

## **ROAD USE AGREEMENT**

This Road Use Agreement (the “**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_ (“**Effective Date**”) between Morris Ridge Solar Energy Center, LLC, a Delaware limited liability company, having offices at 195 Montague Street, 14<sup>th</sup> Floor, Brooklyn, NY 11210 hereinafter “**Company**”, the Town of Mount Morris, a municipal corporation having offices at 103 Main Street, Mount Morris NY 14510, hereinafter “**Town**”, and the County of Livingston, a body corporate and politic under the laws of the State of New York with an office at 6 Court Street, Geneseo, New York 14454 hereinafter “**County**”. The Company, Town and County are each a “**Party**” and referenced together as the “**Parties**”.

### **RECITALS**

WHEREAS, Company has been developing a solar generating facility located in the Town of Mount Morris, in Livingston County, New York (the “**Solar Project**”); and

WHEREAS, Company intends to engage in the construction of the Solar Project (the “**Solar Project Construction Activities**”); and

WHEREAS, in connection with the Solar Project Construction Activities, Company may necessarily need to (i) traverse certain Town and County highways, roads, bridges, culverts and related fee owned land, rights-of-way or easements owned or maintained by the Town and County (collectively “**Roads**”) with Company operated heavy machinery weighing in excess of the legal dimensions or weights specified in Section 385 of the New York State Vehicle and Traffic Law (consisting of approximately one oversize/overweight (OS/OW) truck to deliver the transformer, dump trucks for access road construction, concrete trucks for construction of foundations and transformer pads, and conventional semi-trailers for delivery of panel arrays and other components during the Solar Project Construction Activities) (collectively referred to herein as “**Company's Heavy Vehicles**”), (ii) transport personnel, parts, equipment, facilities and materials on the Roads (iii) widen certain Roads, install temporary turning radii, and other temporary construction easement rights-of-way and make certain modifications and improvements (both temporary and permanent) to such Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material to pass, (iv) place certain electrical collection and transmission and communication cables, conduit and other wires and cables (collectively, “**Cables**”) for the Solar Project in close proximity to or under or across certain Roads, (v) place footings, foundations, towers, poles, crossarms, guy lines and anchors, circuit breakers, junction boxes and other machinery and equipment related to the Cables (all of the foregoing, collectively, “**Utility Poles**”) in close proximity to certain Roads, (vi) temporarily remove or relocate traffic signals and (vii) carry out other related activities (the uses described in clauses (i) through (vii) are the “**Permitted Uses**”); and

WHEREAS, Company acknowledges that the nature of Solar Project Construction Activities may cause damage to said Roads; and

WHEREAS the Town and County seek guarantees and assurances from Company that Company will pay and/or otherwise indemnify the Town and County for any Damage (as defined

herein) to the Roads arising from its activities.

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, agree as follows:

**1. Rights and Responsibilities of the Parties.**

a. Company agrees that it shall be responsible for ensuring that all debris, garbage, and waste upon Roads related to Solar Project Construction Activities are disposed of in the appropriate manner and be responsible for obtaining any applicable approvals, permits and/or orders that are not granted under this Agreement.

b. Except under emergency circumstances, Company shall use commercially reasonable efforts to not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any more than ten minutes at a time. Company agrees that any proposed temporary Road closings will be properly coordinated in advance with the Town and County. Longer term closures, if required, shall be coordinated in writing at least three (3) days prior to the closing. For every activity of the Company that will impact the flow of traffic, the Company shall be responsible for complying with any and all applicable New York State and federal laws concerning traffic control requirements and notifying the Town and County Highway Superintendents, as well as the following emergency service providers and school officials: Livingston County Emergency Services, Mount Morris Fire Department, and Mount Morris school district superintendents and directors of transportation.

c. The term “**Company**” shall include its employees, agents, vendors, contractors, subcontractors, and/or haulers. Company shall require that each and every employee, agent, vendor, contractor, subcontractor, and hauler will comply with the terms and conditions of this Agreement, and the Company shall be responsible for any failure of each and every employee, agent, vendor, contractor, subcontractor, and hauler that fails to comply with the terms of this Agreement.

d. The Town and County designate the Town Highway Superintendent and County Superintendent of Highways (collectively referred to as “**Highway Superintendents**”) to act on behalf of the Town and County, respectively, and to issue approvals under this Agreement. The Town Highway Superintendent shall act on behalf of the Town and the County Superintendent of Highways shall act on behalf of the County.

e. The Company agrees that it shall undertake the Solar Project Construction Activities and each of its Permitted Uses at all times in accordance with applicable state, federal and non-superseded local laws, rules and regulations, including without limitation, Article 10 of the Public Service Law and the terms, conditions, limitations and modifications of any certificate it is awarded pursuant thereto.

f. The term “**Period of Use**” shall mean the Construction Phase of the Solar Project.

