

LEGAL NOTICE

Please take notice that the Mayor and Common Council of the City of North Tonawanda will hold a public hearing on Tuesday, May 24th, 2022, at 6:00pm in the Common Council Chambers, City Hall, 216 Payne Avenue, North Tonawanda, New York 14120. The purpose of said public hearing will be to accept comments on proposed Local Law No. 2 & 3 of the year 2022 entitled "Solar Energy Systems Law & PILOT Law. A copy of said proposed Local Law No. 2 & 3 of the year 2022 is available and may be inspected on the City Hall website www.northtonawanda.org

DRAFT FINAL May 6, 2022

NORTH TONAWANDA SOLAR ENERGY SYSTEMS LAW

Chapter 103-XXX

§ 103-XXX. Authority.

This zoning for solar electric energy systems is adopted pursuant to the Section 20 of the Municipal Home Rule Law and §20(24) of General City Law of the State of New York, which authorizes the City of North Tonawanda to adopt zoning provisions that advance and protect the health, safety, and welfare of the community and to make provisions for, so far as conditions may permit, the accommodation of solar energy systems and equipment.

§ 103-XXX. Findings.

The City Council of the City of North Tonawanda makes the following findings:

- A. The City Council finds a growing need to properly site solar energy systems within the boundaries of the City of North Tonawanda to protect residential, business areas and other land uses; to preserve the overall beauty, nature, and character of the City of North Tonawanda; to promote the effective and efficient use of solar energy resources; and to protect the health, safety, and general welfare of the citizens of the City of North Tonawanda.
- B. Prior to the adoption of this article, no specific procedures existed to address the siting of solar energy systems. Accordingly, the City Council finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- C. To manage and regulate solar development in ways that compliment and protect local residential neighborhoods, business and commercial districts while mitigating potential negative impacts solar installations may have on such community assets.
- D. Solar energy systems need to be regulated for removal when no longer utilized with managed restoration plans in place.

§ 103-XXX. Definitions.

The following definitions shall apply to this article:

APPLICANT — The person or entity filing an application and seeking an approval under this article; the owner of a solar energy system or a proposed solar energy system project; the operator of a solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant" or "owner" or "operator" is used in this article said term shall include any person acting as an applicant, owner, or operator.

BARRIER — A structure and/or plant materials that obstruct visual and/or noise impact on a use from another use and which is located in a buffer yard. A barrier is not considered a fence for the purposes of the regulations set forth §103-XXX. Permitting requirements.

BUFFER — An area of land forming a physical separation between two uses and consisting of the required setback.

BUILDING INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEM (TIER 1) — A combination of photovoltaic building components integrated into any building envelope system, such as vertical

facades including glass and other facade material, semitransparent skylight systems, roofing materials and shading over windows.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS (TIER 1) — A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public.

GROUND-MOUNTED SOLAR ENERGY SYSTEM (TIER 2) — A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public. Ground-mounted solar energy systems not meeting the definition as outlined in this article will be treated as utility-scale solar energy systems and the requirements of such.

FENCE — A vertical structure, constructed of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials, erected in the minimum setback or buffer yard.

FINISHED GRADE — The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or structure. If the line of intersection is not reasonably horizontal, the finished grade, in computing height of a building or structure, shall be the mean elevation of all finished grade elevations around the periphery of the building or structure.

NET METERING — A billing mechanism that credits solar energy system owners for the electricity they add to the grid. For example, if a residential customer has a solar energy system on their roof, it may generate more electricity than the home uses during daylight hours.

NATIVE PERENNIAL VEGETATION — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

POLLINATOR — Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND — Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

PERMIT, BUILDING — A permit issued by the code enforcement officer in conformance with this title, the New York State Uniform Fire Prevention and Building Code and/or any other building code requirements adopted by the City of North Tonawanda.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM (TIER 1) — Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on said lot (net metering is allowed), potentially for multiple tenants.

SETBACK — A line generally parallel to a lot line and spaced equidistant there from by a distance specified in § 103-6 thru § 103-13.1 of the City Code in the underlying districts or a line generally parallel to an edge of a drive or internal drive and spaced equidistant therefrom by a distance specified in Chapter 103 of the City of North Tonawanda Zoning Code.

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site.

SITE PLAN — A map, plan and supporting information required pursuant to Chapter 103 for uses specified in § 103-5 in the City Code.

SOLAR COLLECTOR — A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.

SOLAR ENERGY EQUIPMENT— Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM — The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

- a. Rooftop-Mounted Solar Energy Systems
- b. Building-Mounted Solar Energy Systems
- c. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to 4,000 square feet and that generate up to 110 % of the electricity consumed on the site over the previous 12 months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

SOLAR PANEL — A photovoltaic device capable of collection and converting solar energy into electricity.

STORAGE BATTERY — A device that stores energy and makes it available in an electrical form.

STORMWATER POLLUTION PREVENTION PLAN (SWPP) — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STRUCTURE — A static construction of building materials, composed of one or more parts, including but not limited to a building, heating-ventilating-air conditioning (HVAC) system, stadium, platform, tower, antenna, shed, display stand, storage bin, sign, fence, reviewing stand and gasoline/fuel pump.

STRUCTURE, ACCESSORY — A structure detached from, on the same lot with and subordinate to a principal structure, used for purposes customarily incidental to those of the principal structure. Accessory structure includes, but is not limited to, portable, removable, or permanent enclosure, shade structure, carport, garage, and storage shed.

STRUCTURE HEIGHT — Structure height means the vertical distance measured from the mean finished grade to the highest point of a roof or otherwise to the top of a structure.

STRUCTURE, PRINCIPAL — A structure where the principal uses of a lot are conducted. Such structure includes any open or enclosed porch, carport, garage, or similar structure attached to such structure.

USE — An activity on a lot.

USE, ACCESSORY — A use which is controlled by the person exercising a principal use, incidental to and customarily associated with the principal use and located on the same lot as the principal use.

USE, PRINCIPAL — A main or primary use of a lot or structure

UTILITY-SCALE SOLAR ENERGY SYSTEM (TIER 3) — Any solar energy system that cumulatively on a lot is designed and intended to supply energy to a utility grid primarily for off-site consumption or sale to the general public and have a capacity to produce less than 25 MW of energy.

YARD, FRONT — An open area bounded by: (1) a front lot line; (2) a front yard setback, and (3) either: (a) two side lot lines, or (b) a side lot line and another front lot line, or (c) two other front lot lines.

YARD, REAR — An open area bounded by: (1) a rear lot line; (2) a rear yard setback related to the rear lot line; and (3) two side yard setbacks.

YARD, SIDE — An open area bounded by: (1) a side lot line; (2) a side yard setback related to the side lot line; (3) a front yard setback; and (4) either: (a) rear lot line, or (b) another side lot line, or (c) another front yard setback.

§ 103-XXX. Applicability.

- A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the City after the effective date of this Local Law, excluding general maintenance and repair.
- B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
- C. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
- D. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the City Code.
- E. Any inconsistent provisions of the North Tonawanda City Zoning Law which purport to or may be interpreted to allow solar energy systems in other districts are hereby superseded.

§ 103-XXX. General permitting requirements.

- A. A Building permit shall be required for installation of all Solar Energy Systems.
- B. Issuance of permits and approvals by the Planning Commission shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].
- C. The placement, construction, and major modification of all solar energy systems within the boundaries of the City of North Tonawanda shall be permitted only as follows:
 - (1) **Roof-top-mounted and building-mounted solar energy systems (Tier 1)** are permitted in all zoning districts as accessory uses in the city through a building permit application process per North Tonawanda City Code, Chapter 25, Building Permits.
 - (2) **Building integrated photovoltaic systems (Tier 1)** are permitted as accessory uses under the normal building permit process for building construction or building renovations.
 - (3) **Ground-Mounted Solar Energy System (Tier 2)** energy systems are permitted as accessory structures by building permit, site plan review, and special use permit. These units are allowed in the following districts only if the lot in which the freestanding or ground-mounted solar energy system is situated on is greater than 2 acres up to 5 acres.¹:

¹ The minimum lot size per § 103-6(C)(1) for Single Family Residential (R1-1) in the North Tonawanda City Zoning Law is 8,400 sq. ft. which is Low Density Residential.

- a. Single Family Residential (R-1), Neighborhood Business (C-1), General Commercial (C-2), Waterfront District (W-D) and (WD-1) and all industrial districts (M-1, M-2, M-3).

