

ISSUE PAPER SERIES

## Planning for Offsite Solar Energy Projects

February 2020



NEW YORK STATE TUG HILL COMMISSION

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### IN COLLABORATION WITH:

Cornell Cooperative Extensions of Jefferson, Lewis, Oneida and Oswego Counties  
Development Authority of the North Country  
Jefferson, Lewis, Oneida, Oswego and St. Lawrence County Planning Departments  
Jefferson, Lewis and Oneida County Industrial Development Agencies  
Jefferson, Lewis and Oswego County Soil & Water Conservation Districts

The Tug Hill Commission Technical and Issue Paper Series are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The Technical Paper Series provides guidance on procedures based on questions frequently received by the Commission. The Issue Paper Series provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission. Please call us or visit our website for more information.



# Planning for Offsite Solar Energy Systems

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Front Cover Photograph Courtesy Lewis County Planning Department, of the Lewis County Solar Array, Outer Stowe Street, Lowville, NY

## Introduction

Renewable energy technology deployment is increasing for many reasons, including improved technology, declining manufacturing costs, consumer trends, federal and state tax incentives and new laws that encourage expansion. In New York State, the 2019 Climate Leadership and Community Protection Act has caused a significant increase in proposed solar facilities on Tug Hill and in other rural areas.

This paper summarizes issues and considerations related to offsite, large scale solar development at the time of publication. Technology, installation, and siting considerations are quickly evolving. The paper describes the different scales of solar energy systems, where they are often sited, and land use considerations. Planning tools and financial considerations for municipalities are also discussed. Language and document examples and templates are provided for use in Tug Hill and other rural communities.

## The Climate Leadership and Community Protection Act

The New York State Climate Leadership and Community Protection Act (Climate Act), amends Environmental Conservation Law, Public Service Law, Public Authorities Law, Labor Law and the Community Risk and Resiliency Act. The purpose of the Climate Act is to adopt measures to put New York on a path to reduce statewide greenhouse gas emissions by 85% percent by 2050 and net zero emissions in all sectors of the economy, through the development of a scoping plan. The goals of the Climate Act are (1) greenhouse gas emissions reduction, (2) renewable energy development, (3) improved energy efficiency, (4) a clean energy economy, and (5) resilient and distributed energy systems.<sup>1</sup> Specifically related to solar energy, the law states that New York will:

- Increase the Renewable Energy Standard to 70% by 2030
- Double the target for distributed solar power to 6 gigawatts by 2025
- Install 3 gigawatts of statewide energy storage capacity by 2030

The above targets do not include utility-scale solar, which is estimated to increase by 5 gigawatts by 2025.

For reference, one megawatt (MW) of energy can power approximately 150 homes, conservatively. To produce 1 MW of solar energy, approximately five to seven acres of solar panels are needed. Theoretically, a 4 MW project (i.e. 24 acres of solar panels) could power all the homes in the village of Adams. To meet Climate Act goals, it is estimated that between 34,000 to 68,000 acres of land is needed for solar panels in New York State, or at least 1.7 square miles of solar panels per county if equally distributed among the 62 counties.

## Community Perception

The 2019 Tug Hill Residents and Landowners Survey included a question about solar energy. One-thousand respondents were asked whether they thought solar energy development should be increased, kept but not increased, decreased, or not sure. Respondents overwhelmingly chose "increase" (70%), followed by "keep, but do not increase" (22%), decrease (4%), and "not sure" (3%). The survey has a 3% margin of error.<sup>2</sup>

At a more local level, questions regarding solar energy are beginning to be included in town-level surveys. These surveys are typically used at the beginning of the comprehensive planning process. For instance, a 2019 survey

for the town of Vienna included a question asking respondents if they were for or against large solar projects locating in the town. The results had 59% of respondents in the "for" column and 41% in the "against".

## The Different Scales of Solar

There are three important factors to consider when defining solar: whether the energy will be consumed primarily onsite or offsite, the physical size of the system, and the system's energy production capacity. Onsite solar systems are typically small roof or ground mounted systems that power the property on which they are located. While local governments should plan for their growing popularity, these onsite solar installations are not the focus of this paper. Furthermore, while a good opportunity for home and business owners, onsite solar is capped at 110% of the property owner's usage and therefore is not a significant contributor to NYS renewable energy goals. More detailed information about onsite solar for residential or business use is available on the NYSERDA NY-Sun website.<sup>3</sup>

Offsite systems are composed of large ground mounted arrays of photovoltaic panels that supply power to the grid to be consumed on other properties. A solar energy system's capacity is how much energy is produced at the facility, which is often measured in kilowatts or megawatts.

### Community-Scale Solar

For purposes of this paper, community-scale solar includes projects that take advantage of NYSERDA's NY-Sun community solar incentives. To qualify, individual projects must be 5 MW or less but may be grouped together in a series of  $\leq 5$  MW projects. These projects sell energy to local subscribers, and provide taxing jurisdictions with payments in lieu of taxes (PILOT) agreements in the \$2,000-\$5,500 per MW range. The electricity generated from community solar projects does not count toward meeting the goals of the state's Renewable Energy Standard (RES). A 2 MW community solar project would typically include approximately 10 acres of panels. Local examples of community solar projects would be the proposed Nexamp projects in the towns of Adams (4.6 MW) and LeRay (4.9 MW), where 600-700 National Grid subscribers would be able to subscribe to each array.<sup>4</sup>

Another example from the village of Chaumont demonstrates another possible configuration of community-scale solar. Norbut Solar Farms is proposing a 23 MW total project in the village of Chaumont, but has broken the project into four 5 MW arrays and one 3 MW array. Each array has a different interconnect to the grid and is using the NY-Sun community-solar incentive.

### Utility-Scale Solar

Utility-scale solar projects sell electricity into the grid at wholesale prices and are subsidized by the sale of renewable energy credits. These projects can be 5 MW or larger, but experience shows that they typically start around 20 MW, and can be as large as 200 MW or more. To date, many of the proposed solar energy systems in Tug Hill and the North Country are around 20 MW, slightly below the Public Service Law Article 10 threshold of 25 MW, which means communities will be responsible for project review. Projects of 25 MW or larger will be reviewed through the state's Article 10 process, discussed later in this paper.

For example, the private developer Boralex has two proposed projects in Jefferson County<sup>5</sup>. Their Greens Corners project, located in the towns of Watertown and Hounsfield, is 120 MW and will be reviewed using the

state’s Article 10 process. Their Sandy Creek project, located in the towns of Adams and Ellisburg, is 19.9 MW and will be reviewed locally.

## Evolving Technology

Solar panel technology and installation best practices are quickly evolving as the industry matures. Newer panels have a dual-sheet design that collects energy on the “back side” from light reflecting on snow. Panels can also be installed with single-access tracking systems in a north-south orientation with more space between panels, allowing snow to be shed by putting the panels in a vertical position. The best foundations for panel installation are site specific and depend on soil characteristics and local climate conditions, and range for steel superstructures to anchor systems with ground screws, or ballast systems made with concrete.<sup>6</sup>

## Storage and Transmission

### Battery Energy Storage Systems

Energy storage systems dispatch stored energy for use during peak power demand. Given the intermittent nature of solar, storage is an important element. National Grid installed the first battery storage in its service area in June 2019 in the village of Pulaski, Oswego County. The Pulaski 2 MW storage system is designed to sustain a 2,000-kW customer demand, or the equivalent of powering approximately 1,600 homes for up to two hours. The benefits of the project include increasing the resiliency of the electricity network while modernizing the distribution system, deferring infrastructure and system upgrades, and reducing system peak loads.<sup>7</sup>

Communities where battery energy storage systems are being proposed may want to consider adding provisions to their zoning laws that address impacts. For more information on these tools, see the New York Battery Energy Storage System Guidebook.<sup>8</sup>

### Transmission

All solar projects are dependent on access to transmission lines and/or substations to get the generated electrons onto the electricity grid. The current transmission system in New York State has capacity limitations. Developers must apply to the utility (National Grid in the Tug Hill region) to assess the ability to tie into

## WHAT IS A RENEWABLE ENERGY CREDIT?

The NYS Public Service Commission (PSC) adopted a Clean Energy Standard (CES) in August 2016 which mandated that 50% of the electricity produced in New York State be considered “renewable” by 2030 (known as 50 by 30). The Renewable Energy Standard (RES) is part of the CES and has two components: increase the amount of renewable electricity generated through the purchase of Renewable Energy Credits (RECs), and obligate electricity suppliers (i.e. National Grid) to purchase increasing amounts of renewable energy

For the first component – increasing renewable electricity generation through RECs – NYSEDA annually solicits projects from generators and developers of renewable energy. Three annual REC project announcements to date, and include significant funding to provide a secure source of revenue to move the projects through the development process. Below is a sampling of funded projects to date:

**2016 solicitation:** Number Three Wind (Lewis), Glen Park Hydro and Tannery Island Hydro (Jefferson)

**2017 solicitation:** Lyons Falls Mill Redevelopment Hydro (Lewis)

**2018 solicitation:** Roaring Brook Wind (Lewis)

The 2019 solicitation announcements have not been made yet. Information about the pending proposals can be found on NYSEDA’s website. Proposed projects in the four-county area: Riverside Solar, Greens Corners Solar, Sandy Creek Solar (Jefferson); Deer River Wind, New Bremen Solar, North Country Solar (Lewis); Verona I Solar (Oneida)

the grid, and to determine cost. As more solar projects come on-line, at some point transmission capacity will be maxed out until significant upgrades are made to transmission lines, or if new lines are constructed. Transmission lines can be overhead or buried and can be a point of negotiation in developing solar projects.

## Site Viability Evaluation for Solar Energy Development

Solar energy developers use several site criteria when choosing a project location. The first consideration is proximity of parcels to three-phase power transmission lines and substations. The closer a solar project is to three-phase power, the less effort a developer would need to connect into the electric grid network, ultimately lowering their development costs. Substation locations are critical to project location as they serve the important function of transforming voltage. Proximity to substations is more of a priority for community-scale solar scale projects than for utility scale projects. This is because the smaller revenue potential of community-scale solar projects does not allow for high costs to build expensive, direct connections into the utility grid.

A second important criteria for solar developers are the characteristics of the land. It is easier to place arrays on large acreages of flat, cleared land that does not contain wetlands and is unlikely to be flooded. For these reasons, developers often find farmland very attractive for project development.

The Tug Hill Commission collaborated with regional county partners in Jefferson, Lewis, Oneida and Oswego counties and the Development Authority of the North Country (DANC) to develop maps of likely solar project locations. These maps are intended for use as tools for municipalities to plan for solar development within their boundaries. The analyses used the following criteria to identify potential solar project sites. Communities with significant areas of solar development potential may want to proactively plan for such development, which will be discussed in the planning tools section of this paper.

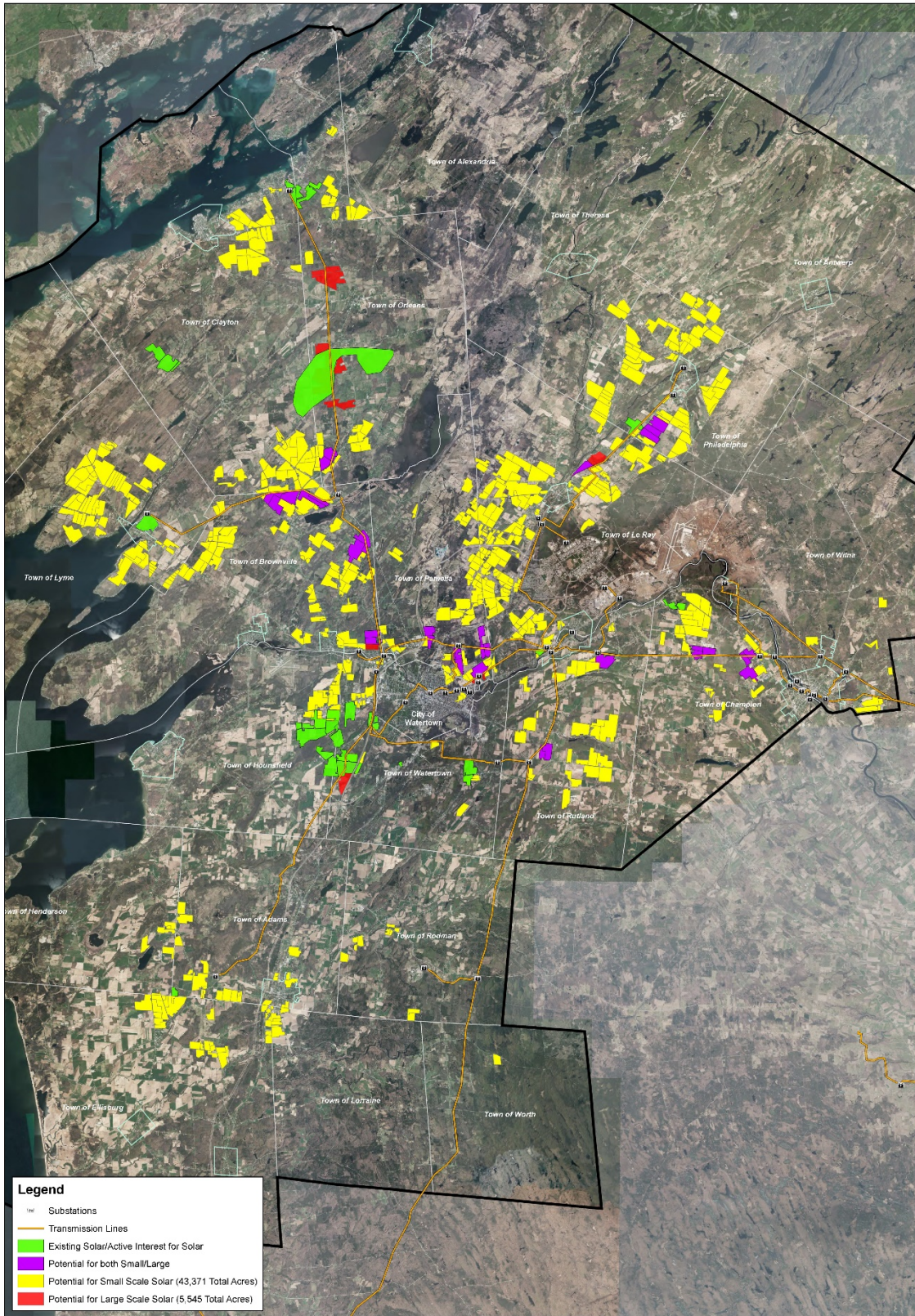
The following criteria were used to identify potential sites for community-scale solar projects:

- 10-acre parcels adjacent to other 10-acre parcels, and parcels that alone are over 50 acres
- Within 3 miles of a substation
- Less than 25% forested and less than 25% wetlands
- Out of floodplain area
- Property assessed as industrial, commercial, vacant, residential, or agriculture
- Not government owned
- Less than 10% slope (if parcel contained less than 20% of an area covered by 10% slope, it was kept. If over 20% of area was at least a 10% slope, it was removed)

The following criteria were used to identify potential sites for industrial scale solar projects:

- 50-acre parcels adjacent to other 50-acre parcels, and parcels that alone are over 200 acres
- Within 1000 feet of a transmission line
- Less than 25% forested and less than 25% wetlands
- Out of floodplain area
- Property assessed as industrial, commercial, vacant, residential, or agriculture
- Not government owned
- Less than 10% slope (if parcel contained less than 20% of an area covered by 10% slope, it was kept. If over 20% of area was at least a 10% slope, it was removed).