## **2. Company Use.**

Provided Company is not in default beyond any applicable cure period but subject to Section 19, the Town and County hereby grant Company the right to use, improve, upgrade, construct, and repair and encroach into the Roads for the Permitted Uses during any Period of Use. Subject to the requirements of this Agreement, the Town and County hereby specifically grant Company during Periods of Use the right to:

a. Heavy Hauls. Use, traverse, improve, upgrade, construct and repair the Roads listed on Exhibit A-1 and depicted on Exhibit A-2 using Company's Heavy Construction Vehicles and other vehicles to transport personnel, parts, equipment, facilities and materials on, over and across the Roads. The routes depicted on Exhibit A-1 and A-2 will include allowable routes for Company's Heavy Construction Vehicles when returning after heavy components have been delivered.

b. Installation of Underground Cables. Use and encroach into the Roads and public rights-of-way as shown on Exhibit B-1 for the purposes of the installation, ownership and operation of underground Cables under, or in close proximity to the Roads and public rights-of-way, subject to the following:

- (1) Except for Cables that cross under the Roads, all Cables shall be placed outside of public rights-of-way except upon prior written approval of the Highway Superintendent.
- (2) For Cables that cross under the Roads, Company may cut an "open trench" across gravel and unimproved roads, and the trench will be backfilled, compacted and raked to return it to conditions equal or better to those prior to the commencement of work. No such open trench shall be cut in any Road, unless first approved in writing by the Highway Superintendent.
- (3) Company will bore under paved roads, and all boring pits and ditch excavation will be backfilled, compacted and raked to return it to conditions equal or better to those prior to commencement of work. The highest point of any such boring by Company must be at a minimum depth of 36" below the lowest point of the following: (i) Road; or (ii) drainage ditch at the selected crossing location. No such boring shall be drilled under any Road except in the locations set forth in the Exhibits to this Agreement.
- (4) Each boring or cut across a Road will be identified by general location and also by centerline coordinate, and upon the completion of construction, Company will provide an as-built location.

c. Installation of Overhead Cables. Use Roads and public rights-of-way for the purposes of the installation, ownership and operation of overhead Cables over, across and in close proximity to certain Roads and public rights-of-way as shown on Exhibit B-2. Overhead Cables

will be designed and constructed in accordance with National Electric Safety Code (“NESC”) governing the clearance requirements above the roadway. Under no circumstances shall any poles used for the installation of Overhead Cables encroach into Roads or public rights-of-way, unless first approved in writing by the Highway Superintendent.

d. Utility Poles. Use Roads and public rights-of-way for the purposes of the installation, ownership and operation of Utility Poles as shown on Exhibits B-1 and B-2, subject to the following:

- (1) Overhead utility poles will be situated on the “back side of the side ditch” away from Roads, outside of the public right-of-way provided, however, that guy wires may be located in a public right-of-way subject to the prior written approval of the Highway Superintendent.

e. Temporary Construction Easements and Turning Radii. Use, traverse, improve, upgrade, widen, construct the Roads and rights-of-way shown on Exhibit C for purposes of making certain modifications and improvements (both temporary and permanent) to such Roads (including without limitation to certain culverts, bridges, road shoulders and other related fixtures) to permit equipment and material associated with the Solar Project to pass. All such modifications and improvements must be constructed in accordance with local laws and regulations.

f. Driveways. Use and encroach into Roads and other rights-of-way shown on Exhibit D for purposes of installing driveways or entrances into or from certain Roads subject to the following:

- (1) Each driveway entrance from a Road will have a coordinate that will be transmitted in an electronic GIS format (ESRI shape file or equivalent) to the Highway Superintendent.
- (2) Each driveway shall be constructed in accordance with the minimum specification outlined in Exhibit D-1, appended hereto. Driveways installed by the Company must be consistent with the Facility’s Stormwater Pollution Prevention Plan (SWPP) and must maintain proper drainage of the Roads, the right-of-way, and other adjoining property located outside the rights-of-way, including the installation of a culvert pipe upon request of the Highway Superintendent.

g. Subsequent Relocation of Improvements. If, from time to time, the Town or County should determine, in its sole discretion, that it will widen a Road or otherwise modify the public right-of-way in a manner that impacts Company’s Permitted Uses hereunder, upon notice from Town or County, Company shall work with the Town or County to relocate any of the improvements to allow the modifications and enter into an agreement to share costs associated with such relocations with the Town or County; provided, however that any underground Cables installed in accordance with Section 2(b) shall not be need to be relocated.

### 3. Approval of Locations of Permitted Uses; Issuance of Permits.

a. Following the Effective Date but prior to the delivery of the Exhibits contemplated in Section 3(c) below or commencement of Company's Permitted Uses, Company and the Highway Superintendents shall meet and confer regarding the routes to be used for Company's Heavy Vehicles engaged in the Company's activities, the precautions to be taken to protect health and safety, and the proposed locations of the other improvements contemplated under this Agreement.

b. The Town and County may retain an engineer (the "**Municipal Engineer**") to assist in the review of Company's draft Exhibits submitted pursuant to Section 3(c) and Company's other documents, reports and plans submitted hereunder. The Company shall pay for all of Town and County's documented out of pocket costs and expenses reasonably related to the implementation of this Agreement not otherwise covered by intervenor funding or other funds designated for expenses related to the activities of the major renewable energy develop program under Article 10 of the public service law (including the reasonable fees of the Town or County's attorney and Municipal Engineer) (hereinafter referred to as "**Professional Fees**").

