

**INTERMUNICIPAL AGREEMENT
BETWEEN THE TOWN OF COLONIE AND
THE COUNTY OF ALBANY**

This Agreement made the _____ day of July, 2023, by and between the TOWN OF COLONIE, a municipal corporation located within the County of Albany and State of New York, hereinafter designated as “Colonie” and the COUNTY OF ALBANY, a municipal corporation within the State of New York, hereinafter designated as “County”.

WITNESSETH

WHEREAS, the County desires to have constructed on a new parcel of land of approximately 5.73 acres to be split/subdivided from 897 Watervliet Shaker Road in Colonie, a solar photovoltaic (PV) electrical system (the “System”) consisting of approximately five (5) acres of solar panels in an effort to provide electricity for County use; and

WHEREAS, County has entered into a certain Solar Energy Power Purchase Agreement (the PPA) with Calibrant NY II, LLC (“Calibrant”), an entity that is part of a joint venture with Siemens Industry, Inc. and Siemens Financial Services, Inc. wherein and whereby Calibrant will construct, own and operate the aforesaid solar energy “System expected to provide 1.5 megawatts AC of power; and

WHEREAS, the PPA sets out a certain “Site Lease” at the new site known as 899 Watervliet Shaker Road upon which the System is intended to be constructed; and

WHEREAS, the County has requested of Colonie to “waive” the procedural and substantive requirements of Colonie Code §190-51 entitled “Solar Energy Systems” and in particular subdivision F entitled “Solar Farms”; and

WHEREAS, the County has requested to act as the Authority Having Jurisdiction (“AHJ”) over the System; and

WHEREAS, the parties are mindful of the strictures set out in Matter of County of Monroe v. City of Rochester, 72 NY2d 338 (1988) which confirmed that a host community (here, Colonie) maintains its planning and zoning regulations, notwithstanding that another governmental unit (here, County) desires to construct or develop land that the latter, as the intruding community, owns within the host community; and

WHEREAS, the parties are mindful of the nine factors which the Monroe court set forth where a host community is considering, or has been asked to consider, whether or not it is in the

public interest to continue to subject the County, as an encroaching government entity, to Colonie's land use regulations; and

WHEREAS, as an inducement for seeking the waiver of Colonie's regulations, County, for itself and on behalf of Calibrant, has agreed to observe and comply with most of the substantive standards for solar farms including abandonment and decommissioning provisions set out at Colonie Code §190-51 (F) and (G); and

WHEREAS, Colonie and County are desirous of entering into an agreement to memorialize the circumstances and provisions upon which Colonie is entitled to rely.

NOW, THEREFORE, in consideration of Colonie's waiver of its building and zoning provisions and Colonie's agreement to the County acting as AHJ over the System, it is understood and agreed as follows:

1. County intends to create a separate parcel of approximately 5.73 acres to be split/subdivided from 897 Watervliet Shaker Road (a/k/a Route 155) in Colonie and known as 899 Watervliet Shaker Road for the purposes of certain exemptions under the Real Property Tax Law and calculating and assessing a special district charge (the "Solar Parcel"). The improvements on the Solar Parcel will be subject to a separate PILOT (payment in lieu of taxes) agreement between the Town and Calibrant.
2. The County will honor the standards listed below that are otherwise applicable to "Solar Farms" in accordance with Section 190-51 (F):
 - (2)(a) Supply to Colonie prior to the Commercial Operation Date:
 - [2] Blueprints showing the layout of the solar energy system signed by a professional engineer.
 - [3] Equipment specification sheets for all photovoltaic panels, significant components, mounting systems and inverters that are to be installed.
 - [4] A property operation and maintenance plan which describes continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
 - Added – an "as built" survey showing the location of the of the solar energy system certified by a licensed surveyor shall be submitted to Colonie prior to the Commercial Operation Date showing all equipment, fencing, setbacks and distances required for compliance with code standards as agreed to herein.

Compliance with the following code standards:

(3) a.

[2] Ground mounted Arrays shall not exceed 20 feet in height when oriented at maximum tilt.