## Potential Locations for Solar Development, Jefferson County



**Legend**

- Substations
- Transmission Lines
- Existing Solar/Active Interest for Solar
- Potential for both Small/Large
- Potential for Small Scale Solar (43,371 Total Acres)
- Potential for Large Scale Solar (5,545 Total Acres)

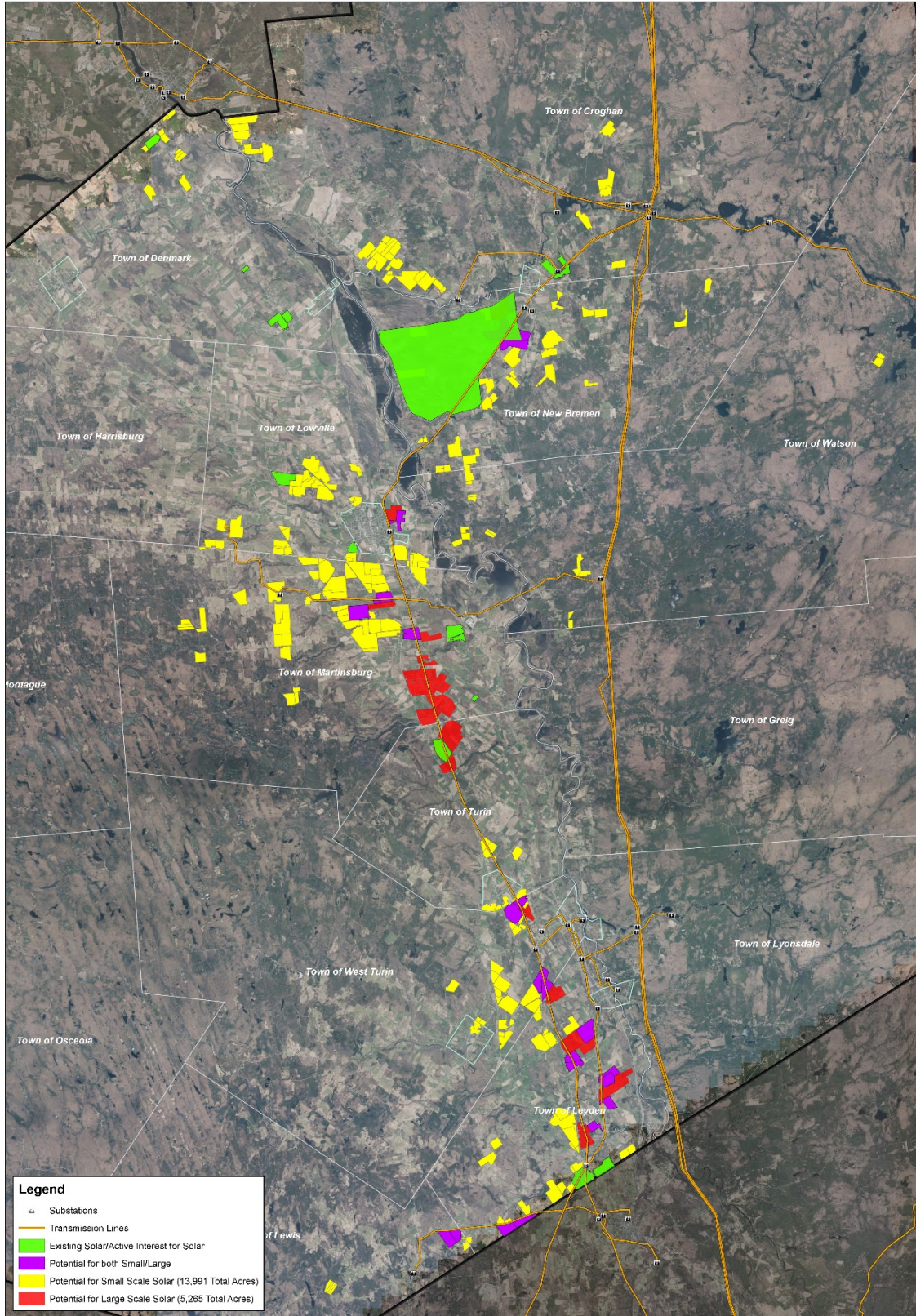
Development Authority of the North Country  
 Engineering Division, GIS  
 23557 NY's Route 37  
 Watertown, NY 13601  
Current: GISSupport@dncc.ny.gov or 315.661.2225



**Potential Locations for Solar Development in Jefferson County**

1 inch = 11,020 feet	DATE PLOTTED
Author: Warren Salo	
Date: 2/7/2020	
Document Name: Solar_Project_Locations_ Jefferson County	

# Potential Locations for Solar Development, Lewis County



**Legend**

- Substations
- Transmission Lines
- Existing Solar/Active Interest for Solar
- Potential for both Small/Large
- Potential for Small Scale Solar (13,991 Total Acres)
- Potential for Large Scale Solar (5,265 Total Acres)

Development Authority of the North Country  
 Engineering Division, GIS  
 23557 NYS Route 37  
 Watertown, NY 13601  
 Contact: GISSupport@dnrc.org or 315.661.3225

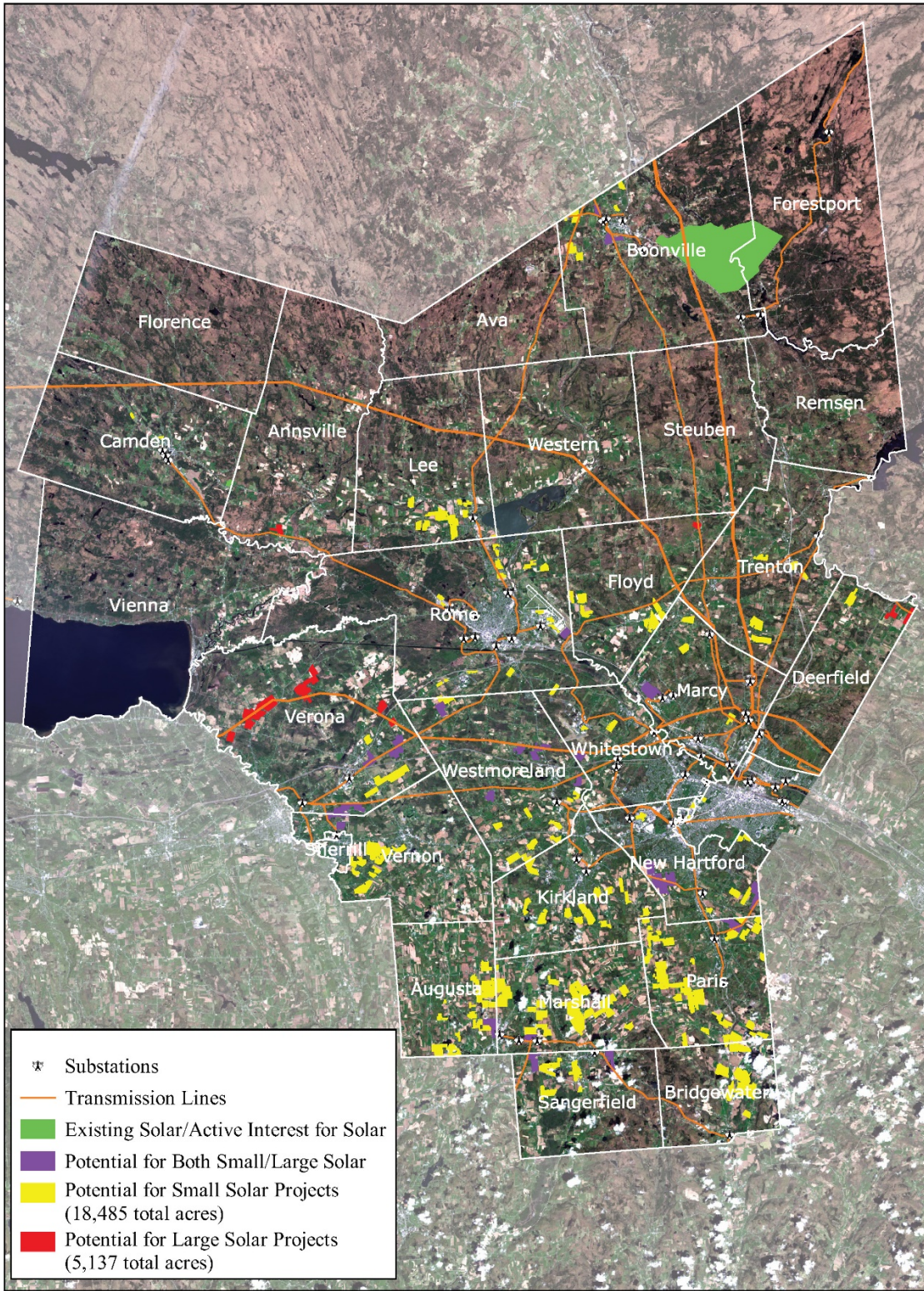


## Potential Locations for Solar Development in Lewis County

1 inch = 8,500 feet	Scale
Author: Willem Sako	
Date: 9/7/2020	
Document Name: Solar_Project_Locations_Lewis	

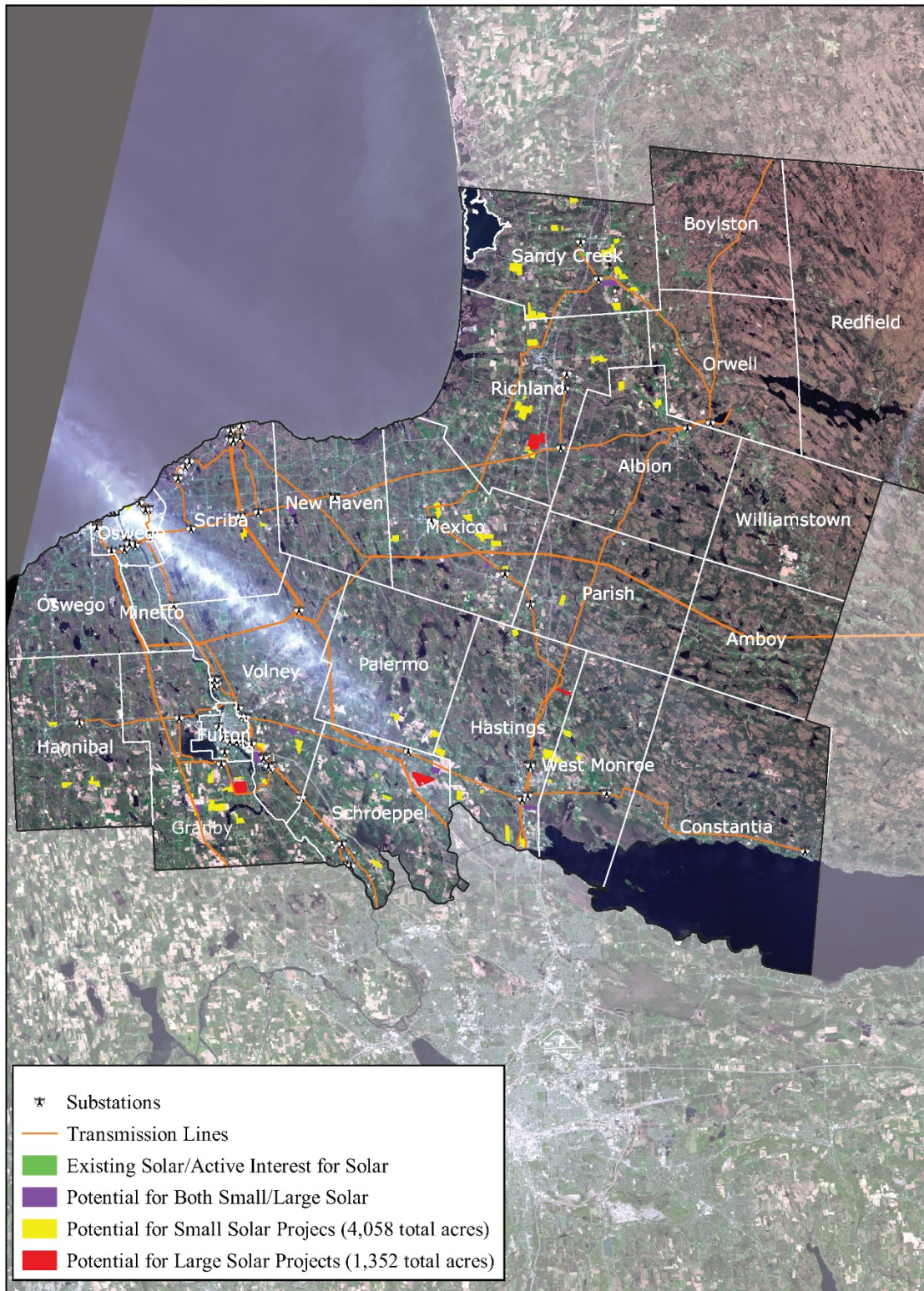



## Potential Locations for Solar Development, Oneida County



 NYS Tug Hill Commission 317 Washington St. Watertown, NY 13601		<b>Potential Locations for Solar Development in Oneida County</b>		1 inch = 30,000 feet	Revisions:
				Author: Alaina Mallette	Document Name: OneidaCo_PotentialSolarDevelopment_021320
				Date: 02/13/2020	Document Path: C:\...Communication site - Public\GIS Resources\Map