(4) **Utility-Scale Solar Energy Systems (Tier 3)** shall require site plan approval, special use permit before the issuance of a building permit and shall be subject to all provisions of this article where the lot in which the freestanding or ground-mounted solar energy system is situated on lots at least 5 acres or greater.²

- a. Neighborhood Business (C-1), General Commercial (C-2), Waterfront District (W-D) and (WD-1) and all industrial districts (M-1, M-2 and M-3).

Table A. Use Districts	(Tier 1)		Ground Mounted (Tier 2)	Utility Scale (Tier 3)
	Roof Mounted	Bldg. Integrated	> 2 to 5 ac.	>5 ac.
R1-1 Single-Family Residence	A (P)	A (P)	AS (SU/SPR)	NP
R1-2 Single-Family Residence	A (P)	A (P)	NP	NP
R-2 General Residence	A (P)	A (P)	NP	NP
R-C Residence–Restricted Business	A (P)	A (P)	NP	NP
C-1 Neighborhood Business	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
C-2 General Commercial	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
M-1 Light Manufacturing	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
M-2 General Industrial	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
M-3 Special Industrial	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
WD Waterfront District	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
WD-1 Waterfront District	A (P)	A (P)	AS (SU/SPR)	AS/PS (SU/SPR)
Sub area Mixed Use DD	A (P)	A (P)	NP	NP
Sub area Mixed Use DD=1	A (P)	A (P)	NP	NP
Key:	AS=Accessory Structure PS=Principal Structure	A =Accessory Use P= Principal Use	(SU) = Special Use Permit (SPR)= Site Plan Review	

§ 103-XXX. Permitting requirements.

A. Rooftop-mounted and building-mounted solar energy systems (Tier 1) All rooftop-mounted or building-mounted or building integrated (BIPV) solar energy systems shall meet all building permit requirements, including the New York State Uniform Fire Prevention and Building Code standards.

² Solar Energy Systems producing 25 MW or more are required to seek a permit through a State-level siting process administered by the Office of Renewable Energy Siting (ORES).

a. Interpretation. The provisions of this chapter shall be interpreted as providing minimum requirements for (Tier 1) solar energy systems adopted for the purpose of promoting the health, safety, morals, and general welfare of the community.

- (1) Installation of small-scale solar energy systems and equipment is encouraged on all preexisting structures; however, access to sunlight which is necessary therefor cannot be obtained through the provisions of this chapter. Height limitations for solar collectors shall not exceed three feet above the level of the permitted building height in the underlying zoning district. All solar collectors and their associated support elements shall be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
- (2) Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface and the highest edge of the system.
- (3) Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
- (4) Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 36 inches above the flat surface of the roof, whichever is higher.
- (5) Glare: All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
- (6) Fire safety: All Roof mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code Standards.
- (7) Installation of building-integrated photovoltaic energy systems under (Tier 1), as defined herein, are exempt from the requirements of this article. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Building Inspector/Code Enforcement Officer may request assistance from the Planning Commission to determine whether a solar energy system should be considered a BIPV system.
- (8) Solar collectors must be completely contained within the limits of the building roof. All other equipment and components (not panels) of the solar energy system (not located on or in the building/structure) shall be located within the rear yard only and are subject to setbacks for accessory structures as prescribed in the underlying zoning district.
- (9) All Roof mounted systems shall be designed and installed on designated landmarks or within designated historic districts per Chapter 51C, Historic Preservation, of the city code to avoid visibility from a public street or alley to the greatest extent practicable. Alterations to any architectural features shall not impact upon the integrity, support, or

exterior appearance of the individual property and/or adjacent properties in an historic district.

b. General Provisions

- (1) Allowing or permitting the reflective glare of solar rays of any solar energy system/or array of solar panels, of any nature or kind or description, onto neighboring properties, public roads, or public parks, under any circumstances whatsoever, is strictly prohibited.
- (2) It is the responsibility of any landowner, resident, manager, tenant, or lessee of any premises upon which there is situated a solar energy system or array of solar panels of any nature, kind, or description to keep reflective glare of any description from going onto neighboring properties, public roads, or public park at any time. In that regard, it is the ongoing responsibility of such persons to conduct regular inspections of such systems or array to prevent the direction of reflective glare onto the property of another and, if necessary, to make appropriate adjustments to prevent the same from occurring.
- (3) In the event such persons become aware of, or with the exercise of reasonable care would have become aware of, or has received a complaint, that reflective glare from his solar energy system or array of solar panels is upon the property of another, such person shall undertake action to immediately block the reflective glare. This may be accomplished by adjusting the angles of the system or array, if possible, or by physically blocking the glare by covering the panels or by removing them.
- (4) Upon the failure, refusal, or neglect of such person to immediately block the reflective glare as directed above, City of North Tonawanda workforces, at the direction of the City Building Inspector and/or Code Enforcement Officer, shall cover such system or array of panels, if possible, to block the reflective glare. If not, the system or panels shall be physically de-constructed or removed to the point the reflective glare is blocked.
- (5) In the event the system or panels are removed or de-constructed as set forth in number (4) above, the owner or person responsible for the system or array shall not replace or reconstruct the system or panels until he or she applies to and receives a new Building permit after submitting to the Building Inspector a plan of operation that will ensure no further incidents of reflective glare onto neighboring properties, public road, or public park will occur.
- (6) Further, or additional complaints of such incidents shall be grounds to revoke any permit received from the City of North Tonawanda for the system or array and the system or array shall be fully dismantled and removed from the premises.
- (7) All (Tier 1) photovoltaic solar panels at the end of their life must be recycled pursuant to the County of Niagara, New York's Solar Panel Recycling Regulations. A written verification (with a copy the stewardship plan, if possible) must be submitted to the

City of North Tonawanda showing that they comply with the county solar recycling regulations.

B. Site plan requirements for a Ground-Mounted Solar Energy system (Tier 2) and Utility-Scale Energy System (Tier 3). The applicant shall be required to apply for a special use permit and a site plan review drawn in sufficient detail as follows:

a. Preliminary site plan review.

- (1) Plans and drawings of the solar energy system installation signed and sealed by a professional engineer registered in New York State showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any stormwater or erosion disturbances, and utility lines, both above and below the ground, on the site and adjacent to the site; and
- (2) Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the proposed solar panels; and
- (3) Any proposed signage, barriers, plantings and/or screening for said project such that the solar panels will not be visible from roadways, driveways, or adjacent lots from a height of observation of at least 6 feet above the ground on said roadways, driveways, or adjacent lots; and
- (4) Any such additional information as may be required by the City's professional engineer or consultant, City of North Tonawanda Planning Commission, City Attorney, Building Inspector, or other City entity.
- (5) At the earliest point possible in the applicant's preliminary project planning applicant must submit a letter of consultation with agencies with jurisdiction New York State Department of Environmental Conservation pursuant to Article 24, Freshwater Wetlands, Title 23 of Article 71 of Environmental Conservation Law (ECL) Article 5 of ECL (and Chapter 44 of the City of North Tonawanda Code); and/or the Regulatory Branch of the US Army Corps of Engineers (USACOE) for federal wetlands pursuant to Section 404 of the Clean Water Act.
 - i Should wetlands be present, at the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a wetland delineation to determine the boundaries of all federal, state and locally regulated wetlands present on the facility site and within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, access roadways, and utility tie-ins. For adjacent properties without accessibility, wetland delineation surveys shall be based on remote sensing data, interpretation of existing wetland and soils mapping, observations from adjacent accessible properties, and current and historical aerial imagery.

- ii The applicant shall submit to the City Engineer and Planning Commission, with a copy to NYSDEC and/or USACOE a draft wetland delineation report summarizing the wetland characteristics and Cowardin classifications of all federal, state, and locally regulated wetlands, the wetland class consistent with 6 NYCRR Section 664.1 (if applicable), a summary of the field data collected, and an ArcGIS compliant shapefiles or geo-database of the field delineated wetland features.
- iii The applicant shall consult with the City Engineer and Planning Commission, and as necessary with the NYSDEC and USACOE, to determine the status of the delineated state-regulated and federal regulated-wetlands and the NYSDEC and/or USACOE may conduct a site visit at the request of the Planning Commission to assist in determining which wetlands are state-regulated pursuant to ECL Article 24, or which are federal-regulated pursuant to Section 404 of the Clean Water Act and to advise with respect to potential impacts to jurisdictional wetlands.
- iv At the request of the Planning Commission, the NYSDEC and/or USACOE shall review the draft wetland delineation and advise the Planning Commission if the proposed facility components could impact regulated wetlands. The Planning Commission, with a copy to the NYSDEC or USACOE, shall provide a final approved jurisdictional determination to the applicant within sixty (60) days of receipt of the applicant's draft wetland delineation report, provided that weather and ground conditions are suitable for making such a determination. In the event that weather or ground conditions prevent the Planning Commission from making a determination within sixty (60) days, the Planning Commission shall provide a jurisdictional determination to the applicant as soon as practicable, following suitable weather and ground conditions.
- v The applicant shall provide the approved wetland delineation and associated report in the application as required in Part b. Final Site Plan Review.
- vi All applicants are required to conduct restoration activities in accordance with an approved Wetland Restoration and Mitigation Plan, restore disturbed wetland areas with native vegetation and erosion controls and monitor vegetative cover for a minimum of 5 years.

