resulting from such testing during the Installation Period, and County shall accept delivery of all Output resulting from such testing. Generator shall invoice for such Output per the terms of this Agreement at the year 1 rate.

Section 6.6 Refuse. Generator will take, reduce or mitigate noise, dust, the spread of debris and construction materials during the Installation Period and while performing any maintenance and repairs after the Commercial Operation Date. Generator agrees to remove all debris, extra materials, scaffolding, tools, machinery and other construction materials and leave all portions of the Premises clean and ready for use.

Section 6.7 Site Repairs. Generator shall be responsible to repair and pay for any damage to all portions of County's property that is solely caused by Generator's or its contractors or subcontractors installation, maintenance, operation, or removal of the System.

Section 6.8 Hazardous Materials. In the event that Generator (or its contractors) discovers any hazardous materials (as such term is defined by applicable law) existing on the Site during the installation of the System that Generator reasonably believes may require removal or remediation, or that otherwise impairs or prevents installation of the System, Generator shall promptly notify County, and Generator shall, in its discretion, suspend installation of the System until such time as County has removed the hazardous substance and remediated the Site in accordance with applicable law and regulations. Generator shall have no responsibility or liability in respect of hazardous material existing at the Site (other than any hazardous materials brought to the Site by or on behalf of Generator). If Generator and County do not agree on a schedule and terms for resumption of installation within fifteen (15) Business Days following the discovery of such hazardous materials at the Site, then (a) each Party shall have the right to terminate the Agreement, and (b) County shall be obligated to reimburse Generator for all actual costs incurred by Generator through the termination date.

Section 6.9 Unanticipated Conditions. If any unusual or unanticipated conditions exist or arise at the Site, including but not limited to environmental conditions, pollution, or archeological findings, which conditions would involve the incurrence by Generator of any expenses to correct such conditions, Generator shall submit a request for approval of the corrective work and payment related to any expenses to County, or County may perform the corrective work with its own forces or contractors. The additional work resulting therefrom will be paid for by County. County may terminate the Agreement if it determines not to proceed with the cost of performing the corrective work, in which case County will reimburse Generator for its actual costs incurred through the termination date. County will not be responsible for such unusual or unanticipated conditions, which would have been anticipated by Generator when it completed due diligence pursuant to its obligations in Section 4.1.5.

Section 6.10 Safe Workplace. Generator (or its contractors) will take all reasonable and customary steps to ensure the safety of workers at the Premises in accordance with all applicable laws and regulations.

Section 6.11 Liens and Claims. Generator shall hold harmless County from all liens and claims filed or asserted by Generator's contractors or third parties claiming under Generator against County for services performed or material furnished to or by Generator by such third parties, and from all claims arising out of such liens. Generator shall, at no cost to County, promptly release, discharge or otherwise remove any such lien or claim by bonding, payment or otherwise and shall notify County of such discharge, release or removal. If Generator does not, within thirty (30) Business Days, cause any such lien or claim to be discharged, released or otherwise removed by payment or bonding or other method approved in advance by County, County shall have the right (but not the obligation) to pay all sums necessary to obtain releases and discharges (including the settlement of any lien or claim). In such event, County shall have the right to deduct all amounts so paid (plus reasonable attorney's fees) from amounts due Generator hereunder, or alternatively, upon reasonable demand by County, Generator shall reimburse County for such amounts.

Section 6.12 Lenders. Generator shall notify County of the identity of any Lender or Lenders.

Section 6.13 Connection. Generator is responsible for establishing the interconnection of the System to the Existing Electrical System in accordance with the Final Design and is solely responsible for the interconnection equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement; provided that County shall at all times own and be responsible for the operation and maintenance of the Existing Electrical System at and from the physical location where the System connects to the Existing Electrical System.

Section 6.14 Final Completion and Commercial Operation Date. Generator will notify County once Generator has installed and tested a System, that the System is ready to deliver Output to County, and Generator has completed all applicable tasks required by this Agreement (such as Site cleanup, etc.). Within five (5) Business Days after receiving the notice, County will confirm whether all requirements of this Agreement have been satisfied with respect to a System. If all requirements have not been satisfied, Generator shall promptly correct any deficiencies. Once all requirements have been satisfied, the Parties will sign a certificate of final completion and the Commercial Operation Date will commence. If no notice is received by the Generator, Commercial Operation Date shall be the date the Generator first delivered notice of final completion to the County.

Section 6.15 Online Monitoring System. The Generator will provide the necessary software and hardware so that County and the general public may monitor the Electricity generated by the Systems. Generator will provide the necessary hosting services and access to a cloud-based system that County may access at any time. Generator will provide, host and operate a public-facing dashboard that may be accessed by a hyperlink County may place on its website.



## ARTICLE VII. OWNERSHIP OF THE SYSTEM AND ATTRIBUTES

Section 7.1 System, Attributes and Incentives. County acknowledges and agrees that the System is the personal property of Generator, and Generator shall have and retain ownership and title to the System and all its components at all times during the Agreement's Initial Term and any Renewal Period and is entitled to all Tax Benefits. For the avoidance of doubt, attributes of ownership and operation of the System are retained by the Generator. All Environmental Attributes are retained by the County. Generator shall forego all future claims to ownership, title to the System and all its components, Environmental Attributes and Tax Benefits upon purchase of the System by the County.

## ARTICLE VIII. INVOICING AND PAYMENT; METERING

Section 8.1 Invoices. The County will be invoiced electronically on the first (1<sup>st</sup>) Business Day of each month for the total amount of Electricity delivered to the County's Site at the rates identified in Schedule A. County shall provide payment for Generator's monthly invoices by Automated Clearing House (ACH) or check within forty-five (45) days of receipt of invoice.

Section 8.2 Late Payments. Late payments after forty-five (45) days of an invoice shall accrue interest at a rate of one percent (1%) per month until the date payment is received by Generator.

Section 8.3 Installation and Ownership of Meter Equipment. Generator will install revenue grade metering equipment (hereinafter "Metering Device") to measure the amount of Electricity produced by each System. Generator will own and maintain any such Metering Device. Generator shall read each Metering Device at the end of each calendar month, and shall record the Output delivered to the County. The Metering Device shall be used as the basis for calculating the amounts to be invoiced pursuant to Section 8.1. The records from each Metering Device shall be made available to County upon written request. County may utilize such meter readings in administering its net metering or other interconnection arrangements with the applicable utility.

### Section 8.4 Calibration.

Section 8.4.1 Generator shall perform calibration testing of each Metering Device prior to its installation and at least annually thereafter to ensure the accuracy of the Metering Device. County may request that Generator perform more frequent testing; any such testing in excess of the annual tests shall be at County's expense if such tests indicate that the Metering Device is accurate within plus or minus two percent (2%). County shall be entitled to witness such tests and shall be provided with such test results.

Section 8.4.2 If, upon testing, any Metering Device is found to be accurate or in error by not more than plus or minus two percent (2%), then the previous recordings of such Metering Device shall be considered accurate in computing deliveries of Output hereunder, but such Meter shall be promptly adjusted to record correctly.

Section 8.4.3 If, upon testing any Metering Device shall be found to be inaccurate by an amount exceeding plus or minus two percent (2%), then Generator shall promptly repair, adjust or replace the Metering Device to record accurately and any previous recordings by such Metering Device shall be corrected to zero error. If no reliable information exists as to the period over which such Metering Device registered inaccurately, it shall be assumed for purposes of correcting previously delivered invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which such Metering Device was tested and found to be accurate, but in no event will County be responsible for corrections for longer than six months.

Section 8.4.4 If upon testing, any Metering Device is found to be in error by an amount exceeding plus or minus two percent (2%), then the payments for Output made since the previous test of such Metering Device shall be adjusted to reflect the corrected measurements. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number, that difference will offset amounts owing by County to Generator in subsequent month(s) or refunded within 30 days if this Agreement expires before the difference is exhausted. If this Agreement is terminated or County exercises its Purchase Option (as defined in Section 17.1), any outstanding difference payable to County will be credited against the Termination Fee. If the difference is a negative number, the difference shall be added to the next month's invoice and paid by the County to the Generator on the due date of such invoice.

#### ARTICLE IX. TAXES

Section 9.1 Taxes on Sale of Electricity. In addition, and if so required by applicable law, Generator shall pay for all taxes assessed and imposed on the generation, sale, delivery or consumption of Electricity generated by the System.

Section 9.2 Taxes on Purchase of System. County will be responsible for and pay all taxes imposed on it arising out of the purchase of the System by County during the Term and from which it is not exempt.

