

PAYMENT IN LIEU OF TAXES AGREEMENT BETWEEN THE TOWN OF WEBSTER AND HOPKINTON SOLAR, LLC

This Payment in Lieu of Taxes (PILOT) Agreement (hereinafter "Agreement") is made under New Hampshire Revised Statutes Annotated (NHRSA) 72:74, this 19th day of November 2019, between the Town of Webster, New Hampshire ("Town") and Hopkinton Solar, LLC, ("HS"), a Delaware limited liability company having an office at c/o OED Granite Apollo, LLC, 114 North Main Street, 3rd Floor, Concord, NH 03301 (hereinafter together "the Parties").

Background

HS seeks to develop a renewable solar-powered electric generating facility (the "Facility") erecting solar arrays and transmissions lines in the towns of Hopkinton and Webster. The portion of the Facility within Webster ("Webster Portion") will be located off Deer Meadow Road in the southeast section of the Town of Webster, with road access from Deer Meadow Road. HS estimates that it will generate 28 MW of the Facility's total 35 MW capacity in the Webster Portion.

HS will construct the Webster Portion on land it will purchase from John and Rebecca Little, identified on Town tax maps as tax parcels 9-18-1, 9-23-4, 9-45, 9-45-1, and 9-45-2.

The Facility will be a "renewable generation facility", as defined in NHRSA 72:73 and NHRSA 374-F:3, V(f)(3). Under NHRSA 72:74, the owner of a renewable generation facility and the governing body of the municipality in which the facility is located may, after a public hearing, enter into a voluntary agreement to make payments in lieu of taxes.

HS and the Town desire to enter into such a PILOT agreement under NHRSA 72:74.

NOW THEREFORE, the Parties hereto agree as follows:

Terms and Conditions

1. **Payments in Lieu of Taxes.** HS will make payments in lieu of taxes to the Town for each tax year (April 1 to March 31) during the term of this Agreement, in accordance with Sections 3, 4, and 5 below. These PILOT payments will be in lieu of any, and all, *ad valorem* real estate taxes otherwise payable under NHRSA Chapter 72, including all town, county, and local school district taxes.
2. **Term.** Mindful of RSA 72:74, VI and VII, the Parties have determined that a long-term agreement provides predictability of tax revenues and expenses, and therefore a PILOT agreement in excess of five (5) years would be advantageous to both the Town and HS. Accordingly, the term of this Agreement shall be the Construction Term, as defined below, followed by a forty (40) year period.
3. **Construction Term.** The Construction Term shall be the period beginning when HS obtains possession of the properties listed above and ending on the earlier of two years after the date of possession, or when the Facility begins commercial operations, unless extended by agreement of HS and the Town. During the Construction Term, HS shall make the following PILOT payments to the Town:
 - a. Forty-Two Thousand and 00/100 Dollars (\$42,000.00) within thirty (30) days of the start of the Construction Term;
 - b. A second Forty-Two Thousand and 00/100 Dollars (\$42,000.00) within thirty (30) days of the one (1) year anniversary of the start of the Construction Term;
 - c. If the Facility has not commenced commercial operations within twenty-four (24) months of the start of the Construction Term, and HS still plans to complete construction and operate the Facility, then HS and the Town will enter into good faith discussions to identify further interim PILOT payments during the Construction Term. If no agreement can be reached by the Parties, then this Agreement shall terminate.

4. PILOT Payments for Forty (40) Year Primary Term. The Primary Term begins once the Facility commences commercial operations. Subject to possible adjustments under Section 5 below, annual PILOT payments to the Town for the forty (40) year Primary Term shall begin at the rate of Eighty-Four Thousand and 00/100 Dollars (\$84,000.00) per year in the tax year that begins April 1 following the date on which the Facility commences commercial operations. The rate for annual PILOT payments will increase 2.5% (two and a half percent) cumulatively in each successive year of the Primary Term.

HS's payments to the Town in lieu of taxes during the Primary Term covered by this Section 4 will be as follows:

<u>Year</u>	<u>Payments In Lieu of Taxes</u>
1	84,000.00
2	86,100.00
3	88,252.50
4	90,458.81
5	92,720.28
6	95,038.29
7	97,414.25
8	99,849.60
9	102,345.84
10	104,904.49
11	107,527.10
12	110,215.28
13	112,970.66
14	115,794.93
15	118,689.80
16	121,657.05
17	124,698.47
18	127,815.93

19	131,011.33
20	134,286.62
21	137,643.78
22	141,084.88
23	144,612.00
24	148,227.30
25	151,932.98
26	155,731.30
27	159,624.59
28	163,615.20
29	167,705.58
30	171,898.22
31	176,195.68
32	180,600.57
33	185,115.58
34	189,743.47
35	194,487.06
36	199,349.24
37	204,332.97
38	209,441.29
39	214,677.32
40	220,044.26