b. Final Site Plan Review. Applicants for a special use permit to place, construct, and make a major modification to a Ground-mounted Solar Energy System (Tier 2) and Utility-Scale Energy System (Tier 3). within the boundaries of the City of North Tonawanda shall submit six sets of the following information to the Building Inspector, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Commission for its review and recommendation. The Planning Commission may make such additional referrals as it deems appropriate. No such application shall be deemed filed

until any required application fee has been paid. Site Plan Review and Special Use Permit applications shall be deemed incomplete if one or more questions have not been answered or if submittal materials are missing. The following information shall be contained in the application:

1. A completed State Environmental Quality Review Act (SEQRA) short form environmental assessment form (EAF), unless a full form is required by the City's professional engineer or consultant or the City of North Tonawanda Planning Commission, with the City of North Tonawanda Planning Commission designated as lead agency for the SEQRA process.
2. Necessary special use permit information:
 - a. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner; and
 - b. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit; and
 - c. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.; and
 - d. Documentation of the clearing, grading, stormwater, and erosion control plans; and
 - e. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection; and
 - f. One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
3. A site plan drawn in sufficient detail as follows:
 - a. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below the ground, on the site and adjacent to the site; and
 - b. Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the solar panels; and (3) Proposed fencing and/or screening for said project.

4. A landscape plan for all Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3) shall be prepared and included with the site plan and special use permit application. The Planning Commission can require that Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Systems (Tier 3) involving complex or sensitive visual and/or aesthetic concerns be approved by a NYS registered landscape architect. Therefore, the applicant should retain a NYS registered landscape architect in the early planning stages of the proposal.
 - a. The screening & landscaping plan shall specify the locations, elevations, height, plant species, grading and/or materials that will comprise the landscape design. The landscape plan should also incorporate existing trees, plants, and shrubs into the landscape design to the extent practical and possible.
 - b. The landscape screening (buffer and barriers) shall be comprised of evergreen/coniferous trees and supplemental lower growth shrubs planted between the evergreen/conifers. The evergreen/coniferous tree plantings must be 6 feet or more in height at the time of planting and planted at recommended spacing for preferred growth and screening coverage. A staggered, zig-zag or similar planting pattern shall be used that will achieve healthy growth and maximum screening. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the City Planning Commission capable of screening the site may be required along any property line that abuts an existing residence.
 - c. Plantings and landscaping must be undertaken in a way that is appropriate for the type of soil, drainage, and other conditions at the planting site. A site inspection and analysis of soil and drainage factors is required; the USDA, Soil and Water Conservation District and/or a landscape professional should be consulted to assist with the selection and placement of appropriate species.
 - d. Sites shall be planted with perennial native vegetation to the extent practicable by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. No chemical herbicides shall be used to manage vegetation in and around facility components unless such chemical herbicides are used to preserve native pollinator vegetation or vegetation providing visual impact screening. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and native seed mixes. These plantings shall cover the ground area throughout the solar panel fenced in area.
 - e. The use of any pesticides is prohibited in the operation and construction of Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3).

- f. Photo-simulations of landscaping and screening of ground-mounted solar energy systems must be included with the site plan and special use permit application. Simulations shall illustrate how the applicant intends to mitigate visual impacts to the greatest extent possible from all adjoining property lines and public roadways. Simulations shall demonstrate how landscaping will be employed to mitigate community character impacts and blend incompatible land uses.
 - g. A visual impact assessment shall be required for Utility-Scaled Solar Energy Systems (Tier 3) situated on lots over 10 acres (which automatically is designated as a SEQR Type 1 Action) or within the City's Land and Water Revitalization Program (LWRP) Area prepared by a NYS registered landscape architect.
 - a. The visual impact analysis must consider existing conditions of various viewpoints and view sheds from abutting properties and abutting public roadways, or other aesthetic sources prescribed by the Planning Commission under the null condition. (Null conditions mean under existing conditions).
 - b. The analysis shall consider comparable viewpoints and view sheds (of those taken from the Null) at the time of completion with proposed plantings and screenings, and secondly, when the landscaping has matured. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
5. A boundary survey stamped and prepared by a New-York-State-licensed professional is to be provided, including the metes and bounds, monumentation, tax map information, property acreage, and easements
6. Clearing, grading, stormwater, and erosion control:
- a. Prior to Planning Commission site plan and special use permit approval, and before the City of North Tonawanda shall issue a building permit, the applicant shall submit an Erosion and Sediment Control Plan and a Stormwater Pollution Prevention Plan (SWPPP) to the City of North Tonawanda's City Engineer for its review and approval pursuant to § 48-10B of the Code of the City of North Tonawanda.; and
 - b. The Plan should avoid, minimize, and mitigate all federal and state wetlands the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

- c. All ground mounted solar energy systems shall be considered pervious if they maintain sheet flow for water to infiltrate under and around arrays through a pervious surface into the subsoil.
 - d. An erosion and sediment control plan shall include construction, post construction activity and decommissioning for removal of any ground-mounted solar energy system.
- 7. Parking surfaces shall be impervious. Parking space requirements shall be at the discretion of the Planning Commission.
- 8. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- 9. Owner or operator shall provide security fencing and warning signs prohibiting unauthorized access.
 - a. A sign not to exceed 8 SQ. FT. shall be displayed on or near the main access point and shall list the facility name, owner, and telephone number; and
 - b. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations not to exceed four square feet.
- 10. Glare - All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the site plan and then the building permit applications. To the extent practical, solar energy systems shall have neutral paint colors, materials, and textures to achieve visual harmony with the surrounding site area.
- 11. Deforestation discouraged. Removal of trees and other existing vegetation shall be limited to the extent necessary for the construction and maintenance of the solar facility. Removal of existing trees larger than six inches in diameter at breast height (DBH) is prohibited to the extent possible. A tree inventory of all trees larger than six inches in diameter must be submitted with any application to the City for a special use permit. Previously cleared or disturbed areas are preferred locations for solar panel arrays. The clearing of additional lands to accommodate a proposed utility-scale solar energy system may be permitted, provided the percentage of newly cleared land on any parcel does not exceed 10% of the existing woodlands on that parcel.
- 12. Prior to operation, all electrical connections must be inspected and approved by an Electrical Engineer or Inspector.
- 13. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed shall be provide with the site plan/special use permit application. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

14. All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and City requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. If solar storage batteries are included as part of the solar energy system they must be placed in a secure container or enclosure meeting the requirements of the New York State Uniform Building and Fire Code when in use, and when no longer used shall be disposed of in accordance with the laws and regulations of the City and New York State.
15. All transmission lines and electrical wiring shall comply with the utility's requirements for interconnection.
16. Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
17. A securitized decommissioning, removal, remediation, and restoration plan to ensure the proper removal of Utility-scale Solar Energy Systems (Tier 3). The decommissioning plan is to be submitted as part of the special use permit application to the Building Inspector for approval and must specify that after the utility-scale solar energy system is no longer in use or out of service for a period exceeding 3 months (as determined by the owner/operator or the Building Inspector), it shall be removed by the applicant or any subsequent owner. The decommissioning plan shall identify the anticipated life of the project. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate for decommissioning prepared by a professional engineer or qualified contractor. Cost estimates shall take inflation into consideration and be revised every five years during operation of the system and include any salvage value. Removal of the Utility-Scale Solar Energy System (Tier 3) must be completed in accordance with the approved decommissioning plan and the standards provided as follows:
 - a. All structures and foundations associated with the Utility-Scale Energy Solar Systems (Tier 3) shall be removed.
 - b. All disturbed ground surfaces shall be restored to original conditions, including topsoil, using native plant species and native seeding as necessary; and
 - c. All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.