c. After meeting with the Town and County Highway Superintendents, but no later than sixty (60) days prior to the commencement of Permitted Uses hereunder the Company will provide to the Highway Superintendents for their review draft Exhibits A-1, A-2, B-1, B-2, C and D showing the proposed use of Roads and the locations of the planned infrastructure within the Roads and other Town or County rights-of-way, as well as any additional information related thereto that is reasonably requested by the Town or County. Within thirty (30) days of the Highway Superintendents' receipt of said draft Exhibits, the Town and County shall either (a) approve said draft Exhibits, which approval shall not be unreasonably withheld, conditioned or delayed, or (b) provide Company with reasonable revisions to said draft Exhibits, which revisions shall not be unreasonably withheld, conditioned or delayed. In the event that the Parties are not able to resolve a dispute regarding the Town or County's requested revisions to the Exhibits, the Parties agree to promptly meet to resolve any such disputes. Once approved, the Exhibits shall be attached to this Agreement as the final Exhibits and Company shall not deviate from the routes and improvements established thereby unless approved by the Highway Superintendents as set forth herein.

d. Following the acceptance of the final Exhibits the Parties recognize that variations to the location of the improvements, or that other routes, may become necessary to use due to various reasons.

- (1) Should any Roads not listed or shown on Exhibits A-1 and A-2 be expected by Company to be used by Company's Heavy Vehicles, at least thirty (30) days prior to the commencement of such use, the Company shall notify the Highway Superintendents in writing, conduct the necessary surveys and pre-use inspections under this Agreement and add the Roads to Exhibit A-1 and A-2, subject to the prior written approval of the Town or County, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Company deviates from the Road route designated in, or added

by the Company to, Exhibits A-1 and A-2, in addition to any other remedies available herein, the Highway Superintendent may request and Company shall immediately upon receipt of such request cease and desist such deviation.

- (2) In the event that the Company's Heavy Vehicles need to use Roads not listed or shown on Exhibits A-1 and A-2 in an emergency, the Company shall provide telephonic notice to the Highway Superintendent and may only use said Roads on a temporary basis until such emergency has ended. In the event that Company determines that said Roads will be used on a permanent basis, Company shall comply with the terms of Section (d)(1) above.
- (3) If Company needs to materially vary the type, method or locations of any improvements shown on Exhibits B-1, B-2, C or D, Company shall provide a revised Exhibit to the Town or County for review and approval, which shall not be unreasonably withheld, conditioned or delayed. Except in the event of an emergency, the Town or County shall complete the review within thirty (30) days.

e. Upon approval of the Exhibits as described above, the Town or County shall issue, if necessary, any encroachment, crossing, driveway or other similar permits for Company's encroachment into the public right of way. Except for the foregoing, no other permits or approvals, including without limitation for the use of Heavy Vehicles on Roads, will be required from the Town or County for the Permitted Uses hereunder.

f. At all times during the Term of this Agreement, Company shall keep the Town and County apprised of the timing, location and nature of its Permitted Uses, including, without limitation, notice of its anticipated and actual start and stop dates for Periods of Use for the Solar Project Construction Activities and identification of subcontractors using Heavy Vehicles to be used by Company. Company shall provide such information regarding the timing, location and nature of its Permitted Uses promptly upon request. Company agrees to cooperate in good faith with the Town and County with respect to such time periods, which cooperation shall include but not be limited to coordinating the timing of Company's use, repair or improvement of the Roads with similar activities of the Town or County and other heavy haulers or developers within the Town or County who are subject to road use local laws or road use agreements.

g. Nothing in this Agreement shall be construed as granting permission or rights to Company to infringe, use or encroach upon the land of private landowners. Any right or permission granted to Company by the terms of this Agreement to infringe, use or encroach upon land within the Town or County shall be limited to land owned by the Town or County and shall be subject to Company obtaining from private landowners within the Town or County all legal and/or equitable permissions and rights necessary to infringe, use or encroach upon privately owned land. For any reinforcement activities, damage repairs or other Permitted Uses that require excavation of land, the Company shall contact Dig Safely New York and shall avoid damage to

any water, sewer, gas or other utility pipes, tanks or lines located in the Town or County rights of way.

#### **4. Reinforcement Activities.**

The Parties acknowledge that certain Roads to be used by Company in connection with the Solar Project Construction Activities may need to be upgraded or otherwise repaired to correct deficiencies or inadequacies. Prior to the Period of Use, if the Company identifies deficiencies or inadequacies in the Roads, Company shall notify the Town or County Highway Superintendent of its planned construction to reinforce and improve the Roads as necessary to correct such deficiencies or inadequacies (“**Reinforcement Activities**”). The Highway Superintendent’s approval of the proposed Reinforcement Activities shall not be unreasonably withheld, conditioned or delayed. The Highway Superintendent shall complete their review of the Reinforcement Activities within thirty (30) days of its receipt of the proposed Reinforcement Activities. Upon the Highway Superintendent’s approval of said plans, the Company shall perform the Reinforcement Activities. Company’s performance of the Reinforcement Activities on the Roads shall be conducted so as to minimize the effects on local transportation and shall be coordinated with the Highway Superintendent with respect to its planned construction (if any) affecting the Roads.

