

SOLAR PROJECT GROUND SUBLEASE AGREEMENT

between

VIRGINIA MUNICIPAL ELECTRIC ASSOCIATION NO. 1,

a Virginia nonstock corporation, as Sublessor,

and

VIRGINIA ELECTRIC AND POWER COMPANY

a Virginia public service corporation, as Sublessee

dated the _____ day of _____, 20__

SOLAR PROJECT GROUND SUBLEASE AGREEMENT

THIS SOLAR PROJECT GROUND SUBLEASE AGREEMENT (this “**Sublease Agreement**”) is made and entered into as of the Effective Date, between the Sublessor (“**Sublessor**”) and Sublessee (“**Sublessee**”), who are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**,” designated in the Basic Terms below:

Basic Terms

Effective Date:	_____, 2020
Sublessor:	VIRGINIA MUNICIPAL ELECTRIC ASSOCIATION NO. 1 , a Virginia nonstock corporation
Sublessor Address:	89 West Bruce Street Harrisonburg, Virginia 22801-3699 Attention: Brian D. O’Dell
Sublessee:	VIRGINIA ELECTRIC AND POWER COMPANY , a Virginia public service corporation
Sublessee Address:	120 Tredegar Street Richmond, Virginia 23219 Attention: Robert J. Trexler
Property:	The land more particularly described in <u>Schedule A</u> , attached hereto, including all rights and benefits appurtenant thereto, including (a) the right to access and utilize all radiant energy emitted from the sun upon, over and across the real property, (b) any easements and rights-of-way benefiting such real property, (c) to the extent Sublessor has any interest in the following: access rights, water and water rights, crops and crop rights, development rights and entitlements, and other rights and benefits relating or appurtenant to such real property, and (d) any timber remaining on the land described in <u>Schedule A</u> as of the Effective Date. Sublessor and Sublessee stipulate and agree that the Property (as specifically described in <u>Schedule A</u>) contains _____ (____) total acres.

ARTICLE 1. DEFINITIONS

Section 1.1 Defined Terms. All capitalized terms not otherwise defined in this Sublease Agreement shall have the meanings assigned to such terms in the Lease Agreement.

ARTICLE 2. GRANT OF RIGHTS; TERM

Section 2.1 Sublease; Purpose of Sublease. Sublessor is the Tenant under that certain Solar Project Ground Lease Agreement (the “**Lease Agreement**”), pursuant to which Sublessor

leases the Property from the City of Harrisonburg, Virginia, The Harrisonburg Electric Commission, a Virginia municipal corporation (the “**Owner**”). For and in consideration of the covenants and agreements set forth herein and other good and valuable consideration, including the consideration set forth in the Electricity Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged and agreed by Sublessor and Sublessee, Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, the Property, together with all rights, privileges, easements and appurtenances in Sublessor’s possession and belonging or in any way pertaining to the Property. The Parties acknowledge that this Sublease Agreement is being entered into pursuant to, and in furtherance of, the Electricity Purchase Agreement, and that in granting this Sublease, Sublessor grants to Sublessee any and all of its rights under the Lease Agreement such that Sublessee shall have the sole and exclusive right to exercise Sublessor’s rights under the Lease Agreement (including, without limitation, the Right of First Refusal, as defined in the Lease Agreement).

Section 2.2 Lease Term. The term of this Sublease Agreement shall commence on the Effective Date and shall continue thereafter until the expiration of the Operations Term, unless sooner terminated as provided for herein, subject to any rights to extend the term as provided for herein (or, pursuant to Section 3.2 below, as provided in the Lease Agreement) (the “**Term**” or the “**Sublease Term**”). The Sublease Term shall consist of the Development and Construction Term and the Operations Term.

Section 2.3 Early Termination by Sublessee. Sublessee shall have the right to terminate this Sublease Agreement at any time by giving Sublessor and Owner at least ninety (90) days advance written notice of such termination. In such event, (i) Owner shall retain all Rent paid prior to the date of such termination, and (ii) at Owner’s request, Sublessee will execute a written notice of such termination, in a recordable form and in form reasonably acceptable to Sublessee, to confirm such termination.