- d. A restoration plan for agricultural areas per New York State Agriculture and Markets (NYSDAM), Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands. Agricultural mitigation is limited to impacts to “active agricultural lands within New York State Agricultural Land Classified Mineral Soil Groups 1 through 4. Active agricultural production is defined as “active three of the last five years.”
 - e. As described in NYS 6 CRRNY, collected photovoltaic modules and installation components may not be stored within Niagara County for a period exceeding one fiscal quarter (three months).
 - f. Decommissioning, removal, remediation, and restoration shall be guaranteed by a Security in accord with 103.xxx. Special use Performance Standards, paragraph L of this law.
18. All (Tier 2 and Tier 3) photovoltaic solar panels at the end of their life must be recycled pursuant to the County of Niagara, New York’s Solar Panel Recycling Regulations. A written verification (with a copy the stewardship plan, if possible) must be submitted to the City of North Tonawanda showing that they comply with the county solar recycling regulations.
19. Any such additional information as may be required by the City's professional engineer or consultant, City of North Tonawanda Planning Commission, City Attorney, City Engineer, Building Inspector, or other City entity.

§ 103-XXX. Special use permit performance standards.

- A.** Special use permits issued for a Ground-Mounted Energy System (Tier 2) shall meet the following conditions:
- (1) Minimum lot area: The minimum lot area shall be 2 acres.
 - (2) Maximum lot area: 5 acres.
 - (3) Setbacks: Any Ground mounted energy system (Tier 2) shall adhere to the following setbacks:
 - a. From any residential (R1-1, R1-2, R2, or RC); business (C-1 or C2); or Waterfront District (WD or WD-1) use district: A minimum 100 feet from all property lot lines bordering these use districts, including required screening.
 - b. From any industrial (M-1, M-2, or M-3) use district: A minimum of 50 feet from all property lines bordering an industrial (M-1, M-2, or M-3) use district.
 - c. From any property lot lines: A minimum of 50 feet from any property lot line, including required screening.

- d. From buildings or structures: A minimum of 250 feet from any inhabited building or structure, except for buildings and structures located on the proposed project lot.
 - e. From public roads:
 - i. A minimum of 150 feet from any public road (measured from the road right-of-way or property line); and
 - ii. Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.
 - f. Maximum overall height. The height of a ground mounted energy system (Tier 2) shall not exceed 15 feet when oriented at maximum tilt.
 - g. A height of a ground mounted energy system (Tier 2) shall only be located in a rear yard or side yard if there is a principal structure or dwelling on said lot.
- B. Special use permits issued for a Utility-Scale Solar Energy Systems (Tier 3) shall meet the following conditions:**
- (1) Minimum lot area: The minimum lot area shall be 5 acres.
 - (2) Maximum lot area: None.
 - (3) Setbacks: Any Utility-Scale Solar Energy System (Tier 3) shall adhere to the following setbacks:
 - a. From any residential (R1-1, R1-2, R2, or RC); business (C-1 or C2); or Waterfront District (WD or WD-1) use district: A minimum 100 feet from all property lot lines bordering these use districts, including required screening.
 - b. From any industrial (M-1, M-2 or M-3) use district: A minimum of 50 feet from all property lines bordering an industrial (M-1, M-2 or M-3) use district.
 - c. From any property lot lines: A minimum of 50 feet from any property lot line, including required screening.
 - d. From buildings or structures: A minimum of 250 feet from any inhabited building or structure, except for buildings and structures located on the proposed project lot.
 - e. From public roads:
 - i. A minimum of 150 feet from any public road (measured from the road right-of-way or property line); and
 - ii. Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.
 - f. Maximum overall height. The height of a utility-scale solar energy system shall not exceed 20 feet when oriented at maximum tilt.

- g. A Utility-Scale Solar Energy System (Tier 3) shall only be located in a rear yard if there is a principal structure or dwelling on said lot.
- C. All appurtenant or accessory structures to Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3) shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements of the underlying zoning district. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be screened from view by vegetation or structures using traditional development forms and materials. Whenever reasonable, structures should be joined or clustered to avoid adverse visual impacts.
- D. All signage shall be in accordance with Chapter 77 of the City Code.
- E. After completion of any Ground-Mounted Solar Energy System (Tier 2) or Utility-Scale Solar Energy System (Tier 3), the applicant shall provide a post-construction certification from a professional engineer licensed in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.

In addition, to ensure the safety of residents, property and utilities a detailed wind analysis shall be provided by the Engineer of Record for the project or an established wind engineering firm acceptable to the City.

The wind input shall be a sustained surface wind gust of 85 mph for at least 60 seconds applied in the horizontal plane with the solar panel in each of 3 positions- these being at no tilt, full tilt and half tilt. The wind load shall be applied to the panel in its x and y directions and 45 degrees from the x direction for each of the stated tilt positions.

The analysis shall demonstrate that no part or component of the solar panel, its tilting mechanism, or its foundation and attachments shall exceed 80% of the rated yield strength of the material or component under the applied wind loads. The intent of this requirement is to verify product reliability and ensure that no part of the solar panel will come adrift during the stated wind loadings.

- F. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and City requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- G. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of Ground-Mounted Solar Energy Systems (Tier 2) and Utility-scale solar energy systems (Tier 3). Prior to the issuance of a building permit,

the applicant shall document that all applicable federal, state, county, and local permits have been obtained.

- H.** Special use permits for a Ground-Mounted Solar Energy System (Tier 2) and Utility-Scale Solar Energy System (Tier 3) granted under this article shall be issued only following a public hearing held as required by the North Tonawanda City Zoning Law.
- I.** Artificial lighting of Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3) shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- J.** All Solar Energy Systems shall comply with Chapter 61A Noise Control of the City Code and shall be strictly enforced. The table "Receiving Land Use Categories" in Chapter 61A shall govern all Solar Energy Systems lot perimeters.
- K.** Escrow for annual inspections. If deemed necessary by the Planning Commission, the applicant for Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3) shall be required to bear the cost of on-site inspection by any independent consulting engineers or electrical inspectors engaged by a department, board, or commission. Payment for the services of any professional consultant, licensed electrical inspector and/or any licensed professional engineer retained by the Planning Commission or department is to be made from funds deposited by the applicant with the City in an escrow account for such purpose. The cost of the consultant's services provided under this section shall not exceed the reasonable cost of such services and the estimate(s) provided by the consultant in advance of providing such services.
- L.** Security. The deposit, execution, or filing with the City Clerk of cash, bond, or other form of security reasonably acceptable to the City Attorney and/or Engineer and approved by the City Planning Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal, remediation, and restorations of the site subsequent to removal. The amount of the bond or security shall be 150 % of the cost of removal of the Utility-Scale Solar Energy System (Tier 3), remediation, and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System. The bond shall be renewed every five (5) years or, as necessary, to reflect adjustments in the projected costs of decommissioning.
 - a.** In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the City, which shall be entitled to maintain an action thereon. The

cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

- b. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law and the Security posted will be forfeited. In the event that ownership of the property and/or solar energy equipment is transferred for any reason, the security also must transfer simultaneously, or it will be considered in default and the security will be forfeited. In the event that the property and/or solar energy equipment is owned by multiple persons, corporations, or LLCs then the security posted must be joint and several with each of the persons, corporations or LLCs named in the security being potentially liable for the entire security should other party(s) default on their obligation through bankruptcy or any other action.

§ 103-XXX. Maintenance, procedures, and fees.

- A. Operation and Maintenance Plan. The Utility-Scale Solar Energy Systems (Tier 3) owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan, which may include ensuring that emergency personnel have immediate, 24-hour access to the facility. All means of shutting down the solar photovoltaic installation shall be clearly marked on the plan. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation, whether operational or not.

The Operation and Maintenance Plan shall periodically be jointly reviewed and updated as necessary by the operator of the installation and the City Fire and Police Departments at a frequency to be determined by the City Fire Department(s). Safety personnel may request at any time that the operator provide onsite training in accessing and shutting down the operation of the installation.

The operator shall identify in the plan a qualified contact person who will provide assistance to local officials during an emergency. The operator shall update the contact information whenever there is a change in the contact person.

- B. Time limit on completion. After the granting of a special use permit of a utility-scale solar energy system with concurrent site plan approval or site plan approval of a freestanding or ground-mounted solar energy system by the Planning Commission, the building permit shall be obtained within six months and the project shall be completed within 12 months. A six-month extension to obtain a building permit or the completion time can be issued by the Planning Commission upon application by the applicant. If not constructed, the special use permit and/or site plan approval shall automatically lapse within 12 months after the date of approval by the City of North Tonawanda Planning Commission (unless an extension is granted).