#### **5. Road Surveys and Routes.**

a. Prior to the commencement of Road use activities by Company’s Heavy Vehicles, Company shall retain an independent New York licensed professional civil engineer approved by the Municipality (“**Company Engineer**”) to prepare a suitable video survey of the Roads (“**Pre Construction Report**”) identified in Exhibits A-1 and A-2 to this Agreement and shall provide a copy of the video and the Pre Construction Report results to the Highway Superintendents at no cost to the Town or County.

b. The Company shall in good faith notify the Highway Superintendents when the Period of Use has concluded and within sixty (60) days thereafter, the Company shall, at Company’s cost, retain a Third Party Engineer, agreed to by the Parties to prepare a post-construction video Road survey (“**Post Construction Report**”) of the Roads identified in Exhibits A-1 and A-2 to this Agreement, as well as a report detailing any Damage arising from the Solar Project Construction Activities or other Permitted Uses of the Company (“**Damage Report**”).

c. Immediately following the completion of a Post Construction Report and Damage Report (if any), Company will provide the Highway Superintendents with the Post Construction Report and Damage Report.

#### **6. Road Damage.**

a. Notwithstanding anything to the contrary in this Agreement, including the definition of the terms “Damage” or “Damages” as described in this Section 6(a), Company shall be obligated to return the Roads identified in Exhibits A-1 and A-2, and any other Roads which

were damaged by the Solar Project Construction Activities or other Permitted Uses of Company, to an equal or better condition than prior to commencement of the Solar Project Construction Activities. The terms “**Damage**” or “**Damages**” as used in this Agreement shall include, but not necessarily be limited to, accelerated deterioration, cracking, imprinting, pitting, tracking, buckling or asphalt and road base damage, damage to culverts, bridges and/or drainage facilities. The terms “Damage” or “Damages” shall not include injuries to the Roads that (1) were present prior to the Company’s use thereof by Company’s Heavy Vehicles as evidenced by the results of pre-use inspection(s) and report(s); (2) occurred after repairs to the Road were made, at a time Company’s Heavy Vehicles were not in use by the Company on the Road and that were not a result of Company’s defective repair work; (3) are the result of ordinary wear and tear. With regards to Damage to Roads used by Company’s Heavy Vehicles, notwithstanding anything in this Agreement to the contrary, Company shall only be liable for reasonable costs, fees, expenses and any other reasonable bills incurred to or by the Town or County to repair Damage to Roads, and the Town and County agree that the remedies related to Damages to Roads and repair thereof set forth herein shall be the sole remedies for such Damages.

b. If any Damage occurs to Roads by the use of Roads by Company’s Heavy Vehicles or by Company’s other Permitted Uses and such Damage is, in the reasonable opinion of the Highway Superintendents, an immediate danger to the public using said Road (“**Immediately Dangerous Damage**”), the Highway Superintendent shall provide telephonic notice to the Company that there is an Immediately Dangerous Damage to a Road or Roads. In the event that the Company does not immediately undertake the necessary emergency repairs, the Town or County may retain necessary contractors and subcontractors, undertake immediate emergency repairs to said Road and draw upon the Security detailed in Section 8 to cover the costs associated with such emergency repairs. The Town or County shall then provide the Company with documentation detailing the completed repairs and any additional repairs that may be required. Immediately Dangerous Damage includes any condition that in the opinion of the Highway Superintendent creates a safety risk if not repaired within the next five (5) days. In the event Company becomes aware of any potential Immediately Dangerous Damage, it shall immediately notify the Highway Superintendent of the particulars of such Damage, which the Town or County shall thereafter inspect and, if warranted, repair in the manner described above.

c. Notwithstanding the provisions of Section 6(b), within 45 days following the submittal of the Post Construction and Damage Report (if any), the Town or County must notify Company in writing if the Town or County believes Damages to the Roads (other than those which are identified in Company’s Damage Report) arise from Solar Project Construction Activities or other Permitted Uses of Company.

d. Except in the case of Immediately Dangerous Damage covered by Section 6(b), within twenty (20) days after a receipt of any written notice of allegation of Damage from the Town or County, Company shall notify the Highway Superintendent in writing of its agreement or disagreement with the allegations.

e. Concurrent with Company’s response in Section 6(d), Company shall also notify Highway Superintendent whether it elects to undertake all or some of the repairs, including retention of necessary contractors and subcontractors and will coordinate such activities with the Highway Superintendent.