## Potential Locations for Solar Development, Oswego County




 NYS Tug Hill Commission  
 317 Washington St.  
 Watertown, NY 13601



### Potential Locations for Solar Development in Oswego County

1 inch = 30,000 feet  
 Author: Alaina Mallette  
 Date: 02/13/2020

Revisions:	
Document Name:	OswegoCo_PotentialSolarDevelopment_021320
Document Path:	C:\...Communication site - Public\GIS Resources\Map

## Agricultural Considerations

Given developers' preferred site characteristics, specifically cleared, flat land near transmission lines, many projects are being proposed on farmland. This presents opportunity for landowners, including dairy farmers who may be facing low milk prices. As an alternative to developing on prime agricultural soils, some ideal locations with access to transmission lines are degraded sites, such as remediated brownfield sites, unused parking lots, parcels adjacent to transfer sites, landfills, prisons, and quarries. Two methods that could channel solar development to these sites are zoning overlays and financial incentives, such as IDA financial packages (PILOTs) structured to incentivize the use of marginal agricultural land and site a project in a way that lessens impacts.

The screenshot below is from a calculator developed by the group collaborating on this issue paper, to show economic value created per acre for land used for dairy farming compared to land used for solar energy generation<sup>9</sup>. The green inputs on the calculator can be changed to look at different scenarios. This is intended to encourage discussion and not to discourage or encourage solar energy development. A few notes: landowners typically lease their land to farmers for between \$45 and \$120/acre. Solar developers are currently paying leases of between \$700 and \$1,000/acre. For farmers who are reliant on rented land this can present a challenge, as the economics of agriculture do not allow for land rental rates that are competitive with solar leases. Loss of rented land that is critical to their operation may decrease their ability to sustain their dairy businesses during times of tight margins (i.e. low milk prices).

Economic Activity from Dairy		Agricultural Landowner Options	
<b>Input Values</b>			
<b>\$ in economy from acres supporting milk production per year</b>			
Production per cow	80	lbs milk/day	
Production per cow per year	29,200	lbs/year	
100 weights of milk (cwt)	292	cwt/cow/year	
Milk Price	\$ 20.00	per cwt	
gross milk sales	\$ 5,840.00	per cow	
economic multiplier for gross milk sales	2.29		
acres needed per cow (& replacement)	2	acres	
\$ in economy (generated from milk sales)	\$ 13,373.60	per cow	
	\$ 6,686.80	per acre	
<b>Revenue from land (Dairy) per year</b>			
gross milk sales	\$ 5,840.00	per cow	
	\$ 2,920.00	per acre	
net milk sales	\$458.44	per cow	
	\$229.22	per acre	
<b>Revenue from land - Rental for Crop Production</b>			
	Average		
Rental of tillable land	\$ 80.00	\$/acre	
<b>Economic Activity from Solar</b>			
Solar Lease for Landowner	\$850.00	\$/acre	
Acres needed to generate 1 MW	7	acres	
PILOT Revenue	\$ 4,500.00	\$/MW	
	\$642.86	\$/acre	
SUM	\$1,492.86	\$/acre	
<b>Revenue from land - Lease for Solar</b>			
	Average		
Solar Lease	\$850.00	\$/acre	
<b>Sell Land</b>			

Looking at these numbers, it is understandable why for many agricultural landowners and farmers, a solar lease is very attractive. A recent article in the Cornell SUN also highlights the potential profitability of installing solar on farmland.<sup>10</sup>

To preserve farmland, a balanced approach may be to encourage or incentivize siting of solar panels on the least productive portion of the land, so that farming activities can still occur but the agricultural landowner benefits from the influx of capital from the solar lease. Using this approach, as well as requiring solar panel installation to follow best practices to limit long-term impacts to the soil, solar development may be a significant tool to maintaining farm ownership during periods of low dairy prices. A good resource for more details is available from Cornell Cooperative Extension of Jefferson County.<sup>11</sup> The NYS Department of Agriculture and Markets has also guidance for construction mitigation on agricultural lands in relation to solar projects.<sup>12</sup>

Another financial consideration for farmers is that if land enrolled in the state agricultural assessment program is taken out of production, conversion penalties and interest may apply. For some projects, payment of those penalties has been incorporated into the lease payments from the developer to the landowner. More information about this is available in NYSEDA's Solar Guide Book.<sup>13</sup> All landowners considering a solar lease with a development company are advised to consult with an attorney. The New York Farm Bureau's Leasing Your Farmland for Wind & Solar Energy Development<sup>14</sup> is a good resource as well.

Agriculture has significant economic impacts in these four counties and beyond, as calculated in the 2017 United States Department of Agriculture National Agricultural Statistics Service Census of Agriculture<sup>15</sup> and the Office of the NYS Comptroller<sup>16</sup>.

## Common Municipal Planning Tools for Managing Solar Development

Under Town Law, Village Law, and Municipal Home Rule Law, municipalities are given the power to regulate land use, except in very specific situations (Article 10). Many types of development, including solar energy, may be reviewed. A variety of land use planning tools are available to help municipalities ensure that large scale solar development projects are well sited and constructed.

### Moratoria

An option for communities that have received inquiries from solar developers looking to build projects within their borders that have no provisions for reviewing them is to adopt a moratorium by local law. A moratorium prohibits development for a set period (typically six months) which gives the municipality time to write and adopt provisions for siting and reviewing solar projects either in their zoning laws or in 'stand-alone' solar energy laws. For more information, the NYS Department of State has a useful publication about moratoria.<sup>17</sup>

### Comprehensive Plans

Municipalities should amend their comprehensive plans to include language regarding goals for solar energy (and other alternative energy) development as well as defining ideal site locations. Plans should be used to communicate in plain language the rationale behind the standards in zoning and other land use laws. As mentioned previously, community surveys undertaken in conjunction with comprehensive planning processes should include questions designed to gauge public opinion on large-scale solar project development.



*This image depicts the location of a recently constructed 2.9 MW solar project in the town of Hounsfield<sup>18</sup>. The project was sited in an 'Industrial' zoning district adjacent to a mining operation and a manufacturing operation.*



*This image depicts a properly fenced and screened solar energy array in the town of Watertown. The array itself is surrounded by a fence to prevent unauthorized access. The fencing and the system may be further screened by any landscaping needed to avoid adverse aesthetic impacts.*

## Zoning Laws

Towns and villages (especially ones shown as vulnerable on the Potential Locations for Solar Development maps) should act to amend their zoning laws to include articles or sections on solar development. Provisions can also be adopted as 'stand-alone' local laws. Model language is very helpful and is available from several local and national sources. The Development Authority of the North Country (DANC), the Central NY Regional Planning Board (CNYRB), and NYS Energy Research & Development Authority (NYSERDA) have all developed model provisions that are geared toward New York State municipalities. The American Planning Association (APA) has also developed a model law with standards that could apply nationwide. County planning departments are available to assist communities in writing or amending zoning laws. As always, municipalities should also work with their attorneys while drafting local laws and policies.

All local laws should include appropriate definitions and the requirement that all large-scale solar energy projects undergo site plan review or special use permit review, either by planning boards or town boards. Site plan review alone may be appropriate for projects that are proposed in commercial or industrial areas. Special use permit review (authorized in NYS Town Law Section 274-B and Village Law Section 7-725-B) is more stringent in that it requires the municipality to hold a public hearing. It also gives the municipality the power to impose conditions on a project and to ultimately disapprove a project if it is found to be a bad fit for the neighborhood or general area where it is proposed.

## Project Review

### Site Plan Review

Projects that are reviewed under a site plan review or special use permit process are required to submit site plans for review by the municipality. Boards are encouraged to seek the help of professional planners at the Tug Hill Commission, the county planning departments or DANC for help with this process. Assistance from a private consultant such as an engineer, landscape architect, or attorney can be sought in some cases, with fees being

charged to the project applicant. Great care should be taken with this however, as open-ended fees have been struck down in the courts. In other words, municipalities need to use rational fee structures, based on experiences in other communities, to be judged as fair to applicants.

## SEQR

Large scale solar energy systems reviewed under local laws are also subject to the State Environmental Quality Review Act, or SEQR<sup>19</sup>. Projects that are greater than 10 acres in surface area are classified as Type I actions, meaning they require completion of a full environmental assessment form. This threshold is reduced to 2.5 acres for projects that are proposed in county agricultural districts or contiguous to certain historic sites or public parkland or open space. Under SEQR, projects are given either a negative declaration or positive declaration of environmental impact. A positive declaration requires that the applicant complete an elaborate environmental impact statement (EIS) and allows the municipality to require set amounts of funding from the applicant to hire experts for project review. Review of large offsite solar projects can require specialized expertise. There may be a need for the lead agency to seek professional assistance to direct them through the EIS Process if a positive declaration is issued.

## County Planning Board Review

New York State General Law Section 239-m, towns and villages must forward site plan review and special use permit applications to their County Planning Board prior to taking final action if the proposed property is within 500 feet from any of the following locations: a municipal boundary, a county or state park or recreation area, a county or state road, a county right-of-way of a stream or drainage channel, a boundary of county or state owned land with a public building, or a boundary of a farm operation within an agricultural district.

## Article 10

Article 10 of Public Service Law applies to energy projects that will generate 25 MW or more of electricity. The Article 10 process takes project review largely out of local communities' hands. Review is done by a siting board made of five permanent members (Department of Public Service, Department of Environmental Conservation, Department of Health, NYS Energy Research and Development Authority, and Empire State Development), and two locally appointed members. For more details about Article 10, see the Tug Hill Commission's issue paper about wind farms<sup>20</sup>, or the Article 10 Public Service Law<sup>21</sup>.

As of February 2020, there are three Article 10 wind projects in the Tug Hill region, and two Article 10 solar projects, with potential for several others. Each Article 10 project has a case filed with the Public Service Commission, where all documents are available to the public.<sup>22</sup> To get a sense of what is involved in an Article 10 solar project, see case number 17-F-0182 which refers to the application of Mohawk Solar LLC for a certificate in the towns of Canajoharie and Minden, Montgomery County, located about an hour from the southeastern edge of Tug Hill.<sup>23</sup> There are over 280 filed documents for this case.

## Ag & Markets Review

Projects that will receive a subsidy from a New York State funding agency in an agricultural district triggers a consultation from the NYS Department of Agriculture and Markets. Information about the details of the Notice of Intent process is available on the Ag & Markets website.<sup>24</sup>

## Financial Impact on Municipalities

### Taxation and PILOTs

Real Property Tax Law Section 487 created an exemption for certain alternative energy systems including solar. Under the terms of the exemption, a qualifying project would be fully exempt from general municipal and school taxes for a period of 15 years for the added value of the system. The legislation also gives the option to the taxing jurisdictions to require a project to enter into a payment in lieu of tax agreement (PILOT). Currently most PILOTs are based on the project's rated capacity or dollars per megawatt. Any PILOT entered into may be up to 15 years in duration and may not exceed what would have been due and payable if the project was normally assessed. Under this section of law, unless the negotiations are coordinated, it would be the responsibility of each taxing jurisdiction to separately negotiate the terms of the PILOT.

The legislation also allows for any taxing jurisdiction (school, county, city, town or village), by resolution, to opt out of the provisions and not grant any exemption or PILOT regardless of project scale. If a jurisdiction has opted out of the exemption, the project would be fully taxable in the absence of a PILOT from another authorized agency. As of the writing of this paper, the Tug Hill municipalities that have opted out of Real Property Tax Law §487 are the towns of Champion, Watertown, Worth, Denmark, Trenton, and West Monroe. The only village to have opted out of the taxation exemption for solar energy projects is Copenhagen. A list of those taxing jurisdictions that have opted out is available for each county on the Department of Tax and Finance website<sup>25</sup>.

County Industrial Development Agencies (IDAs) are authorized in Article 18-A of General Municipal Law to enter into PILOT agreements. Due to the number of taxing jurisdictions that have opted out of RPTL Section 487, IDAs have become the preferred route for the larger projects to seek a PILOT. Each IDA is required by law to establish a Uniform Tax Exempt Policy (UTEF) that defines what benefits they may offer. While there may be similarity between IDA's UTEFs, developers should review each agency's policy to fully understand the procedures for seeking a PILOT. Taxing jurisdictions may have also adopted their own policy for alternative energy projects. A list of UTEFs and other known policies are listed at the end of this paper.

