

## DECOMMISSIONING AGREEMENT

This Decommissioning Agreement (this “Agreement”), dated effective as of [\_\_\_\_\_] (the “Effective Date”), is between [\_\_\_\_\_] (“Town”), and [\_\_\_\_\_] (“Owner”). Town and Owner may be referred to herein individually, as a “Party” and collectively, as the “Parties.”

### Recitals

A. Owner has permitted and intends to construct, operate and maintain a solar energy facility [with battery storage,] with an estimated capacity of [\_\_\_\_\_] that will generate electric power (the “Facility”) at [\_\_\_\_\_] (the “Site”), which is owned by [\_\_\_\_\_] (the “Site Owner”).

B. [Town/Approval] requires that the Facility be decommissioned and removed upon the cessation of its operation at Owner’s expense in accordance with the decommissioning plan attached hereto as Exhibit A (“Decommissioning” and such plan, the “Decommissioning Plan”) and requires that Owner post a form of surety deemed acceptable to [Town] to cover the cost of Decommissioning in the event that Owner fails to properly perform Decommissioning (such cost, taking into account the salvage value of the Facility, the “Removal Cost”).

C. Owner intends to post a surety in an amount equal to [Ten Thousand Dollars per MW<sub>AC</sub> of the installed capacity of the Facility] as may be adjusted in accordance herewith, and Town has determined that such surety is acceptable to cover the Removal Cost and satisfies Owner’s obligations under [Approval] in accordance with the terms and conditions hereof.

### Agreement

In consideration of the covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. ***Surety.***

(a) Owner shall notify Town of the date that the Facility achieves commercial operation as determined by Owner (the “Commercial Operation Date”) within thirty (30) days following such date. Within sixty (60) days following the Commercial Operation Date, in satisfaction of [Town’s] surety requirements, Owner shall post as financial security in the event Owner fails to perform its obligations relating to Decommissioning (in any case, the “Posted Surety”): (i) a bond in favor of Town (the “Decommissioning Bond”) with a face amount equal the product of [Ten Thousand Dollars *multiplied by* the installed capacity of the Facility in MW<sub>SAC</sub>] (the “Surety Amount”); (ii) cash in an escrow account held by [Town] that is reasonably acceptable to the Parties in the amount of the Surety Amount; (iii) a letter of credit from a reasonably acceptable financing institution for the Surety Amount; or (iv) any combination of the foregoing such that the aggregate amount of the Posted Surety is in an amount not less than the Surety Amount. At any time, Owner may replace the Posted Surety with any one or more of the foregoing, *provided* that the aggregate amount of the Posted Surety is an amount not less than the Surety Amount. If, at any time, Owner replaces any Posted Surety with an alternative form of surety, Town shall return to Owner the replaced surety (*i.e.*, bond, cash, letter of credit) within

fifteen (15) days following such replacement. Any interest on cash posted as surety shall be the property of Owner and remitted to Owner by Town on an annual basis on each anniversary of the date that such cash was posted.

(b) Any funds comprising or that are the proceeds of the Posted Surety shall be used solely to pay for the Removal Cost. Other than the Posted Security, Owner shall have no security obligations to Town during the operation of the Facility; *provided, however*, that, in the event the Removal Cost exceeds the amount in the Posted Surety, Owner shall be responsible for any such excess cost, *provided* that such excess cost is not as a result of Town using any amounts from the Posted Surety for any reason other than to pay for Decommissioning in accordance with the Decommissioning Plan. In the event that Town uses any funds comprising or that are the proceeds of the Posted Surety for any reason other than to pay for Decommissioning in accordance with the Decommissioning Plan, Town shall be responsible to reimburse such amount to Owner and Town shall indemnify and hold harmless Owner and the Site Owner from any claim, loss, damage, liability or cost (including reasonable attorney costs) arising from such use of funds for reasons other than to pay for Decommissioning in accordance herewith.

(c) **[OPTIONAL:** At any time within sixty (60) days following each five-year anniversary of the Commercial Operation Date, Town may engage, at Town's sole cost and expense, a third-party consultant to determine whether the then-current Surety Amount is adequate to cover the then-anticipated Removal Cost. If such consultant and Owner determine that the Removal Cost exceeds the then-current Surety Amount, then Owner, within sixty (60) days following the date of such determination, shall increase the amount of the Posted Surety accordingly to cover such additional cost and same shall become part of the Posted Surety for all purposes thereafter. If such consultant and Owner determine that the then-current Surety Amount exceeds the then-anticipated Removal Cost, then Owner, within sixty (60) days following the date of such determination, shall decrease the amount of the Posted Surety accordingly and Town shall return such excess to Owner.]

2. ***Decommissioning.*** Owner shall complete Decommissioning within twelve (12) full calendar months following the earlier to occur of (i) the date of the end of the Facility's useful life, and (ii) the date that the Facility ceases to be operational for more than twelve (12) consecutive months, in either case, whether Decommissioning has occurred shall be determined by Owner. Owner shall notify Town of such date within thirty (30) days thereafter. Upon completion of Decommissioning, Owner shall provide written notice thereof to Town, and Town shall have forty-five (45) days to determine, in writing, provided to Owner, whether such Decommissioning is complete and in compliance with the Decommissioning Plan. Upon such determination by Town, or Town's failure to issue same within such forty-five (45) day period, Owner's obligations hereunder shall be deemed discharged, this Agreement shall be deemed terminated and the Posted Surety shall, within thirty (30) days following the earlier of the Town's determination that Decommissioning is complete or expiration of the forty-five (45) day period, shall be returned to Owner by the Town.

