

GROUND LEASE AGREEMENT

This Ground Lease Agreement (the “Agreement”) is entered into and effective the ___ day of _____, 2017, by and between THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, a municipal corporation of the State of Tennessee (hereinafter “Metro”) and THE ELECTRIC POWER BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (hereinafter “NES”). Metro and NES may be collectively referred to as the “Parties”.

WHEREAS, NES is a municipally-owned electric power distribution company and duly created, organized, and existing under and by virtue of the laws of the State of Tennessee; and,

WHEREAS, Metro is vested with the authority to enter into lease agreements for real property; and

WHEREAS, NES desires to obtain a lease from Metro to construct a two (2) MegaWatt community solar array, hereafter referred to as “Music City Solar,” part of the Tennessee Valley Authority’s (TVA) Distributed Solar Solutions (DSS) initiative that offers distribution-scale solar; and,

WHEREAS, the Parties have identified a parcel of property suitable for Music City Solar, located at the Old Due West Landfill, 801 Old Due West Avenue, Madison, Tennessee 37115 (Parcel Number 05100002200), comprising a total of 35 acres with approximately 10 acres of flat usable area on the eastern portion of the site for the solar array (hereinafter described as the “Property”). Music City Solar will utilize a previous waste disposal landfill, also known as a “Brownfield” site that was closed and unused for the past 40+ years; and,

WHEREAS, Music City Solar will be the largest solar photovoltaic system in Nashville and Davidson County, and will produce an estimated 55 million kilowatt-hours over the life of the system; and,

WHEREAS, Music City Solar will provide access to green energy production via community solar to Nashville and Davidson County residents while also will helping achieve the Mayor’s goal of Nashville becoming the “Greenest City in the Southeast;” and,

WHEREAS, Metro has determined that the lease of said parcel and commencement of said renewable energy initiative will benefit the environment as well as the citizens of Nashville and Davidson County.

NOW, THEREFORE, in consideration of the Property and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PROPERTY. The Parties have identified a location for a parcel of property suitable for Music City Solar, located on the Old Due West Landfill, located at 801 Old Due West Avenue, Madison, Tennessee 37115, comprising a total of 35 acres with approximately 10 acres of flat usable area for the solar array, as set forth in Exhibit “A,” which is capable as serving as the base for the installation and operation of Music City Solar.

2. LEASE TERM. The lease term of this Agreement (hereinafter “Term”) shall be twenty-five (25) years from the Commencement Date. The Term may be extended by an amendment. This Lease may be terminated at any time upon mutual agreement of the Parties. **This Agreement shall not become effective until and after NES and all appropriate signatories for Metro have signed, and the Agreement has been approved by the Metropolitan Council.**

3. RENT. In consideration of the benefit Music City Solar will provide for the residents of Nashville- Davidson County, Metro leases to NES the use of this property without payment for the initial twenty-five (25) year Term.

4. CONDITION OF PROPERTY. The Parties acknowledge the existing land restrictions on this property codified in Metropolitan Ordinance No. BL2011-959. NES shall abide by these restrictions and all other environmental regulations related to this site. NES shall conduct a National Environmental Policy Act (NEPA) review of the proposed site before beginning construction of Music City Solar.

5. USE. NES agrees that the Property shall only be used by NES for the purpose of operating and maintaining Music City Solar and for no other purpose outside of this Agreement without the prior written consent of Metro. The parties agree that Metro proposes to sell a parcel of property (the “Adjacent Tract”) adjacent to the Property to a third party. Metro will include in the deed of conveyance for the Adjacent Tract a provision to the effect that no building, improvement, tree or landscaping located thereon shall be built such that it casts a shadow on the Property greater than the shadow cast by a vertical hypothetical wall five feet high located along any Solar Property line, daily between the hours of 5:00 AM and 8:30 PM Central Standard Time. Metro agrees to provide NES at least 30 days’ notice prior to any further Metro conveyances of the Property.

6. UTILITIES. NES covenants and agrees to promptly pay for any and all water, light, power and/or other utility service used by NES in or about the Property during the Term.

7. MAINTENANCE AND REPAIRS. NES shall keep and maintain the Property and all improvements located thereon in good condition and repair. Metro shall have no repair or maintenance obligations with respect to the Property or the improvements located thereon.

8. SURRENDER NES covenants and agrees at the end of the Term or any extension thereof, or upon any sooner termination of this Agreement, to quit and deliver the Property to

Metro peaceably and quietly and in good order and condition, reasonable use and wear thereof excepted. NES shall remove all fixtures and equipment at the end of the Term.

9. COVENANTS AND WARRANTIES. Metro covenants and warrants that it has full right and power to execute and perform this Agreement and to grant the estate leased herein, and covenants that NES, upon performing its obligations hereunder, shall peaceably and quietly hold and enjoy the Property, together with the right of ingress and egress throughout the Term of this Agreement or any extension thereof. Metro further covenants and warrants that as of the Commencement Date, no one other than Metro and NES will have any interest in, or lien, claim or encumbrance against the Property.

10. ASSIGNMENT AND SUBLETTING. NES may not assign its interest in this Agreement or sublet the whole or any part of the Property without Metro's consent. If NES does so sublet, it shall remain fully and primarily liable to Metro for the full performance of NES's obligation. If NES does so assign, it shall remain primarily liable to Metro for the full performance of NES's obligations provided that no modification or amendment of the Agreement shall be binding upon NES without NES's prior written consent. Termination or cancellation of this Agreement shall constitute a termination or cancellation of every such assignment or sublease.

