

**DRAFT**

**SOLAR GENERATING FACILITY DEVELOPER AGREEMENT**

Between the Town of Saratoga and Wood County Solar Project, LLC

- A. This Solar Generating Facility Developer Agreement (“**Agreement**”) is by and between the Town of Saratoga in Wood County, Wisconsin (the “**Town**”) and Wood County Solar Project, LLC, a Delaware Limited Liability Company (“**Developer**”), executed on [DATE], 2020 (the “**Effective Date**”). The Town and Developer are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**” to this Agreement.
- B. As used herein, the term “**Property**” or “**Site**” refers to those certain portions of specified parcels of land located in the Town and described in **Exhibit A**.
- C. As used herein, the term “**Solar Energy System**” or “**System**” has the meaning provided in § 1.03(2) of the Town’s Solar Energy System License Ordinance (Ordinance 2019-9-18) (the “**Ordinance**”).
- D. The Ordinance provides that a prospective operator of a proposed System to be located in the Town of Saratoga must obtain a license from the Town or enter into a developer agreement with the Town prior to beginning construction activities, in order to protect public health and safety, to minimize or prevent potential adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Saratoga.
- E. Developer and the Town agree that if the Ordinance is subsequently invalidated in whole or in part by action of a court of competent jurisdiction, this Agreement and all of the obligations of the Town and Developer herein will remain in full force and effect, other than specific portions thereof that have been superseded.
- F. Developer represents that it owns, leases, has options to purchase, or has other contractual rights over all of the land comprising the Property, and is authorized to engage in this Agreement and incur the obligations in this Agreement with respect to the Project (defined below) that Developer intends to construct and operate on the Property.
- G. Developer desires to construct and operate up to a 150 megawatt (MW) solar photovoltaic electrical generating facility and associated facilities such as underground power collection lines, access roads, an operating and maintenance facility, an electrical substation, and an overhead transmission line connection (the “**Project**”).
- H. Developer and the Town desire to enter into this Agreement to govern the rights and obligations of each with respect to the Project and intend that this Agreement supersedes specific provisions of the Ordinance as authorized under § 1.06(2) of the Ordinance.
- I. The Town has reviewed initial plans for the Project and The Town finds that the standards, requirements, levels of review, monitoring, and compliance mechanisms and measures to mitigate or compensate for potential impacts set forth in this Agreement are

consistent with the standards and the purposes of the Ordinance and that the issuance of this Approval will provide adequate protections for the public health, safety, and welfare.

- J. By execution of this Agreement, the Town provides Developer with approval to construct, operate and maintain the Project under the terms set forth herein (the “**Approval**”).
- K. Pursuant to § 1.06(2) of the Ordinance, this Agreement supersedes specific provisions of the Ordinance only to the extent expressly provided below.
  - 1. A license for the Project is not required under Section 1.04(1). The term of this Agreement is as provided in Section M of this Agreement. The remainder of § 1.04 applies to this Agreement as if this Agreement were a license issued under that section. A transfer of Developer’s rights and obligations under this Agreement pursuant to Section 1.04(4) must include financial assurance for completion of the decommissioning plan under Section 3 of this Agreement.
  - 2. The application requirements under Section 1.05(1) are superseded by this Agreement. When making the decision whether to execute this Agreement, the Town Board will adhere to the process for approval under Section 1.05(3) and (4) to the extent that process can be applied to the approval of this Agreement.
  - 3. The requirements under Section 1.06(1) are hereby determined to be completed and to the extent they have not been completed, are superseded by this Agreement.
  - 4. The minimum standards under Section 1.07 are satisfied by this Agreement and to the extent that they are not satisfied herein, are superseded by this Agreement.
  - 5. Section 1.08 of the Ordinance is superseded in part as provided in Section 24 of this Agreement.
- L. This Agreement is conditioned on Developer’s initial and maintained compliance with all applicable state and federal and local laws and permit or approval requirements, including any requirements associated with a Certificate of Public Convenience and Necessity (“**CPCN**”) issued by the Wisconsin Public Service Commission (“**PSC**”) and any requirements in permits issued by the Wisconsin Department of Natural Resources (“**DNR**”) for the proposed Project.
- M. The Approval granted under this Agreement shall be concurrent with the Project’s CPCN, subject to the rights and remedies of the Town expressly provided in this Agreement with respect to Developer’s breach of the terms of this Agreement.
- N. The terms of this Agreement were designed by mutual efforts of the Parties and are mutually agreed upon by the Parties. The rights and obligations of Developer and the Town under this Agreement shall survive termination of the Agreement.