- C. Inspections. Upon reasonable notice, the City of North Tonawanda Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Utility-Scale Solar Energy System (Tier 3) shall be inspected annually by a New York State-licensed professional engineer that has been approved by the City or at any other time, upon a determination by the City's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the City Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder. (See § 103-XXX. Special use permit performance standards., B., (11) Escrow for annual inspections).
- D. If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within 30 days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned (and removed per this section).
- E. General complaint process. During construction, the City Building Inspector can issue a stop order at any time for any violations of a special use permit or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- F. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. "Operational condition" includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- G. The applicant shall retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two years following the installation to identify any plant material that did not survive, appears impaired, and/or otherwise needs to be replaced. The applicant shall remove and replace plantings that fail in materials, workmanship or growth with two years following the completion of installing the plantings.
- H. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special use permit or approval has been revoked by the City of North Tonawanda Planning Commission or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the City Council may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel. The security posted in accordance with §103.XXX—L., shall be forfeited, in this case, prior to a tax lien being placed.

- I.** Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the City Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the City of North Tonawanda Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing certified mail his written determination, and the Board shall hold a hearing on same. The security posted per §103.XXX—L., will be subject to forfeiture as a default. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- J.** Application and annual fees.
- (1) Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy System (Tier 3). An applicant shall pay an initial application fee in the amount as set by the City Council, upon filing its Special Use Permit and Site Plan application to cover the cost of processing and reviewing the application.
 - a. If approved, the owner shall pay an annual fee in the amount as set by the City Council, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections, and enforcement. (see § 103-XXX. Special use permit performance standards, (11))
 - (2) Site plan application for a freestanding and ground-mounted solar energy systems. An applicant shall pay the standard site plan review fee as determined from time to time by the City Council, by resolution.
 - (3) Payment in Lieu-of-Taxes (PILOT). Upon filing for site plan review and a Special Use Permit, Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Energy Systems (Tier 3) shall negotiate PILOT agreements (annual payments due under an agreement with the City of North Tonawanda pursuant to NYS Real Property Tax Law § 487(9)) and under the City of North Tonawanda Solar Energy Systems PILOT Local Law. The annual payment shall not exceed the amount which would otherwise be payable but for the exemption under NYS Real Property Tax Law § 487. (Note: Solar Energy Systems under 1 MW AC are exempt from PILOT agreements).
- H.** The Planning Commission may:
- (1) For Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3), grant a special use permit, deny a special use permit, or grant a special use permit with written stated conditions. The Planning Commission in making this decision shall make findings in accordance with § 103-18(4) of the city of North Tonawanda Zoning Law. Denial of a special use permit shall be by written decision

based upon substantial evidence considered by the Board. Upon issuance of a special use permit, the applicant shall obtain a building permit for the utility-scale solar energy system.

- I. Any changes or alterations post-construction to a utility-scale, freestanding or ground-mounted solar energy system shall be done only by amendment to the special use permit and/or site plan (if required) subject to all requirements of this Code.
- J. Special use permits for Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3) shall be assignable or transferrable so long as they are in full compliance with this article and all the conditions, and the Building Inspector is notified in writing at least 15 days prior thereto.
- K. In addition to the requirements of this article, the special use permit application shall be subject to any other site plan approval requirements set forth in the North Tonawanda City Zoning Law.

§ 103-XXX. Safety

- A. A Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scale Solar Energy Systems (Tier 3) owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan, which may include ensuring that emergency personnel have immediate, 24-hour access to the facility. All means of shutting down the solar photovoltaic installation shall be clearly marked on the plan. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation, whether operational or not.
- B. The operator shall identify a qualified contact person who will provide assistance to local officials during an emergency. The operator shall update the contact information whenever there is a change in the contact person.
- C. Storm Preparedness—All Ground-Mounted Solar Energy Systems (Tier 2) and Utility-Scaled Solar Energy Systems (Tier 3) shall include racking, foundations, and module connection systems designed to withstand sustained hurricane-force winds or damage from wind-blown debris. Storm preparedness and response considerations shall be included in the Operation and Maintenance Plan.
- D. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the City of North Tonawanda and any applicable federal, state, or county laws or regulations.

§ 103-XXX. Revocation.

If the applicant violates any of the conditions of its special use permit or site plan approval or violates any other local, state, or federal laws, rules, or regulations, this shall be grounds for

revocation of the special use permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the City of North Tonawanda Planning Commission holds a hearing on same.

§ 103-XXX. Interpretation; conflict with other law.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements adopted for the promotion of the public health, safety, and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations, or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

§ 103-XXX. Severability.

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Draft City of North Tonawanda Solar Energy System PILOT Law

§1. Title

This Local Law be cited as the “Solar Energy System PILOT Law of the City of North Tonawanda, New York.”

§2. Purpose

This Local Law is adopted to ensure that the benefits of the community’s solar energy resource are available to the entire community, by promoting the installation of solar energy generating equipment through a payment-in-lieu-taxes (PILOT), granting reduced costs to system developers and energy consumers, and providing a revenue stream to the entire community.

§3. Authority

This Local Law is adopted under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(8),
2. New York Statute of Local Governments, § 10 (5),
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(8), and
4. New York Real Property Tax Law § 487(9).

§4. Definitions

1. “Annual Payment” means the payment due under a PILOT Agreement entered into pursuant to Real Property Tax Law § 487(9).
2. “Annual Payment Date” means January 1st of each year.
3. “Capacity” means the manufacturer’s nameplate capacity of the Solar Energy System as measured in kilowatts (kW) or megawatts (MW) AC.
4. “Owner” means the owner of the property on which a Solar Energy System is located or installed, or their lessee, licensee or other person authorized to install and operate a Solar Energy System on the property.
5. “Residential Solar Energy Systems” means a Solar Energy System with a nameplate generating capacity less than 50 kW AC in size, installed on the roof or the property of a residential dwelling (including multi-family dwellings), and designed to serve that dwelling.
6. “Solar Energy Equipment” means collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by New York law.
7. “Solar Energy System” means an arrangement or combination of Solar Energy Equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar energy and its conversion, storage, protection and distribution.

§5. PILOT Required

1. The owner of a property on which a Solar Energy System is located or installed (including any improvement, reconstruction, or replacement thereof), shall enter into a PILOT Agreement with the City of North Tonawanda consistent with the terms of this Local Law, except for

a) Residential Solar Energy Systems

b) Solar Energy Systems that do not seek or qualify for an exemption from real property taxes pursuant to Real Property Tax Law § 487(4).

2. The Lessee or licensee of any owner of a property required to enter into a PILOT Agreement by this section, which owns or controls the Solar Energy System, may enter into the PILOT Agreement on behalf of the owner of the property.

3. Upon receipt of any notification from an owner or other person of intent to install a Solar Energy System, the Mayor or delegate shall immediately, but in no case more than sixty days after receipt of the notification, shall notify the owner or other person by certified mail or hand delivery of the mandatory requirements for a PILOT Agreement pursuant to the terms of this Local Law.

4. Nothing in this Local Law shall exempt any requirement for compliance with state and local codes for the installation of any solar energy equipment or a solar energy system or authorize the installation of any solar energy equipment or a solar energy system. All solar energy systems must file a Real Property Tax Exemption application pursuant to Real Property Tax Law § 487 to receive a tax exemption.

§6. Contents of PILOT Agreements

1. Each PILOT Agreement entered into shall include

a) Name and contact information of the Owner or other party authorized to act upon behalf of the Owner of the Solar Energy System.

b) The SBL number for each parcel or portion of a parcel on which the Solar Energy System will be located.

c) A requirement for fifteen successive annual payments, to be paid commencing on the first Annual Payment Date after the effective date of the Real Property Tax Exemption granted pursuant to Real Property Tax Law § 487.

d) The Capacity of the Solar Energy System, and that if the Capacity is increased or decreased as a result of a system upgrade, replacement, partial removal or retirement of Solar Energy Equipment, the annual payments shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

e) That the parties agree that under the authority of Real Property Tax Law § 487 the Solar Energy System shall be considered exempt from real property taxes for the fifteen-year life of the PILOT Agreement.

- f) That the PILOT Agreement may not be assigned without the prior written consent of the City of North Tonawanda which consent may not be unreasonably withheld if the Assignee has agreed in writing to accept all obligations of the Owner, except that the Owner may, with advance written notice to the City of North Tonawanda but without prior consent, assign its payment obligations under the PILOT Agreement to an affiliate of the Owner or to any party who has provided or is providing financing to the Owner for or related to the Solar Energy System, and has agreed in writing to accept all payment obligations of the Owner.
- g) That a Notice of this Agreement may be recorded by the Owner at its expense, and that the City of North Tonawanda shall cooperate in the execution of any Notices or Assignments with the Owner and its successors.
- h) That the Annual Payment shall be
 - i) For Solar Energy Systems with a Capacity greater than 1 MW (to be established and negotiated by the City of North Tonawanda Common Council), and less than 5MW, (to be established and negotiated by the City of North Tonawanda Common Council) per MW of Capacity.
 - ii) For Solar Energy Systems with a Capacity greater than 5 MW will be determined on a case by case basis.
- i) That the Annual Payment shall escalate at a percentage per year at the discretion of the City of North Tonawanda Common Council, starting with the second Annual Payment.
- j) That if the Annual Payment is not paid when due, that upon failure to cure within thirty days, the City of North Tonawanda may cancel the PILOT Agreement without notice to the Owner, and the Solar Energy System shall thereafter be subject to taxation at its full assessed value.