f. Except in the case of Immediately Dangerous Damage covered by Section 6(b), with respect to any repairs that are not in dispute and that Company elects not to perform hereunder, Company shall reimburse the Town or County for the undisputed repair costs incurred by the Town or County within thirty (30) days after receipt of the invoice. The Town or County's charges shall be based on the Town or County maintained time and material cost records, which shall be made available to Company for review upon request. Billing rates shall be those established by the Town or County and shall be uniformly applied to all customers.

g. If Company reasonably disputes the invoice, scope of repair, need for repair or its liability for the repair, Company shall pay any and all amounts not in dispute and Company shall provide a written statement as to its basis for contesting the disputed amount(s) within the same 20-day period. In the event of a dispute, then both Parties shall abide by the dispute resolution procedures set forth in Section 7 below.

h. The manner of repair of any Road Damage described in this Agreement shall be at the reasonable discretion of the Highway Superintendent consistent with the Road or bridge standards that are otherwise applicable throughout the Town and County for the type of road or bridge involved being a guide. All laborers, workmen and mechanics, under the control of Company or Company's subcontractors, within the meaning of NYS Labor Law Article 8, performing the road repairs contemplated by this Agreement prior to the date the Solar Project achieves commercial operation, whether through long-term or short-term employment, must be paid at least the applicable Prevailing Wage requirements of the jurisdiction where the Town is located. This requirement applies to all laborers, workmen and mechanics performing said road repairs, whether they are direct employees of the Company or of Company's subcontractors, or any other entity under the control of Company or Company's subcontractors. This requirement shall not apply if Company or Company's subcontractors has entered into a single collective bargaining agreement (including a pre-hire agreement) covering both contractors in the construction industry working on the Solar Project and a bona fide building and construction trade labor organization representing the craft workers who will perform the road repairs contemplated herein. The Company shall be required to pay for and install road base materials or surfaces to a condition equal to or better than existed prior to the alleged Damage caused by the Company. By way of example, should Damage occur to an unpaved Road, the Company will not be required to pave such Road. The Parties agree that the roadway repairs will consist of those repair techniques identified in Exhibit E, provided however, the Parties agree that the repair techniques may change in the future and further agree to cooperate in good faith to amend Exhibit E to take into account reasonable advances in repair techniques in consultation with the Highway Superintendents.

i. Company warrants that all repairs to Damage that it completes under this Agreement (but not those repairs completed solely by Town or County) shall withstand and sustain normal wear and tear for a period of 1 year from the issuance of a Completion Letter. This one year warranty period shall not be deemed to be renewed, or deemed to recommence, upon the second repair of a particular Damage previously repaired by the Company.

j. Promptly, upon completion of any repairs required in this Section, the Highway

Superintendent will issue a letter in the form of Exhibit F (the “**Completion Letter**”) accepting the repairs and, subject to the Company’s warranty in Section 6(i), release the Company from Damages that may occur from normal wear and tear. To the extent Damage is not identified, subject to the Company’s warranty in Section 6(i), such letter from the Highway Superintendent will release the Company from the responsibility of repairing Damages of each of the Roads identified in Exhibit A-1 and A-2. Notwithstanding anything to the contrary herein or in any Completion Letter, no release from liability shall apply the extent of Roads used by Company’s Heavy Vehicles during time periods which have not been agreed to under this Agreement.

k. Company agrees that in connection with any upgrades or repairs to be made hereunder, the Company may determine, in its sole discretion, that there may be certain materials removed from the Roads that are no longer necessary for the Solar Project (the “Excess Materials”). Company agrees to remove such materials and stockpile them for use by the Town or County if requested by the Highway Superintendent. The Highway Superintendent shall designate the place on Town or County property on which the Excess Materials will be stored.

## **7. Dispute Resolution**

If a Party has a dispute with the other Party regarding or in connection with this Agreement, then such Party will notify the other Party in writing of such dispute. Before resorting to litigation, the Parties shall use reasonable efforts to settle such dispute through representatives of the Parties for a period of at least thirty (30) days, during which time the parties shall have at least one (1) in-person meeting. Any litigation related to this Agreement shall be initiated before a court of competent jurisdiction located in the State of New York. For the purposes of clarity, in the event a cure period applies pursuant to Section 19, no dispute resolution obligation shall apply until after the expiration, or alleged expiration, of such cure period.

## **8. Security**

a. The Company agrees to obtain a bond, irrevocable letter of credit, or other mutually acceptable cash equivalent in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the joint and several benefit of the Town and County (“Construction Security”).

b. The Construction Security shall be executed by an insurance company with an AM Best Rating of A-/9 or better and authorized to do business in the State of New York.

c. The Construction Security shall be released within thirty (30) days of the issuance of the Completion Letter.

d. Company shall be listed as principal with the instrument benefiting the Town and County, as obligees and shall be conditioned that the Company will comply with the terms and conditions of this Agreement. The original security shall be delivered to the appropriate Town and County employees or supervisors.

e. In the event that the Company does not undertake repairs, fails to properly complete repairs or reimburse the Town or County in the time allotted under Section 6 above, the

Town or County shall be authorized to demand payment from and against any security to recover any amounts due from the Company for repairs to the Roads and/or bridges. Upon receipt of the monies, the Town or County will proceed with completing the required repairs. Nothing in this subsection will prevent the Town or County from proceeding by way of a civil action to obtain compliance and abate the default.