### Decommissioning

Municipalities need to plan for equipment removal and site restoration when solar facilities can no longer serve their intended function. This is known as the decommissioning process. During the application process for an Article 10 solar project, a decommissioning agreement must be created and approved. A decommissioning agreement can also be stipulated in special use permit provisions for projects that are less than 25 MW. To ensure that projects less than 25 MW have a decommissioning plan, municipalities should include language requiring it in their zoning or stand-alone solar laws.

A decommissioning agreement should include at least the following: a plan for the decompaction of 18 to 24 inches of soil, rocks, and debris, ideally up to 4 feet; a plan for the removal of unused transmission lines; a plan for soil restoration and monitoring; a plan for regrading, reseeding, and revegetating disturbed soil; and a process for collecting decommissioning funds. A financial surety, such as a performance bond, escrow account, irrevocable line of credit can be required of developers to guarantee decommissioning funds will be available even if the ownership of the project changes over the life of the system, or if the owner goes bankrupt.

Other important considerations include safety and removal of hazardous conditions and facilities, environmental impacts, aesthetics, salvaging and recycling of materials, potential future uses for the site, and what the

expected useful life of the facility will be. Potential costs might include the removal of the solar panels, removal of array foundations, removal of collection lines and junction boxes, substation removal, reclamation of access roads, and soil restoration measures. Oftentimes, a project's salvage value will be subtracted from the total decommissioning costs to provide the total net decommissioning cost.

### Impact on Property Values

It is difficult to determine if solar energy systems influence residential or recreational property values since these developments are so new. In some instances, for example when a project is not well screened, there may be a negative impact on property values. In very rural areas and in cases where when panels are screened by vegetation, property values may not be negatively affected. As more solar farms are built, and more properties near them are sold, further study should be undertaken to determine impacts to property values.

### Final Thoughts

Solar energy development is rapidly evolving as financial incentives, technology, and best management practices change. If your community needs help, please reach out for assistance.



## Useful Websites

### American Farmland Trust

- Smart Solar Siting Principles and Examples of Land Use Laws that Support Renewable Energy While Protecting Farmland: <https://www.livingstoncounty.us/DocumentCenter/View/8560/American-Farmland-Trust-Smart-Solar-Solar-Siting-Principles-and-Examples-of-Local-Solar-Laws-that-Protect-Farmland-with-links>

Connecticut Solar Scorecard: <http://www.ctsolarscoreboard.com/>

National Renewable Energy Laboratory Solar Data Viewer: <https://maps.nrel.gov/nsrdb-viewer/?aL=chXUF-%255Bv%255D%3Dt&bL=clight&cE=0&IR=0&mC=43.5107129908437%2C-73.91876220703125&zL=8>

### NYS Energy Research and Development Authority

- Solar Electric Programs Reported by NYSERDA Beginning 2000: <https://data.ny.gov/widgets/3x8r-34rs>
- New York Solar Guidebook: <https://www.nyserdera.ny.gov/All-Programs/Programs/NY-Sun/Communities-and-Local-Governments/Solar-Guidebook-for-Local-Governments>
- New York Battery Energy Storage System Guidebook: <https://www.nyserdera.ny.gov/-/media/Files/Programs/clean-energy-siting/battery-storage-guidebook.pdf>
- NY-Sun PV Trainers Network, Zoning for Solar Energy Resource Guide: [https://training.nysun.ny.gov/images/PDFs/Zoning\\_for\\_Solar\\_Energy\\_Resource\\_Guide.pdf](https://training.nysun.ny.gov/images/PDFs/Zoning_for_Solar_Energy_Resource_Guide.pdf)  
Webinar: <https://training.ny-sun.ny.gov/zoning-for-solar-webinar>
- Solicitations for Large-Scale Renewables: <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts>

### NYS Department of Environmental Conservation

- SEQR Handbook: <https://www.dec.ny.gov/permits/6188.html>
- Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

### NYS Department of Public Service, Public Service Commission

- Siting Board Home: <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/1392EC6DD904BBC285257F4E005BE810?OpenDocument>

### The Nature Conservancy

- Accelerating Large-Scale Wind and Solar Energy in New York: <https://www.nature.org/content/dam/tnc/nature/en/documents/accelerating-large-scale-wind-and-solar-energy-in-new-york.pdf>

Scenic Hudson's Clean Energy, Green Communities: A Guide to Siting Renewable Energy in the Hudson Valley: [https://www.scenichudson.org/wp-content/uploads/legacy/renewables-siting-guide\\_web.pdf](https://www.scenichudson.org/wp-content/uploads/legacy/renewables-siting-guide_web.pdf)

## Links to Model Local Laws

NYSERDA: <https://www.nyserda.ny.gov/-/media/NYSun/files/Model-Solar-Energy-Law-Guidance-Document.pdf>

Fort Drum Compatibility:

<https://www.fortdrumcompatibility.org/media/Documents/Solar%20Law%20Model.docx>

American Planning Association: <https://www.planning.org/publications/report/9117592/>

Central New York Regional Planning & Development Board: <https://www.cnyenergychallenge.org/zoning-building-code-and-permitting>

## Links to UTEP Policies

Jefferson County: <http://www.jcida.net/web/wp-content/uploads/2008/08/Uniform-Tax-Exemption-Policy-020304-reviewedreapproved1202101.pdf>

Lewis County:

[https://naturallylewis.com/images/COUNTY\\_OF\\_LEWIS\\_IDA\\_UniformTaxExemptionPolicy\\_Final\\_Draft\\_12.1.2016.pdf](https://naturallylewis.com/images/COUNTY_OF_LEWIS_IDA_UniformTaxExemptionPolicy_Final_Draft_12.1.2016.pdf)

Lewis County Commercial Solar Policy:

[https://naturallylewis.com/images/LCIDA\\_Solar\\_Policy\\_Final\\_2.7.2019.pdf](https://naturallylewis.com/images/LCIDA_Solar_Policy_Final_2.7.2019.pdf)

Oneida County: <http://www.cmvh.org/documents/89.pdf>

Oswego County: <http://www.oswegocountyida.org/pdfs/UTEP%20Countywide.pdf>

# Appendices

## Example adopted zoning text

**A LOCAL LAW # 2 FOR THE YEAR 2019  
AMENDING THE LAND DEVELOPMENT CODE OF THE VILLAGE OF CHAUMONT, NEW YORK  
TO REGULATE SOLAR ENERGY SYSTEMS**

NOW THEREFORE, be it enacted by the Village Board of the Village of Chaumont as follows:

**Article II of the Village of Chaumont Development Code is hereby amended to include the following definitions.**

**BUILDING-INTEGRATED SOLAR ENERGY SYSTEM:** A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other façade material, semi-transparent skylight systems, roofing materials, and shading over windows.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System that is directly anchored to the ground and attached to a pole or other mounting system, not attached or affixed to an existing structure, and detached from any other structure.

**LARGE-SCALE SOLAR ENERGY SYSTEM:** A solar energy system that produces energy primarily for supplying more than 200 kW of electrical energy into a utility grid for wholesale or retail offsite sale or consumption whether generated by photovoltaics, solar thermal devices or other solar technologies, and whether ground-mounted or building-mounted. A large-scale solar energy system may also be referred to as a “solar plant”, “solar energy system”, “commercial solar energy system” or “solar power plant”.

**LOT COVERAGE, SOLAR ENERGY SYSTEM:** the area measured from the outer edges of ground mounted arrays, batteries, storage cells, and all other mechanical equipment use to create solar energy, exclusive of fencing and unpaved roadways.

**MEDIUM-SCALE SOLAR ENERGY SYSTEM:** A ground mounted solar energy system or solar thermal system and produces between 25kW and 200 kW of electricity.

**SMALL-SCALE SOLAR ENERGY SYSTEM:** A roof-mounted or building-integrated solar energy system or solar thermal system servicing primarily the building or buildings on the parcel on which it is located for onsite consumption for either residential or business use, and limited to those rooftop and building-integrated, roof-mounted, and ground-mounted solar collectors that produce 25 kW or less electricity.

**ROOF-MOUNTED SOLAR ENERGY SYSTEM:** A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity or solar thermal power generation for onsite consumption.

**SOLAR ENERGY EQUIPMENT:** Electrical energy storage devices, material, hardware, inverters, or any other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

**SOLAR ENERGY SYSTEM (SES):** A photovoltaic (PV) electrical generating system composed of a combination of both Solar panels and Solar Energy Equipment.

**SOLAR PANEL:** A Photovoltaic device capable of collecting and converting solar energy into electrical energy.

**Section 325 of the Village of Chaumont Land Development Code is hereby amended by adding the following use by site plan review in the Business Residential (BR) and Residential B (RB) Districts.**

- (f) Large-Scale Solar Energy System
- (g) Medium-Scale Solar Energy System

**Delete Section 330 – Unclassified Uses**

**Be it further enacted that Section 650 in Article VI of the Land Development Code of the Village of Chaumont shall be added as follows:**

**SECTION 650 – SOLAR ENERGY SYSTEMS**

**I. Purpose**

The Village of Chaumont has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Village, its residents, and its businesses by advancing and protecting the public health, safety, and welfare of the Village of Chaumont by:

1. Taking advantage of a safe, abundant, renewable, and non-polluting energy resource;
2. Decreasing the cost of energy to the owners of commercial and residential properties, including single-family homes;
3. Accommodating solar energy systems while balancing the potential impact on neighbors and preserving the rights of property owners to install solar energy system; and
4. Promoting the effective and efficient use of solar energy resources, set provisions for the placement, design, construction and operation of such systems to be consistent with the Village of Chaumont Comprehensive Plan to ensure that such systems will not have a significant adverse impact on the environment, aesthetic qualities, and character of the Village.

**II. Applicability**

The requirements of this section shall apply to all Solar Energy Systems excluding Building-Integrated Solar Energy Systems. All Solar Energy Systems shall be designed, erected, installed, maintained, and repaired in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Uniform Fire and Building Code, as well as may be required by the Public Service Commission regulations.

**III. Small Solar Energy Systems**

**A. Roof-Mounted Small SES**

- 1) Zoning permit. Roof-Mounted Solar Energy Systems that use the electricity onsite are permitted when attached to any lawfully permitted building or structure.
- 2) Height. Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located.
- 3) Aesthetics. Roof-Mounted Solar Energy System installations shall incorporate, when feasible, the following design requirements:
  - a. Panels facing the front yard must be mounted at the same angle as the roof’s surface with a maximum distance of eighteen inches (18”) between the roof and highest edge of the system.
  - b. Roof mounted structures shall be color-coordinated to harmonize with roof material and other dominant colors of the structure.
  - c. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond applicant property’s lot lines.

- 4) Roof-Mounted Solar Energy Systems that use the energy onsite shall be exempt from Site Plan Review under the land development code or other land use regulations, unless such Roof-Mounted system increases the overall height of the structure by more than eighteen (18) inches, in which case a site plan review by the Planning Board shall be required.

B. Ground-Mounted Small SES

- 1) Zoning permit. Ground-Mounted Solar Energy Systems that use the electricity onsite are permitted as accessory structures. A valid zoning permit shall be obtained through the Village of Chaumont Zoning Enforcement Officer, prior to installation.
- 2) Height and Setback. Ground-Mounted Solar Energy Systems shall not exceed sixteen (16) feet in height when oriented at maximum tilt. They shall be setback at least twenty (20) feet from side and rear lot lines. All solar collectors must be located in compliance with NYS Department of Environmental Conservation (DEC) and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- 3) Lot Coverage. Systems are limited to a maximum coverage of forty (40) percent.
- 4) All such Systems shall be installed in the side or rear yards only.
- 5) Glare. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines. Particular attention shall be paid to panel orientation with regard to airport runway locations, airplane flyover/approach patterns, and emergency helicopter landing areas to minimize potential glare impacts on pilots.

IV. Medium-Scale Solar Energy Systems

- A. Medium-Scale Solar Energy Systems are permitted through Site Plan Review subject to the requirements set forth in this Section. Applications for the installation of a Medium-Scale Solar Energy System shall be reviewed by the Enforcement Officer and then referred to the Planning Board for its review and recommendation to the Village Board of Trustees.

- 1) All Medium-Scale Solar Energy System shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and National Fire Protection Association (NFPA) 70 Standards.
- 2) All solar collectors must be located in compliance with NYS DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- 3) **Application requirements for Medium-Scale Solar Energy System.** The following items are required as well as those set forth in Section 415:
  - a. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
  - b. Blueprints signed by a Professional Engineer or Registered Architect showing the layout of the Solar Energy System shall be required. Plans shall show the proposed layout of the entire Solar Energy System along with a description of all components, whether on site or off site, including existing vegetation, existing or proposed access, gates, parking areas, mounting systems, inverters, panels, fencing, proposed clearing and grading of all sites involved, as well as proposed buffering and screening.

- c. The equipment specification sheets shall be documented and submitted for all proposed photovoltaic panels, significant components, mounting systems, and inverters to be installed. Photo simulations shall be included showing the proposed Medium-Scale Solar Energy System in relation to the building/site along with elevation views and dimensions, and manufacturer's specifications and photos of the proposed Medium-Scale Solar Energy System, solar collectors, and all other components must also be submitted. The Planning Board may require photo simulations to be provided from specific roads or other public areas that may be impacted.
- d. A clearing and grading plan that shall also include methods to stockpile, reduce erosion of, and reuse all top soil from the site. If one acre or more of land is to be disturbed, the applicant shall also submit a Stormwater Pollution Prevention Plan consistent with NYS DEC requirements. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of site plan approval.
- e. A Property Operation and Maintenance Plan. It shall be submitted and shall include at a minimum: schedule for maintenance of the photovoltaic panels and equipment, frequency of visits of maintenance personnel, schedule of maintenance of vegetative screening and process for replacement of dead vegetation, and schedule of mowing.
- f. Applicants shall produce evidence of a consultations with Wheeler-Sack Army Airfield and the Watertown International Airport regarding potential negative impacts of the project on their facilities and air traffic patterns. At a minimum, a letter shall be provided from each facility stating they have reviewed the project and any comments.