#### ARTICLE X. OPERATION, MAINTENANCE AND REPAIR

Section 10.1 Costs arising from Operation, Maintenance and Repair. Generator shall operate the System and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from County's, its contractor's, subcontractor's or agent's sole negligence, willful misconduct or breach of the Agreement. If the System requires repairs for which County agrees it is responsible, County shall pay Generator its actual costs for diagnosing and correcting the problem at Generator's or Generator's contractors' then current standard rates.

Section 10.2 Costs arising from Third Parties. Generator shall not be responsible for any work performed by third parties engaged by County on any part of the System unless: (i) Generator provides advanced written authorization for such work, or (ii) County performed such work due to an emergency involving the System.

Section 10.3 Costs not resulting from Generator's Actions. Generator shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper operation or maintenance of the System by anyone other than Generator or Generator's contractors or subcontractors.

Section 10.4 Additional Equipment on Site. County may place equipment on a Site at any time and without notice to Generator so long as it does not affect a System, including but not limited to casting shadows. In the event of an emergency, County may place equipment, perform repairs, and take any other actions at a Site it determines necessary by providing as much notice as practicable to Generator. In such cases, County will endeavor to minimize effects on a System to the extent practicable.

## ARTICLE XI. INTERRUPTION OF SERVICE AND OBSTRUCTIONS

Section 11.1 Interruptions. County understands that the System contains intermittent generation facilities and will not provide County with a continuous supply of Electricity. The System will operate in parallel to the host utility provider and will not affect the host's ability to provide electricity. The Parties acknowledge that Generator shall be provided with a warranty from the solar panel manufacturer and inverter manufacturer as to the performance of such equipment used in a particular System and such warranty shall be assigned by Generator to County in the event County exercises a Purchase Option in accordance with Section 17.1.

Section 11.2 DISCLAIMER OF WARRANTY FOR SUPPLY OF ELECTRICITY. THIS AGREEMENT PROVIDES NO WARRANTY OR GUARANTEE TO CUSTOMER WITH RESPECT TO THE CONTINUOUS SUPPLY OF ELECTRICITY.

Section 11.3 Damages Resulting from Interruption of Service. Generator shall not be liable for any damages caused by or resulting from any interruption in Electricity during the Term, nor shall Generator be responsible for County's cost of alternative supplies of electricity during any interruption. If delivery of Electricity from the System is interrupted by reasons other than County's negligence, Generator will restore delivery of Output in a timely manner.

Section 11.4 Generator's Suspension of Output.

Section 11.4.1 Generator's Right to Suspend. Notwithstanding anything to the contrary herein, Generator shall be entitled to suspend operation of the System for the purpose of maintaining and repairing the System and such suspension of System operation shall not constitute a breach of this Agreement; provided, that Generator shall minimize interruption in operation to the County. Generator shall notify County within twenty-four (24) hours following Generator's discovery of any material malfunction in the operation of the System.

Section 11.4.2 No Requirement to Supply Electricity. If at any time the Generator reasonably determines that the Existing Electrical System is unsafe, Generator shall not have the obligation to supply Electricity to County. Generator shall have no responsibility, obligation, or requirement to inspect or approve the Existing Electrical System after the Commercial Operation Date.

Section 11.5 Cost to Restore Service Following Interruption. Any costs incurred in restoring service following the interruption of operation of the System as a result of Generator's maintenance and repairs of the System shall be borne by the Generator. Any costs incurred in restoring the operation of the System as a result of the actions of County or the condition of the Existing Electrical System shall be born by the County.

Section 11.6 Obstructions.

Section 11.6.1 Except in the case of an emergency or performance of routine maintenance, County shall not install or permit to occur on a Site any physical obstruction that materially reduces, or is reasonably likely to reduce, the production of Electricity. In the event that such obstruction is installed and no emergency exists, and such obstruction has the effect of decreasing by one tenth of one percent (.1%) or more the Output by a System for more than fourteen (14) days, Generator shall have the right to remove said obstruction at the County's expense. If said obstruction is unable to be removed within thirty (30) days, County shall reimburse Generator for lost production revenue.

Section 11.6.2 In the event of an obstruction on property not owned or controlled by County that materially reduces, or is reasonably likely to reduce, the production of electricity by the System, Generator shall be permitted to terminate this Agreement and remove the System (at Generator's expense); provided, that in such event County shall not be responsible for the Termination Fee.

Section 11.7 Roof Repairs. In the event the roof system at a Site requires repair not caused solely by the Generator and a System or part thereof must be temporarily removed, County will provide as much notice as possible to Generator. Unless Generator provides written authorization for the County to remove the System, Generator will use commercial reasonable efforts to remove the System within thirty (30) days. If an emergency repair is required, Generator will use commercial reasonable efforts to remove the applicable System within forty-eight (48) hours of County's notice, or sooner if the need for repair is urgent. If Generator cannot do so within the emergency time frame specified by County in the notice, County may remove the System with its own forces and at its own expense, including replacing any damaged System equipment caused solely by the County. Upon completion of any roof repairs, Generator will reinstall the System. County will reimburse Generator for its actual costs of removing and reinstalling the System, as applicable. If the System is offline for more than three (3) days due to a roof repair not caused by Generator, County will reimburse Generator for lost production at a rate of:  $| 3.7 \text{ (kWh/Wdc)} * \text{DC capacity of System off line (Wdc)} * \text{System's current PPA rate (\$/kWh)} |$  for each day the System is offline.

## ARTICLE XII. SUBCONTRACTORS

Section 12.1 Subcontractors. Generator may use subcontractors to perform its obligations under this Agreement.

## ARTICLE XIII. STANDARD OF PERFORMANCE

Section 13.1 Standard of Performance. Generator shall perform its obligations under this Agreement in accordance with (i) all applicable laws, codes, permits, and regulations, (ii) all appropriate safety manuals and applicable security procedures, (iii) the best practices, methods and acts of photovoltaic industry standards, and (iv) the provisions of the Agreement, including all documents incorporated by reference.

Section 13.2 Production Guarantee. Generator guaranteed that the System will produce ninety three percent (93%) of the year one Target Production listed in Schedule A multiplied by the Site Meteorological Adjustment Factor. For the subsequent nine years, year over year, the Target Production will be reduced by seven tenths of one percent (0.7%) of the year one Target Production. (For example, if the year one Target Production is 100.0kWh, the year five Target Production would be 96.5 kWh.) At the end of each year of operation, if the amount of solar electricity produced is less than the guarantee, Generator will credit the County the System's PPA savings rate (\$/kWh) multiplied by the guarantee deficit (kWh).

Guarantee provided does not apply to any lost production or any repair, replacement or correction required due to:

- (i) Any unauthorized work performed on the System by the County;
- (ii) Access to site not accessible due to County issue;
- (iii) Host utility outage; or
- (iv) Any Force Majeure Event.
- (v) Equipment downtime due to manufacturing defect as evidenced by acceptance of the warranty claim by the manufacturer.

## ARTICLE XIV. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 14.1 Representations of Generator. Generator represents and warrants to County as of the date of this Agreement as follows:

Section 14.1.1 Organization and Performance. Generator is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. But for the passage of time, Generator has no knowledge of any facts or circumstances that would materially adversely affect Generator's ability to perform its obligations hereunder.

Section 14.1.2 Due Authorization. The execution, delivery, and performance of its obligations under this Agreement by Generator have been duly authorized by all necessary corporate, company or partnership action, as applicable, to enter into this Agreement and perform its obligations hereunder.

Section 14.1.3 Accuracy of Information. The information provided in this Agreement (including the Agreement Documents) as of the Effective Date is true and accurate in all material respects.

Section 14.2 Representations of County. County represents and warrants to Generator as of the date of this Agreement as follows:

Section 14.2.1 Organization and Performance. County is a public body duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has the full legal right, power and authority to conduct its business and perform its obligations under this Agreement.

Section 14.2.2 Due Authorization. The execution, delivery, and performance of its obligations under this Agreement by County have been duly authorized by all necessary authorities to enter into this Agreement and perform its obligations hereunder.

Section 14.2.3 Accuracy of Information. To the best of its knowledge, the information provided in this Agreement as of the Effective Date is true and accurate in all material respects.

## ARTICLE XV. COVENANTS OF THE PARTIES

Section 15.1 Status of Premises and Site. During the Term of this Agreement, County will not subject the Site to a lease, security interest, lien, mortgage, deed of trust or similar encumbrance without Generator's consent, not to be unreasonably withheld. The Parties agree the System is the personal property of the Generator severable from the Site and is not and will not be a fixture. Generator's financing arrangements of the System shall not result in an encumbrance on any portion of County's property.

Section 15.2 Use of Premises. Subject to Generator's rights under the Site Lease, County intends to continue to use the Premises for its governmental purposes throughout the Term. County shall give reasonable prior notice to Generator of any material modification of the Premises or change in the use of the Premises that could have an impact on the operation of the System.