11. DEFAULT. The following shall constitute an event giving rise to a termination for Default: (i) NES cannot secure the necessary permits and entitlements to proceed with the construction of Music City Solar from any licensing agency within twenty-four months (24) of the execution of this Agreement; or (ii) NES abandons or discontinues conducting its operations on the Property; provided however NES may discontinue conducting its operations on the Property for such time as is necessary to restore the facility and/or Music City Solar due to casualty or to construct improvements.

12. LIENS. NES will not permit any liens to stand against the Property for any labor or material furnished in connection with any work performed by or at the direction of NES.

13. SUCCESSORS AND ASSIGNS. All rights, remedies, liability and obligations herein given to or imposed upon either of the parties hereto shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors in interest and assigns of the respective parties.

14. HOLDING OVER. Any holding over by NES after the expiration of the Term of this Agreement, or any extension thereof, shall be from month to month only, terminable upon thirty (30) days prior written notice to the other, and not otherwise.

15. WAIVER Any waiver by either of the parties hereto of a breach of any of the terms, covenants, agreements or conditions hereof shall not be deemed a continuing waiver by such party.

16. INDEMNIFICATION. To the extent permitted by Tennessee law, NES shall indemnify and hold harmless Metro, its officers, agents and employees from: (a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of NES, its employees in connection with the performance of this Lease Agreement; and (b) Any claims, damages, penalties, costs and attorney fees arising from any failure of NES or its employees to observe applicable laws. NES is self-insured pursuant to T.C.A. § 29-20-403(b) and NES shall provide a copy of its certificate of self-insurance, which sets forth the limits of liability for general liability, automobile liability, professional malpractice and worker's compensation. NES will plead and rely on its sovereign immunity for all claims in excess of the limits provided by the Government Tort Liability Act.

17. NOTICES. All notices required or permitted to be given under this Agreement shall be in writing and shall be given by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, and addressed to the person and addresses designated below.

METRO: The Metropolitan Government of Nashville and Davidson County
Public Property Administration
Post Office Box 196300
Nashville, Tennessee 37219
RUSH: FORMAL NOTICE OF CONTRACT ACTION

NES: Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No.: 615-747-3667
Confirmation No.: 615-747-3701
ATTN: Vice-President & General Counsel
RUSH: FORMAL NOTICE OF CONTRACT ACTION

The person and address to which notices are to be given may be changed at any time by Metro or NES by at least ten (10) days prior written notice to the other. All notices given pursuant to the Agreement shall be deemed given upon receipt. Receipt shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address shown above and as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity shown above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

Each party agrees to give the other party immediate notice in writing of any action or suit filed related in any way to this Agreement, and of any claim made against it by any entity which may result in litigation related in any way to this Agreement.

18. TERMINATION. Notwithstanding anything to the contrary set forth herein, either party may terminate this Agreement immediately upon written notice at any time if the other party is in breach of any term, condition or covenant of this Agreement and fails to cure that breach within one hundred eighty (180) days after written notice thereof. However, should the Parties agree such default cannot be cured within said one hundred eighty (180) days, the non-breaching party may allow a reasonable extension of time to cure.

19. SEVERABILITY. If a court of competent jurisdiction holds that one or more clauses, sections or provisions of this Agreement are unlawful, invalid or unenforceable, the Parties hereto agree that all remaining clauses, sections and provisions shall continue in full force and effect.

20. PARTNERSHIP/JOINT VENTURE. This Agreement shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this Agreement.

21. ENTIRE AGREEMENT. This Agreement contains all of the terms, covenants, conditions and agreements of the parties hereto relating in any manner hereto and the occupancy of the Property, and no prior agreement or understanding pertaining to the same shall be valid or of any force or effect, and the terms, covenants, conditions and agreements of this Agreement cannot be altered, changed or modified or added to except in writing and signed by the President/CEO of NES and approved by the Metropolitan Council.

22. CONSTRUCTION OF LEASE. Metro and NES have negotiated this Agreement, have had an opportunity to be advised respecting the provisions contained herein and have had the right to approve each and every provision hereof; therefore, this Agreement shall not be construed against either Metro or NES as a result of the preparation of this Agreement by or on behalf of either party. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, excluding principles of conflict of laws.

23. COMPLIANCE WITH LAWS. NES agrees to comply with any applicable federal, state and local laws and regulations.

24. MODIFICATION OF LEASE AGREEMENT. This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.

25. GOVERNING LAW. The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the state of Tennessee.

26. VENUE. Any action between the Parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.

IN WITNESS WHEREOF this Agreement has been signed by the parties on the day and year first above written.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

By: _____
Steve Berry, Director, Public Property Administration

APPROVED AS TO THE AVAILABILITY OF FUNDS:

Talia Lomax-O'dneal, Director of Finance

APPROVED AS TO INSURANCE:

Director of Insurance/Risk Management

APPROVED AS TO FORM AND LEGALITY:

Metropolitan Attorney

ATTEST:
FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:

Date: _____

**THE ELECTRIC POWER BOARD OF THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:**

By: _____
_____, Secretary

By: _____
_____, President and CEO

By: _____
_____, Vice President and General Counsel