§7. Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§8. Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law and shall apply to all solar energy systems constructed.

Solar Payment-In-Lieu-Of-Taxes (PILOT)

Assisting New York State municipalities considering PILOT agreements for community solar projects larger than one megawatt.



Solar Guidebook for Local Governments
NYSERDA 17 Columbia Circle Albany, NY 12203

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Overview

The following toolkit is for local governments in New York State who are considering a payment-in-lieu-of-taxes (PILOT) agreement for solar projects larger than one megawatt (MW). We provide resources for local governments to gain more information on PILOT agreements. A few notable resources within the toolkit are the New York Model Solar Energy PILOT Law, Model Solar PILOT Agreement for a single jurisdiction, and the PILOT calculator for taxing jurisdictions, which can be accessed here and under the PILOT toolkit section below.¹⁸

1. Community Solar

In addition to residential, commercial, and municipal projects, a relatively new kind of solar project, “community solar,” has emerged as an efficient and affordable way for all New Yorkers to gain access to clean energy. Community solar projects are much larger, typically in the 2-5MW range and allow individuals (including renters and others who cannot install a system on their own roof) to purchase individual panels or some fraction of the electricity the entire system generates. These customers receive credits for this electricity on their monthly utility bills.

A community solar project brings revenues and benefits to a community and its residents in several ways. The owner of a project site will typically lease land to the solar company in return for lease payments. Community solar customers, which may include municipalities, businesses, and residents, save money on their utility bills. Taxing jurisdictions can benefit from PILOT payments. At the same time, given the passive nature of a solar array, a solar project does not create increased demands on municipal services and infrastructure.

2. Real Property Tax Law (RPTL) § 487

As a measure to promote the installation of clean energy sources, the New York State legislature adopted a section of the RPTL § 487 that exempts the value of a solar panel system from local property taxes.¹⁹ Under the law, any increase in the property value attributable to the addition of the solar panel system is exempt from property tax. The RPTL § 487 exemption has been a cornerstone of the State’s efforts to meet its clean energy goals, providing essential economic incentives for solar. The law does, however, allow any taxing jurisdiction (town, school, etc.) to “opt-out” of the tax exemption by adopting a local law or resolution, making the added value of a solar panel system fully taxable. Alternatively, a taxing jurisdiction that does not opt-out can require a solar developer to pay an annual fee or “payment- in-lieu of taxes” as a replacement for the taxes it would have otherwise collected. Under the law, PILOT amounts cannot exceed what the tax amount would have been without the exemption. Additionally, the law does not allow jurisdictions to partially opt out of the law to generate tax revenue from large solar projects while exempting the small systems of homeowners. Opting out of RPTL § 487 makes community solar projects financially unviable and makes homeowners’ rooftop systems more expensive.

¹⁸ The terms “taxing jurisdictions” and “jurisdictions” include counties, cities, towns, villages and school districts.

¹⁹ New York State Real Property Tax Law § 487 provides a 15-year real property tax exemption for properties located in New York State with renewable energy systems, including solar electric systems. The law applies only to the value that a solar electric system adds to the overall value of the property; it does not mean that landowners with an installed renewable energy system are exempt from all property tax. Local governments have the option to opt out of RPTL § 487 and tax solar projects at the full property tax rate, but doing so can impact project economics in a way that unintentionally prohibits developers from building projects. For more information on RPTL § 487, see Understanding New York State’s Real Property Tax Law § 487 fact sheet. A local government that does not opt out of RPTL § 487 can still generate revenue through PILOT agreements.

NYSERDA understands that many communities have little or no experience with solar PILOT agreements or with assessing the value of large-scale solar projects. Information is difficult to obtain by consulting other communities because few communities have completed large-scale solar projects.

Two common questions have arisen from New York State municipal officials and other interested parties:

- (1) If we do not opt-out and seek a PILOT, what is a fair PILOT amount based on what projects can afford?
- (2) What are the steps to negotiate a successful PILOT agreement?

The answer to the first question is complicated, as PILOTs are often negotiated for individual projects, and the PILOT amount a project can afford depends on many factors, including construction and maintenance costs, and the amount of revenue from electricity sales. From the point of view of solar developers, if the PILOT amount is too high, they will not be able to make the project economically feasible and will not proceed. So, the amount of revenue available for a PILOT is dependent on the overall project economics. The first question then becomes, “What PILOT amount will allow the jurisdiction and its residents to enjoy the benefits of the project, but will not make the project financially unviable and unattractive to a developer?”

NYSERDA's research indicates that PILOT rates should be negotiable between 1% and 3% of the compensation solar developers receive for the electricity their projects generate.²⁰ This research includes an independent analysis of current solar market data and an analysis of solar project compensation rates established under the preliminary value stack in the New York Public Service Commission's March 2017 Value of Distributed Energy Resources (VDER) order. The new solar energy compensation methodology will likely reduce project revenue. NYSERDA will review and update its PILOT guidance regularly; taxing jurisdictions are encouraged to adjust their PILOT rates accordingly.

NYSERDA offers the Solar PILOT Toolkit as a resource to help municipalities and solar developers negotiate successful PILOT agreements. The following describes the Toolkit's contents.

3. Solar PILOT Toolkit

3.1 The Model Solar PILOT Law

The Model Solar PILOT Law, or resolution, provides a sample template for jurisdictions that wish to establish the legal authority to implement a formulaic, jurisdiction-wide PILOT agreement process with solar developers. The model law cites the appropriate laws to do so and includes blank fields for jurisdictions to fill in. The model law exempts projects smaller than 1 MW AC as the amount of PILOT revenue may not justify the cost of negotiating the PILOT.

3.2 The Model Solar PILOT Agreement

Only jurisdictions that do not opt out of RPTL § 487 may enter PILOT agreements. The Model Solar PILOT Agreement provides a draft contract that jurisdictions can sign with solar developers. The agreement can be tailored to meet a jurisdiction's specific needs and includes blank fields for the jurisdiction to fill in. Jurisdictions may negotiate PILOT rates with solar developers on a project-by-project basis or may adopt a jurisdiction-wide rate for certain types of solar panel systems, typically in the form of annual payments based on a dollar-per-MW rate.

²⁰ NYSERDA continuously assesses market data and Public Service Commission proceedings and may revise this Toolkit when appropriate.

3.3 The Solar PILOT Calculator

The Solar PILOT Calculator can be accessed [here](#).

This tool provides PILOT rate guidance for solar projects and includes two separate calculators.²¹ **Calculator One should be used to set a uniform PILOT rate across an entire jurisdiction.**

The following table displays sample PILOT rates generated by Calculator One for a 2-MW AC community solar project in each utility service territory. **The "Low" and "High" rates represent 1% and 3% of the compensation solar developers receive for the electricity their projects generate.** NYSERDA's research of solar project economics across the State indicates that such projects should be able to afford rates within this range.

	Low (\$/MW AC)	High (\$/MW AC)
Central Hudson	\$2,600	\$7,600
Orange & Rockland	\$3,200	\$9,500
National Grid	\$1,700	\$5,100
NYSEG	\$1,700	\$5,000
Con Edison	\$3,700	\$11,100
Rochester Gas & Electric	\$1,700	\$5,000

Calculator Two should be used to set PILOT rates on a project-by-project basis. It is highly customizable, taking into account extensive project-specific data and all factors affecting solar project economics. Users may accept the default values but are encouraged to enter project-specific data. Calculator Two estimates PILOT rates based on the net present value of a project's unlevered cash flow that achieves a specified pre-tax internal rate of return.

²¹ Each calculator's outputs reflect the sum total of all PILOT payments, property taxes from taxing jurisdictions which have opted-out of the exemption, and special district taxes (which are not exempt under RPTL § 487).

4. New York Model Solar Energy System PILOT Law

The workable version of this document can be found at nyserdera.ny.gov/SolarGuidebook, under the PILOT tab.

§1. Title

This Local Law [if for a school district, change “Law” to “Resolution” throughout this document] may be cited as the “Solar Energy System PILOT Law of the [Village/Town/City/County/School District] of _____, New York.”