Section 15.3 Net Metering and Interconnection Arrangements. County shall maintain such net metering or other interconnection arrangements with the applicable utility during the Initial Term and any Renewal Period as necessary for Generator to operate the System at the Site. Generator shall provide County with reasonable assistance in, and shall bear all reasonable expenses associated with, obtaining such permits, approvals and other authorizations as provided in Section 4 above.

**Section 15.4 Notice of Malfunction; Non-Interference.**

Section 15.4.1 Each Party shall notify the other Party promptly upon the discovery of (i) any material malfunction of or damage to the System and (ii) any occurrences at the Site that could reasonably be expected to adversely affect the System.

Section 15.5 Cooperation Regarding Approvals. The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary approvals and consents described in this Agreement or such other cooperation as is reasonably required to affect the purposes of this Agreement.

Section 15.6 Compliance with Solar Power Purchase Agreement Program. On County's behalf, Generator will comply with all provisions of the PPA Pilot Requirements, as applicable. Generator's performance under this Agreement will be in accordance with the requirements of the PPA Pilot Requirements, as they may be updated from time to time.

**ARTICLE XVI. DEFAULT; TERMINATION; PARTIES' RIGHTS; LENDER CURE RIGHTS**

Section 16.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" by either Party under this Agreement:

Section 16.1.1 Bankruptcy. If a Party (i) becomes insolvent or generally unable to pay its debts as they become due; (ii) applies for, consents to, or acquiesces in the appointment of a trustee, receiver, sequestrator or other custodian for it or any of its property, or makes a general assignment for the benefit of its creditors; (iii) in the absence of any such application, consent or acquiescence, permits or suffers to exist the appointment of a trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; (iv) permits or suffers to exist the commencement of any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding in respect of it, and, if any such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relieve or shall remain for sixty (60) days without such being dismissed; or (v) takes any formal action authorizing or in furtherance of any of the foregoing.

Section 16.1.2 Failure to Meet Material Obligations. Any failure by a party to perform or comply with any other material term or covenant contained herein, provided that such failure continues for thirty (30) days after notice to the breaching party demanding that such failure to perform be cured.

Section 16.1.3 County Failure to Pay. County's failure to pay an invoice following the Due Date, and such failure continues for a period of forty-five (45) days after Generator provides written notice of such nonpayment to County.

Section 16.1.4 Lease Termination. Any event resulting in the termination of the Lease not caused by the Generator shall be an event default by the County, and any default under the Lease by County (Lessor therein) shall be an event default by the County hereunder.

Section 16.2 Right to Terminate for Default. Upon the occurrence and during the continuation of any Event of Default hereunder, subject to Section 16 and the applicable cure periods, the non-defaulting party shall have the option, but not the obligation, to terminate this Agreement.

Section 16.2.1 Generator Event of Default. Without the limitation of the foregoing default provisions in Section 16.1, if an Event of Generator Default shall occur, the County shall have the right to terminate this Agreement. Following such termination, Generator shall remove the System from the Site within ninety (90) Days after such termination, and shall, within fifteen (15) Business Days thereafter, repair any damage the Generator or the System caused to the Premises and Site and return the Premises and Site to their Original Condition, normal wear and tear excepted; provided, if Generator fails to make such repairs within fifteen (15) Business Days, then County may make such repairs and Generator will reimburse County for the actual costs incurred in making such repairs.

Section 16.2.2 County Event of Default. If the Generator exercises a valid termination of this Agreement, Generator may remove the System from the Premises. County shall reimburse Generator of actual cost of removal. In addition, upon such termination, County shall pay the Termination Fee as identified in a Schedule C.

Section 16.3 Reservation of Rights. Neither termination nor the exercise of any other rights or remedies pursuant to this Article 16 shall eliminate the non-defaulting Party's right to pursue any other remedy given under this Agreement now or hereafter existing at law, in equity or otherwise.

Section 16.4 Contractual Claims. Whether for money or other relief, all contractual claims shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of Generator's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based.

Section 16.5 Termination Fee. If County terminates this Agreement or Lease before the end of the applicable term for any reason other than Generator's breach or Force Majeure, County shall pay the Termination Fee listed in the Schedule C that corresponds to the year in which the termination is effective. In such event, County must also pay Generator's actual cost of removal of the applicable System. If this Agreement expires and County elects not to exercise a Purchase Option, then no Termination Fee is applicable and Generator will remove the System at its own expense.

Section 16.6 Lender's Right to Cure. At any time after the occurrence of any Event of Default set forth in this Section 16, but within the timeframes set forth therein, the Lenders shall have the right, but not the obligation, to cure such Default on behalf of Generator. If the Lenders elect to cure (i) the Lenders must comply with the provisions of this Agreement as though they are acting as Generator, (ii) the Lenders must give County reasonable notice of the contractors it intends to engage to perform any



work, and (iii) the Lender will not use any contractor whom County reasonably determines is not satisfactory.

Section 16.7 Termination for Fiscal Non-Funding. In the event sufficient funds are not appropriated, which may lawfully be applied to the payment of County's obligations under this Agreement, County shall promptly provide written notice thereof to Generator identifying the date funding will cease. Generator may, at its sole discretion and with prompt notice to County (i) place the System in standby until such time as the County is re-appropriated funds to meet its obligations under this Agreement or (ii) terminate this Agreement. If County later appropriates sufficient funding for County's payment obligations under this Agreement, then County shall provide prompt written notice thereof to Generator and each Parties' obligations to sell and purchase Electricity generated by the System pursuant to this Agreement shall be reinstated at a date determined by the Generator.

## ARTICLE XVII. PURCHASE OPTION & RELOCATION

Section 17.1 Purchase Option. Generator hereby grants to County the option to purchase a System ("Purchase Option") on the seventh (7th) anniversary of the Commercial Operation Date and at the end of the Initial Term. County must provide a notification to Generator of its intent to purchase at least ninety (90) Business Days and not more than one hundred eighty (180) Business Days prior to the end of the applicable anniversary. The Parties will arrange the sale under customary terms and conditions for the purchase and sale of a facility of this type and size, which terms and conditions shall provide, among other things, that (i) Generator shall transfer good title to the County upon Generator's receipt of the purchase price, but otherwise disclaims all warranties of any kind, express or implied, concerning the System, "as is, where is, with all faults"; (ii) Generator shall assign to County any manufacturers' warranties that are in effect as of the purchase date, and which are assignable pursuant to their terms; and (iii) upon such transfer of title, the Agreement shall terminate automatically. Upon purchase of the System, County will assume complete responsibility for the operation and maintenance of the System, as well as liability for the performance of the System and for the related real estate obligations, if any, with respect to the Site, and Generator shall have no further liabilities of obligations hereunder. Generator shall cooperate with County in connection with any such sale, including responding to due diligence requests and seeking any necessary approvals, provided that such cooperation shall not require Generator to incur any material out-of-pocket costs unless such costs are reimbursed by County. If County exercises the Purchase Option, County will pay the higher of Fair Market Value or the Purchase Option Price listed in Schedule A.

Section 17.2 System Relocation and Costs of Relocation. If County ceases to conduct business operations at the Premises, or otherwise vacates the Premises prior to the expiration of the Initial Term, or the Renewal Periods, County shall have the option to provide Generator with a mutually agreeable substitute premises. In connection with such substitution, County shall execute an amended Agreement that shall have the same or substantially similar terms as this Agreement. County shall be responsible for all costs associated with relocation of the System, including all costs and expenses incurred by Generator associated with the removal of the System from the Premises and installation and testing of the System at the substitute Premises and all applicable interconnection fees and expenses at the substitute Premises.

Section 17.3 Non-Election; Removal. In the event that County does not exercise the Purchase Option pursuant to Section 17.1, Generator shall remove any or all of the System from the Site at Generator's expense within ninety (90) Business Days of the expiration of the Initial Term or Renewal Period, as applicable. Generator shall use reasonable commercial practices in the removal of the System and at its own expense shall return the Premises and Site to their Original Condition, including making any necessary repairs to the roofing system at the Site, normal wear and tear excepted within such ninety (90) Business Day period.

#### **ARTICLE XVIII. FORCE MAJEURE; CHANGE IN LAW/REGULATION**

Section 18.1 "Force Majeure Event" means any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of due diligence, cannot be prevented, avoided or removed by such Party, (ii) such event is not due to such Party's negligence or intentional misconduct, or the negligence or intentional misconduct of such Party's representatives or contractors, (iii) such event is not the result of any failure of such Party to perform any of its obligations under this Agreement, (iv) such Party has taken all reasonable precautions, due care, and reasonable alternative measures to avoid the effect of such event and to mitigate the consequences thereof, and (v) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken to comply with this Agreement. Subject to the foregoing conditions, Force Majeure Events may include: strikes or other labor disputes, supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest, actions or failures to act of any governmental authority or agency, but shall not include any inability to make payments that are due hereunder, to make emergency repairs to a System, or to procure or maintain insurance required hereunder.