- O. Terms used in this Agreement shall first be interpreted based on any definition contained in this Agreement. Terms not defined in this Agreement shall be interpreted using their common meaning as appropriate for the context in which they are used.

### Agreement

Therefore, Developer and the Town agree to the following terms and conditions in consideration of the mutual promises, covenants, obligations, and agreements contained herein.

1. **Background Information.** Prior to commencement of construction or operation of the Project, Developer shall submit a detailed site plan and map; information about the owner of any lands upon which any part of the Project will be located; the name, address, phone number, and email address of the operator; and an operation plan detailing the construction, operations, and decommissioning phases over the life of the Project, including estimated timelines for each. The Parties understand and recognize that approval of the Project is under the jurisdiction of the PSC and that the Project must seek concurrence and approval from the PSC for substantive site design changes. If at any time during the operation of the Project, Developer proposes modifications to the Project in a manner that requires additional permitting review from the PSC or the DNR, Developer shall provide the Town any updated site plans or other material Project details.

2. **Highway Maintenance and Use Agreement.** Prior to commencement of construction or operation of the System, Developer and the Town shall enter into a Highway Maintenance and Use Agreement, substantially in the form attached hereto as Exhibit B (the “**Road Agreement**”).

3. **Decommissioning Plan.** Prior to commencement of construction or operation of the Project, Developer will provide the Town with a detailed decommissioning plan, which shall include, within two (2) years after the beginning of commercial operation of the Project, an obligation for Developer to provide a commercially reasonable financial assurance in an amount to be determined by an independent engineer, to the extent the reasonably estimated costs to complete the decommissioning exceed the reasonably estimated salvage value of the Project improvements. Costs of this determination are to be paid by Developer. Developer and the Town shall agree on the choice of an independent engineer to perform this analysis. The independent engineer shall be retained by and professionally obligated to serve both the Developer and the Town. The Town shall not unreasonably withhold acceptance of an engineer suggested by the Developer. The need for and amount of the financial assurance shall be reviewed by the independent engineer, and if applicable, updated approximately every 5 years.

The decommissioning plan shall require at least the following to be completed within 12 months after permanent cessation of operation of the Project (for purposes of this Agreement, “permanent cessation of operation” shall mean that the entire Project has ceased operations for a consecutive period of twelve (12) months for reasons other than a force majeure event, and the Project shall be deemed to be operating for purposes of this Section 3 if the Project is under active construction activities, including without limitation, construction activities in connection with a Project-wide replacement or upgrade of the Solar Energy System):

- a) Removal of all above-ground Project components, including proper dismantling thereof.
- b) Restoration of the property to a reasonably similar condition as prior to construction, including efforts to (i) de-compact any substantially compacted soil, and (ii) reseed and replant disturbed areas of the Site.

4. **Post-Project Use of Property.** Prior to commencement of construction or operation of the System, Developer shall record with the Register of Deeds for Wood County a covenant applicable to the Site that prohibits: 1) agricultural business uses of the Site that generate or store material amounts of animal waste on site, 2) the housing of livestock on the Site for agricultural business purposes, and 3) the land-spreading of animal or human waste on the Site. Such covenant shall run with the land in perpetuity and shall list the Town as the beneficiary of the rights and obligations of the Developer and subsequent owners of the Site under said covenant.; provided, however, the foregoing covenants (i) shall not be deemed to prohibit or prevent Developer from establishing animal grazing practices to accomplish weed control measures during the operation of the Project, including housing such grazing animals on the Site; and (ii) may be waived or released, in whole or in part, at any time by the Town, in its discretion.

5. **Public Impacts Studies.** Developer has completed and the Town acknowledges receipt of and satisfaction with the following studies:

- a) Phase I Environmental Site Assessment
- b) Karner Blue Butterfly Survey
- c) Wetland Delineation
- d) Geotechnical Investigations
- e) Cultural Resource Surveys
- f) Floodplain Study
- g) Road / Traffic Analysis
- h) Visual Simulations
- i) Erosion Control Plan
- j) EMF Study
- k) Noise Study
- l) Glare/Glint Study

6. **Groundwater Monitoring Plan.** Developer will perform or cause to be performed ongoing groundwater monitoring near the proposed Site by developing and executing a groundwater monitoring plan, in consultation and coordination with the Town. This additional monitoring will begin prior to construction of the Project and continue through year 5 of the Project. The Town, at its expense, shall install and maintain all groundwater monitoring wells.