Section 2.4 Early Termination by Owner or Sublessor. Either the Owner or the Sublessor shall have the right to terminate this Sublease Agreement (i) if the Sublessee terminates the Letter Supplement as provided in Section V of the Letter Supplement, (i) Sublessor terminates the Letter Supplement due to an event of default pursuant to the terms of the Letter Supplement and any related agreements, or (iii) either Party terminates the Letter Supplement due to a “Force Majeure Event” (as that term is defined in the Letter Supplement).

ARTICLE 3. RELATIONSHIP TO LEASE AGREEMENT

Section 3.1 Sublessee’s Performance Under Lease Agreement. Sublessee hereby assumes and agrees to perform all of Sublessor’s obligations as Tenant under the Lease Agreement, and Sublessee agrees to abide by and comply with all the provisions of the Lease Agreement during the Term of this Sublease, including, without limitation, the payment of Rent. Sublessee acknowledges that it is familiar with the terms and conditions of the Lease Agreement. Sublessee further acknowledges and agrees that, except as otherwise set forth in this Sublease Agreement, this Sublease shall be subject to all the terms and conditions of the Lease Agreement.

Section 3.2 Incorporation of Lease Agreement Terms. The provisions of the Lease Agreement, to the extent that they do not conflict with specific provisions contained in this Sublease Agreement, are fully incorporated into this Sublease Agreement. In the event of any conflict between the provisions of this Sublease Agreement and the provisions of the Lease Agreement, the provisions of the Lease Agreement shall control as between Sublessor and Sublessee.

Section 3.3 Preservation of Lease Agreement; Assignment by Sublessor. So long as Sublessee is not in default under this Sublease beyond any applicable notice and cure periods, Sublessor covenants to make every effort necessary to preserve the Lease Agreement. Sublessor shall refrain from any act or omission that would result in a breach of any term of the Lease Agreement, and Sublessor shall not terminate the Lease Agreement under any circumstances without Sublessee's prior written consent. Notwithstanding the foregoing, if Sublessor assigns the Letter Supplement to Owner as further described in Section 10.22 of the Lease Agreement, Sublessor shall have the unilateral right to assign the Lease Agreement to Sublessee, provided that such assignment is pursuant to the terms of an assignment and assumption agreement in form and substance reasonably acceptable to Sublessor and Sublessee.

Section 3.4 Restoration of Property. Sublessee expressly acknowledges the obligation of the Tenant in Section 6.4 of the Lease Agreement to restore the Property and, to remove all doubt, assumes said obligation to restore the Property.

ARTICLE 4. GENERAL PROVISIONS

Section 4.1 Representations of Sublessor. Sublessor represents and warrants to Sublessee as of the Effective Date that (i) each Person signing this Sublease Agreement on behalf of Sublessor is authorized to do so, (ii) Sublessor has the full and unrestricted legal power, right and authority to enter into the Lease Agreement and this Sublease Agreement, and to perform its obligations under the Lease Agreement and hereunder, (iii) no other Person is required to join in the Lease Agreement or this Sublease Agreement in order for the same to be fully enforceable by Sublessee and for Sublessee to enjoy all the rights and benefits accorded to it hereunder, (iv) both the Lease Agreement and the Sublease Agreement are in full force and effect, without the necessity of any consent of or joinder by any other Person, (v) the Lease Agreement and this Sublease Agreement constitute the valid and binding obligation of Sublessor, and are enforceable in accordance with their terms (except as enforcement may be limited by general principles of equity and/or bankruptcy, insolvency, moratorium, and similar laws affecting creditors' rights and remedies generally), and (vi) Sublessor is not the subject of any bankruptcy, insolvency, or probate proceeding.

Section 4.2 Covenants Running With the Land. The Property shall be held, conveyed, assigned, hypothecated, encumbered, leased, used, and occupied subject to the provisions of this Sublease Agreement, which provisions shall run with the Property, and shall be binding upon and inure to the benefit of the Parties and each other Person having any interest therein during their ownership thereof, and their respective tenants, heirs, executors, administrators, successors, and assigns.

Section 4.3 Governing Law. This Sublease Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to the choice of law principles thereof.