Section 18.1.1 Except with respect to the obligation to pay money in a timely manner for liabilities already incurred or accrued, to make emergency repairs to a System, or to procure or maintain insurance, each party shall be excused from performance hereunder and shall not be considered to be in default or be liable in damages or otherwise with respect to any obligation hereunder, if and to the extent that such party's failure of, or delay in, performance is due to the occurrence of a Force Majeure Event.

Section 18.1.2 The party affected by a Force Majeure Event shall promptly notify the other party in writing of the occurrence of such event. The non-performing party shall use reasonable commercial efforts to continue to perform its obligations hereunder and to overcome the effects of Force Majeure Event. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.

Section 18.1.3 If a Force Majeure Event prevents a party from performing its obligations of this Agreement for more than twenty (20) Business Days, the Parties shall meet to negotiate an amendment to the Agreement. If the Parties are unable to negotiate a mutually acceptable amendment to this Agreement within a thirty (30) day negotiation period, then County shall have the option to purchase the System for the applicable Termination Fee, and upon such purchase this Agreement shall terminate. In the event County does not exercise its purchase option within thirty

(30) days of the expiration of the negotiation period, then Generator may terminate this Agreement and, in such case, Generator shall remove the System at its own expense within one hundred twenty (120) days.

Section 18.2 Change in Law/Regulation. In the event there is a Change in Law/Regulation that (i) imposes taxes on the ownership or operation of the System in excess of \$10,000, (ii) requires modifications to the System in excess of \$20,000, or (iii) impacts the cost of operating and maintaining the System in an amount greater than \$10,000 as evidenced by the Generator, then the Generator shall have the right to engage in negotiations in good faith for a period of thirty (30) days with the County in an attempt to amend this Agreement to address the Change in Law/Regulation. This provision will not be applicable to any changes to the federal tax credit program that exists at the execution of this contract.

Section 18.2.1 If the Parties are unable to negotiate a mutually acceptable amendment to this Agreement within such 30-day negotiation period, then the Generator shall have the right to terminate this Agreement and Generator shall remove the System at its own expense within twenty (20) Business Days.

## **ARTICLE XIX. LIABILITY; INDEMNIFICATION; WARRANTY DISCLAIMER**

### **Section 19.1 Liability and Responsibility.**

Section 19.1.1 County. To the extent permitted by law, County shall have the responsibility to pay Generator for the actual and reasonable costs and expenses associated with any repairs, damage to, or loss of the System, resulting from the solely negligent acts, omissions, or willful misconduct of County or any of its employees, agents, or contractors.

Section 19.1.2 Generator. Generator shall have the responsibility to pay County for the reasonable costs and expenses associated to any repairs to, direct or indirect harm to, or loss of the Premises or any personal property or fixtures on the Premises, to the extent resulting from the action or inaction of Generator or any of its contractors, agents, employees, subsidiaries, affiliates or assignees or the negligence or intentional misconduct of Generator or any of its contractors, second-tier contractors (or anyone working through or under such second-tier contractors), agents, employees, partners, owners, subsidiaries or affiliates.

Section 19.2 Indemnification. Generator agrees to indemnify, defend and hold harmless the County, the County's officers, agents and employees, from any claims, damages, suits, actions, liabilities and costs of any kind or nature, including attorneys' fees, arising from or caused by the provision of any services, the failure to provide any services or the use of any services or materials furnished (or made available) by the Generator, or its contractors and subcontractors, provided that such liability is not attributable to the County's sole negligence.

Section 19.3 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER (INCLUDING ANY SERVICES, GOODS, MATERIALS OR OTHER ITEMS SUPPLIED HEREUNDER), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE. The remedies set forth in this Agreement, including those reserved per Section 16.3, shall be County's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

Section 19.4 **Defense of Claims.** County shall give Generator prompt written notice of any asserted actions or claims indemnified against hereunder and the Parties shall cooperate in good faith with each other in the defense of any such claims or actions. Without prior written consent of Generator, County shall not take any action relating to such claims or actions within the indemnification obligations hereof. Consent of Generator shall not be unreasonably withheld. Without prior written consent of the County, Generator shall not settle any such claims or actions unless the settlement includes a full and unconditional release of claims against County.

Section 19.5 **Limitations of Liability, Remedies and Damages; Consequential Damages.** Except to the extent that amounts payable pursuant to the indemnification or liquidated damages provisions of this Agreement might be construed as such, notwithstanding any other provisions of this Agreement, in no event shall any Party be liable to any other Party for incidental, indirect, special, punitive, consequential damages, whether caused by negligence, tort, strict liability, statute, contract, or warranty, including damages in nature of loss of revenue, loss of profits, or inability to perform contracts with third parties (other than for any damages incurred under such contracts), other than for damages resulting from the claims of persons not a party to this Agreement.

## ARTICLE XX. ASSIGNMENT

### Section 20.1 **Assignment by Generator.**

Section 20.1.1 Generator may, with the consent of the County (which consent shall not be unreasonably withheld), assign its interest in this Agreement as along as the assignee shall expressly assume Generator's obligations under this Agreement and agree to be bound by the terms and conditions hereof. Such assignment will become effective once the Parties and the assignee enter into an amendment to this Agreement or an assignment agreement that identifies the assignee for invoicing and payment purposes.

Section 20.1.2 Generator may, without the consent of the County: (i) mortgage, pledge or otherwise collaterally assign its interests in this Agreement to an entity for the purposes of financing (including debt or equity financing), (ii) assign this Agreement to any successor of Generator, or (iii) fully assign its interest in this Agreement to Dominion Energy Inc or its affiliate, as along as the assignee expressly assumes Generator's obligations under this Agreement and agree to be

bound by the terms and conditions hereof. Generator or any assignee shall provide written notice to County within fifteen (15) Business Days of an assignment to another party.

Section 20.2 Assignment by County. County may, upon prior approval from the Generator, assign its interests in this Agreement to an entity with equal or greater credit rating that purchases or otherwise acquires the property where the Site is located.

Section 20.3 Binding on Successors. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

## ARTICLE XXI. INSURANCE

Section 21.1 Generator's Insurance. Generator shall maintain (and will cause its independent contractors to maintain) with the appropriate company or companies licensed to do business in the Commonwealth of Virginia, including self-insurance provided by Dominion Energy Inc or its affiliate, the following insurance coverages:

### Workers' Compensation

- Statutory Virginia Limits
- Employers' Liability Insurance
- \$100,000 for each Accident by employee
- \$100,000 for each Disease by employee
- \$500,000 policy limit by Disease

### Commercial General Liability

- \$1,000,000 each occurrence including contractual liability for specified agreement
- \$2,000,000 General Aggregate (other than Products/Completed Operations)
- \$2,000,000 General Liability-Products/Completed Operations
- \$1,000,000 Personal and Advertising injury
- \$100,000 Fire Damage Legal Liability

### Business Automobile Liability – including owned, non-owned and hired car coverage

- Combined Single Limit - \$1,000,000 each accident

### Umbrella Liability

- \$2,000,000 Per Occurrence and in the aggregate

### Professional Liability

- \$2,000,000 Per Occurrence in the form of contractor's design errors and omissions coverage.

The Certificate shall add the County as an additional insured for the Commercial General Liability coverage. The certificate must not show in the description of operations section that it is issued specific to any bid, job, or contract. The coverage shall be provided by a carrier(s) rated not less than "A-" with a financial rating of at least VII by A.M. Best or a rating acceptable to the County. In addition, the County shall be notified at least thirty (30) days prior notice of any cancellation or material reduction in coverage. Notwithstanding anything herein to the contrary, Generator's obligation to maintain Workers'

Compensation insurance applies only to the extent that Generator has employees and Generator's obligation to maintain Business Automobile Liability insurance applies only to the extent that Generator has automobiles.

Section 21.2 Expiration of Coverage. Generator shall maintain the required coverage throughout a System's Initial Term and any Renewal Terms. County shall not be obligated by this Agreement to maintain insurance.

Section 21.3 Evidence of Insurance. Generator will maintain, and provide County with, insurance certificate(s) or, self-insurance letter(s) evidencing coverage provided in Section 21.1. Such certificate(s) shall contain provisions that (a) coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to County, and (b) the insurer shall waive all rights of subrogation against County.