**4) Review Standards for Medium-Scale Solar Systems.**

- a. Height and Setback. Medium-Scale Solar Energy Systems shall not exceed sixteen (16) feet in height when oriented at maximum tilt. Solar structures and equipment shall be setback a minimum of fifty (50) feet from lot lines in the BR district and 100' in the RB district unless located adjacent to a lot containing a single or multi-family residence then a minimum setback of 200 feet is required. Solar structures that are adjacent to other parcels with the similar scale solar systems will have a 0' setback.
- b. Lot Coverage. A Medium-Scale Solar Energy System that is ground-mounted shall not exceed 50 percent of the total size of the lot or parcel on which it is installed.
- c. Roadways. In accordance with National Fire Protection Association, all access roads shall be a minimum of twenty (20) feet wide to assure adequate emergency and service access. Dead end roads that are at least 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. Maximum use of existing roads, public or private, shall be made. Minimal access points shall be allowed by the Planning Board. A turnaround shall be provided at the gate.
- a. Fences. All Medium-Scale Solar Energy Systems shall be enclosed by seven (7) foot high fencing to prevent unauthorized access. The type of fencing and placement of the gate shall be determined by the Planning Board. The fencing and the system may be further screened by any landscaping needed to avoid adverse aesthetic impacts.
- d. Screening. All Medium-Scale Solar Energy Systems shall have the least visual effect practical, as determined by the Planning Board. Based on site specific conditions, including topography, adjacent structures and roadways, reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, and providing berms or landscape screening consisting of native species to abutting residential properties, public roads, public sites, and known areas of important views or vistas, but screening should minimize the shading of solar collectors. No more than fifteen (15) percent of the total existing brush, trees, and other perimeter screening vegetation on a parcel of

property may be removed in order to accommodate a solar energy system. Appurtenant structures such as inverters, batteries, equipment shelters, storage facilities, transformers, shall also be screened as above.

- e. Vegetation. Appropriate landscaping and/or site design features, including both the maintenance of existing natural vegetation and the introduction of new plantings consisting of a naturally appearing blend of deciduous and coniferous species, shall be required to help screen the facility and accessory structures from roads, neighboring residences, and other uses. Any existing tree or group of trees which stands within or near a required planting area may be used to satisfy the screening and tree planting requirements. The protection of tree stands, rather than individual trees, is strongly encouraged.

Landscaping to attain 80% screening shall be some combination of the following, to encourage a more natural landscape:

- i. 1 canopy tree per 50'
- ii. 10 understory trees per 50'
- iii. 15 shrubs per 50'

- f. Signage. The manufacturers or installer's identification, contact information, and appropriate warning signage shall be posted at the site and clearly visible. Solar equipment shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except: (a) manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a federal agency; and (d) signs that provide a 24-hours emergency contact phone number and warn of any danger.
- g. Glare. Solar panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties, or roadways. Exterior surfaces of all collectors and related equipment shall have a non-reflective finish. Particular attention shall be paid to panel orientation with regard to airport runway locations, airplane flyover/approach patterns, and emergency helicopter landing areas to minimize potential glare impacts on pilots.
- h. Noise. Noise producing equipment such as substations and inverters shall be located to minimize noise impacts on adjacent properties. Their setback from property lines should achieve no discernable difference from existing noise levels at the property line.
- i. Safety. The owner/operator shall provide a letter from the Fire Chiefs of the Chaumont Fire Department and the Three Mile Bay Fire Department verifying their review of the application and site plan and providing any comments. All means of shutting down the photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.
- j. Stormwater Management. The Solar Energy System shall be designed with the ground cover as pervious to the maximum extent practicable so that stormwater infiltrates as sheet flow across the system. If solar panels are constructed in such a manner as to promote effective infiltration of rainfall the Solar Energy System may be considered pervious for stormwater pollution prevention purposes. Other structures such as but not limited to transformers, buildings, or paved entrance roads shall still be considered impervious. The following criteria must be met in order to establish a Solar Energy System as pervious cover:
  - a. Panels must be positioned to allow water to run off their surfaces.
  - b. Soil with adequate vegetative cover must be maintained under and around the panels.
  - c. The area around each panel must be adequate to ensure proper vegetative growth under and between the panels.

- k. The Planning Board may impose conditions on its approval of any Site plan review under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).

V. Large Scale Solar Energy Systems

B. Large-Scale Solar Energy Systems are permitted through Site Plan Review subject to the requirements set forth in this Section. Applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Enforcement Officer and then referred to the Planning Board for its review and recommendation to the Village Board of Trustees.

- 4) All Large-Scale Solar Energy System shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and National Fire Protection Association (NFPA) 70 Standards.
- 5) All solar collectors must be located in compliance with NYS DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- 6) Application requirements for Large-Scale Solar Energy System. The following items are required as well as those set forth in Section 415:
  - g. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
  - h. Blueprints signed by a Professional Engineer or Registered Architect showing the layout of the Solar Energy System shall be required. Plans shall show the proposed layout of the entire Solar Energy System along with a description of all components, whether on site or off site, including existing vegetation, existing or proposed access, gates, parking areas, mounting systems, inverters, panels, fencing, proposed clearing and grading of all sites involved, as well as proposed buffering and screening.
  - i. The equipment specification sheets shall be documented and submitted for all proposed photovoltaic panels, significant components, mounting systems, and inverters to be installed. Photo simulations shall be included showing the proposed Large-Scale Solar Energy System in relation to the building/site along with elevation views and dimensions, and manufacturer's specifications and photos of the proposed Large-Scale Solar Energy System, solar collectors, and all other components must also be submitted. The Planning Board may require photo simulations to be provided from specific roads or other public areas that may be impacted.
  - j. A clearing and grading plan that shall also include methods to stockpile, reduce erosion of, and reuse all top soil from the site. If one acre or more of land is to be disturbed, the applicant shall also submit a Stormwater Pollution Prevention Plan consistent with NYS DEC requirements. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of site plan approval.
    - a. Property Operation and Maintenance Plan. Such Plan shall include at a minimum: schedule for maintenance of the photovoltaic panels and equipment; frequency of visits of maintenance personnel; schedule of maintenance of vegetative screening and process for replacement of dead vegetation; schedule of mowing.
    - b. Glint and Glare Analysis Report shall be required to determine potential impacts to the Watertown International Airport and Wheeler-Sack Army Airfield. The Report shall take into consideration



takeoff, approach, flight patterns, training operations in the area, and emergency helicopter landing sites.

- c. Screening Plan. Such plan shall describe and show the location of proposed features that will mitigate the view from public areas, streets, roads, and residential properties.
- d. Decommissioning.
  - a. Solar Energy Systems that have been abandoned or have not produced electricity for a period of [1] year shall be removed at the Owner and/or Operators expense, the cost of which may come from any security made with the Village of Chaumont as set forth in Section 10(b) herein.
  - b. A Decommissioning Plan signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:
    - i. The cost of removing the Solar Energy System.
    - ii. The time required to decommission and remove the Solar Energy System and ancillary structures.
    - iii. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
- e. Security.
  - a. The deposit, executions, or filing with the Village Clerk of cash, bond, or other form of security reasonably acceptable to the Village attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 100 % of the cost of removal of the Large or Medium Solar Energy System and restoration of the property with an escalator of 3 % annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by the amount of any estimated salvage value of the Solar Energy System.
  - b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Village, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
  - c. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Village may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
  - d. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Village may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

#### 4) Review Standards for Large-Scale Solar Systems.

- b. Height and Setback. Large-Scale Solar Energy Systems shall not exceed sixteen (16) feet in height when oriented at maximum tilt. Solar structures and equipment shall be setback a minimum of fifty (50) feet from lot lines in the BR district and 100' in the RB district unless located adjacent to a lot containing a single or multi-family residence then a minimum setback of 200 feet is required. Solar structures that are adjacent to other parcels with the similar scale solar systems will have a 0' setback.

- c. Lot Coverage. A Large-Scale Solar Energy System that is ground-mounted shall not exceed 50 percent of the total size of the lot or parcel on which it is installed. The surface area covered by Solar Panels shall be included in total lot coverage.
- d. Fences. All Large-Scale Solar Energy Systems shall be enclosed by seven (7) foot high fencing to prevent unauthorized access. The type of fencing and placement of gate shall be determined by the Planning Board. The fencing and the system may be further screened by any landscaping needed to avoid adverse aesthetic impacts.
- e. Screening. All Large-Scale Solar Energy Systems shall have the least visual effect practical, as determined by the Planning Board. Based on site specific conditions, including topography, adjacent structures, and roadways, reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, and providing berms or landscape screening consisting of native species to abutting residential properties, public roads, public sites, and known areas of important views or vistas, but screening should minimize the shading of solar collectors. No more than fifteen (15) percent of the total existing brush, trees, and other perimeter screening vegetation on a parcel of property may be removed in order to accommodate a solar energy system. Appurtenant structures such as inverters, batteries, equipment shelters, storage facilities, transformers, shall be screened from offsite.
- f. Vegetation. All large-scale Solar Energy Systems shall be completely screened with a vegetative buffer or landscaping from all streets and adjacent residential uses. Appropriate landscaping and/or site design features, including both the maintenance of existing natural vegetation and the introduction of new plantings consisting of a naturally appearing blend of deciduous and coniferous species, shall be required to help screen the facility and accessory structures from roads, neighboring residences, and other uses. Any existing tree or group of trees which stands within or near a required planting area may be used to satisfy the screening and tree planting requirements. The protection of tree stands, rather than individual trees, is strongly encouraged.

Landscaping to attain 80% screening shall be some combination of the following, to encourage a more natural landscape:

- i. 1 canopy tree per 50'
  - ii. 10 understory trees per 50'
  - iii. 15 shrubs per 50'
- g. Signage. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. Solar equipment shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except: (a) manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a federal agency; and (d) signs that provide a 24-hours emergency contact phone number and warn of any danger.
- h. Glare. Solar panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties, or roadways. Exterior surfaces of all collectors and related equipment shall have a non-reflective finish. Particular attention shall be paid to panel orientation with regard to airport runway locations, airplane flyover/approach patterns, and emergency helicopter landing areas to minimize potential glare impacts on pilots.
- i. Noise. Noise producing equipment such as substations and inverters shall be located to minimize noise impacts on adjacent properties. Their setback from property lines should achieve no discernable difference from existing noise levels at the property line.

- j. Access Roads. In accordance with National Fire Protection Association, all access roads shall be a minimum of twenty (20) feet wide to assure adequate emergency and service access. Dead end roads that are at least 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. Maximum use of existing roads, public or private, shall be made. Minimal access points shall be allowed by the Planning Board. A turnaround shall be provided at the gate.
- k. Safety. The owner/operator shall provide a letter from the Fire Chief of the Chaumont Fire Department and the Three Mile Bay Fire Department that the Departments have reviewed the application and site plan and provided any comments. All means of shutting down the photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.
- l. The Planning Board may impose conditions on its approval of any Site plan review under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).

VI. Solar Rights

- A. Pursuant to Chapter 7-704 of New York Village Law, all parcels within the Village of Chaumont shall be permitted to enjoy access to direct sunlight.
- B. No structure shall be constructed or vegetation installed that limits direct solar access greater than 50 percent of the ground surface of adjoining lots to less than six hours (per day) on any day of the year.

BE IT FURTHER RESOLVED THAT, this local law shall supersede all prior inconsistent local laws, ordinances or regulations.

BE IT FURTHER RESOLVED THAT, this local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

LAND LEASE AND SOLAR EASEMENT

This Land Lease and Solar Easement ("Lease") is made on [redacted], 2020 (the "Effective Date") by and between [redacted] ("Lessor") and [redacted] a [redacted] limited liability company, and its successors and assigns ("Lessee").

RECITALS

- A. Lessor owns that certain real property located in [redacted] New York and legally described on the attached Exhibit A (the "Property").
B. Lessee is desirous of developing a solar energy project on the Premises (the "Project"), and Lessor desires to lease a portion of the Property (as more fully described herein, the "Premises") to Lessee for that purpose.
C. Lessor is willing to lease and grant certain easement rights in the Premises to Lessee, and Lessee is willing to lease and obtain certain easement rights in the Premises from Lessor, all as more fully described below.

KEY TERMS

Table with 2 columns: Term and Duration. Includes Development Period (5 years), Extended Term (25 years), Construction Period (2 years), and Renewal Terms (3, each) (5 years). A handwritten note '47 years' is present next to the table.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, Lessor and Lessee agree that the above recitals are true and correct in all material respects and are incorporated herein by reference, and further agree as follows:

ARTICLE I. Premises

Section 1.1 General

(a) Lease of Premises for Solar Energy Purposes. Lessor leases to Lessee, and Lessee leases from Lessor, the Premises, as identified on the site plan attached hereto as Exhibit A-1 (the "Site Plan"), for the purpose of development and use of a solar facility, including but not limited to monitoring, testing and evaluating the Premises for solar energy generation; activities related to the production of solar energy including constructing, installing, using, maintaining, operating, replacing, relocating and removing solar panels, overhead and underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with solar panel installations, including roads, and solar energy measurement equipment, fencing, and

related facilities and equipment (hereinafter "**Solar Facilities**"). Such Solar Facilities shall be installed in compliance with Article VI. Such activities may be conducted by Lessee, its employees, agents, licensees or permittees. Lessee shall have the exclusive right to use the Premises for solar energy purposes. For purposes of this Lease, "solar energy purposes" means converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

(b) Lessee shall use the Premises only for the construction, installation, operation, maintenance, replacement, and removal of Solar Facilities. Lessee shall consult with Lessor on Lessee's site development plan prior to construction on the Premises, showing Lessor the proposed locations of Solar Facilities before making its final decisions as to locations of Solar Facilities on the Premises; provided, however, that Lessee shall make all such final siting decisions in Lessee's sole discretion. Lessee has the right to relocate existing Solar Facilities upon the Premises during the term of this Lease.