7. **Revenue Guarantee.** Under Wisconsin law applicable on the Effective Date of this Agreement, the State of Wisconsin is required to make utility aid payments to the Town if a solar generating system like the Project is located in the Town. If applicable laws should change during the life of the Project reducing the amount of these state payments, Developer shall

compensate the Town in an amount to equal the amount of annual utility aid payments required under laws applicable on the effective date of this Agreement less any annual property taxes paid by the Developer to the Town for the Site and less any other annual payments to the Town that are adopted to replace the utility aid payments. Such payments shall be made annually by the Developer to the Town no later than January 31 of the year following the year for which payment is made.

8. **Third Party Evaluation/Verification of Project Safety.** Within 30 days after a request by the Town for reimbursement of costs associated with an evaluation of project safety conducted by a third party retained by the Town, along with a copy of detailed invoices supporting such review, Developer shall reimburse the Town for such out-of-pocket third party costs actually paid by the Town to such third party, in an amount not to exceed \$5,000. For purposes of this section, an “evaluation of project safety” may include an evaluation of the Project’ potential impacts on public health, safety, and welfare, and the reporting of the evaluation findings to the Town. The Town will provide a copy of such findings to the Developer, for the Developer’s good faith consideration of any recommendations contained therein.

9. **Fencing.** Developer shall use non-barb smooth wire mesh fencing around the perimeter of the solar array, constructed with wood posts. The height of the perimeter fencing shall be the minimum allowable under state and federal law and applicable building and electric codes.

10. **Buffer from Project Fence to Existing Residences.** Developer shall not remove any existing, live trees that are within 50 feet of the Project property line boundary. If existing trees that are within such 50-foot strip in a particular area die or are destroyed during the life of the Project as part of a pervasive event (i.e., fire, flood, tornado, etc.) that destroys a material number or grouping of such trees such that the overall impact is to materially diminish the viewshed buffer effect achieved by the existing trees, the Developer agrees to work with the Town in good faith to establish a plan to replant trees in such areas at the Developer’s expense. In addition to and without limiting the Developer’s obligation to maintain the aforementioned 50-foot strip, Developer, at Developer’s expense, shall also work with any owner of any residence existing as of the Effective Date of this Agreement that is within 500 feet of the Project perimeter fence, to design a plan to retain the existing vegetative buffer and review and discuss other cost-effective supplemental view shed buffering options, if necessary.

11. **Construction Operations.** Construction activities that include significant noise generating activities will generally occur between the hours of 7:00 a.m. and 7:00 p.m., unless dusk occurs later. While not anticipated, in the event construction needs to occur outside of these hours or after dusk, residences within ¼ mile of where such activities are actually occurring within the Site will be notified.

12. **Lighting.** Lighting on the Site, during both construction and operations phases, shall be limited to the minimal lighting necessary for safety and security, and the Developer shall take all reasonable measures through light shrouding and other methods to reasonably mitigate light leaving the Property at night.

13. **Visitor Area and Tours.** The Developer will fund and construct a pull-off area with a platform viewing area and/or a kiosk in the amount of up to Ten Thousand Dollars (\$10,000.00). The Project will allow limited public parking spaces to be located in the pull-off area. Additionally, once the Project is commercially operating, the Project will collaborate with the community to arrange occasional tours of the facility, subject to reasonable notice and safety and security measures.

14. **Vegetation.** Prior to commencement of construction or operation of the Project, Developer shall prepare and provide the Town with a copy of a vegetation management plan for the Project. The vegetation management plan shall outline plans for site vegetation management during construction and operations. After construction, the site shall be seeded with a low-growth grass seed mix under the solar panels. A pollinator seed mix shall be planted in select open areas outside of the array and inside the perimeter fence. Noxious weed and invasive species shall be managed through mowing and targeted applications of commercially available herbicides. After site vegetation is established, the Project shall not use broad applications of herbicides. No burning is allowed for disposal of cleared vegetation or trees, including tree stumps.

15. **Stormwater.** Developer will prepare and comply with an Erosion Control and Stormwater Management Plan (ESCWMP) in accordance with the Wisconsin General Permit to discharge under the Wisconsin Pollutant Discharge Elimination System (WPDES) regulations established by the Clean Water Act and guided by the State of Wisconsin Department of Natural Resources.

16. **Emergency Response Plan.** Prior to commencement of construction or operation of the Project, Developer shall prepare and provide to the Town a copy of a site-specific Emergency Response Plan (ERP). A copy of the ERP shall be kept on Site during construction and operation of the Project.

17. **Site Maintenance.** Developer shall at all times maintain the Site in good condition and repair.

18. **Local Employment and Training.** Developer shall work with the local community to provide notice of employment opportunities and training programs.

19. **Cooperation.** Developer and the Town agree to communicate and cooperate in good faith concerning the safe construction, operation, and decommissioning of the Project.