## ARTICLE XXII. DISPUTE RESOLUTION

Section 22.1 Good Faith. The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner. If a dispute remains unresolved within fifteen (15) Business Days, each Party shall provide written notice to the other Party stating the dispute and desired resolution.

Section 22.2 Litigation. In the event that any dispute between the Parties is not resolved pursuant to Sections 22.1 within twenty-five (25) Business Days after delivery of written notice described above in Section 22.1, then either Party may commence a proceeding with respect to such dispute in accordance with Sections 24.5 and 24.6.

## ARTICLE XXIII. COOPERATIVE CONTRACTING

Section 23.1 Cooperative Contracting. As authorized by Va. Code § 2.2-4304, the RFP contained cooperative procurement language that authorizes other public bodies, including County, to make purchases pursuant to Contract #1919A. County hereby exercises its right to request Generator to perform the services described in Section 4 of Contract #1919A.

## ARTICLE XXIV. MISCELLANEOUS

Section 24.1 Modifications. This Agreement may be modified only by a writing signed by both parties.

Section 24.2 Further Assurances. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

Section 24.4 Notices. Except as otherwise specified in this Agreement, any notice required or authorized by this Agreement to be given to a Party shall be given in writing and may be delivered by overnight mail, overnight courier, or hand delivered to the address set forth below or to such other address

as such Party may designate for itself by prior notice given in accordance with this Section 24.4. A notice shall be effective on the Business Day when received if received during normal business hours of the receiving Party; otherwise, the notice shall be deemed to have been received on the Business Day following delivery. The Parties may provide copies of notices by E-mail.

If to Generator:

Sun Tribe Solar, LLC  
107 5th Street SE  
Charlottesville VA 22902  
Attn: Contract Manager  
Taylor.brown@suntribesolar.com

If to County:

Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201  
Attn: Sharon Lewis, LLM, MPS, VCO, CPPB  
Purchasing Agent  
[Slewis1@arlingtonva.us](mailto:Slewis1@arlingtonva.us)

Section 24.5 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the Commonwealth of Virginia.

Section 24.6 Jurisdiction and Venue. The Parties hereby submit to the personal jurisdiction of, and any litigation relating to this Agreement, shall be brought in the state courts for the County of Arlington, Virginia.

Section 24.8 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstance is held in a final, non-appealable judgement to be illegal, invalid or unenforceable under any present or future law, (i) such term or provision shall be fully severable, (ii) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (iii) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provisions or by its severance herefrom.

Section 24.9 Counterpart Execution. The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it.

Section 24.10 Headings. The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

Section 24.11 No Waiver. No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

Section 24.12 Neutral Interpretation. The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party.

Section 24.13 Survival. The obligations Section 19.2 (Indemnification), Section 19.5 (No Consequential Damages), Section 24.5 (Governing Law), Section 24.6 (Jurisdiction and Venue) and any other provisions of this Agreement, which by their nature and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement.


Section 24.14 Entire Agreement. Except as otherwise provided herein, this Agreement, including all attachments hereto (all of which are incorporated by reference herein), constitutes the entire understanding between the Parties and supersedes any and all previous understandings, provisions or contemporaneous agreements between the Parties with respect to the subject matter hereof.

*[Signatures Appear on the Following Page.]*



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf as of the Effective Date.

County: County Board of Arlington

Signature:   
Name: Shanon Flanagan-Watson  
Title: Acting County Manager

**CHECK ONE OF THE FOLLOWING**

County's execution of this Agreement  DOES serve as its Notice to Proceed with Design.

County's execution of this Agreement  DOES NOT serve as its Notice to Proceed with Design.

Generator: Sun Tribe Solar, LLC

Signature:   
Name: Taylor Brown  
Title: Chief Technical Officer

**SCHEDULE A – SYSTEM DESCRIPTION & COMMERCIAL TERMS**

**System Description:** Lubber Run Community Center; a more detailed description of the System will be developed during the Final Design to be incorporated by reference to this Schedule A System to be a photovoltaic system estimated at 231.2 kWdc .

<b>Initial Term:</b>	thirty (30) years
<b>Renewal Periods:</b>	none
<b>Electricity Price (First Year):</b>	\$0.0895/kWh
<b>Annual Escalation Rate:</b>	2%
<b>Invoicing Frequency:</b>	Monthly
<b>Year 7 Purchase Option Price (\$/kWdc):</b>	\$1,746
<b>Year 30 Purchase Option Price (\$/kWdc):</b>	\$703
<b>Year 1 Target Production:</b>	To be updated at Commercial Operation Date by written notice from Generator to the County.

**SCHEDULE B – DESCRIPTION OF SITE AND PREMISES**

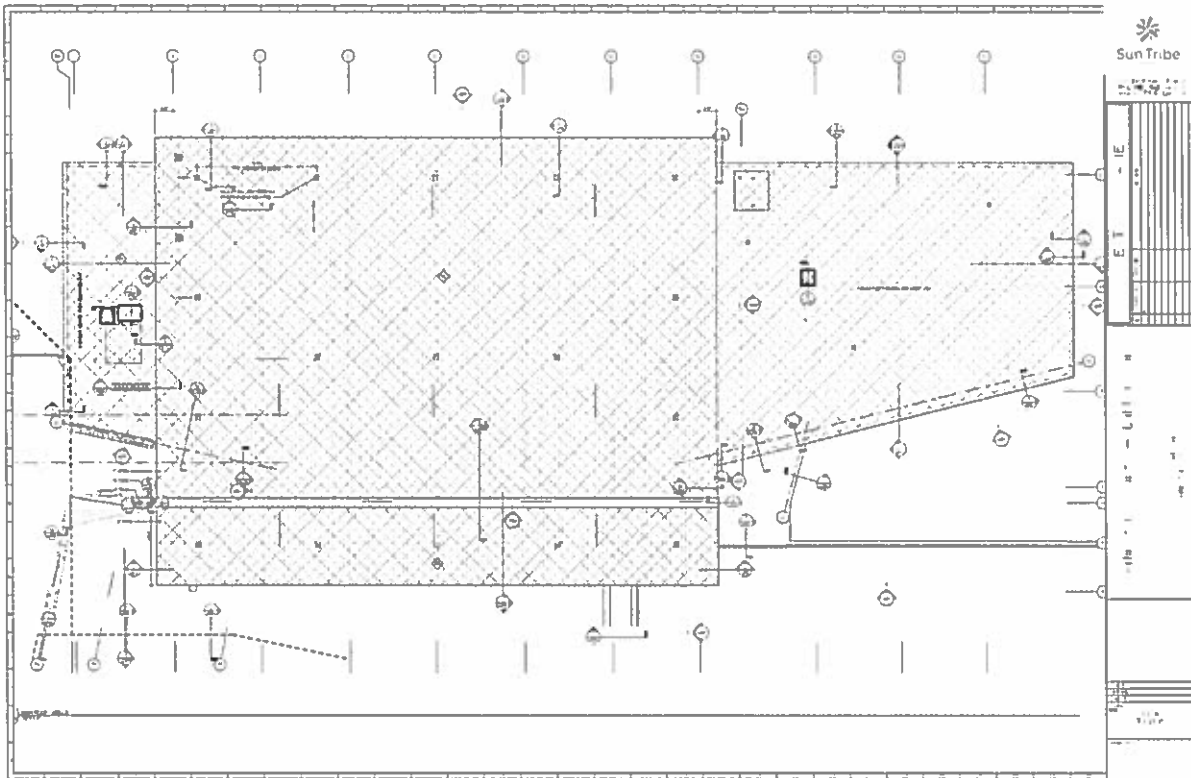
**Premises:**

The real property addressed as 300 N. Park Drive, Arlington, VA 22203 located in the County of Arlington, Virginia.

Parcel ID: 13046007

**Site:**

“Site” The entire rooftop(s) of the building(s) located on Parcel 13046007 necessary for installation of the System, excluding any mechanical, communications, or other systems necessary and currently occupying the roof, including access areas. The Site and other depicted aspects may be further refined once the Final Design is completed. The Site includes the necessary area for routing of electrical equipment, including conduit runs, from and along the rooftop(s) to the point of interconnect, including any wall or ground space required to mount electrical equipment.