(c) Lessor hereby grants to Lessee, for the Term (as defined below), easements over, under, upon and across and on the Property (1) for ingress to and egress from Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of roads and lanes thereon if existing, or otherwise by such route or routes as Lessee may construct from time to time (the "**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Property, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(d) Lessor shall retain the right to use the portion of the Property not included within the Premises.

(e) Notwithstanding any provision to the contrary, Lessee reserves the right to reduce the size of the Premises, at any time during the Term, to that amount of acreage needed for the installation of the Solar Facilities, as described herein, to be selected and further identified with an amended description and site plan, at a future date, all at Lessee's sole discretion. Upon Lessee's exercise of its right to reduce the size of the Premises, all reference to Premises in this Lease shall refer to the Premises as modified by the amended Site Plan, if any.

## **Section 1.2 Solar Easement**

(a) **Solar Easement.** Lessor hereby grants and conveys to Lessee an exclusive easement on, over and across the Property for direct sunlight to any solar panels on the Premises and an exclusive easement prohibiting any obstruction of direct sunlight (collectively, the "**Solar Easement**") throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a "**Site**") and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each

point and on and along such line to the opposite exterior boundary of the Property. The memorandum described in Section 9.12 shall reference the Solar Easement.

(b) **Lessor Improvements.** Trees, buildings and other improvements located on any contiguous, non-tillable land containing an existing home site on the Property (the “**Existing Homestead**”), as of the date of this Lease shall be allowed to remain, and Lessee may not require their removal. Lessee may require the removal of trees, buildings, and other improvements (an “**Improvement**”) located on the Property outside of the Existing Homestead. Lessor may not place or plant any Improvement on the Property after the date of this Lease which may, in Lessee’s sole judgment, impede or interfere with direct sunlight to any Solar Facilities, unless Lessor has received written approval from Lessee for any such trees, structure or improvement. Notwithstanding the foregoing, Lessor may replace any structure or improvement located in the Property as of the Effective Date (the “**Original Structure or Improvement**”) with a new structure or improvement in the exact same location that does not exceed the size and dimensions in any direction as the Original Structure or Improvement (the “**New Structure or Improvement**”), provided that such New Structure or Improvement does not impede or interfere with direct sunlight to any Solar Facilities in any way that is more detrimental to the Property than the Original Structure or Improvement. If at any time during the duration of this Lease, Lessor would like a variance of the preceding requirements, Lessor may submit a letter of request to Lessee for approval, and approval or denial of such request shall be in Lessee’s sole discretion.

## ARTICLE II. Lease Term

### Section 2.1 Term

#### Development Period; Construction Period; Extended Term; Renewal Terms

(a) Lessee’s rights under this Lease continue throughout the term of this Lease (the “**Term**”). Initially, the Term shall be for the Development Period. The “**Development Period**” commences on the Effective Date and expires on the fifth (5th) anniversary of the Effective Date.

(b) The Lease shall automatically be extended for the Construction Period, as defined below, upon the earlier of (i) the date when construction of Solar Facilities commences in connection with the Project (“**Construction Date**”); or (ii) the date when Lessor receives written notice from Lessee of Lessee’s election to extend the term of the Lease for the Construction Period (“**Construction Period Notice Date**”), provided that the Construction Period commences prior to the expiration of the Development Period. The Construction Period of the Lease (“**Construction Period**”) is two (2) years from the earlier of either of the Construction Date or the Construction Period Notice Date unless sooner terminated in accordance with the terms of the Lease. Lessee may record a notice of the Construction Date or the Construction Period Notice Date against the Premises to give notice of such date, and upon the request of Lessor shall record such notice, but a failure to record such notice shall not affect the validity of this Lease.

(c) The Term shall automatically be extended for the Extended Term (as defined below) upon the date when the Project begins commercial operation, which shall be defined as the date of the first commercial deliveries of electrical energy to the local utility grid (“**Commercial Operation Date**”) ; or (ii) the date when Lessor receives written notice from Lessee of Lessee’s election to extend the term of the Lease for the Extended Term (“**Extended Term Notice Date**”),

provided that the commencement of the Extended Term occurs prior to the expiration of the Construction Period. The Extended Term of this Lease (“**Extended Term**”) is twenty five (25) years from the Commercial Operation Date or the Extended Term Notice Date, unless terminated earlier in accordance with the terms of this Lease. Lessee may record a notice of the Commercial Operation Date or the Extended Term Notice Date against Lessor’s Property to give notice of the Construction Date, and upon the request of Lessor shall record such notice, but a failure to record such notice shall not affect the validity of this Lease.

(d) Lessee shall have the right, at its option, to further extend the Term for three (3) additional periods of five (5) years (each, a “**Renewal Term**”). To exercise an option to extend the term of this Lease for a Renewal Term, Lessee must deliver both a written extension notice to Lessor and an extension payment in the amount of Ten Dollars (\$10.00) per each acre within the Premises (prorated for any partial acre) prior to the expiration of the Extended Term or the applicable Renewal Term, as the case may be. Lessee must deliver the written notice and the extension payment in the amount and in the manner set forth above to exercise effectively its options to extend the term of this Lease for any Renewal Term. This Lease shall continue during each Renewal Term on the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Lease beyond the last Renewal Term provided for in this Section 2.1(d) absent further mutual agreement. If Lessee fails to effectively exercise an option to renew the term hereof, this Lease shall terminate and Lessee shall have no further options or rights to renew or extend the Term hereof. Notwithstanding anything to the contrary contained herein, in no event shall the Term of this Lease, including the Development Period, Construction Period, Extended Term and any applicable Renewal Term exceed forty-seven (47) years in the aggregate.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Lease:

- (a) The expiration of this Lease as set forth in Section 2.1; or
- (b) The written agreement of both parties to terminate this Lease; or
- (c) An uncured material breach of this Lease by either party and the election of the non-defaulting party to terminate the Lease pursuant to Article VIII; or
- (d) At the option of Lessee, thirty (30) days after Lessee’s execution and delivery of written notice of termination to Lessor (as to the entire Property, or any part thereof at Lessee’s option), in Lessee’s sole and absolute discretion; or
- (e) A condemnation of all or a portion of the Premises and the election of the Lessee to terminate the Lease pursuant to Article VII; or
- (f) Pursuant to applicable law.

## **Section 2.3 Part of a Larger Project**

The parties acknowledge that the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Lease including, but not limited to, the easement described in Section 1.2, and Lessee's use of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of a larger solar energy project with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of the Project.

### **ARTICLE III. Payments and Taxes**

#### **Section 3.1 Development Period Rent**

Within sixty (60) days after the Effective Date, and on each anniversary of the Effective Date during the Development Period, Lessee shall pay Lessor the sum of Four Thousand Eight Hundred Dollars and No/100 (\$4,800.00) (the "**Development Rental Payment**") per year, as consideration for the Development Period. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Development Period upon thirty (30) days written notice to Lessor.

#### **Section 3.2 Annual Rent During Construction Period, Extended Term and Renewal Term**

Within forty-five (45) days after the first day of the Construction Period, and by February 15<sup>th</sup> of each subsequent year of the Extended Term and any Renewal Term, Lessee shall pay Lessor the sum of Seven Hundred Fifty Dollars and No/100 (\$750.00) multiplied by the acreage of the Premises (prorated for any partial acres within the Premises) as rent for the Premises (the "**Annual Rent**"). The Annual Rent shall be increased on an annual basis for each year in the Extended Term and Renewal Term, if any, by one percent (1.0%), compounded annually. The Annual Rent payment for the first and last years of the Extended Term, if less than a full calendar year, shall be prorated based on the number of days remaining in such calendar year.

#### **Section 3.3 Taxes, Assessments and Utilities**

(a) Lessor shall pay, when due, all real property taxes and assessments levied against the Premises and all personal property taxes and assessments levied against any property and improvements owned by Lessor and located on the Premises. Subject to Section 3.3 (c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Rent otherwise due to Lessor from Lessee.

(b) Lessee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of the installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Lessee shall pay or reimburse Lessor an amount equal to the increase no later than ten (10) days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Lessor provides Lessee with copies of the applicable current and past



statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes.

(c) Either party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Lease as long as such contest is pursued in good faith and with due diligence and the party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

(d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Lessee on the Premises.

### **Section 3.4 Severance of Lease Payments**

Lessor acknowledges and agrees that it shall not be permitted to sever the payments under the Lease, and shall not be permitted to assign payments due to Lessor under the Lease to a third party without the consent of Lessee. Upon the transfer of an interest in the Premises to an heir, legal representative, successor or assign, the payments hereunder (or the proportionate share thereof) shall inure to the benefit of such party.

### **Section 3.5 Crop Damage and Compaction**

(a) The parties anticipate and acknowledge that Lessor or Lessor's renters may suffer damage to crops, tile, fences, and other property or improvements on the Premises during Lessee's construction, installation and maintenance of Solar Facilities on the Premises. Lessee shall reimburse Lessor for any such damages within thirty (30) days after determining the extent of damage. Notwithstanding any provision to the contrary, Lessor acknowledges and agrees that it shall not be allowed to rent, lease, or otherwise allow crop tenants to grow crops on the Premises during a calendar year if, by December 1st prior to such calendar year when crop tenants are disallowed, Lessee provides Lessor with written notice stating that Lessee intends to construct the Project in the following year (the "Development Notice").

(b) Crop damages will be calculated by the following formula:  $\text{Price} \times \text{Yield} \times \text{Percentage of Damage} \times \text{Acreage} = \text{Crop Damages}$ . Prices for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop. Yield will be the average of the next previous two (2) years' yields of the same crop as the damaged crop, according to Lessor's records, as received from and certified by Lessor, for the smallest parcel of land that includes the damaged area. For purposes of the foregoing, "Lessor's records" shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines. If Lessor does not have yield records available, the Lessor will use FSA records for the county in which the Premises is located (or other commonly used yield information available for the area) for the smallest parcel of land which includes the damaged area. The parties hereto shall try in good faith to agree to the extent of damage and acreage affected. If the parties hereto cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent.

(c) After such payment for any Crop Damages, Lessee shall not be responsible to pay

Lessor or Lessor's renters any loss of income, rent, business opportunities, profits or other losses arising out of Lessor's inability to grow crops or otherwise use the portion of the Premises occupied by Solar Facilities.

(d) Lessee will take all commercially reasonable steps to avoid damaging any tile lines on the Premises that may affect the operation of tile lines draining from adjacent property to a drainage outlet on the premises or through the premises. Within Thirty (30) days of determining any damage to tile lines, Lessee agrees to repair and/or replace underground tile lines on the Premises damaged during the construction or operation of the Project. Lessee shall retain a qualified local third-party tile repair contractor to undertake all tile repair work. Upon reasonable notice, Lessor shall be given the opportunity to inspect the repair, replacement or rerouting of tile prior to being covered with topsoil.

#### **ARTICLE IV. Lessee's Covenants**

Lessee covenants, represents and warrants to Lessor as follows:

##### **Section 4.1 Mechanic's Liens**

Lessee shall keep the Premises free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed for or furnished to Lessee or, at the request of Lessee, any Solar Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien if Lessee provides Lessor with a bond or other reasonable security to protect Lessor's interest in the Premises against any such lien, in which case Lessee shall not be required to remove the lien during the period of the contested proceeding, but will be required to remove the lien prior to Lessor's interest in the Premises being forfeited. Lessee agrees to provide for ultimate removal before it affects Lessor's rights on the Premises.

##### **Section 4.2 Permits and Laws**

Lessee and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority applicable with respect to Lessee's activities pursuant to this Lease and shall obtain all permits, licenses and orders required to conduct any and all such activities (collectively, "**Legal Requirements**"). Failure to comply with any such Legal Requirements shall be a default as set forth in Section 8.1. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee, the validity or applicability to the Premises, Solar Facilities, or any Other Approved Facilities of any Legal Requirement now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Lessee shall not contest any Legal Requirements in the name of Lessor unless Lessor has specifically agreed to join the action. If Lessor agrees to join the action, Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expense in advance.

##### **Section 4.3 Lessee's Improvements**

After the construction of the Solar Facilities, Lessee shall remove any construction debris and shall restore the portions of the Premises not occupied by the Solar Facilities to substantially the same condition that such portions of the Premises were in prior to the construction of the Solar Facilities. Lessee will install and maintain a fence surrounding the Solar Facilities (with the exception of any access roads, overhead and underground electrical transmission and communications lines, telecommunications equipment and relating improvements). All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Lease shall be and remain the sole property of Lessee and, except as expressly provided in this Section 4.3, Lessor shall have no ownership or other interest in any Solar Facilities on the Premises.

All Solar Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Lease may be moved, removed, replaced, repaired or refurbished by Lessee at any time. Lessee shall maintain Lessee's Solar Facilities in good condition and repair, ordinary wear and tear excepted. If Lessee fails to remove any of the Solar Facilities within twelve months from the date the Term expires or the Lease terminates, such Solar Facilities shall be considered abandoned by Lessee and Lessor may either: (i) remove the remaining Solar Facilities from the Premises and dispose of them in its sole discretion without notice or liability to Lessee; or (ii) consider the Solar Facilities abandoned, at which time the remaining Solar Facilities shall become the property of Lessor. If Lessee fails to remove any of the Solar Facilities as required, and Lessor elects to remove such Solar Facilities at Lessor's expense, Lessee shall reimburse Lessor for all reasonable out-of-pocket costs of removing those Solar Facilities, less any salvage value received by Lessor, within thirty days after receipt of an invoice from Lessor accompanied by reasonable supporting documentation.