20. **Public Safety and Emergency Medical Services.** Construction and operation of a solar photovoltaic electrical generating facility does not create any unique or especially dangerous environments or situations for emergency responders. Developer will require that all contractors on the Site during construction meet all state and federal laws for employee and public safety. Developer intends to request meetings with area emergency response agencies to provide project and facility familiarization and establish communication protocols. Developer will work with the Town to establish communication protocol and arrange for any necessary site-specific training for area emergency response personnel.

21. **Indemnification.** Developer agrees to defend, indemnify, and hold harmless the Town and their supervisors, trustees, administrators, employees, and representatives (collectively the "Indemnified Parties") against any and all losses, damages, claims, expenses, including reasonable attorneys' fees, and liabilities for physical damage to the property of the Town and for physical injury to any person, to the extent the same is proximately caused as a result of any activities or operations of Developer, its agents and employees, and arising out of the performance or non-performance of its duties pursuant to this Agreement or the construction, maintenance, or operation of the Project, except to the extent caused by the negligence or intentional misconduct of the Town or any other Indemnified Parties. Furthermore, Developer agrees to defend, indemnify, and hold harmless the Town from any third party claims proximately caused as a result of any activities or operations of Developer, its agents and employees, and arising out of the performance or non-performance of its duties pursuant to this Agreement or the construction, maintenance, or operation of the Project, except to the extent that such claims are caused by the negligence or intentional misconduct of the Town or any other Indemnified Parties. This Indemnification obligation shall survive the termination of this Agreement. Nothing in this Section extends any statutes of limitation applicable to any claims that may be brought against the Town or the Developer.

22. **Insurance.** Developer shall at all times during construction and operation of the project carry Commercial General Liability Insurance with a minimum liability of \$5,000,000 per occurrence, and Automobile Liability insurance with a minimum liability limit of \$1,000,000 per occurrence, or, if the Developer is qualified self-insured in the State of Wisconsin, shall maintain not less than \$5,000,000 of claims-first-made excess general liability insurance on an occurrence basis over its self-insured retention that may change from time to time. Such excess insurance shall include automobile liability. Certificates of insurance will be provided to the Town upon request.

23. **Relevant Law.** Any and all disputes arising under this Agreement and/or relating to the development and/or construction of the Project shall be resolved pursuant to the laws of the State of Wisconsin.

24. **Ordinance Superseded.** Section 1.08 of the Ordinance is hereby superseded as and to the extent provided below:

(i) Subsection 1.08(1) remains in effect; provided, however, any such inspections shall be conducted in accordance with operational and safety protocols established by the Project owner and operator;

(ii) Subsections 1.08(2)(a) and 1.08(2)(b) are hereby deemed satisfied, waived and superseded by this Agreement;

(iii) Subsection 1.08(2)(c) is satisfied, waived, and superseded by this Agreement except with respect to intentional and material false statements;

(iv) Subsections 1.08(4)(a), 1.08(4)(e), and 1.08(5) remain in effect only with respect to Sections 2, 3, 4, 6, 7, and 23 of this Agreement (but only after prior written notice from Town

to Developer and ninety (90) days to cure) and all of such subsections are superseded with respect to all other Sections of this Agreement;

(v) Subsection 1.08(6) remains in effect; provided however, any fines or penalties thereunder shall not exceed \$150 per day and shall not commence unless and until written notice of such violation from the Town to Developer and thirty (30) days to cure;

25. **Notices.** Notices, requests, demands, and other communications shall be sent to the following addresses:

*If to Developer:*

Wood County Solar Project, LLC  
422 Admiral Boulevard  
Kansas City, MO 64106  
Attn: \_\_\_\_\_

*If to the Town:*

Town of Saratoga  
1120 State Hwy 73 South  
Wisconsin Rapids WI 54494  
Attn: Town Clerk

All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next Business Day if sent by overnight delivery service (*e.g.* Federal Express) to the notified Party at its address set forth above. These addresses shall remain in effect unless another address is substituted by written notice. Notices may be sent via email transmission to the email addresses provided, however, notice sent via email shall be followed by notice delivered by personal service or by registered or certified mail, return receipt requested, or by overnight delivery.

*[Signature Page Follows]*



**IN WITNESS WHEREOF**, the parties have entered into this Solar Generating Facility Developer Agreement.

**TOWN OF SARATOGA**

By: \_\_\_\_\_  
Terry Rickaby, Chairperson

**WOOD COUNTY SOLAR PROJECT, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Heidi Kawleski, Town Clerk

Date: \_\_\_\_\_

## **Exhibit A – the Property**

## **Exhibit B - Highway Use Agreement**

Pursuant to the Solar Generating Facility Developer Agreement between the Town of Saratoga (the “**Town**”) and Wood County Solar Project, LLC, executed on [DATE] (the “**Agreement**”) and Wis. Stat. §. 349.16(1)(c), the parties agree to the following. Terms capitalized in this document but not herein defined shall be interpreted as provided in the Agreement.