5. Potential Adjustment of PILOT Payments.

- a. Increase in Capacity: In the event HS upgrades the Facility during the term of this Agreement in such a way as to increase the Webster Portion's total capacity, then PILOT payments beginning in the next tax year will be adjusted upward by the percentage of the increase in capacity.
- b. Reduction in Capacity: If the Webster Portion's installed and operating capacity as of April 1 in any tax year is materially reduced from the previous tax year due to: (i) damage caused by natural forces, (ii) operation

restrictions caused by a change in law, regulation, ordinance, or industry management standards, or (iii) the permanent cessation of the Webster Portion's operations, the PILOT payment will be adjusted downward based on the percentage of the Webster Portion that is no longer functional. In the case of clause (iii) above, this Agreement will terminate.

6. Payment of Amounts Due. Other than the Construction Term payments, which shall be made as set forth in Section 3 above, HS shall make the PILOT payments to the Town due hereunder for any given tax year in the Primary Term in two equal installments on July 1st and December 1st.
7. Non-Payment. Non-payment of any payment due the Town shall constitute default. In the event of default for non-payment of the payments required pursuant to this Agreement, the Town, in addition to such other rights available at law or equity, shall be entitled to issue such notices and exercise all rights available to the Town pursuant to RSA Chapter 80. It shall not be a defense to such a proceeding that HS is obligated under this Agreement to make payments in lieu of taxes rather than taxes.
8. Public Hearing. Prior to signing this Agreement, the Town shall hold a public hearing as required by NHRSA 72:74, I. The Town shall provide notice of such hearing as required by law.
9. Current Use Tax. Within three months of commencement of the Construction Term, HS agrees to make an additional payment to Webster of \$53,750, in lieu of land use change taxes.
10. Other Taxes Not Covered. This Agreement covers only *ad valorem* real estate taxes and land use change taxes payable under NHRSA Chapters 72 and 79-A. It does not include or cover other local, state, or federal taxes which may be payable on account of Facility revenues or activities, including the State Utility Property Tax, Business Enterprise Tax, or Federal Income Tax.

11. Notices. Any notice to be provided under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or by certified mail at the following addresses:

For the Town:	Town of Webster 945 Battle Street Webster, NH 03303
For HS:	Hopkinton Solar, LLC c/o OED Granite Apollo, LLC 114 N. Main Street, 3 rd Floor Concord, NH 03301
With a copy to:	Nixon Peabody LLP 900 Elm Street Manchester, NH 03101 Attention: Mark E. Beaudoin, Esquire

In the event of a change in address of any party listed above, the responsible signatory (HS in the case of itself, or its counsel) shall give the other party prompt written notice of such change of address, which shall be effective upon receipt.

12. Miscellaneous.

- a. New Hampshire law shall apply in construing and interpreting this Agreement. In the event any court having jurisdiction shall hold any term of this Agreement, or the application of any such term, invalid, the other terms of this Agreement and their application shall not be affected thereby and shall remain in full force and effect, provided that the remaining terms continue to preserve the essential economic terms of this Agreement.
- b. The terms and provisions contained in this Agreement constitute the final Agreement between the Parties with respect to this Agreement and supersede all previous communications, representations or agreements, either verbal or written. No modification or amendment to this Agreement shall be valid unless it is in writing and signed by both Parties hereto.

- c. HS shall have the right, in its sole discretion, to assign this Agreement to any bona fide purchaser, transferee, or assignee, provided that said purchaser, transferee or assignee has the financial, managerial, and technical capacity to construct and operate the Facility as contemplated by the Parties hereto. All covenants, agreements, terms and conditions contained in this Agreement shall apply to and be binding upon the Parties, their assigns and successors. HS shall provide written notice to the Town of any sale, transfer, or assignment not less than thirty (30) days prior to such sale, transfer or assignment taking effect.
- d. Section titles or subject headings in this Agreement are for the purpose of reference and convenience only and are not intended to affect the meaning of the contents or scope of this Agreement.
- e. The Parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original instrument, but all of such counterparts together will constitute but one Agreement.

[Signature page follows]

TOWN OF WEBSTER

By its Select Board:



Nanci A. Schofield, Chair

HOPKINTON SOLAR, LLC

By: _____
Name: Michael Caplan
Title:

TOWN OF WEBSTER

By its Select Board:

Nanci A. Schofield, Chair

HOPKINTON SOLAR, LLC

By: _____
Name: Michael Caplan
Title: *President*