f. In the event the security contains a stated termination date, then Company shall renew or obtain a new security in the agreed upon amount no later than 30 days prior to the stated termination date. Should Company convey any or all of its interest in this Agreement, then the new owner will obtain a security to comply with this Agreement.

g. The security is to guarantee reimbursement to the Town or County for all reasonable costs of labor, material and equipment expenses the Town or County may incur in repairing any Road consistent with the provisions of this Agreement.

h. The cancellation of any security will not release the Company from its obligation to meet all of the requirements of this Agreement.

i. Nothing in this Section 8 shall be construed to result in a waiver of any rights of the Company, bonding company or insurance institution issuing a security to dispute or challenge any claims for payment by the Town or County for alleged Damage to its Roads.

j. The Town or County shall take all action and execute such documents as are reasonably requested by Company to evidence the release of the security as contemplated in this Section 8.

## **9. Indemnification and Insurance.**

Upon the Effective Date, Company shall purchase and maintain insurance of the following types and form during the Term, and the Company shall ensure that its vendors, contractors, subcontractors, and/or haulers obtain and maintain the types and forms of insurance during the Term that are reasonable. Company shall furnish Town and County with certificates of insurance and endorsements of all required insurance, as may be reasonably requested.

a. Company shall maintain, at its own cost and expense, a minimum level of commercial general liability insurance of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Excess liability insurance of ten million dollars (\$10,000,000) for each occurrence and in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form or claims made form. Company agrees that it will include the Town and County as an additional insured. Coverage for the additional insured shall apply as primary and non-contributing before any other insurance, including any deductible, maintained by, or provided to, the additional insured. All insurers shall have at least an A - (VII) or better rating by A.M Best and be qualified to do business in the jurisdiction where the Project is located. Company shall maintain CGL coverage for itself and all additional insured throughout the Term of this

Agreement, and for at least two (2) years after the termination of this Agreement.

b. Company shall have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the premises where the work is performed. Employers' Liability insurance shall not be less than five hundred thousand dollars (\$500,000) for injury or death each accident

c. Company shall provide 30 days' notice to the Town and County prior to cancellation of any coverage.

d. Indemnification by the Town and County. The Town and County hereby release and agree to indemnify and hold harmless Company, its members and Affiliates and its and their officers, directors, contractors, subcontractors, employees, successors and assigns (hereinafter collectively "**Company Solar Releasees**") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Company Solar Releasees arising out of or resulting from the Town or County's negligent or willful misconduct in the course of Town or County's completion of any Road repairs under this Agreement. More particularly, but without in any way limiting the foregoing, the Town and County hereby release the Company Solar Releasees and agree to indemnify and hold harmless the Company Solar Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Road by the Town or County, its respective employees, agents, representatives or contractors or its respective employees, agents or representatives.

e. Indemnification, Waiver and Forbearance. To the fullest extent permitted by law, Company shall defend, indemnify and hold harmless the Town and County, its agents, officers, board members and employees from and against all claims, damages, losses and expenses (including reasonable attorneys' fees), arising out of or resulting from Company's breach of this Agreement, Damage to the Roads, or Company's negligent or willful misconduct in the course of Company's completion of Road repairs under this Agreement. With respect to injuries to persons for whom Company has secured the payment of compensation as provided under the New York Workers' Compensation Law and which Company has agreed in this section to provide indemnification to the Town and County, this provision shall be construed as one by which the Company has expressly agreed to contribution or indemnification of the Town and County within the meaning of New York Workers' Compensation Law § 11. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this section. In any and all claims against the Town or County or any of their agents or employees by any employee of Company, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Company under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. So long as the Company materially complies with the terms and provisions of this Agreement, the Town and County further agree that they shall not seek, obtain or enforce punitive damages, including, but not limited to treble damages set forth in New York Highway

Law Section 320 for Damages to the Roads, and that Damages successfully remediated pursuant to this Agreement shall not be considered damages subject to the provisions of New York Highway Law Section 320. Notwithstanding anything to the contrary herein, but subject to the waiver of rights under Highway Law § 320, the Town and County have not waived any and all other rights and remedies that may be available and applicable under the New York State, local and federal law, including but not limited to, the New York Highway Law, Town Law and General Municipal Law.

f. **No Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT IT IS THE INTENT THAT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ITS RELATED PERSONS, FOR CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED UPON NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

**10. Captions and Headings.**

Captions and headings throughout this agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this agreement nor in any way affect this Agreement.

**11. Modifications.**

This Agreement cannot be changed orally, but only by agreement in writing signed by the Parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

**12. Severability; No Waiver.**

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any Party hereto of a breach or violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

**13. Governing Law; Forum.**

This Agreement shall be governed and construed in accordance with the laws of the State of New York. The exclusive forum for any actions or proceedings not settled or required to be settled through dispute resolution or other means pursuant to this Agreement shall be the state and federal courts located in Livingston County, New York.

**14. Binding Effect/Assignment.**

a. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

b. Company may, without the consent of the Town or County, assign this Agreement or any or *all* of its rights, interests or obligations under this Agreement to (i) an affiliate of Company, (ii) an entity to which Company has conveyed or leased the Solar Project, or (iii) any corporation, partnership, limited liability company or other business entity that acquires all or substantially all of the assets used in connection with the Solar Project; provided further that, assignee agrees in writing to be bound by the terms of this Agreement. Company or the assignee shall provide notice of the assignment of this Agreement prior to assignee using the Roads pursuant to the terms of this Agreement.

c. Company may, without the consent of the Town or County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any lender or equity provider providing financing for the Solar Project as security for Company's obligations under the financing agreements (including a trustee or agent for the benefit of its lenders) (a "**Permitted Collateral Assignee**"). In connection with any such collateral assignment to a Permitted Collateral Assignee, the Town and County shall, upon the request of Company, deliver to Company and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by Company and the Permitted Collateral Assignee and which shall contain customary provisions.

#### **15. Entire Agreement.**

The entire agreement of the Parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

#### **16. Counterparts.**

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by one counterpart.

#### **17. Authority of Parties.**

The individuals who have executed this Agreement on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

#### **18. Notice.**

a. Except where telephonic notice is required in Section 3(d)(2) and Section 6(b) and when providing telephonic notice to the other Party in the event of an emergency, any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (1) upon hand delivery, or (2) on the first day following delivery via a nationally registered United States overnight courier service. Prior to the commencement of Road use activities by Company's Heavy Vehicles, Company shall provide a telephone number in writing to the Highway Superintendents where a Company representative will be available 24 hours a day and, thereafter, Highway Superintendents shall provide a telephone number to the Company. The Parties agree that whenever there is an emergency situation, the Party shall provide telephonic notice to the other Party in a reasonable amount of time following the emergency.

b. For purposes of this Agreement only, any notices to the Parties, other than telephonic notices, shall be directed to the Parties as set forth below:

For Company:

Morris Ridge Solar Energy Center, LLC  
195 Montague Street, 14th Floor  
Brooklyn, NY 11201

With a copy to:

For Town:

For Town Highway Superintendent:

With a copy to:

For County:

For County Highway Superintendent:

With a copy to:

The Parties may change their notice addresses upon written notice to the other Party using a method set forth in this Section 18.

## **19. Cure.**

a. In the event the Town or County believes a default in the obligations of the Company under this Agreement has occurred, the Town or County shall give Company written notice of such alleged default and the Company shall have thirty (30) days (or ten (10) days for alleged defaults which are already subject to an express time period, or longer if the Agreement expressly allows for a longer cure period, from the receipt of such notice to cure such alleged default, except that should the nature of the alleged default be such that it cannot be reasonably

cured within such thirty (30) days, Company shall commence and diligently continue cure activities within such thirty (30) days and shall have a reasonable amount of time after the expiration of the thirty (30) (or ten (10) day period to cure such alleged default, provided however, such additional cure period shall not exceed one hundred and twenty (120) days. No cure period shall apply to a default that requires immediate attention pursuant to Section 6 of this Agreement. Notwithstanding anything in this Section 19 to the contrary, the Company shall have a reasonable amount of time to cure an alleged default with regard to its obligations regarding disposal of debris and the blockage of traffic.

b. In the event the Company believes a default in the obligations of the Town or County under this Agreement has occurred, Company shall give the Town or County written notice of such alleged default and the Town or County shall have thirty (30) days (or ten (10) days for alleged defaults which are already subject to an express time period, or longer if the Agreement expressly allows for a longer cure period from the receipt of such notice to cure such alleged default, except that should the nature of the alleged default be such that it cannot be reasonably cured within such thirty (30) days, the Town or County shall commence and diligently continue cure activities within such thirty (30) days and shall have a reasonable amount of time after the expiration of the thirty (30) day period to cure such alleged default, provided however, such additional cure period shall not exceed one hundred and twenty (120) days.

## **20. Further Assurances**

Subject to the terms of this Agreement, each Party agrees to reasonably cooperate with the other Party's reasonable use of Roads.

## **21. Term.**

a. The term of this Agreement shall become effective as of the date first written above and shall remain in effect until the expiration of the one year warranty period in Section 6(i), unless terminated earlier in accordance with this Agreement ("**Term**").

b. The Town and County agree that the Company's right to place Cables and Utility Poles and other infrastructure as permitted herein in the Roads and in the Town and County's right of way shall be irrevocable during the Term.

## **22. Force Majeure**

a. Force Majeure Event Defined. As used in this Agreement, "**Force Majeure Event**" means causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes; earthquake; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this Section 24; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and



requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

b. Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

- (1) the non-performing Party will give the other Parties written notice within forty eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;
- (2) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- (3) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and
- (4) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Parties written notice to that effect.