1. Use of Town highways by Wood County Solar Project, LLC, and its successors, assigns, contractors, agents and representatives (collectively, “**Developer**”) using vehicles with a gross vehicle weight rating of no more than 48,000 pounds is not restricted by this Agreement except as applicable to other highway users. No use of Town highways by Developer using vehicles with a gross vehicle weight rating in excess of 48,000 pounds (“**Heavy Vehicles**”) is allowed except as specifically provided in this Agreement or if not specifically provided herein, by special permission provided by the Town in writing.

2. Developer may use the Town highway segments depicted in the map attached hereto as Schedule A for Heavy Vehicle traffic as part of the construction, operation, maintenance and repair of the Project (the “**Permitted Town Highway Segments**”).

3. The Town imposes no weight or size limits and waives any applicable vehicle weight or size license or permit requirement related to transportation activities by Heavy Vehicles on the Permitted Town Highway Segments during the construction phase of the Project.

4. Following issuance of a permit to proceed with construction being issued by the PSC, Developer will engage a professional engineer to prepare an “Initial Condition” report on all Town roads designated as “Permitted Town Highway Segments.” The same engineering firm will be engaged to prepare a post-construction road condition report on “Permitted Town Highway Segments.”

During the ongoing construction of the Project, the Town shall be responsible for continued routine maintenance of the Permitted Town Highway Segments; provided, however, Developer, at its expense, shall reimburse the Town for the cost to repair any significant damage to Permitted Town Highway Segments within thirty (30) days after receipt of a detailed invoice itemizing the cost of such repairs. Within thirty (30) days after substantial completion of construction of the Project, Developer, at its expense, shall have prepared and provide to Town, a Post Construction Road Condition Report. The Post Construction Roads Report will be the basis for preparation of the Final Roads and Drainage Restoration Plan (“Final Repairs Plan”). The Final Repairs Plan will be provided to the Parties. To the extent required under the Final Repairs Plan, Developer will reimburse the Town for the cost to repair any damage to Permitted Town Highway Segments or drainage systems, to as good or better than the condition they were in prior to construction, as documented in the Initial Evaluation. If no objections to the Final Repairs Plan are stated by the Parties within 30 days of receipt, the Final Repairs Plan will be deemed approved and the Town may commence work, subject to reimbursement by Developer within thirty (30) days after receipt of a detailed invoice itemizing the cost of such repairs. The Parties shall rely upon the Initial Evaluation as a baseline for purposes of determining the type and restoration standard of repair required.

Prior to commencement of construction of the Project, to guarantee compliance with the terms of this Agreement during construction and until completion of the repairs contemplated under the Final Repairs Plan, Developer shall furnish security initially in the form of a bond, letter of credit, parent guaranty, or escrow. The bond shall remain in an amount equal to \$50,000.00, subject to allowable draws by the Town; provided, however, such financial assurance shall be released and no longer required upon completion of the repairs contemplated in the Final Repairs Plan to the reasonable satisfaction of the Town.

5. Throughout the life of the Project, the Parties shall work cooperatively to maintain public road infrastructure in a safe condition for passage by the public; provided, however, after the completion of the repairs contemplated in the Final Repairs Plan to the reasonable satisfaction of the Town the Developer shall be responsible only for the cost of repairs for significant damages to Town roads to the extent proximately caused by Developer. The Town shall expedite review and, if appropriate, issue any permits or other approvals requested by the Developer in connection with construction, operation and maintenance of electric collection lines, communications cables and other equipment in the Town highway rights-of-way.

6. If the Permitted Town Highway Segments are temporarily unusable to Developer, including because of maintenance being conducted on these segments, the Town will authorize use of alternate Town highway segments as necessary for Developer to conduct its operations pursuant to a subsequent agreement between the Town and Developer regarding maintenance costs and other relevant factors associated with the use of the alternate Town highway segments.

7. Developer will make reasonable efforts to keep the Permitted Town Highway Segments clear of mud and debris resulting from Project activities.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have entered into this Highway Use Agreement.

TOWN OF SARATOGA

By: \_\_\_\_\_  
Terry Rickaby, Chairperson

WOOD COUNTY SOLAR PROJECT, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Heidi Kawleski, Town Clerk

Date: \_\_\_\_\_