On the ten (10) year anniversary of the Commercial Operation Date and for the remainder of the Term, Lessee shall provide either a surety bond or escrow funds (the "**Extended Term Security**") to secure Lessee's obligations under this Section 4.3, which Security shall be in the name of Lessor and/or the applicable governmental authority. Lessee shall provide Lessor written notice upon the establishment of such Extended Term Security, which notice shall identify the location and amount of the Extended Term Security. The amount of the Extended Term Security shall be in an amount equal to the greater of: (i) \$500.00 per megawatt ("**MW**"), which sum shall increase by \$500.00 per MW on each anniversary of the Commercial Operation Date thereafter (for example, the total minimum amount will be \$1,000.00 per MW on the 11<sup>th</sup> Anniversary and \$1,500.00 per MW on the 12<sup>th</sup> Anniversary); or (ii) the amount necessary to satisfy the requirements set forth by applicable governmental rules or the permits for the Solar Facilities. If Lessee does not remove the Solar Facilities within twelve (12) months after the expiration of the Term or earlier termination of the Lease, Lessor may draw from the Extended Term Security an amount sufficient to reimburse Lessor that amount required to reimburse Lessor for the difference between Lessor's out-of-pocket costs of removing the Solar Facilities, less the salvage value of the Solar Facilities.

#### **Section 4.4 Insurance**

Lessee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Lessee's activities on the Premises at all times during the Term, including specifically

comprehensive general liability insurance with a minimum combined occurrence and annual limitation of one million dollars, for the period prior to commencement of construction of any Solar Facilities on the Premises other than meteorological measuring devices, and three million dollars, for the period commencing on the Construction Date. Such insurance coverage for the Solar Facilities and Premises may be provided as part of a blanket policy that covers other solar facilities or properties as well. Any such policies shall name Lessor as an additional insured and shall provide for 30 days prior written notice to Lessor of any cancellation or material change. Lessee shall provide Lessor with copies of certificates of insurance evidencing this coverage upon request by Lessor. Policies shall provide coverage for any costs of defense or related fees incurred by Lessor. Lessee shall also reimburse Lessor for any increase in Lessor's insurance premiums relating to the Premises, to the extent that such increase is directly caused by the installation of the Solar Facilities or Lessee's operations on the Premises.

#### **Section 4.7 Hold Harmless.**

Each party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other party and the other party's officers, directors, employees, representatives, mortgagees and agents (collectively the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Property (including, as to Lessor, any operations or activities conducted on the Property by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. This indemnification shall survive the termination of this Lease.

#### **Section 4.8 Essential Services.**

Except for any competing developers of solar energy projects, Lessee shall accommodate the reasonable development of essential services on the Property, including any electric transmission and distribution lines and associated facilities, telecommunications facilities, and rural water systems, provided that such services do not interfere with the Solar Facilities.

### **ARTICLE V. Lessor Covenants**

Lessor covenants, represents and warrants to Lessee as follows:

#### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Lease, Lessor is the sole owner of the Property in fee simple and each person or entity signing this Lease on behalf of Lessor has the full and unrestricted authority to execute and deliver this Lease and to grant the leaseholds, easements and other rights granted to Lessee herein. There are no encumbrances or liens against the Property except: (a) those currently of record in the county where the Property are located, or (b) those which are reflected in a title report for the Property provided to Lessee prior to execution of the

Lease. To the extent that any such encumbrances or other title defects could interfere with the development, construction or operation of the Project or otherwise interfere with the rights of Lessee under this Lease, Lessor shall, at Lessor's expense, promptly take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm or other tenancies affecting the Property except those disclosed by Lessor to Lessee in writing prior to or at the time of execution hereof. Any farm or other tenancies entered into after the date hereof shall be subject and subordinate to this Lease, and immediately terminable upon written notice to the tenant. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

### **Section 5.2 Cooperation to Eliminate Lien Interference**

Lessor shall cooperate with Lessee to obtain non-disturbance and subordination agreements, or such other necessary agreements, from any person or entity with a lien, encumbrance, mortgage, lease (including, but not limited to a crop lease) or other exception to Lessor's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights granted to Lessee under this Lease. Lessor shall also cooperate with Lessee to obtain and maintain any permits or approvals needed for the Solar Facilities at no cost or expense to Lessor. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Property are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Solar Facilities to be installed or constructed on the Property or on adjacent properties that are a part of the Project. Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments, non-disturbance and subordination agreements, or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders.

### **Section 5.3 Quiet Enjoyment**

As long as Lessee is not in default of this Lease beyond any applicable cure period (or if no cure period is expressly set forth, a reasonable time), Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Lease without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall be only as permitted under this Lease and shall not interfere with any of Lessee's rights or activities pursuant to this Lease, and Lessor shall not interfere or allow interference with any of Lessee's rights or activities pursuant to this Lease, and Lessor shall not interfere or allow interference with the direct sunlight over the Premises or otherwise engage in activities or allow any activities which might impede or decrease the output or efficiency of the Solar Facilities.

### **Section 5.4 Exclusivity**

Lessee shall have the exclusive right to use the Premises for commercial solar energy purposes. For purposes of this Lease, "commercial solar energy purposes" means converting solar

energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

### **Section 5.5 Operation of the Solar Facilities**

Lessor acknowledges and understands that the Solar Facilities to be located on the Premises may impact the view on the Property, and will cause or emit electromagnetic and frequency interference. Lessor covenants and agrees that the Lessor shall not assert that the Solar Facilities constitute a nuisance.

### **Section 5.6 Maintenance of the Premises**

Lessor will maintain the Premises to the extent not occupied by Solar Facilities. Lessee shall be responsible for maintaining the Premises which are occupied by the Solar Facilities as set forth in the Site Plan. Lessee will maintain any roads or trails constructed by Lessee, and Lessor will maintain all other roads or trails on the Premises.

### **Section 5.7 Hazardous Materials**

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance", "hazardous material", or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

The Lessor hereby determines that, when the Lessee takes an action that is contemplated by this Lease, including the acquisition of a leasehold and easement interests contemplated herein and the installation of the Solar Facilities, such actions will not associate the Lessee with any existing release or threatened release of existing contamination on the Premises or Easement Area as of the Effective Date, so long as the Lessee takes such actions in accordance with the terms and conditions of this Lease.

## **ARTICLE VI. Assignment; Encumbrance of Lease**

### **Section 6.1 Right to Encumber**

(a) **Lessee Right to Mortgage Leasehold Interest.** Lessee may at any time mortgage all or any part of its interest in the Lease and rights under this Lease and/or enter into a collateral assignment of all or any part of its interest in the Lease or rights under this Lease to any entity ("**Lender**"). No Lender shall have any obligations under this Lease until such time as it exercises its rights to acquire Lessee's interests subject to the lien of Lender's mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) **Notice.** Lessee shall notify Lessor of the identity and notice address for any Lender. Lessor and Lessee agree that, once all or any part of Lessee's interests in the Lease are mortgaged or assigned to a Lender, they will not modify or terminate this Lease without the prior written consent of the Lender.

(c) **Lender Right to Cure Lessee Default.** Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Lease, and any such payment, act or thing performed by Lender shall be effective to prevent an Event of Default by Lessee and any forfeiture of any of Lessee's rights under this Lease as if done by Lessee itself.

(d) **Notice from Lessor to Lender in Case of Lessee Default.** During the time all or any part of Lessee's interests in this Lease are mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to give Lender notice of the default. If Lessor becomes entitled to terminate this Lease due to an uncured default by Lessee, Lessor will not terminate this Lease unless it has first given written notice of the uncured default and of its intent to terminate this Lease to the Lender and has given the Lender at least thirty (30) days from receipt of such notice to cure the default to prevent termination of this Lease. If within such thirty (30) day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Lease in order to cure the default, Lessor shall not terminate this Lease and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(e) **Recognition of Lender as Successor.** The acquisition of all or any part of Lessee's interests in the Lease by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute an Event of Default or default of this Lease by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Lease upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Lease prospectively.

(f) **New Lease.** If this Lease is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor may agree, upon request by any Lender within sixty (60) days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Lease, (ii) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Lease (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender, shall (i) pay Lessor

any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Lease but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Lease to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

## **Section 6.2 Assignment of Lessee's Interest**

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following with respect to all or any portion of the Premises for solar energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Lease, or any right or interest in this Lease, or any or all right or interest of Lessee in the Premises or in any or all of the Solar Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the Term of this Lease; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Lease by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its interests under the Lease to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

## **Section 6.3 Continuing Nature of Obligations**

(a) **Benefits are "In Gross".** The easements and related rights granted by Lessor in this Lease to Lessee are easements "in gross", which means, among other things, that they are interests personal to and for the benefit of Lessee, and its successors and assigns, as owner of the rights created by the easements granted herein. Such easements and other rights granted Lessee by Lessor in this Lease are independent of any lands or estates or interest in lands, there is no other real property benefiting from the easements and related rights and, as between the Premises and other tracts of property on which Lessee may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) **Burdens Run With and Against the Land.** The burdens of the easements and related rights granted to Lessee in this Lease shall run with and against the Property and shall be a charge and burden on the Property and shall be binding upon and against Lessor and its successors, assigns, permittees, licensees, lessees, employees and agents. The Lease and the easements and related rights granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and Project lessees.

## **ARTICLE VII. Condemnation**



### **Section 7.1 Effect of Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Solar Facilities on the Premises, at Lessee's option, the parties shall either amend this Lease to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Lease to Lessee, together with any corresponding payments, or this Lease shall terminate in which event neither party shall have any further obligations.

### **Section 7.2 Condemnation Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Lease. Lessee shall have the right to participate in any condemnation proceedings to this extent. No termination of this Lease under Section 7.1 shall affect Lessee's right to receive any award to which Lessee is entitled under this Section 7.2.

## **ARTICLE VIII. Default/Termination**

### **Section 8.1 Events of Default**

Each of the following shall constitute a "**Event of Default**" that shall permit the non-defaulting party to terminate this Lease or pursue other remedies available at law or equity, subject to the terms and conditions of Article VI.

- (i) any failure by Lessee to pay any undisputed amounts due under Article III if the failure to pay continues for thirty (30) days after written notice from Lessor;
- (ii) any other breach of this Lease by either party which continues for thirty (30) days after written notice of default from the nondefaulting party or, if the cure will take longer than thirty (30) days, the length of time necessary to effect cure as long as the defaulting party is making diligent efforts to cure during that time, but not more than ninety (90) days.

### **Section 8.2 Surrender**

Upon the termination or expiration of this Lease, Lessee shall peaceably surrender the Premises to Lessor and remove all Solar Facilities from the Premises at Lessee's expense within twelve (12) months after the date the Lease expires or is terminated as required pursuant to Section 4.3 of this Lease. Lessee shall pay Annual Rent to Lessor for the period until the Solar Facilities are removed from the Premises, which obligation shall survive the expiration or earlier termination hereof.

### **Section 8.3 Damages**

Lessor acknowledges and agrees that should Lessor breach any of its obligations hereunder or otherwise fail to permit Lessee to exercise any of the rights and privileges granted herein, damages would be difficult to calculate and money damages would not be sufficient to compensate Lessee for such breach, and therefore, Lessor agrees that Lessee shall have the right to seek specific enforcement of this Lease. In that event, Lessor agrees that Lessee has no adequate remedy at law, and that an order of specific performance may be granted in favor of Lessee.

**ARTICLE IX. Miscellaneous**

**Section 9.1 Notice**

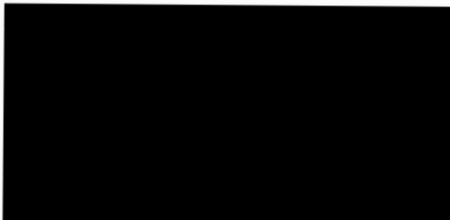
Notices, consents or other documents required or permitted by this Lease must be given by personal delivery, reputable overnight courier or certified U.S. mail postage prepaid and shall be sent to the respective parties as follows (or at such other address as either party may designate upon written notice to the other party in the manner provided in this paragraph) and shall be deemed delivered upon actual delivery or refusal, if personally delivered, upon the date of actual delivery or refusal shown on the courier's delivery receipt if sent by overnight courier and on the fourth business day after deposit in the U.S. mail if sent by certified mail:

To Lessor:



P: \_\_\_\_\_

To Lessee:



With a copy to:



**Section 9.2 Relationship of the Parties; No Third Party Beneficiaries**

The duties, obligations and liabilities of each of the parties are intended to be several and not joint or collective. This Lease shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other party. Except for the rights of Lenders set forth above, no provision of this Lease is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such

person a third party beneficiary under this Lease, or of any one or more of the terms of this Lease, or otherwise give rise to any cause of action in any person not a party to this Lease.

### **Section 9.3 Entire Agreement**

It is mutually understood and agreed that this Lease constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Lease. This Lease may not be amended except in a writing executed by both parties.

### **Section 9.4 Legal Matters.**

(a) This Lease shall be interpreted, construed and enforced in accordance with and governed by the internal laws of the State of New York without reference to the principles of conflicts of laws. Each party hereby irrevocably consents to the exclusive jurisdiction of the courts of the County of ██████ and County of ██████ and State of New York and of the federal courts located in the Northern District of New York for all purposes in connection with any action, suit or proceeding which arises out of or relates to this Lease. To the fullest extent it may effectively do so under applicable law, each party hereby irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection which it may now or hereafter have to the laying of the venue of any such action, suit or proceeding brought in any such court and any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) Notwithstanding anything to the contrary in this Lease, neither party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Lease.

(c) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS LEASE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS LEASE WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS LEASE.

### **Section 9.5 Cooperation**

Each of the parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective parties. If, at any time during the Term, Lessee deems it to be necessary or desirable to meet legal or regulatory requirements, Lessee may request that Lessor re-execute a new lease substantially in the form of this Lease with a term equal to the Term remaining as of the date of execution of the new lease, and Lessor shall execute and enter into the new lease with Lessee or its designee. In the event of inaccuracies or insufficiencies in the legal description of the Property, this Lease shall be amended to correct the inaccuracies or insufficiencies. Furthermore, Lessor agrees to negotiate in good faith to grant an easement to a utility over the Premises if needed in connection with the transmission of electricity generated by the Project.

#### **Section 9.6 Waiver**

Neither party shall be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the party against whom the waiver would operate. Any waiver at any time by either party of its rights with respect to any rights arising in connection with this Lease shall not be deemed a waiver with respect to any subsequent or other matter. In the event that Lessee makes any overpayments to Lessor hereunder, Lessee shall offset the amount of such overpayments to Lessor against future payments due to Lessor from Lessee hereunder.

#### **Section 9.7 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Lease, for any failure to perform an obligation of this Lease to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided. Unanticipated Project costs do not constitute a Force Majeure event.

#### **Section 9.8 Confidentiality**

The parties acknowledge that prior to the execution of this Lease, neither party may require the other party to maintain the confidentiality of any negotiations or the terms of the Agreement. After the Effective Date, however, both parties shall maintain in confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Agreement. Neither party will use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of the other party. Notwithstanding the foregoing, each party may disclose such information to such party's lenders, attorneys, accountants and other advisors; any prospective purchaser or lessee of such party's interests in Premises; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided the party making such disclosure advises the party receiving the information of the confidentiality of the information. The provisions of this Section 10.8 shall survive the termination or expiration of this Lease.

#### **Section 9.9 Tax Credits**

If under Legal Requirements the holder of a leasehold interest in the nature of that held by Lessee under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal governmental authority, then, at Lessee and Lessor's option, Lessor and Lessee may amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Premises to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

#### **Section 9.10 Severability**

Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

#### **Section 9.11 Counterparts**

This Lease may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

#### **Section 9.12 Memorandum of Lease**

Lessor and Lessee shall execute in recordable form and Lessee shall have the right to record a memorandum of this Lease in a form provided by Lessee. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Lease, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

#### **Section 9.13 Relationship of Parties**

The duties, obligations and liabilities of each of the parties are intended to be several and not joint or collective. This Lease shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other party.

#### **Section 9.14 Multiple Owners**

Notwithstanding anything to the contrary in this Lease or elsewhere, any obligation under this Lease for Lessee to pay Lessor any amount will be completely and unconditionally satisfied by payment of such amount by Lessee to the party named for Lessor in Section 9.1 at the address for such party given in Section 9.1, or such other single address designated by not less than thirty (30)

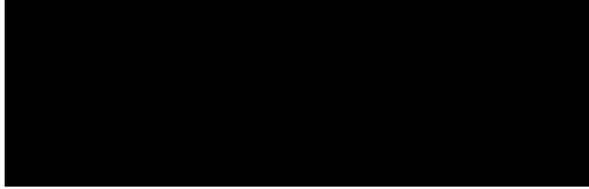
days' prior written notice to Lessee signed by all parties comprising Lessor. At Lessee's election such payment may be by joint check or checks payable to the Lessor parties known to Lessee. The parties comprising Lessor shall be solely responsible to notify Lessee in writing of any change in ownership of the Property or any portion thereof. Each of the parties comprising Lessor hereby irrevocably directs and authorizes Lessee to make all payments payable to Lessor under this Lease and to provide all notices to Lessor under this Lease directly to the party named in Section 9.1 as agent for all parties comprising Lessor, or to such other single person that all parties comprising Lessor shall direct by written notice to Lessee. The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute they might have between themselves under this Lease or any other agreement regarding any amount paid or payable to Lessor under this Lease or the performance of any obligation owed to Lessor under this Lease and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Lease in any way; provided, this will not limit the rights of Lessor under this Lease to enforce the obligations of Lessee under this Lease and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing.

**IN WITNESS WHEREOF**, the undersigned have caused this instrument to be executed as of the Effective Date.

**The remainder of this page is intentionally blank.**

**LESSEE SIGNATURE PAGE**

**LESSEE**



the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

LESSOR SIGNATURE PAGE



By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2020 before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/she reside(s) in \_\_\_\_\_ (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires:  
\_\_\_\_\_



STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2020 before me personally came  
\_\_\_\_\_ to me known, who, being by me duly sworn, did  
depose and say that he/she reside(s) in \_\_\_\_\_ (if the place of  
residence is in a city, include the street and street number, if any, thereof); that he/she is the  
\_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she  
signed his/her name thereto by authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires:  
\_\_\_\_\_

**DECOMMISSIONING BOND**

Bond No.: 9324760

KNOW ALL MEN BY THESE PRESENTS, THAT WE OYA Blanchard Road LLC (Hereinafter called Principal), as Principal and Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland (hereinafter called "Surety") as Surety, are held and firmly bound unto Town of Orleans (Hereinafter called "Obligee"), as Obligee, in the penal sum of Two Hundred Forty Seven Thousand Two Hundred Fifty and 00/100 (\$247,250.00) good and lawful money of the United States of America, to be paid to the Obligee, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has been granted approval by the Town of Orleans for a Special Use Permit for Blanchard Road Community Solar project a 5.0 MW ground mount tracker based solar project in the Town of Orleans, NY, and

WHEREAS, as a condition of said approval, the Principal is required to file security to cover the cost of the removal of solar equipment, the management of excess materials and waste, and the restoration of Project Location to allow for the future use of the land associated with the Blanchard Road Community Solar Project and pursuant to NY Town Law and the Town of Orleans Zoning Ordinance Article 7.


NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall comply with the conditions of the Bond as referenced above, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

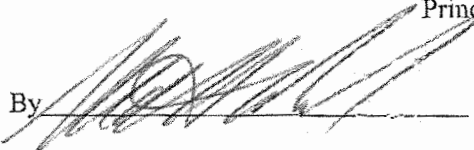
1. The term of this Bond is for 20 year(s) beginning on July 19, 2019, unless released by the Obligee prior thereto.
2. The liability of the Surety shall not be discharged by any payment or succession of payments under this Bond, unless and until such payment shall amount in the aggregate to the penal sum of the Bond, but in no event exceed the penal sum of the Bond regardless of the number of extensions or years it may be in effect.
3. That in the case of default of the Principal, the Obligee will give written notice to the Surety within thirty (30) days thereafter.
4. No right of action shall accrue under this Bond to or for the use or benefit of anyone other than the named Obligee or its successors or assigns. No assignment by the Principal shall be effective without the written consent of the Surety.
5. During the term of this Bond, the Surety shall notify both the Obligee and the Principal by certified mail 120 days before any cancellation of this Bond. If the Principal does not extend the effective date of this Bond or establish alternate financial assurance within 90 days after receipt of a cancellation notice by the Surety, the Obligee may draw on this Bond.
6. All suits, actions on this Bond must be brought within sixty (60) days of the termination of the Permit or Bond, whichever shall occur first.
7. If any conflict or inconsistency exists between the Surety's obligations as described in the Bond and as described in the underlying Permit, then the terms of the Bond shall prevail.
8. The Surety's liability under this Bond shall not extend in any manner nor will the Surety be responsible to pay any sums due related to hazardous waste clean-up, wetlands mitigation, remediation actions or removal or responsibility for any of these pollution risks whatsoever, unless such matters are a direct result of Principal's actions and required as a result of the conditions set forth in the Permit or for tort liability.

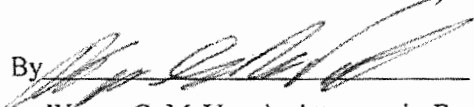
9. No modification of the Permit guaranteed by this Bond shall be binding on the Surety or covered by this Bond without the written consent of the Surety.

IN WITNESS WHEREOF, said Principal and Surety have caused these presents to be executed in their names and by their seals to be hereunder affixed on this 9<sup>th</sup> day of July, 2019.

ATTEST 

ATTEST Sara Owens  
Sara Owens

OYA Blanchard Road LLC  
Principal  
By 

Fidelity and Deposit Company of Maryland  
Surety  
By   
Wayne G. McVaugh, Attorney-in-Fact

The above terms and conditions of this Bond have been reviewed and accepted by \_\_\_\_\_, the Obligee.

**Acknowledged and Accepted:**  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Wayne G. MCVAUGH, Elizabeth MARRERO, Patricia A. RAMBO, Sara OWENS, Kimberly G. SHERROD, Joanne C. WAGNER, Vicki JOHNSTON, Cathy H. HO, George GIONIS, Lori SHELTON, Jaquanda MARTIN and Kaitlyn MALKOWSKI** all of Philadelphia, Pennsylvania, EACH, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of May, A.D. 2019.



**ATTEST:  
ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By: *Robert D. Murray*  
Vice President

By: *Dawn E. Brown*  
Secretary

State of Maryland  
County of Baltimore

On this 15th day of May, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2019

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 9th day of July, 2013.



*Brian M. Hodges*

Brian M. Hodges, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056  
[www.reportsfclaims@zurichna.com](mailto:www.reportsfclaims@zurichna.com)  
800-626-4577

## Endnotes

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<sup>1</sup> The full text of the act can be found at <https://www.nysenate.gov/legislation/bills/2019/s6599>.

<sup>2</sup> The full survey can be found at <https://www.tughill.org/about/survey-2019/>.

<sup>3</sup> <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Solar-for-Your-Home> and <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Solar-for-Your-Business>.

<sup>4</sup> [https://www.nny360.com/communitynews/business/construction-for-adams-leray-solar-arrays-slated-for-spring/article\\_c623d44d-2352-55d5-92be-3c24d8e6fcbb.html](https://www.nny360.com/communitynews/business/construction-for-adams-leray-solar-arrays-slated-for-spring/article_c623d44d-2352-55d5-92be-3c24d8e6fcbb.html)

<sup>5</sup> <https://www.boralex.com/our-projects-and-sites/>

<sup>6</sup> <https://www.solarpowerworldonline.com/2015/08/what-is-the-best-foundation-for-a-ground-mount-solar-array/>

<sup>7</sup> <https://us.ournationalgrid.com/news-article/national-grid-launches-first-of-its-kind-battery-storage-system/>

<sup>8</sup> <https://www.nyserda.ny.gov/-/media/Files/Programs/clean-energy-siting/battery-storage-guidebook.pdf>

<sup>9</sup> <https://www.tughill.org/agriculture-solar-calculator/>

<sup>10</sup> <https://cornellsun.com/2020/02/10/the-new-cash-cow-how-solar-can-save-dairy-farms/>

<sup>11</sup> [https://s3.amazonaws.com/assets.cce.cornell.edu/attachments/42188/Considerations\\_When\\_Leasing\\_Agricultural\\_Lands\\_to\\_Solar\\_Developers.pdf?1579700937](https://s3.amazonaws.com/assets.cce.cornell.edu/attachments/42188/Considerations_When_Leasing_Agricultural_Lands_to_Solar_Developers.pdf?1579700937)

<sup>12</sup> [https://agriculture.ny.gov/system/files/documents/2019/10/solar\\_energy\\_guidelines.pdf](https://agriculture.ny.gov/system/files/documents/2019/10/solar_energy_guidelines.pdf)

<sup>13</sup> [https://www.nyserda.ny.gov/-/media/NYSun/files/solar-guidebook.pdf\\_page\\_36](https://www.nyserda.ny.gov/-/media/NYSun/files/solar-guidebook.pdf_page_36)

<sup>14</sup> [http://www.nyfb.org/application/files/2014/9780/6349/file\\_y349d211hx.pdf](http://www.nyfb.org/application/files/2014/9780/6349/file_y349d211hx.pdf)

<sup>15</sup>

[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_2\\_County\\_Level/New\\_York/](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_County_Level/New_York/)

<sup>16</sup> <https://www.osc.state.ny.us/reports/economic/agriculture-report-2019.pdf>

<sup>17</sup> [https://www.dos.ny.gov/lg/publications/Land\\_Use\\_Moratoria.pdf](https://www.dos.ny.gov/lg/publications/Land_Use_Moratoria.pdf)

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<sup>18</sup> [https://www.nny360.com/news/solar-project-coming-to-hounsfield/article\\_4d076142-d9b2-5ec9-a506-1b2492858c26.html](https://www.nny360.com/news/solar-project-coming-to-hounsfield/article_4d076142-d9b2-5ec9-a506-1b2492858c26.html)

<sup>19</sup> <https://www.nyserda.ny.gov/-/media/NYSun/files/SEQR-for-Large-Scale-Solar.pdf>

<sup>20</sup> <https://www.tughill.org/wp-content/uploads/2011/09/2016-UpdateThe-Next-Generation-of-Wind-Farms.pdf>

<sup>21</sup>

<http://www3.dps.ny.gov/W/PSCWeb.nsf/W/PSCWeb.nsf/All/D12E078BF7A746FF85257A70004EF402?OpenDocument>

<sup>22</sup>

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/06041D757BAFCC25852579D0006972C0?OpenDocument>

<sup>23</sup> <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=17-F-0182&submit=Search>

<sup>24</sup> <https://agriculture.ny.gov/land-and-water/notice-intent-requirement>

<sup>25</sup> <https://www.tax.ny.gov/research/property/legal/localop/487opt.htm>