§2. Purpose

This Local Law [Resolution] is adopted to ensure that the benefits of the community’s solar energy resource are available to the entire community, by promoting the installation of solar energy generating equipment through a payment-in-lieu-taxes (PILOT), granting reduced costs to system developers and energy consumers, and providing a revenue stream to the entire community.

§3. Authority [IF MUNICIPALITY]

This Local Law is adopted under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(8),
2. New York Statute of Local Governments, § 10 (5),
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(8), and
4. New York Real Property Tax Law § 487(9).

§3. Authority [IF SCHOOL DISTRICT]

This Resolution is adopted under the authority granted by New York Real Property Tax Law § 487(9).

§4. Definitions

1. “Annual Payment” means the payment due under a PILOT Agreement entered into pursuant to Real Property Tax Law § 487(9).
2. “Annual Payment Date” means January 1st of each year [September 1st for school districts].
3. “Capacity” means the manufacturer’s nameplate capacity of the Solar Energy System as measured in kilowatts (kW) or megawatts (MW) AC.
4. “Owner” means the owner of the property on which a Solar Energy System is located or installed, or their lessee, licensee or other person authorized to install and operate a Solar Energy System on the property.
5. “Residential Solar Energy Systems” means a Solar Energy System with a nameplate generating capacity less than 50 kW AC in size, installed on the roof or the property of a residential dwelling (including multi-family dwellings), and designed to serve that dwelling.
6. “Solar Energy Equipment” means collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by New York law.
7. “Solar Energy System” means an arrangement or combination of Solar Energy Equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar energy and its conversion, storage, protection and distribution.

§5. PILOT Required

1. The owner of a property on which a Solar Energy System is located or installed (including any improvement, reconstruction, or replacement thereof), shall enter into a PILOT Agreement with the [Village/Town/City/County/School District] consistent with the terms of this Local Law [Resolution], except for
 - a) Residential Solar Energy Systems
 - b) Solar Energy Systems that do not seek or qualify for an exemption from real property taxes pursuant to Real Property Tax Law § 487(4).

2. The Lessee or licensee of any owner of a property required to enter into a PILOT Agreement by this section, which owns or controls the Solar Energy System, may enter into the PILOT Agreement on behalf of the owner of the property.
3. Upon receipt of any notification from an owner or other person of intent to install a Solar Energy System, the [title of appropriate official, e.g., Town Supervisor, Superintendent, Building Inspector] shall immediately, but in no case more than sixty days after receipt of the notification, notify the owner or other person of the mandatory requirement for a PILOT Agreement pursuant to the terms of this Local Law [Resolution].
4. Nothing in this Local Law [Resolution] shall exempt any requirement for compliance with state and local codes for the installation of any solar energy equipment or a solar energy system, or authorize the installation of any solar energy equipment or a solar energy system. All solar energy systems must file a Real Property Tax Exemption application pursuant to Real Property Tax Law § 487 to receive a tax exemption.

§6. Contents of PILOT Agreements

1. Each PILOT Agreement entered into shall include
 - a) Name and contact information of the Owner or other party authorized to act upon behalf of the Owner of the Solar Energy System.
 - b) The SBL number for each parcel or portion of a parcel on which the Solar Energy System will be located.
 - c) A requirement for fifteen successive annual payments, to be paid commencing on the first Annual Payment Date after the effective date of the Real Property Tax Exemption granted pursuant to Real Property Tax Law § 487.
 - d) The Capacity of the Solar Energy System, and that if the Capacity is increased or increased as a result of a system upgrade, replacement, partial removal or retirement of Solar Energy Equipment, the annual payments shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.
 - e) That the parties agree that under the authority of Real Property Tax Law § 487 the Solar Energy System shall be considered exempt from real property taxes for the fifteen- year life of the PILOT Agreement.
 - f) That the PILOT Agreement may not be assigned without the prior written consent of the [Village/Town/City/County/School District], which consent may not be unreasonably withheld if the Assignee has agreed in writing to accept all obligations of the Owner, except that the Owner may, with advance written notice to the [Village/Town/City/County/School District] but without prior consent, assign its payment obligations under the PILOT Agreement to an affiliate of the Owner or to any party who has provided or is providing financing to the Owner for or related to the Solar Energy System, and has agreed in writing to accept all payment obligations of the Owner.
 - g) That a Notice of this Agreement may be recorded by the Owner at its expense, and that the [Village/Town/City/County/School District] shall cooperate in the execution of any Notices or Assignments with the Owner and its successors.
 - h) That the Annual Payment shall be
 - i) For Solar Energy Systems with a Capacity greater than 1 MW and less than 5MW, \$___per MW of Capacity.
 - ii) For Solar Energy Systems with a Capacity greater than 5MW will be determined on a case by case basis.
 - i) That the Annual Payment shall escalate ___ percent (___%) per year, starting with the second Annual Payment.
 - j. That if the Annual Payment is not paid when due, that upon failure to cure within thirty days, the [Village/Town/City/County/School District] may cancel the PILOT Agreement without notice to the Owner, and the Solar Energy System shall thereafter be subject to taxation at its full assessed value.

§7. Severability

Should any provision of this Local Law [Resolution] be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law [Resolution] as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§8. Effective Date

This Local Law [Resolution] shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law, and shall apply to all solar energy systems constructed.

5. Model Solar PILOT Agreement for a Single Jurisdiction

The workable version of this document can be found at nyserra.ny.gov/SolarGuidebook, under the PILOT tab.

PAYMENT IN LIEU OF TAXES AGREEMENT
FOR SOLAR ENERGY SYSTEMS

between

[NAME OF TAXING JURISDICTION]

and

[NAME OF OWNER]

Dated as of _____, 2017

RELATING TO THE PREMISES LOCATED AT _____
(TAX MAP _____) IN THE (TOWN/COUNTY/VILLAGE,
_____ COUNTY, NEW YORK.

PAYMENT IN LIEU OF TAXES AGREEMENT
FOR SOLAR ENERGY SYSTEMS PURSUANT TO REAL PROPERTY TAX LAW § 487

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY, effective as of the date on the cover page, above, by and between [ENTER OWNER NAME] (the "Owner"), a Owner, with a principal place of business located at _____ [ENTER ADDRESS]; and [choose ONE as appropriate]

the [ENTER SCHOOL DISTRICT NAME], (the "School District"), a school district duly established with a principal place of business located at _____ [ENTER ADDRESS];

the [Village/Town/City] of _____, New York, (the "Town"), a municipal corporation duly established in _____ County with a principal place of business located at _____ [ENTER ADDRESS];

the County of _____, New York, a municipal corporation duly established with a principal place of business located at _____ [ENTER ADDRESS] (the "County");

the School District/Town/County is herein referred to as the "Taxing Jurisdiction." Owner and the Taxing Jurisdiction are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party."

RECITALS

WHEREAS, Owner has submitted a Notice of Intent to the Taxing Jurisdiction that it plans to build and operate a "Solar Energy System" as defined in New York Real Property Tax Law ("RPTL") Section 487 (1)(b) (herein the "Project") with an expected nameplate capacity ("Capacity") of approximately _____ Megawatts AC on a parcel of land located within the Village/Town/City at _____ and identified as SBL # _____, as described in Exhibit A (herein the "Property"); and;

WHEREAS, the Taxing Jurisdiction has not opted out of RPTL Section 487; and WHEREAS, pursuant to RPTL Section 487 (9) (a), the Taxing Jurisdiction has indicated its intent to require a Payment in Lieu of Taxes ("PILOT") Agreement with the Owner, under which the Owner (or any successor owner of the Project) will be required to make annual payments to the Taxing Jurisdiction for each year during the term of this Agreement; and

WHEREAS, the Owner has submitted or will submit to the assessor of the (Village/Town/City) a RP-487 Application for Tax Exemption of Solar or Wind Energy Systems or Farm Waste Energy Systems, demonstrating its eligibility for a real property tax exemption pursuant to RPTL Section 487; and

WHEREAS, the Parties intend that, during the term of this Agreement, the Project will be placed on exempt portion of the assessment roll and the Owner will not be assessed for any statutory real property taxes for which it might otherwise be subjected under New York law with respect to the Project.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Representations of the Parties.