3. ***Use of Surety.*** If, within the forty-five (45) day period described in Section 2, Town determines that Owner failed to adequately perform Decommissioning, in whole or in part, substantially in accordance herewith or that Owner Abandoned (as hereinafter defined) the Facility, Town shall, within five (5) days following such determination, notify Owner in writing

thereof (the “Failure Notice”) and ninety (90) days following the date of the Failure Notice, Town (or its agents or contractors) may enter onto the Site to commence Decommissioning using the Posted Surety to cover its costs in accordance therewith, unless Owner has either (i) commenced Decommissioning and is diligently pursuing same during such ninety (90) day period such that Decommissioning will be complete by the expiration of twelve (12) full calendar months following the date of the Failure Notice, or (ii) provided a reasonable explanation for the delay in Decommissioning. Upon completion of Decommissioning, Owner’s obligations hereunder shall be deemed discharged, this Agreement shall be deemed terminated and, if at the time that Town commenced Decommissioning in accordance with this Section 3, cash had been posted as surety, any cash remaining after Decommissioning by Town is complete shall be returned to Owner along with any other form of Posted Surety within thirty (30) days after such completion. For purposes hereof, “Abandoned” means when either (x) no electricity is generated by the Facility for more than twelve (12) consecutive months, or (y) Owner has stated in writing to the Town Building Inspector that Owner intends to abandon, vacate, or cease solar energy creation operations at the Site indefinitely.

#### 4. ***Force Majeure.***

(a) Neither Party shall be considered in default or breach in the performance of their respective obligations hereunder to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event (defined in Section 4(b)). The affected Party’s obligation to perform the subject obligation hereunder shall be suspended during the tenure of the subject Force Majeure Event and such Party shall not be liable in damages or otherwise for a failure to perform, if and only to the extent that such Party is unable to perform, or prevented from performing by a Force Majeure Event. As soon as reasonably possible after the occurrence of the Force Majeure Event, but no later than thirty (30) days following the date that the affected Party has knowledge that such occurrence qualifies or could qualify as a Force Majeure Event, the affected Party shall give the other Party written notice describing the particulars of the occurrence and its estimated duration. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to recover from the effects of the Force Majeure Event and shall resume performance of its obligations hereunder as soon as reasonably practicable.

(b) For purposes of this Agreement, “Force Majeure Event” means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that: (i) such event is not due to the affected Party’s negligence or willful misconduct; and (ii) such event is not the result of any failure of the affected Party to perform any of its obligations hereunder. Subject to the foregoing conditions, Force Majeure Events include: acts of God; war; acts of the public enemy; terrorism; riot; civil commotion; sabotage; fire; floods; landslide; volcanic eruption; epidemics; global pandemics; quarantine restrictions; embargos; and governmental authority decreed official state of emergency.

#### 5. ***Miscellaneous.***

(a) ***Amendment and Waiver.*** This Agreement may not be altered or amended, nor any rights hereunder waived, except by a written agreement executed by the Parties. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver

thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other (or further) exercise thereof.

(b) **Notices.** All notices, demands and other communications required or permitted hereunder (“Notices”) shall be in writing and addressed as set forth below. A Notice shall be deemed made or given when personally delivered, three (3) business days after deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested, or two (2) business days after being delivered to a courier guaranteeing overnight delivery. Either Party may, by notice so delivered to the other Party, change the address or individual to which delivery shall thereafter be made.

*If to Owner:*

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

*If to Town:*

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

*with copies to:*

[\_\_\_\_\_]

*and:*

[\_\_\_\_\_]

(c) **No Assignment; Binding Effect; Third Parties.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that Owner may assign this agreement without Town’s prior consent to any of Owner’s affiliates upon notice of such assignment delivered to Town. Any assignment in violation of the foregoing shall be void. For the avoidance of doubt, any change in ownership of Owner shall not be deemed an assignment hereunder. Subject to the foregoing, this Agreement is binding upon and inures to the benefit of the Parties and their respective agents, successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any third party any benefits, rights or remedies.

(d) **Governing Law; Venue; No Jury Trial; Severability.** This Agreement shall be governed by and construed in accordance with the laws of [\_\_\_\_\_] without regard to its conflict of laws principles. The Parties consent to exclusive venue and jurisdiction in the state and federal courts located in [\_\_\_\_\_]. **TO THE EXTENT ALLOWED UNDER APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH REGARD TO ANY DISPUTE RELATED HERETO.** If any provision hereof is deemed by a court of competent jurisdiction to be unenforceable, in whole or in part, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof.

(e) **Construction.** The headings of the Sections hereof and any listing of their contents are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof. The Parties acknowledge that this Agreement is the result of

negotiations between the Parties, each Party had equal bargaining power, and no provision hereof shall be construed against a Party as a result of the preparation hereof. All references herein to Sections, subsections and other subdivisions refer to the corresponding Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. The words “this Agreement,” “herein,” “hereby,” “hereunder” and “hereof,” and words of similar import, refer to this Agreement as a whole and not to any particular Section, subsection or other subdivision unless expressly so limited. The words “this Section” and “this subsection,” and words of similar import, refer only to the Section or subsection hereof in which such words occur. The word “including” (in its various forms) means “including without limitation.” Words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires.

(f) ***Integration; Execution.*** This Agreement contains the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, understandings and statements with respect thereto. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. Facsimile or electronic signatures are valid and binding on the Parties.

*[Signature page follows.]*

The Parties have executed this Agreement to be effective as of the Effective Date.

TOWN:

[\_\_\_\_\_]

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

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

Title: \_\_\_\_\_

OWNER:

[\_\_\_\_\_]

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

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

Title: \_\_\_\_\_

**EXHIBIT A**  
Decommissioning Plan

*[see attached]*