**SCHEDULE C – TERMINATION FEE**

Termination Fee (\$/kWdc)	
Year 1	\$ 2,596
Year 2	\$ 2,431
Year 3	\$ 2,264
Year 4	\$ 2,097
Year 5	\$ 1,927
Year 6	\$ 1,756
Year 7	\$ 1,746
Year 8	\$ 1,734
Year 9	\$ 1,720
Year 10	\$ 1,703
Year 11	\$ 1,685
Year 12	\$ 1,664
Year 13	\$ 1,641
Year 14	\$ 1,615
Year 15	\$ 1,586
Year 16	\$ 1,554
Year 17	\$ 1,520
Year 18	\$ 1,482
Year 19	\$ 1,441
Year 20	\$ 1,396
Year 21	\$ 1,347
Year 22	\$ 1,295
Year 23	\$ 1,238
Year 24	\$ 1,177
Year 25	\$ 1,111
Year 26	\$ 1,041
Year 27	\$ 965
Year 28	\$ 883
Year 29	\$ 796
Year 30	\$ 703

**APPENDIX A**

**SITE LEASE AGREEMENT**

This LEASE AGREEMENT (hereinafter "Lease") is entered into as of July 13, 2021 (hereinafter "Effective Date") by and between County Board of Arlington (hereinafter "Lessor") and Sun Tribe Solar, LLC (hereinafter "Tenant").

**GENERAL PROVISIONS**

**LEASED SITE.** The Site is identified in Schedule B attached hereto. The portions of Lessor's entire property, including the Site, any temporary construction laydown areas, and any special means of access are referred to herein as the "Premises."

**DEMISE.** In consideration of the mutual covenants contained herein, Lessor does hereby lease, let and demise to Tenant, and Tenant hereby leases from Lessor, the Site upon the Lease Terms and Conditions set forth herein. Lessor also grants to Tenant all rights and privileges appurtenant to the Site, including the non-exclusive right to use the parking areas serving the Premises, driveways, roads, alleys, and other means of ingress and egress to the Site and other portions of the Premises as designated in Schedule B.

**LEASE TERM.** This Lease is entered into in conjunction with that certain Solar Power Purchase Agreement between Lessor and Tenant (hereinafter "Agreement"). Except as otherwise set forth herein, this Lease shall be effective as of the Effective Date and shall continue for thirty (30) years after the Commercial Operation Date (hereinafter "Lease Term"), unless terminated as provided herein or in the Agreement. In the event that the Agreement (i) is terminated for a reason other than a breach or default by Lessor or Tenant pursuant to the Agreement or (ii) expires, then this Lease shall terminate ninety (90) Business Days following the date of such Agreement termination or expiration to facilitate and complete the removal of Tenant's property at the Site and Tenant's restoration of the Site and Premises, as applicable, as contemplated by the Agreement.

**RENT.** The annual rent during the Lease Term shall be One Dollar (\$1.00) plus all sales tax, if any, due thereon (hereinafter "Rent"). Rent shall be due on the Commercial Operation Date of the System and each anniversary thereafter. Rent for the entire Lease Term may be paid as a lump sum.

**HAZARDOUS MATERIALS REPRESENTATION.** Lessor, to the best of its knowledge, is not aware of any past or present release of hazardous materials on, under or surrounding the Site and has not received any warning notices, notice of violations, administrative complaints, judicial complaints or other formal or informal notices from any environmental or governmental agency alleging that conditions on, under or surrounding the Site are in violation of any applicable laws. Lessor has provided copies to Tenant, in whatever capacity and in whatever form obtained, any and all information relating to hazardous contamination on or around the Site.

**RECORDABLE FORM OF LEASE.** Upon the request of either Lessor or Tenant, the parties shall execute,

acknowledge and deliver a memorandum of this Lease, in a form reasonably acceptable to each party, which Tenant, at its sole expenses, may record in the public office which is required to put third parties on notice of the existence of this Lease. Upon termination of this Lease for any reason, Tenant will promptly release the memorandum of Lease.

**RELATIONSHIP TO AGREEMENT.** Any capitalized terms used in this Lease and not otherwise defined shall have the meanings set forth in the Agreement. In the event of any inconsistency or conflict between the terms of this Lease and the Agreement, the terms of the Agreement shall prevail and take precedence.

**ENTRY; TEMPORARY ACCESS.** Tenant may not enter the Premises to commence the Development Tasks until Lessor has provided a Notice to Proceed with Design (if so indicated in the Agreement). Thereafter, Tenant may not enter the Premises to install the System until Lessor has provided a Notice to Proceed with Construction. During the Construction Period, Lessor grants Tenant access to the Premises to install the System as depicted in Schedule B.

## CONDITIONS OF LEASE

### ARTICLE I. RENT AND LEASE CONTINGENCY

Section 1.1 Rent. Rent shall be due and payable within twenty (20) Business Days each year during the Initial Term and Option Term, if any, of this Lease, beginning with the first payment due on the Rent Commencement Date.

Section 1.2. Lease Contingency. This Lease is expressly contingent upon Tenant obtaining all licenses, permits, easements and approvals necessary to install, operate, and maintain the System. If Tenant is unable to complete its due diligence and the Development Tasks set forth in Article IV of the Agreement by the later of (a) four hundred fifty (450) days after the date of the Agreement, or (b) 180 days of the Notice to Proceed with Design if applicable, then either Tenant or Lessor shall have the option to terminate this Lease upon forty-five (45) days written notice to the other Party.

### ARTICLE II. TAXES, INSURANCE AND UTILITIES

Section 2.1. System Taxes and Assessments. Tenant shall pay, as the same become due and payable, all taxes, assessments, and charges of any kind whatsoever accruing against the System located at the Site during the Lease Term that may at any time be lawfully assessed or levied against Tenant's System located at the Site, unless the same are being contested in good faith by Tenant. If Tenant contests such taxes, assessments or charges, it shall bond or deposit with Lessor an amount equal to the contested amount. Any payments due under this Article shall be made by Tenant within ten (10) days after receipt of written notice thereof (together with a copy of the applicable tax bill) from Lessor or otherwise or resolution of any contest hereunder.

Section 2.2 Utilities. Not applicable.

Section 2.3. Insurance. At all times during this Lease, Tenant shall, at its own expense, maintain

and provide the insurance as required by the Agreement.

### ARTICLE III. USE AND ENJOYMENT

Section 3.1. Use. Unless the parties agree otherwise, Tenant may use, and have access from 6:00am to 8:00pm Monday through Sunday to the Site for the installation, ownership, operation and maintenance of the System, and activities necessary or related thereto. Upon Lessor's consent, Tenant shall be entitled to use the portions of the Premises for the temporary storage, laydown and staging of tools, materials and equipment, the parking of construction crew vehicles and temporary construction trailers and facilities, and rigging reasonably necessary during the furnishing, installation, testing, commissioning and, if necessary during any period of repair or deconstruction, disassembly, decommissioning and removal of the System, all as depicted in Schedule B. Upon Lessor's consent, Tenant may temporarily enter upon certain portions of the Premises to otherwise exercise its rights and meet its obligations under the Agreement, including interconnection to the Existing Electrical System. Notwithstanding the foregoing, in the event Tenant requires access to the Site outside of the aforementioned hours in order to address an emergency condition existing at the Site, Tenant may immediately access the Site by whatever means reasonable under the circumstances to address such condition, provided Tenant shall use good faith efforts to contact Lessor prior to accessing the Site if it is reasonable for Tenant to do so given the nature of such condition.

Section 3.2. Quiet Enjoyment. So long as Tenant is not in default of this Lease, or the Agreement, it shall peaceably and quietly enjoy the Site, except as provided in the Agreement.

Section 3.3. Subordination. This Lease and all rights of Tenant under this Lease will be subject or subordinate to the lien of any mortgage hereafter affecting the Premises. Lessor shall obtain the agreement of any lender holding such Mortgage (hereinafter "Mortgagee"), providing so long as Tenant is not in default in the performance and observance of any covenant, condition, term or provision of this Lease beyond any applicable notice, grace and/or cure period, the Mortgagee will not disturb Tenant's rights under this Lease, which non-disturbance agreement shall otherwise be in form and substance reasonably satisfactory to Tenant. The lien of any such Mortgagee shall not cover the System, or Tenant's moveable trade fixtures or other System of Tenant located in or on the Premises.

Section 3.4. Assignment and Sublet. Tenant may not sublease the Site or assign its rights under this Lease in whole or in part, without Lessor's prior consent. Notwithstanding the foregoing, Lessor's prior consent shall not be required in the event of an assignment (in whole or in part) by Tenant of its rights under this Lease in connection with an assignment by Tenant of its rights under the Agreement.

### ARTICLE IV. CASUALTY; CONDEMNATION

Section 4.1 Destruction of Site. In the event of damage or destruction of all or any portion of the Site which renders the Site reasonably and economically unsuitable for Tenant's business, as determined by Tenant, in its sole discretion, Tenant shall have the option to terminate this Lease and the parties shall be released of all further duties and obligations hereunder. Tenant shall notify Lessor in writing within ten (10) days of the date of such damage or destruction of its election hereunder.

Section 4.2. Condemnation. In the event of condemnation or other similar taking or transfer due to governmental order, of all or any portion of the Site which renders the Site reasonably and economically unsuitable for Tenant's business, as determined by Tenant, Tenant may, at its option, terminate this Lease, in which case the Rent shall be apportioned as of such date, any prepaid rents or deposits shall be returned, and Tenant shall be released of all further duties and obligations hereunder. Lessor shall be entitled to the entire proceeds of any condemnation award; provided, however, that Lessor shall pay Tenant any portion of such award intended to compensate Tenant for the improvements placed on the Site by Tenant at its own expense plus any portion of such award intended, to compensate Tenant for expenses special to Tenant.

## ARTICLE V. DEFAULT AND REMEDIES

### Section 5.1 Events of Default. If:

(a) Tenant shall default in the due and punctual payment of the Rent, insurance premiums, impositions or any other amounts or rents due under this Lease or any part thereof, and such default shall continue for ten (10) days after notice thereof in writing to Lessee; or

(b) Tenant shall default in the performance or compliance with any of the other material covenants, agreements or conditions contained in this Lease or the Agreement and such default shall not be cured within ten (10) days after notice thereof in writing from Lessor; provided, however, if such default cannot reasonably be cured within such ten (10) day period, Tenant shall not be in default hereunder if Tenant commences efforts to cure such default within such ten (10) day period and, thereafter, diligently pursues those efforts to completion;

(c) Tenant shall file a petition in voluntary bankruptcy or under Chapter VII or XI of the Federal Bankruptcy Act or similar law, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a stay of involuntary proceedings within thirty (30) after the involuntary petition is filed;

(d) Tenant shall be adjudicated a bankrupt or a trustee or receiver shall be appointed for it or for all of its property or the major part thereof in any involuntary proceedings, or any court shall have taken jurisdiction of its property or the majority part thereof in any involuntary proceeding for reorganization, dissolution, liquidation or winding up, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise within sixty (60) days;

(e) Tenant shall make an assignment for the benefit of its creditors;

(f) Tenant shall be in breach of the Agreement, then,

and in any such event referred to in clauses (a), (b), (c), (d), (e) of (f) above, Lessor shall have the remedies as set forth below.

Section 5.2. Lessor's Remedies Upon Default. Upon the occurrence of an Event of Default by Tenant, then Lessor shall be entitled to terminate this Lease by giving written notice of termination to Tenant,



in which event Tenant shall surrender the Site to Lessor. Lessor shall have the right to pursue any other remedy now or hereafter available at law or in equity and to recover its costs from Tenant. If Tenant fails to so surrender the Site, then Lessor may, without prejudice to any other remedy it has for possession of the Site or arrearages in rent or other damages, re-enter and take possession of the Site and expel or remove Tenant and any other person occupying the Site or any part thereof and recover its costs, in accordance with applicable law.

Section 5.2.1 The Parties hereto agree that a Tenant default under this Lease shall constitute a Generator default under the Agreement. Notwithstanding anything to the contrary set forth herein, in no event shall Lessor have the right to accelerate the Rent and other amounts payable hereunder.

Section 5.3 Tenant's Remedies Upon Default. The failure of Lessor to perform any obligation or the breach by Lessor of any representation or warranty contained herein within sixty (60) days after receipt by Lessor of written notice of such failure, shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default by Lessor, then Tenant, may, at its option and without any obligation to do so, other than those obligations created in this document, elect any one or more of the following remedies: (a) terminate and cancel this Lease; (b) withhold payment or performance under the Lease until such time as such Event of Default is cured; (c) cure such Event of Default and recover the reasonable costs thereof by an action at law; or (d) pursue any other remedy now or hereafter available at law or in equity. The Parties hereto agree that a Lessor default under this Lease shall constitute a County default under the Agreement.

Section 5.4. Cumulative Remedies. Each and all of the rights and remedies given to either party by this Lease or by law or equity are cumulative, and the exercise of any such right or remedy by either party shall not impair such party's right to exercise any other right or remedy available to such party under this Lease or by law or equity.

## ARTICLE VI. MISCELLANEOUS

Section 6.1 Indemnification. Tenant will indemnify Lessor as provided in the Agreement.

Section 6.2 No Waiver. No delay in exercising or omission of the right to exercise any right or power by either party shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant provision or condition. The consent or approval by either party to or of any act by other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 6.3 Notices. All notices and other communications under this Lease shall be in writing and shall be made as required by the Agreement.

Section 6.4 Brokers. Each party represents and warrants that it has not dealt with any real estate brokers and that there are no claims for brokerage commissions or finders' fees due and owing in connection

with this Lease.

Section 6.5 Entire Agreement. This Lease, together with the Agreement and remaining Agreement Documents, constitutes and represents the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter therein.

Section 6.6 Modifications and Amendments. This Lease may be amended, supplemented, modified or discharged only upon an agreement in writing executed by all of the parties hereto.

Section 6.7 Binding. This Lease shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns, subject, however, to the limitations contained herein.

Section 6.8 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.9 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and any litigation relating to this Lease shall only be brought in the state courts for the County of Arlington, Virginia.

Section 6.10 Interpretations. This Lease shall not be construed more strictly against one party than against the other merely because it may have been prepared by counsel for one of the parties, it being recognized that both parties have contributed substantially and materially to its preparation. In the event of any inconsistency or conflict between any term or provision of this Lease and the Agreement, the term or provision of the Agreement shall control and take precedence.

Section 6.11 Estoppel. To comply with typical financing requirements, Tenant may request that the Lessor execute an Estoppel Certificate. If the Tenant is in compliance with the terms set forth in the Estoppel Certificate, Lessor shall execute the Estoppel Certificate within fourteen (14) days. The Estoppel Certificate shall be of form similar to that seen in Exhibit A. In the event that the Tenant is not in compliance with the terms, Parties shall work together in good faith to modify the Estoppel Certificate as required.

Section 6.12 Zoning Request. Lessor hereby consents to reasonably cooperate with any requests for zoning compliance, zoning confirmation, zoning verification, zoning determination, or any other zoning request required in order to confirm that the construction, operation, and maintenance of the System is permitted at the Site under the Zoning Ordinances.

Section 6.13 Access to Site. Lessor will continue to have access to the Site at all times, provided Lessor does not interfere with or obstruct the System as provided in this Lease or Agreement. Lessor shall comply with Tenant's then current safety and security protocols for the Site.

*[Signatures Appear on the Following Page.]*



IN WITNESS WHEREOF, Lessor and Tenant have caused this Lease to be executed on their behalf as of the Effective Date.

Lessor: County Board of Arlington  
Signature: [Handwritten Signature]  
Name: Shannon Flanagan-Watson  
Title: Acting County Manager

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF Arlington

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this 29<sup>th</sup> day of July, 2021 by Shannon Flanagan-Watson, Acting County Manager (Lessor signatory).

NOTARIAL SEAL

[Handwritten Signature] (signature)  
Notary Public



Tenant: Sun Tribe Solar, LLC  
Signature: [Handwritten Signature]  
Name: Taylor Brown  
Title: CEO

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this 22 day of July, 2021 by Taylor Brown (Tenant signatory).

NOTARIAL SEAL



[Handwritten Signature] (signature)  
Notary Public

**Exhibit A**

**ESTOPPEL CERTIFICATE**

**County Board of Arlington (“Lessor”)** is the County under that certain Power Purchase Agreement dated July 13, 2021 (the “**Contract**”) between Lessor and **Sun Tribe Solar, LLC**, a Virginia limited liability company (“**Tenant**”), and the Lessor under that certain Site Lease Agreement dated July 13, 2021 (the “**Lease**” and collectively with the Contract, the “**Agreements**”) located at Lubber Run Community Center, 300 N. Park Drive, Arlington, VA 22203 (the “**Property**”), between Lessor and Tenant.