Section 4.4 Memorandum. Concurrently with execution hereof, the Parties shall execute a Memorandum of Sublease, the form of which is attached as Schedule B (the “**Memorandum of Sublease**”), and cause it to be acknowledged and recorded in the Real Property Records and Sublessee shall pay all costs (including transfer and recordation taxes and fees) associated with such recordation. If the Memorandum of Sublease is recorded, each Party covenants to execute and acknowledge (A) a valid release of such Memorandum of Sublease, in recordable form, effective upon the expiration, or earlier termination, of this Sublease Agreement (and which may thereupon be recorded by Owner or Sublessor), and (B) an amendment to such Memorandum of Sublease, in recordable form, upon any amendment to this Sublease Agreement which renders any information set forth within the original Memorandum of Sublease incorrect in any material respect (and which may thereupon shall be recorded by Sublessee). The provisions of this section shall survive expiration or earlier termination of this Sublease Agreement.

Section 4.5 Savings Clause. If any term or provision hereof is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, then the same shall not affect the validity or enforceability of any other term or provision hereof, the terms and provisions hereof being severable.

Section 4.6 No Waiver. The waiver of any covenant, condition, or agreement contained herein shall not constitute a waiver of any other covenant, condition, or agreement herein or of the future performance thereof.

Section 4.7 Entire Agreement; Modifications. This Sublease Agreement, including any Schedules attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, are merged herein and superseded hereby. No modification, waiver, amendment, discharge or change of this Sublease Agreement shall be valid unless the same is in writing and signed by the Party against whom the enforcement thereof is sought.

Section 4.8 Multiple Counterparts. This Sublease Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

Section 4.9 Survival. The provisions of the Lease Agreement (as incorporated into this Sublease Agreement) relating to indemnification from one Party to the other Party, and restoration obligations under Section 6.4 of the Lease Agreement, shall survive any termination or expiration of this Sublease Agreement. Additionally, any provisions of this Sublease Agreement that require performance subsequent to the termination or expiration of this Sublease Agreement shall also survive such termination or expiration.

Section 4.10 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Sublease Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Sublease Agreement. Unless expressly provided otherwise in this Sublease Agreement, wherever this Sublease Agreement gives a Party a right to determine, require, specify, or take similar action with respect to matters, such determination, requirement, specification, or similar action shall be reasonable.

Section 4.11 Construction. In this Sublease Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation.” Both Parties acknowledge that each was actively involved in the negotiation and drafting of this Sublease Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Sublease Agreement shall be construed in favor of or against either Party because one is deemed to be the author thereof. Captions or titles used herein are for convenience of reference only and do not affect the meaning or intent hereof.

Section 4.12 Third-Party Beneficiary. The Parties expressly acknowledge that this Sublease Agreement is intended to make, and does make, the Owner a third-party beneficiary of this Sublease Agreement. Owner shall have the independent authority to enforce the obligations of Sublessor under this Sublease Agreement.

[remainder of this page intentionally blank]

IN WITNESS WHEREOF, the Parties have caused this Sublease Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

SUBLESSOR:

VIRGINIA MUNICIPAL ELECTRIC ASSOCIATION NO. 1,
a Virginia nonstock corporation

By: _____

Name: _____

Title: _____

Date Signed: _____

(Sublessee's Signature Appears on the Following Page)

SUBLESSEE:

VIRGINIA ELECTRIC AND POWER COMPANY,
a Virginia public service corporation

By: _____

Name: _____

Title: _____

Date Signed: _____

Schedule A to Lease Agreement

Description of Property

All that certain tract or parcel of land containing 9.921 acres, more or less, located on the northeastern side of Acorn Drive in the City of Harrisonburg, Virginia, being the same property conveyed to the City of Harrisonburg by deed dated September 15, 2020, which deed is recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in Deed Book 5314, at page 254, which property is more particularly described in said deed and on that certain plat attached thereto entitled "BOUNDARY SURVEY OF A 9.921 ACRE TRACT ACORN LC," dated August 31, 2020, revised September 15, 2020, prepared by Hal T. Benner, Land Surveyor. Tax Map Number 44-(C)-6.

[remainder of this page intentionally blank]

Schedule B to Sublease Agreement

Memorandum of Sublease

This instrument prepared by
and after recording return to:

Richmond, Virginia _____

City/County of _____

Tax Map Numbers: _____

Actual Value of Leased Property: \$ _____

NOTE TO CLERK: THE RECORDING TAXES DUE ON A MEMORANDUM OF SUBLEASE PURSUANT TO CODE OF VIRGINIA (1950) SECTION 58.1-807(B) IS CALCULATED ON THE BASIS OF THE LOWER OF (A) THE GROSS RENTAL DUE OVER THE LEASE TERM OR (B) THE LEASED PROPERTY'S ACTUAL VALUE. THE LEASED PROPERTY CONSISTS OF PORTIONS OF THE ABOVE-REFERENCED TAX MAP PARCELS HAVING AN AGGREGATE AREA OF [REDACTED] ACRES AND AN AGGREGATE PRORATED TAX ASSESSED VALUE OF \$ [REDACTED]. THE GROSS RENTAL DUE OVER THE LEASE TERM EXCEEDS THIS PRORATED TAX ASSESSED VALUE.

MEMORANDUM OF SOLAR PROJECT GROUND SUBLEASE AGREEMENT

This MEMORANDUM OF SOLAR PROJECT GROUND SUBLEASE AGREEMENT (this "**Memorandum**") is effective as of the ____ day of _____, 20__ (the "**Effective Date**"), by and between **VIRGINIA MUNICIPAL ELECTRIC ASSOCIATION NO. 1**, a Virginia nonstock corporation, with an address of 89 West Bruce Street, Harrisonburg, Virginia 22801-3699, Attention: Brian D. O'Dell ("**Sublessor**"), and **VIRGINIA ELECTRIC AND POWER COMPANY**, a Virginia public service corporation, with an address of 120 Tredegar Street, Richmond, Virginia 23219, Attention: Robert J. Trexler ("**Sublessee**").

WITNESSETH:

That in consideration of the rents, covenants and conditions more particularly set forth in that certain Solar Project Ground Sublease Agreement of even date herewith made by and

between Sublessor and Sublessee (the “**Sublease Agreement**”), Sublessor and Sublessee do hereby covenant, promise and agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Sublease Agreement.

2. **Property.** Pursuant to the terms of the Sublease Agreement, Sublessor does sublease unto Sublessee, and Sublessee does sublease from Sublessor, for the Sublease Term (as hereinafter defined) the Property described on Schedule A-1 attached hereto and made a part hereof

3. **Nature of Sublease.** Sublessor is the Tenant under that certain Solar Project Ground Lease Agreement (the “**Lease Agreement**”), pursuant to which Sublessor leases the Property from the City of Harrisonburg, Virginia, The Harrisonburg Electric Commission. The Sublease Agreement is subject to all the terms and conditions of the Lease Agreement, as more particularly described in the Sublease Agreement but except as otherwise set forth in the Sublease Agreement.

4. **Term.** The Sublease Term commenced on the Effective Date. Pursuant to the incorporation of certain terms of the Lease Agreement into the Sublease Agreement, the Sublease Term is comprised of a Development and Construction Term that commences on the Effective Date and expires on the Commercial Operation Date and an Operations Term that commences upon the expiration of the Development and Construction Term and expires on the twenty-fifth anniversary of the expiration of the Development and Construction Term, unless sooner terminated as provided in the Sublease Agreement. Sublessee shall have up to six (6) months after the expiration or earlier termination of the Sublease Term to complete certain restoration obligations.

5. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Sublease Agreement and its terms, covenants and conditions to the same extent as if the Sublease Agreement were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Sublease Agreement and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Sublease Agreement or determine the intent of the parties under the Sublease Agreement.

[REMAINDER OF PAGE BLANK; SIGNATURES FOLLOW]

IN WITNESS WHEREOF, each of the parties hereto has caused this Memorandum to be executed in its name pursuant to due authority.

SUBLESSOR:

VIRGINIA MUNICIPAL ELECTRIC ASSOCIATION NO. 1,
a Virginia nonstock corporation

By: _____
Name: _____
Title: _____

Date Signed:_____

STATE/COMMONWEALTH OF _____
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____ as _____ of **VIRGINIA MUNICIPAL
ELECTRIC ASSOCIATION NO. 1**, a Virginia nonstock corporation, on behalf of such
corporation.

Notary Public

My commission expires: _____
Notarial Registration Number: _____

[Notarial Seal]

SUBLESSEE:

VIRGINIA ELECTRIC AND POWER COMPANY,
a Virginia public service corporation

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of **VIRGINIA ELECTRIC AND POWER COMPANY**, a Virginia public service corporation, on behalf of the corporation.

Notary Public

My commission expires: _____
Notarial Registration Number: _____

[Notarial Seal]

Schedule A-1 to Memorandum

The Property