[3] Revised – It is hereby acknowledged by the parties that the County is leasing to Calibrant the Solar Parcel as depicted upon a survey map dated June 7, 2023 made by Damion Lozier and captioned “Lands New or Formerly of the County of Albany Radar Tower Solar” (the “Survey”). The setback depicted on the Survey between the Solar Parcel line and the beginning of the solar panels is 25 feet. The County has stated, and hereby confirms, that it maintains and is the owner in fee title of the entire area (the “Shoulder Area”) lying between the south and east lines of the Solar Parcel and the edge of the asphalt denoted on such Survey as “Watervliet Shaker Road, New York State Route 155.” One of the measured and surveyed distance width as depicted and described on the Survey is 50.04 feet and it appears that the referenced Shoulder Area is at least 50 feet in width as the pavement bounds the southern and eastern sides of the Solar Parcel. Based upon the assurance by the County that the Shoulder Area will be held by the County and will never, in any form, be included/appended to or used by Calibrant, its successors and assigns, for the System, Colonie is hereby accepting a 25 foot setback between the System and the Solar Parcel property line instead of the 50 feet required by Colonie’s Code. The only exception to the above assurance granted by the County, is the placement of the equipment pad and the equipment pad access driveway in the Shoulder Area as shown on the aforesaid Damion Lozier Survey. Colonie hereby accepts the location of the equipment pad and the equipment pad access driveway at the depicted location on the Survey upon the assurance that said equipment pad shall be properly fenced and totally screened with vegetation so the equipment pad cannot be seen from State Route 155. The County hereby agrees that the System will not be made operational until Colonie’s Bureau of Engineering has delivered its written opinion to the County and Calibrant that the vegetation to be provided fully screens the equipment pad.

[6] Revised - A minimum twenty-foot buffer, consisting of natural and undisturbed vegetation shall be provided to provide screening of the System to adjacent properties and roadways. The County hereby agrees that the System will not be made operational

until Colonie's Bureau of Engineering has delivered its written opinion to the County and Calibrant that the vegetation to be provided reasonably screens the System.

Added – A landscaping buffer will be added to the south and east side of the System consisting of natural and undisturbed vegetation to accomplish the screening suggested above. The County hereby agrees that the System will not be made operational until Colonie's Bureau of Engineering has delivered its written opinion to the County and Calibrant that the vegetation to be provided reasonably screens the System.

[7] All electrical and control equipment shall be labeled with appropriate warning signs and placards.

[13] All electrical and control equipment shall be secured to prevent unauthorized access. The entire System shall be enclosed by fencing.

G. Abandonment and decommissioning.

Added – A decommissioning plan prepared by a professional engineer shall be submitted to Colonie, satisfactory to Colonie's legal counsel, that provides for the removal of the System and restoration of the property on which the System is installed to a useful and nonhazardous condition. The decommissioning plan shall provide for the removal of the aboveground and belowground equipment, structures and foundations; restoration of the surface grade and soil after removal of the equipment; and revegetation of the restored soil areas with native seed mixes, excluding any invasive species.

(2) The System shall be deemed abandoned if:

(b) The System ceases to generate electricity on a continuous basis for a period of six months.

(3) In the event that Colonie determines that the solar farm System is abandoned, Colonie will inform County of such determination. In the event that County (acting for itself or through Calibrant) fails to have the System completely decommissioned and the System totally removed in its entirety (as determined in the sole discretion of Colonie), Colonie may undertake the decommissioning of the System and return the site to a restored state.

(a) Under such circumstances, the expense incurred by Colonie to complete the decommissioning process as above described, County will, within thirty (30) days of

notice by Colonie, pay to Colonie the cost incurred by Colonie for said decommissioning. Toward this end and to the fullest extent permitted by law, the County unconditionally guarantees to reimburse Colonie for all cost incurred by Colonie in the decommissioning of the System and the return of the site to a restored state. To the fullest extent permitted by law, the County hereby indemnifies and agrees to defend and hold harmless the Colonie and its employees and agents (collectively, the “Indemnatee”) from and against all claims, damages, demands, actions, judgements, lawsuits, liabilities, losses, costs and expenses (including without limitation, reasonable attorneys’ fees, costs and expenses, including court costs), whether or not subject to litigation (each an “Indemnified Loss”), incurred by Colonie relating to or resulting from the failure of the System being decommissioned in accordance with the decommissioning plan submitted to Colonie.

(b) County acknowledges that Colonie Code §190-51 (G) requires the posting of a decommissioning security. County has requested that no decommissioning security be posted. Colonie has agreed to waive the posting of security in major part based upon the unconditional guaranty given by the County as provided herein. While both the PPA and the Agreement for payment in lieu of taxes (PILOT) may obligate Calibrant NY II, LLC to undertake the decommissioning process, Colonie is relying upon the guaranty of the County.

THIS AGREEMENT, has been authorized separately by the Town Board of Colonie and the County Legislature of Albany.

IN WITNESS WHEREOF, the parties here set their hands and seals effective the day and year first above written.

TOWN OF COLONIE

Peter G. Crummey, Supervisor

COUNTY OF ALBANY

By: _____

Title: _____

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On the ____ day of _____, 2023, before me, the undersigned, personally appeared **Peter G. Crummey**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On the ____ day of _____ in the year 2023, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC