

SITING AGREEMENT

This **SITING AGREEMENT** (together with all exhibits appended hereto, this “*Siting Agreement*”) dated as of _____, 2022 (the “*Effective Date*”) is made by and between **360 Solar Center, LLC**, a Virginia limited liability company (“**360**”), and **THE COUNTY OF CHESTERFIELD, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “*County*”). 360 and the County may each be referred to herein as “*Party*” and collectively, the “*Parties*.”

RECITALS:

WHEREAS, 360 is proposing to develop alternating current (“*ac*”) photovoltaic solar facility/facilities totaling approximately 52 megawatts (“*MW*”) (the “*Project*”) on certain parcels of land located in the County and identified by the Tax Map Numbers set forth in Exhibit A hereto (collectively, the “*Property*”); and

WHEREAS, pursuant to *Code of Virginia* Chapter 22, Title 15.2, Article 7.3 (the “*Siting Agreement Statute*”), 360 and the County may enter into a siting agreement with respect to a solar energy generating facility proposed to be located in the County;

WHEREAS, 360 provided the County with written notice of 360’s proposed intent to locate the Project in Chesterfield County and requested a meeting to discuss and negotiate a Siting Agreement (such notification, discussion and negotiation being the “*Siting Agreement Process*”);

WHEREAS, prior to the date hereof, 360 commenced the Siting Agreement Process with respect to the Project;

WHEREAS, the County has not adopted an ordinance pursuant to *Code of Virginia* § 58.1-2636 assessing a revenue share of up to \$1,400 per MW(ac) (a “*Revenue Share Ordinance*”);

WHEREAS, pursuant to authority granted in the Siting Agreement Statute, the County wishes to enter into a Siting Agreement with 360 pursuant to which the County sets forth financial obligations of 360 over the life of the Project;

WHEREAS, as set forth herein, the parties have negotiated the terms and conditions of a Siting Agreement, the effectiveness of which is conditioned on the County’s approval of a conditional use permit authorizing the use of the Property for the Project;

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

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

NOW, THEREFORE, pursuant to *Code of Virginia* Chapter 22, Title 15.2, Article 7.3, intending to be legally bound hereby and in consideration of the mutual covenants and agreements

{2987600-1, 122891-00001-05}

set forth herein, the receipt and sufficiency of which are conclusively acknowledged, the Parties hereby agree as follows:

1. ANNUAL ADDITIONAL PAYMENT OBLIGATIONS.

(a) Payment Schedule. 360 will make the following payments (individually and collectively, the “*Additional Annual Payments*”) to the County at the milestones set forth below:

(i) Once the Project is fully constructed and operational, in addition to the M&T tax and any other personal property tax and other tax attributable to the solar and related equipment on the Property owed to the County after all applicable tax credits and exemptions, 360 will pay the County for each year that the Project is fully operational for a period not to exceed 35 years, \$1,400 per MW of the Project minus the M&T tax and other personal property taxes and taxes attributable to the solar and related equipment paid to the County in connection with the Project (collectively, the “*M&T Tax*”), to the extent the M&T Tax due and paid totals less than \$1,400 a MW. For example, if 360 in connection with the 52 MW Project pays the County \$50,000 in M&T Tax in a given year, 360 would pay the County \$22,800 in addition to the \$50,000. The date the Project is constructed and becomes operational is the “*Commercial Operation Date*” or “*COD*.” The testing of energy or equipment does not constitute operation, and operation shall be deemed to occur on the date Permission To Operate has been issued by the interconnecting utility. Provided further, the Additional Annual Payments minus the M&T Tax per MW shall increase by 10 percent in the tax year 2027 and shall increase every five years thereafter by 10 percent. So, for example, the Additional Annual Payment for 2027 would be \$1,540 per MW minus the M&T Tax paid.

(ii) The Additional Annual Payment is due on the date the M&T tax is due for any tax year.

(b) Use of Payment. The Additional Annual Payments are intended to be used, at the County’s sole discretion, to (a) assist the County in addressing capital needs set out in the County’s (i) capital improvement plan, (ii) current fiscal budget or (iii) fiscal fund balance and/or (b) support broadband (as defined in *Code of Virginia* § 56-585.1:9) funding, all as permitted by *Code of Virginia* § 15.2-2316.7.

(c) Distinguished from Real Estate Taxes and Other Obligations. The Additional Annual Payments are separate and distinct from all real estate taxes owed, and other taxes, fees, and ordinances that may be validly applicable to the Property except as otherwise set forth herein.

2. ANNUAL PAYMENTS

(a) Payment Obligation and Schedule. The obligation to make the Additional Annual Payments shall cease (as applicable, the “*Termination Date*”) upon: (i) the Applicant’s commencement of the decommissioning of all or a material portion of the Project, (ii) the cessation of operation of the Project for a continuous period of longer than one (1)

- year, or (iii) the 35th calendar year of commercial electricity generation of the Project occurs.
- (b) Revenue Share Ordinance. If Chesterfield County in the future adopts a Revenue Share Ordinance that is applicable to the Project, any payments made pursuant to or described in Section 1(a)(i) shall be reduced by any sums due the County from such Revenue Share Ordinance.
- (c) Public Service Company Property. The Parties acknowledge and agree that if the Project is owned by a public service corporation (including as a result of an assignment made pursuant to Section 7 of this Siting Agreement), the provisions pertaining to the taxation of real and tangible personal property of public service corporations under *Code of Virginia* Chapter 26 of Title 58.1 shall apply to the Property.
3. STATEMENT OF BENEFIT. 360 acknowledges that this Siting Agreement is beneficial to 360 in assisting it to proceed with the installation of the Project and provides for future revenues to the County that are fair to both Parties. The County acknowledges that the funding provided pursuant to this Siting Agreement is beneficial in that it will result in mutually acceptable, predictable, and reasonable payments to the County.
4. PERMITS AND APPROVALS.
- (a) CUP Application. On July 27, 2022, the County Board of Supervisors approved 360's application for a Conditional Use and Conditional Use Planned Development (collectively referred to as "CUP") to construct and operate the Project on the Property. The approval was subject to certain conditions recommended by the Planning Commission, as well as an additional condition that requires that a Siting Agreement be executed in a form acceptable to the County Administrator and County Attorney prior to final site plan approval for the Project.
- (b) Limitation of Remedies. Notwithstanding anything to the contrary in the CUP, this Siting Agreement, or otherwise, neither an actual or asserted breach of this Siting Agreement by 360 nor the voiding, termination or invalidation of this Siting Agreement shall be grounds for voiding, terminating or suspending the CUP, provided that this subsection 4(b) shall not apply in the case of a willful or intentional breach of this Siting Agreement by 360.
5. CONFORMANCE WITH COMPREHENSIVE PLAN. Upon approval of the CUP or this Siting Agreement by the County and in accordance with *Code of Virginia* § 15.2-2316.9, the Project and all related transmission facilities shall be deemed to be "substantially in accord" with the "Chesterfield County Comprehensive Plan," in all respects, to the extent that prior to such date of approval the County's Planning Commission has not determined that the Project was "substantially in accord" with the Chesterfield County's Comprehensive Plan then in effect under *Code of Virginia* § 15.2-2232(A).

6. EFFECT OF SITING AGREEMENT

- (a) Binding Effect. In accordance with *Code of Virginia* § 15.2-2316.8(A)(3), and acknowledged and agreed to by the parties, this Siting Agreement shall be binding upon the County and enforceable against the governing body and future governing bodies of the County in any court of competent jurisdiction.
 - (b) Conditional Effect. This Siting Agreement is expressly conditioned upon, among other factors, the County's approval of a CUP authorizing the use of the Property as a utility-scale solar facility, subject to the conditions associated with the CUP. Should 360 elect not to proceed with the construction of the Project, then this Siting Agreement shall be null and void and of no effect, at 360's election.
 - (c) No Obligation to Develop. The parties agree and acknowledge that 360 has no obligation to develop the Project and this Siting Agreement does not require that any Additional Annual Payment be made unless and until the Commercial Operation Date occurs. It is expressly understood that development of the Project is contingent upon a number of factors and no election by 360, in its sole discretion, to terminate, defer, suspend, or modify plans to develop the Project shall be deemed a default by 360 under this Siting Agreement. The production of test energy, or any other energy, prior to the COD does not trigger payment under this paragraph.
 - (d) Covenant to Pay. 360 covenants to the County that it will pay the County the amounts due hereunder when due in accordance with the terms of this Siting Agreement, and, in the absence of a breach or default by County of its obligations hereunder, will not seek to invalidate this Siting Agreement, or otherwise take a position adverse to the purpose or validity of this Siting Agreement.
7. SUCCESSORS AND ASSIGNS. This Siting Agreement may be assigned by 360 without the necessity of obtaining the County's consent, and the assignee shall have the same rights under this Siting Agreement as held by the assignor prior to the assignment, provided the assignee agrees to be bound by the terms of this Siting Agreement and a notice of assignment, in a form reasonably acceptable to the County, is delivered to the County evidencing the assignee's acknowledgement of the terms of this Siting Agreement and agreement to be bound hereby. If 360 sells, transfers, leases or assigns all or substantially all of its interest in the Project or the ownership of 360, this Agreement will automatically be assumed by and be binding on the purchaser, transferee or assignee and 360 is released from the provisions herein. Notwithstanding the foregoing, 360 shall obtain the written consent of the County Administrator prior to any assignment of this Siting Agreement to Virginia Electric and Power Company or its wholly-owned affiliate (each, "Dominion"), which consent may be conditioned upon the execution of an amended Siting Agreement between the County and Dominion in the County's absolute discretion prior to such assignment.
8. REPRESENTATIONS. Each Party represents as follows:
- (a) It has the power and authority to enter into and perform this Siting Agreement; and that the execution, delivery and performance of this Siting Agreement has been duly authorized by all necessary corporate or governmental action, as applicable;

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

9. MISCELLANEOUS

- (a) Governing Law; Jurisdiction; Venue. This Siting Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to any of its principles of conflicts of laws or other laws which would result in the application of the laws of another jurisdiction. The Parties hereto (a) agree that any suit, action or other legal proceeding, as between the Parties hereto, arising out of or relating to this Siting Agreement shall be brought and tried only in the Circuit Court of Chesterfield County, Virginia, (b) consent to the jurisdiction of such Court in any such suit, action or proceeding, and (c) waive any objection which any of them may have to the laying of venue or any such suit, action, or proceeding in such court and any claim that any such suit, action, or proceeding has been brought in an inconvenient forum. The Parties hereto agree that a final judgment in any such suit, action, or proceeding shall be conclusive, subject to any appeal allowable by law, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- (b) Confidentiality. Once public notice has been issued regarding the Board's scheduled consideration of this Siting Agreement at an upcoming meeting of the Board, this Siting Agreement shall be a public document, subject to production under the Freedom of Information Act (FOIA). The County understands and acknowledges 360, and as applicable, their associates, contractors, partners and affiliates utilize confidential and proprietary "state-of-the-art" information and data in their operations ("**Confidential Information**"), and that disclosure of any information, including, but not limited to, disclosures of technical, financial or other information concerning 360 or any affiliated entity could result in substantial harm to them and could thereby have a significant detrimental impact on their employees and also upon the County. The County acknowledges that during the development of this Siting Agreement, certain Confidential Information may be shared with the County by 360. 360 agrees to clearly identify any information it deems to be Confidential and not subject to mandatory disclosure under the Virginia Freedom of Information Act or other applicable law as Confidential Information at the time it provides such information to the County. The County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent or contractor of the County will

knowingly or intentionally disclose or otherwise divulge any such confidential or proprietary information to any person, firm, governmental body or agency, or any other entity unless the request for Confidential Information is made under a provision of Local, State or Federal law. Upon receipt of such request but before transmitting any documents or information which may contain Confidential Information, the County will contact 360 to review the request for information and associated documents to determine if any Confidential Information is at risk of disclosure. If Confidential Information exists, 360 may intervene on behalf of the County and defend against disclosure of the Confidential Information. The County agrees to cooperate in this defense and to the extent allowed by law, work to protect the Confidential Information of 360.

(c) Removal of Property. The County acknowledges that the final design of the Project will occur at a later date. Based on final design, 360 shall have the right to remove parcels from the Project without the consent of the County. Property that is not included in the Project will be considered withdrawn from this Agreement without the need for further action by the Parties. The withdrawal of any parcels from this Agreement shall not affect 360's obligations under this Agreement.

(d) Notices.

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

Any communication under this Siting Agreement shall be sufficiently given and deemed given when delivered by hand or after being deposited in the mails by first-class certified mail, postage prepaid, and addressed as follows:

If to 360: 360 Solar Center, LLC
 c/o Sun Tribe Solar
 107 5th Street, SE
 Charlottesville, Virginia 22902
 Attn: Development Manager

With copies to: William H. Shewmake, Esq.
 Woods Rogers Vandeventer Black PLC
 901 East Byrd Street, Suite 1550
 Richmond, Virginia 23219

If to the County: County Administrator
 Chesterfield County, Virginia
 9901 Lori Road
 P.O. Box 40
 Chesterfield, VA 23832
 Attn: Dr. Joseph P. Casey, County Administrator

With a copy to: Jeffrey L. Mincks, Esq.

County Attorney
9901 Lori Road
P.O. Box 40
Chesterfield, VA 23832

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

- (e) Memorandum of Siting Agreement. A memorandum of this Siting Agreement (the “*Memorandum*”), in a form acceptable to the County, shall be recorded in the land records of the Clerk’s Office of the Circuit Court of Chesterfield County, Virginia (the “*Clerk’s Office*”). Such recordation shall be at 360’s sole cost and expense and shall occur as reasonably practicable after the full execution of this Siting Agreement. If 360 chooses not to develop the Project, the Parties, at the request of either Party, shall execute a release of the Memorandum filed in the Clerk's Office and direct its recordation.
- (f) Non-Business Days. If the date for making any payment or performing any act or exercising any right is not a day when financial institutions are open for business in the Commonwealth of Virginia, such payment must be made or act performed or right exercised on or before the next business day such offices are open for public business.
- (g) Entire Agreement: Amendments. This Siting Agreement and any schedules or exhibits constitute the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof. No provision of this Siting Agreement can be modified, altered, or amended except in a writing executed by all parties hereto. This Siting Agreement may not be changed except in writing signed by all parties
- (h) Construction. This Siting Agreement was drafted with input by the County and 360, and no presumption will exist against any Party.
- (i) Binding Effect. This Siting Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns. There are no other agreements or other conditions precedent to the binding nature of the respective obligations of 360 and the County.
- (j) Liability of Officers and Agents. No officer, agent, or employee of the County or 360 or its affiliates shall be subject to any personal liability or accountability by reason of the execution of this Siting Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- (k) Counterparts; Electronic Signatures. This Siting Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one in the same instrument. A signed copy of this Siting Agreement delivered by facsimile, email/PDF or other means of electronics

transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Siting Agreement. Electronic signatures using a nationally recognized service, such as DocuSign, shall be permitted for execution of this Siting Agreement

- (l) Force Majeure. Any delay in the performance of any of the duties or obligations of either party hereunder (the “*Delayed Party*”) shall not be considered a breach of this Siting Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts; shortages of materials or energy; fires; explosions; floods; changes in laws governing international trade; or other unforeseeable causes beyond the control and without the fault or negligence of the Delayed Party. The Delayed Party shall give prompt notice to the other party of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as promptly as possible. No such event shall excuse the payment of any sums due and payable hereunder on the due date thereof except any payment due upon the occurrence of any act or event for which delayed performance is excused as provided above.
- (m) Severability; Invalidity. Any provision of this Siting Agreement that conflicts with applicable law or is held to be void or unenforceable shall be ineffective to the extent of such conflict, voidness, or unenforceability without invalidating the remaining provisions hereof, which remaining provisions shall be enforceable to the fullest extent permitted under applicable law. If, for any reason, including a change in applicable law, it is ever determined by any court or governmental authority of competent jurisdiction that this Siting Agreement is invalid then the parties shall, subject to any necessary County meeting vote or procedures, undertake reasonable efforts to amend and or reauthorize this Siting Agreement so as to render the invalid provisions herein lawful, valid, and enforceable. If the Parties are unable to do so, this Siting Agreement shall terminate as of the date of such determination of invalidity, and the Property and Project will thereafter be assessed and taxed as though this Siting Agreement did not exist. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Siting Agreement by a third party.
- (n) Third Party Beneficiaries. This Siting Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person shall have any right, benefit, priority, or interest in, under or because of the existence of, this Siting Agreement.
- (o) No Obligation to Develop Project. 360 and its successors and assigns are under no obligation to continue to develop the Project after the date of this Siting Agreement.
- (p) Records. 360 shall keep records of the maintenance and operations of the Project, including, but not limited to, the quantity of power generated, per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Project based on submissions by 360 to the interconnecting utility (or such corresponding records as otherwise maintained by the utility if the utility purchases

the property). The County shall have the right to inspect and audit the same insofar as the records pertain to the operation of the Project.

- (q) Emergency Resources. 360 will reimburse any verifiable expense incurred by the County's fire and rescue personnel in the event that a fire or similar event occurs at the Project, with a cap in the aggregate of \$100,000 during the term of the Agreement.

SEE ATTACHED SIGNATURE PAGES

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

COUNTY OF CHESTERFIELD, VIRGINIA

By:
Name:
Title:
Date:

APPROVAL AS TO FORM BY:

Chesterfield County Attorney

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, 360 has caused this Siting Agreement to be executed in its corporate name by its duly authorized officer as of the date first above written.

360 SOLAR CENTER, LLC

By:
Name:
Title:
Date:

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

Exhibit A

The Property

A. Chart of Tax Map Parcels Included in the Project, Including Acreage