**NOW THEREFORE**, in consideration of the foregoing premises and for good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, Lessor hereby certifies, confirms, acknowledges, warrants, covenants and agrees as follows:

1. Except as specifically provided herein, all capitalized terms in this Lessor Estoppel Certificate (this “**Estoppel**”) shall have the meanings given to them in the Agreements.
2. Lessor is the fee owner of the Property located in the County of Arlington, Virginia, which Property is described on Exhibit A attached hereto.
3. Lessor is the current Lessor or County and Tenant is the current Tenant or Generator under the Lease, pursuant to which Tenant leases the Property. The Lease has not been amended, and other than the Agreements there exist no other agreements between Lessor and the Tenant relating to the Property. The Lease is valid and in full force and effect, enforceable against Lessor and its successors and assigns in accordance with its terms, and has not been waived, surrendered, canceled, terminated or abandoned (orally or in writing). In addition, Lessor has not commenced any action or sent any presently effective notice to Tenant or any of its affiliates (or received any presently effective notice from Tenant or any of its affiliates) for the purpose of terminating, canceling or surrendering the Lease. Lessor is not presently entitled to terminate, cancel or surrender the Lease for cause, but retains all rights under the Contract and the Lease to terminate either the Contract or the Lease for convenience as provided therein.
4. Lessor is the current County and Tenant is the current Generator under the Contract, pursuant to which Lessor has granted certain rights to Tenant. The Contract has not been amended, and other than the other Agreements, there exist no other agreements between Lessor and Tenant relating to the subject matter of the Contract. The Contract is valid and in full force and effect, enforceable against Lessor and its successors and assigns in accordance with its terms, and has not been waived, surrendered, canceled, terminated or abandoned (orally or in writing). In addition, Lessor has not commenced any action or sent any presently effective notice to Tenant or any of its affiliates (or received any presently effective notice from Tenant or any of its affiliates) for the purpose of terminating, canceling or surrendering the Contract. Lessor is not presently entitled to terminate, cancel or surrender the Contract for cause, but retains all rights under the Contract to terminate for convenience as provided therein.
5. All persons known to Lessor to have any ownership interest in any Property have signed, ratified or joined in the Lease. Lessor is not aware of any unrecorded tenancies or unrecorded options, leases, easements or license rights in favor of any persons other than Tenant that would interfere with the use of the Property by Tenant or any of their respective affiliates, successors or assigns, for the purposes set forth in the Lease. Except for liens of record, if any, and liens for property taxes not yet due and payable, Lessor is not aware of any liens against Lessor or the Property.

6. The rent, fees and other sums due and payable under the Agreements have been paid through the date of this Estoppel. No event has occurred and no condition exists that constitutes, or that with the giving of notice or the lapse of time or both, would constitute, a default by Lessor or, to the best knowledge of Lessor, Tenant, under the Agreements. To Lessor's knowledge, Lessor has no existing defenses or offsets against (i) Tenant's enforcement of the Lease or (ii) Tenant's enforcement of the Contract. Notwithstanding the foregoing, all defenses, offsets, rights or claims (i) associated with any default of which Lessor currently is not aware, (ii) applicable rights of sovereign immunity; (iii) specifically reserved or set forth in the Agreements; or (iv) provided by statute are expressly reserved.

7. No voluntary actions or, to Lessor's knowledge, involuntary actions are pending against Lessor under the insolvency or bankruptcy laws of the United States or any other jurisdiction.

8. Lessor is not aware of any unrecorded lease superior to the Lease, nor any unrecorded mortgage encumbering Lessor's fee interest in any of the Properties.

9. Each person or entity executing this Estoppel on behalf of the Lessor is authorized to do so, and upon such execution, this Estoppel shall be a valid and legally binding obligation of the Lessor, and its successors and assigns, and is enforceable against Lessor and its successors and assigns in accordance with its terms.

10. Notices:

Tenant's address for purposes of notice under the Agreements is:

Sun Tribe Solar, LLC  
107 5<sup>th</sup> Street SE  
Charlottesville, Virginia 22902

11. This Estoppel shall be binding upon and inure to the benefit of Tenant and/or any entity to which the Tenant assigns the Agreements and their respective principals, successors, successor owners and assigns, and shall be binding on Lessor and Lessor's respective representatives, successors and assigns, including, without limitation, all successor owners of the Property or any part thereof, or Lessor's interest in the Agreements.

12. This Estoppel may be executed in two or more counterparts, each of which shall constitute a duplicate original, but all of which shall constitute one and same instrument. This Estoppel may be executed and delivered by facsimile or other electronic means (e.g., e-mail transmission of version in .pdf format) and shall be legally binding on the party so executing and delivering such counterpart.

*[Signature on next page]*

**IN WITNESS WHEREOF**, the undersigned has caused this Estoppel to be duly executed and delivered as of the day and year first set forth below.

**LESSOR:**

**COUNTY BOARD OF ARLINGTON,**  
a political subdivision of the Commonwealth of Virginia

BY:           *A. J. Watson*            
*Acting County Manager*

NAME: *Shannon Flanagan-Watson*

DATE: ~~July 11, 2021~~ *July 29, 2021*



**EXHIBIT B**

**Description of the Property**

Lubber Run Community Center, 300 N. Park Drive, Arlington, VA 22203

**MEMORANDUM OF SITE LEASE AGREEMENT**

THIS MEMORANDUM OF SITE LEASE (this "Memorandum") is dated as of July 13, 2021 (the "Effective Date") by and between **COUNTY BOARD OF ARLINGTON** ("Lessor") and **SUN TRIBE SOLAR, LLC** ("Tenant"), a Virginia Limited Liability Company, with reference to the following recitals:

**WITNESSETH**

WHEREAS, Tenant and Lessor (together, the "Parties" and each a "Party") have entered into that certain unrecorded Lease dated of even date herewith (the "Lease"), which affects the Premises;

WHEREAS, the Parties entered into the Lease in conjunction with that certain Solar Power Purchase Agreement (the "PPA"), between Lessor and Tenant dated of even date herewith;

WHEREAS, the Parties hereto desire to enter into this Memorandum of Lease and are recording a document in the land records with the Clerk's Office of the County of Arlington, Virginia;

NOW, THEREFORE, the parties hereto do hereby certify and agree as follows:

1.1. **Leased Area.** The Leased Site ("Site") shall be the site identified on "Schedule B" to the Site Lease and attached hereto. The Lessor's entire property, including the Site, is referred to herein as the "Premises." Tenant may use, and have access at all times to, the Leased Site for the installation, ownership, operation and maintenance of a photovoltaic system, and activities necessary or related thereto, or any other lawfully permitted uses. Upon Lessor's consent, Tenant shall be entitled to the use of portions of the entire Premises as may be necessary or required by Tenant for the temporary storage, laydown and staging of tools, materials and equipment, the parking of construction crew vehicles and temporary construction trailers and facilities, and rigging reasonably necessary during the furnishing, installation, testing, commissioning and, if necessary during any period of repair or deconstruction, disassembly, decommissioning and removal of the photovoltaic system. Tenant shall be entitled to use certain portions agreed to by Tenant of the entire Premises to otherwise exercise its rights and meet its obligations under the PPA, including interconnection to the utility's electric distribution system.

1.2. **Term and Consideration.** This Lease is in effect from Effective Date of this Agreement until thirty (30) years after the Commercial Operation Date at a rate of one dollar (\$1.00) per year.

1.3. **Tax ID(s):** 13046007

1.4. **Assignment and Sublet.** Lessor and Tenant shall have the absolute right to assign or to otherwise transfer its interest in this lease subject to certain limitations.

1.5. **Execution.** This Memorandum may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

1.6. **Applicable Law.** The Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

1.7. **Purpose of Memorandum of Lease.** This Memorandum of lease, when recorded in the Clerk's Office of the County of Arlington, Virginia, is intended to as public notice of the Lease and to incorporate and reference all of its promises, Covenants, and agreements to the same extent as if the lease were fully set forth herein; This Memorandum of Lease does not describe or refer to all the terms or conditions contained in the Lease, nor does it intend to modify, amend or vary any of the terms or conditions set forth in the Lease.

1.8. **Relationship to Lease.** Any capitalized terms used in this Memorandum and not otherwise defined shall have the meanings set forth in the Lease or PPA. In the event of any inconsistency between capitalized terms the order of precedence shall be PPA, Lease, then Memorandum in that order.

**[REST OF PAGE LEFT BLANK; SIGNATURES ON SEPARATE SHEET]**

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed on their behalf as of the Effective Date:

Lessor: County Board of Arlington  
Signature: [Handwritten Signature]  
Name: Shannon Flanagan-Watson  
Title: Acting County Manager

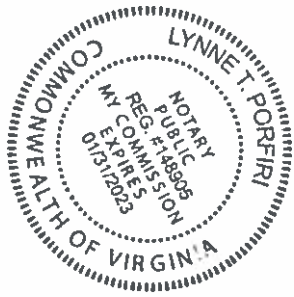
ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF Arlington

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this 29<sup>th</sup> day of July, 2021 by Shannon Flanagan-Watson (Lessor signatory).  
Acting County Manager

NOTARIAL SEAL

[Handwritten Signature] (signature)  
Notary Public



Tenant: Sun Tribe Solar, LLC  
Signature: [Handwritten Signature]  
Name: Taylor Brown  
Title: CTO

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this 22 day of July, 2021 by Taylor Brown (Tenant signatory).

NOTARIAL SEAL



[Handwritten Signature] (signature)  
Notary Public