[signature page to follow]

**IN WITNESS WHEREOF**, Parties have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

**Morris Ridge Solar Energy Center, LLC**

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

**Town of Mount Morris**

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

**Livingston County**

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

List of Exhibits – To be provided by Company at a later date as set forth in the Agreement

- Exhibit A-1: List of Roads
- Exhibit A-2: Map of Roads
- Exhibit B-1: Locations of Underground Cables
- Exhibit B-2: Locations of Overhead Cables and Utility Poles
- Exhibit C: Locations of Temporary Construction Easements and Turning Radii
- Exhibit D: Location of Driveways and Curb Cuts
- Exhibit E: Repair Techniques
- Exhibit F: Road Inspection and Release Completion Letter

**Exhibit A-1**  
**List of Roads**  
**[To be Provided Prior to Construction]**

**Exhibit A-2**

**Map**

**[To be Provided Prior to Construction]**

**Exhibit B-1**

**Locations of Underground Cables**

**[To be Provided Prior to Construction]**

**Exhibit B -2**

**Locations of Overhead Cables and Utility Poles**

**[To be Provided Prior to Construction]**

## **Exhibit C**

### **Locations of Temporary Construction Easements and Turning Radii**

**[To be Provided Prior to Construction]**

**Exhibit D**

**Location of Driveways and Curb Cuts**

**[To be Provided Prior to Construction]**



## **Exhibit D-1**

### **Minimum Standards for Driveways**

## Exhibit E

### Repair Techniques

Paved Surface:

Base Repair ( hot mix areas)	Surface Repair (Gouges, track marks)	Base Repair ( cold mix areas)
Mill four inches in depth to the limits of the repair as field located	Chip seal in accordance with NYDOT Section 405 full lane width in the area of the surface	Mill four inches in depth to the limits of the repair as field located
Install two inches of NYDOT Section 402 19 mm hot mix	NYDOT hot mix ( shim) may be applied in areas of minor depressions at the Town's direction	Install four inches of NYDOT Section 405 cold mix bituminous pavement, Type 2 and chip seal the surface <u>using limestone chip seal</u>
Install two inches of NYDOT		Seal surface in accordance with NYDOT Section 405
Seal edges with NYDOT joint sealant		

Hot/Cold mix areas: Prior to use of the Roads by Company's Heavy Vehicles, Municipality shall notify Company as to which paved Roads are hot mix areas and which are cold mix areas. If Company has an objection as to whether a Road is a hot mix area or a cold mix area, it can provide evidence of the contrary with a core sample of the Road. The results of the core sample shall be conclusive evidence regarding hot mix or cold mix area.

Exception: if base failure area requires excavation and stone, a reasonable field determination will be made for depth and size of the repair. Also, field adjustments for paved surfaces and base may be made upon mutual agreement.

Chip Seal Surface:

Loss of surface material:	Base Repair:(excess rutting or base failure)
Install NYDOT Section 410 Bituminous Surface Treatment in areas where existing surface material loss occurs.	Profile the roadway by a full depth reclamation in four to eight inch lifts using a calcium chloride binder
Spot chip seal repairs will be applied on an as needed basis using limestone chip	Install a NYDOT double chip seal over the reprofiled area using limestone chip seal

Aggregate and Dirt Surfaces:

Regrade and reshape rutted aggregate and dirt surfaces	Apply dust control as determined to be necessary. Water or commercial dust control
Repair ditch lines as necessary	Furnish and install 4 inches of crusher run aggregate in the areas of repair.

Scope of repairs will be field inspected and compared to the existing conditions as recorded by Road video collected prior to the start of the use of each Road by Company's Heavy Vehicles. A copy will be provided to the Municipality for use of comparison to the Municipality video should the Municipality choose to prepare its own video record.

Should temperatures or seasonal restrictions apply, the Municipality may elect to waive temperature and seasonal restrictions or delay the repairs until Section 402 and 410 specifications can be met.

Notifications:

1. Company will notify and provide updates to the Municipality of the project schedule and the approximate time periods Company's Heavy Vehicles will be using the Municipality's Roads
2. Company will request a pre-use inspection of the Roads listed in the Road Use Agreement by the Municipality Representatives and Company representatives for identification of any existing Road damage prior to the time period of use by Company's Heavy Vehicles.
3. Company will request a post-use inspection of the roads listed in the Road Use Agreement by the Municipal Representatives and Company representatives for identification of any new Road damage associated with the time period of use by Company's Heavy Vehicles.

Completion:

Upon completion of the construction of the Solar Project Wind Project, Company will contact the Municipality to schedule the final inspection of the Roads listed in the Road Use Agreement for release of the Roads from the Road Use Agreement and/or identification of repairs.

## Exhibit F

### Road Inspection and Release

Whereas the Town/County of \_\_\_\_\_ has inspected and approved the necessary repairs on \_\_\_\_\_ Road (the “**Road**”) on 20\_\_\_\_.

The Town/County of \_\_\_\_\_ hereby releases Company, according to the terms of the Road Use Agreement dated \_\_\_\_\_ 20\_\_\_\_, from any future repairs on the Road from the following date: \_\_\_\_\_ 20\_\_\_\_.

Town/County of \_\_\_\_\_

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