(a) The Owner hereby represents, warrants, and covenants that, as of the date of this Agreement:

1. The Owner is duly organized, and a validly existing _____ (corporation, limited liability company, etc.) duly authorized to do business in the State of New York, has requisite authority to conduct its business as presently conducted or proposed to be conducted under this Agreement, and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.
2. All necessary action has been taken to authorize the Owner's execution, delivery, and performance of this Agreement and this Agreement constitutes the Owner's legal, valid, and binding obligation enforceable against it in accordance with its terms.
3. None of the execution or delivery of this Agreement, the performance of the obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any provision of the Owner's Certificate of Incorporation, Certificate of Formation, bylaws or other organizational documents or of any restriction or any agreement or instrument to which the Owner is a party and by which it is bound; (ii) conflict with, violate, or result in a breach of any applicable law, rule, regulation, or order of any court or other taxing jurisdiction or authority of government or ordinance of the State or any political subdivision thereof; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result

in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any mortgage, indenture, or any other agreement or instrument to which it is a party or by which it or any of the Owner's properties or assets are bound. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Owner, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Owner's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

(b) The Taxing Jurisdiction hereby represents, warrants, and covenants that, as of the date of this Agreement:

1. The Taxing Jurisdiction is duly organized, validly existing, and in good standing under the laws of the State of New York and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.
2. All necessary action has been taken to authorize the Taxing Jurisdiction's execution, delivery, and performance of this Agreement, and this Agreement constitutes the Taxing Jurisdiction's legal, valid, and binding obligation enforceable against it in accordance with its terms.
3. No governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by the Taxing Jurisdiction except such as have been duly or will be obtained or made.
4. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Taxing Jurisdiction, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Taxing Jurisdiction's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

2. Tax Exemption; Payment in Lieu of Real Property Taxes.

(a) Tax-Exempt Status of the Project Facility. Pursuant to RPTL 487 the Parties hereto agree that the Project shall be placed by the Taxing Jurisdiction as exempt upon the assessment rolls of the Taxing Jurisdiction. A Real Property Tax Exemption Form (RP 487) has or will be filed with the Assessor responsible for the Taxing Jurisdiction and the Project is eligible for exemption pursuant to RPTL 487 (4).

(b) Owner agrees to make annual payments to the Taxing Jurisdiction in lieu of real property taxes for the Project for a period of fifteen (15) consecutive fiscal tax years; annual payments may not exceed the amounts that would otherwise be payable but for the RPTL 487 exemption. Such 15-year term shall commence on the first taxable status date selected by Owner following commencement of the construction of the Project (the "Commencement Date"), and shall end the fifteenth fiscal year following the Commercial Operations Date. The first annual payment shall be in the amount of \$__ per Megawatt AC of Capacity (the "Annual Payment"). Thereafter Annual Payments will escalate by ___ percent (___%) per year. Based on the Capacity of _____ Megawatts AC, Annual Payments to be made by Owner during the term of this Agreement shall be as listed in Exhibit B. Each Annual Payment will be paid to the Taxing Jurisdiction in accordance with Section 5 of this Agreement; and the annual payment amount and payment date will be noted on an annual bill issued by the Taxing Jurisdiction to the Owner, provided that any failure of the Taxing Jurisdiction to issue such a bill shall not relieve Owner of its obligation to make timely payments under this section.

(c) Owner agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor or reduction in the Taxing Jurisdiction tax rate, and the Taxing Jurisdiction agrees that the payments in lieu of taxes will not be increased on account of an inflation factor or increase in the Taxing Jurisdiction tax rate, all of which factors have been considered in arriving at the payment amounts reflected in this Agreement.

3. Change in Capacity at Mechanical Completion: Adjustments to Payments. To the extent that the Capacity of the Project is more or less than the _____ Megawatts AC on the date when the Project is mechanically complete, and Owner has commenced production of electricity, the payments set forth in Exhibit B will be increased or decreased on a pro rata basis.

4. Change in Capacity After Mechanical Completion: Adjustments to Payments. If after the Completion Date the Capacity is increased or decreased as a result of the replacement or upgrade or partial removal or retirement of existing Project equipment or property or the addition of new Project equipment or property, the Annual Payments set forth in Exhibit B shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

5. Payment Collection. (depending on the type of jurisdiction – choose ONE)

Payments for the School District shall be made payable to the _____ School District and mailed to the School District, c/o the Superintendent's Office, located at [ENTER SCHOOL DISTRICT ADDRESS] and are due no later than September 15th of each year.

Payments for the Town shall be made payable to the Town of _____ and mailed to the Town of _____, c/o the Town of _____ Supervisor's Office, located at [ENTER TOWN ADDRESS] and are due no later than February 15th of each year.

Payments for the County shall be made payable to the County Treasurer and mailed to the County of _____, c/o [ENTER COUNTY ADDRESS], and are due no later than February 15th of each year.

All late payments shall accrue interest at the statutory rate for late tax payments under New York Law. Owner shall pay the reasonable attorney fees, court and other costs incurred by the Taxing Jurisdiction in the collection of the unpaid amounts. All payments by the Owner hereunder shall be paid in lawful money of the United States of America.

6. Tax Status. Separate Tax Lot. The Taxing Jurisdiction agrees that during the term of this Agreement, the Taxing Jurisdiction will not assess Owner for any real property taxes with respect to the Project to which Owner might otherwise be subject under New York law, and the Taxing Jurisdiction agrees that this Agreement will exclusively govern the payments of all such taxes, provided, however, that this Agreement is not intended to affect, and will not preclude the Taxing Jurisdiction from assessing, any other taxes, fees, charges, rates or assessments which the Owner is obligated to pay, including, but not limited to, special assessments or special district assessments, fees, or charges for services provided by the Taxing Jurisdiction to the Project. Nothing in this Agreement shall limit the right of the Owner to challenge the assessment of the Project pursuant to the RPTL.

7. No Assignments Without Prior Notice: Binding Effect.

(a) This Agreement may not be assigned by Owner without the prior written consent of the Taxing Jurisdiction; such consent may not be unreasonably withheld if the Assignee has agreed in writing to accept all obligations of the Owner. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Owner. If Owner assigns this Agreement with the advance written consent of the Taxing Jurisdiction, the Owner shall be released from all obligations under this Agreement upon assumption hereof in writing by the assignee, provided that Owner shall, as a condition of such assignment and to the reasonable satisfaction of the Taxing Jurisdiction, cure any defaults and satisfy all liabilities arising under this Agreement prior to the date of such assignment. A Notice of this Agreement may be recorded by Owner and the Taxing Jurisdiction shall cooperate in the execution of required Assignments with the Owner and its successors. Owner may, with advance written notice to the Taxing Jurisdiction and without prior consent, assign this Agreement to an affiliate of Owner or to any party who has provided or is providing financing to Owner for the construction, operation and/or maintenance of the Project.

(b) Binding Effect. This PILOT Agreement shall inure to the benefit of, and shall be binding upon, the Taxing Jurisdiction, the Owner and their respective successors and assigns.

8. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement have been negotiated in good faith in recognition of and with due consideration of the full and fair taxable value of the Project.

9. Additional Documentation and Actions. Subject to applicable laws and regulations, each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such reasonable additional instruments and documents as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement. Owner shall pay all reasonable attorneys' and consulting fees incurred by the Taxing Jurisdiction to review and negotiate any such instruments or documents.

10. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, by hand, or by certified mail, return receipt requested. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Owner:

With a copy to:

If to the Taxing Jurisdiction: Attn: Superintendent
Mayor
Town Supervisor County

With a copy to:

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

11. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the State of New York. Owner and the Taxing Jurisdiction each consent to the jurisdiction of the New York courts in and for the County in which the Project is located regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Accordingly, any litigation arising hereunder shall be brought solely in such courts.

12. Termination Rights of the Owner. Owner may terminate this Agreement at any time by Notice to the Taxing Jurisdiction. Upon receipt of the Notice of Termination, the Project shall be placed on the taxable portion of the tax roll effective on the next taxable status date of the Taxing Jurisdiction. Owner shall be liable for all PILOT payments due in the year of termination, except that if Owner is required to pay any part-year real property taxes, the PILOT payment for that year shall be reduced pro rata so that the Owner is not required to pay both PILOT payments and real property taxes for any period of time.

13. Termination Rights of Taxing Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Taxing Jurisdiction may terminate this Agreement on thirty (30) days written notice to Owner if:

- a. Owner fails to make timely payments required under this Agreement, unless such payment is received by the Taxing Jurisdiction within the 30-day notice period with interest as stated in this Agreement
- b. Owner has filed, or has had filed against it, a petition in Bankruptcy, or is otherwise insolvent;

14. Remedies: Waiver and Notice.

(A) No Remedy Exclusive. No remedy herein conferred upon or reserved to Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any breach of an obligation hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

15. Entire Agreement. The Parties agree that this is the entire, fully integrated Agreement between them with respect to payments in lieu of taxes for the Project.

16. Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

17. No Third-Party Beneficiaries. The Parties state that there are no third-party beneficiaries to this Agreement.

18. Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

19. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Executed by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

By:

Name

Title

Date

Superintendent/Supervisor/County Official

Date

