

**Local Law No. \_\_\_ of 2023**

**Be it hereby enacted by the Town Board of the Town of Willing as follows:**

**Section 1:** The “Solar Energy Facility Law of the Town of Willing, New York,” is hereby authored to read in its entirety as follows:

**SOLAR ENERGY FACILITIES**

**§ I. Title.**

This Local Law may be cited as the “Solar Energy Facility Law of the Town of Willing, New York.”

**§ II. Authority.**

This Local Law is adopted pursuant to the People of the State of New York through Article IX, Sections 1(a) and 2(c) of the New York State Constitution. The law is also adopted pursuant to the supersession authority granted by New York Municipal Home Rule Law, §10, Subdivision (l) (ii)(d)(3) which authorizes the Town of Willing to adopt provisions that advance and protect the health, safety and welfare of the community, and to provide for, so far as conditions may permit, the accommodations of solar energy systems (as hereafter defined) and equipment which generate electricity primarily for onsite use.

**§ III. Purpose.**

This Solar Energy Law is adopted to permit the construction of solar energy systems in the Town of Willing in a manner that advances and protects the public health, safety and welfare of the Town of Willing while facilitating the production of renewable energy. In so doing, this Law seeks to:

A. Allow local residents, farms, businesses and government to take advantage of a safe, abundant, renewable and non-polluting energy resource in a way that is consistent with the nature and character of the Town.

B. Preserve and protect the natural resources and Prime Farmland/Agricultural of Statewide Importance within the Town of Willing in accordance with the Town’s Comprehensive Plan.

C. Protect and promote scenic and environmental resources by minimizing solar energy systems’ impacts on Willing scenic and environmental resources such as the WAG Trail/Genesee River Corridor, class 1 and 2 streams, flood plains, historic sites, conservation easements, trails, parklands, wetlands, wildlife and scenery, and areas for recreational and outdoor activities.

D. Permit solar installations for the production of renewable energy to be used principally onsite, subject to reasonable conditions to mitigate potential impacts to adjoining properties and preserve neighborhood aesthetics.

**§ IV. Findings.**

The Town Board of the Town of Willing make the following findings:

A. The Town Board of the Town of Willing has previously adopted a Temporary Moratorium concerning the siting and construction of solar energy systems within the Town of Willing. In connection with its review of this subject, the Town Board has recognized the desirability of promulgating regulations as to the siting and construction of solar energy systems in other applications. To date, existing solar energy systems in the Town of Willing have been built and used in residential applications prior to the moratorium.

B. The Town Board of the Town of Willing recognizes that solar energy can be a clean, readily available and renewable energy source. At this time, Town of Willing intends to accommodate the use of solar energy systems in the context of residential and agricultural applications, as well as single-user commercial applications in which the solar energy system provides energy for the property, but is not intended to create sufficient excess solar energy to make its resale as a marketable commodity the purpose of the solar energy system, but rather an incidental or subordinate product thereof. The Town Board's determination to restrict and regulate large scale solar energy systems (as hereinafter defined) is based on the Town's farmland protection objectives, recognition of unique local conditions, i.e., the limited prevalence of highly productive soils throughout the entire Town, recognition that fragmentation of the land base is counter to the local objectives and threatens the sustainability of agriculture.

C. The Town Board acknowledges and finds a growing need to properly site solar energy systems within the boundaries of the Town of Willing so as to protect the limited amount of Prime Farmland/Farmland of Statewide Importance within the Town, residential properties, business areas and other land uses, to preserve the overall beauty , nature and rural character of the Town of Willing, 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 Town of Willing.

D. Prior to the adoption of this Law, no specific procedures existed to address the siting of solar energy systems or to mitigate their potential impact upon adjoining properties or the public view shed. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.

E. Solar energy systems need to be regulated for removal when no longer utilized.

**§ V. Definitions.**

The following definitions shall apply to this Law:

A. **APPLICANT:** The person or entity filing an application and seeking approval under this Law.

B. **BATTERY ENERGY STORAGE SYSTEM (BESS):** One or more devices assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone 12-volt car battery or an electrical motor vehicle. A BESS is classified as a

Tier 1, Tier 2, Tier 3 or Tier 4 BESS as follows:

1. Tier 1 (Small) BESS have an aggregate energy capacity less than or equal to 600kWh that are an accessory use or structure to the principal use; and, if in a room or enclosed area consist of only a single energy storage system technology.

2. Tier 2 (Medium) BESS have an aggregate energy capacity greater than 600kWh and less than 1mWh that are an accessory use or structure to the principal use and are generating electricity to be used onsite. These systems may be either in a room or an enclosed area.

3. Tier 3 (Large) BESS (Utility/Industrial Grad System) are systems that are associated with a large-scale solar energy system and are designed with a purpose to store energy and put that energy back into the power grid and have an aggregate energy capacity less than 1mWh.

4. Tier 4 BESS: any BESS with a capacity greater than 1mWh used to store energy for any purpose.

C. BUILDING-INTEGRATED PHOTOVOLTAIC SYSTEM: a combination of photovoltaic building components integrated into any building envelop system such as vertical facades including glass and other façade material, semitransparent skylight systems, roofing materials and shading over windows.

D. BUILDING-MOUNTED SOLAR ENERGY SYSTEM: any 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 solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

E. FARMLAND OF STATEWIDE IMPORTANCE: land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service’s (NRCS) Soil Survey Geographic (SSURGO) database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage and oilseed crops as determined by the appropriate state agency or agencies.

F. GLARE: the effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort or loss in visual performance and visibility in material aspects.

G. GROUND MOUNTED SOLAR ENERGY SYSTEM: any solar energy system that is affixed directly or indirectly to the ground or land surface, rather than attached to the wall or roof of a structure. Said system is designed and intended to generate electricity solely for the use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

H. LARGE SCALE SOLAR ENERGY SYSTEM: a solar energy system that is ground mounted and produces energy primarily for the purpose of offsite sale or consumption. Large scale solar energy systems are restricted and regulated in all districts withing the Town of

Willing.

I. PRIME FARMLAND: land designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service’s (NRCS) Soil Survey Geographic (SSURGO) Database 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 uses. It has the soil quality, growing season and moisture supply needed to produce economically sustainable high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, Prime Farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content and few or no rocks. They are permeable to water and air. Prime Farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

J. ROOFTOP MOUNTED SOLAR ENERGY SYSTEM: 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 the lot (upon which the structure containing the solar energy system is located), potentially for multiple tenants, through a distribution system that is not available to the general public.

K. SENSITIVE VISUAL RECEPTOR: any person, business or institution likely to be adversely impacted by the visibility of a solar energy system. Sensitive Visual Receptors may include, but are not limited to, certain businesses, campgrounds, churches, medical facilities, people with pre-existing medical conditions, and others.

L. SOLAR ACCESS: space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

M. SOLAR ENERGY EQUIPMENT: electrical storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

N. 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 of 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, Tier 3 or Tier 4 solar energy system as follows:

1. Tier 1 Solar Energy Systems include the following:
  - a. Roof mounted solar energy systems
  - b. Building integrated solar energy systems
2. Tier 2 Solar Energy Systems are ground mounted solar energy systems that generate no more that 110% of the electricity consumed on the site or more than one site or piece of property within the jurisdictional limits of the Town of Willing owned by the same

person, farm or business over the previous 12 months.

3. Tier 3 and Tier 4 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 solar energy systems as defined by New York State.

O. SOLAR PANEL: a photovoltaic device capable of collecting and converting solar energy into electrical energy.

P. STORAGE BATTERY: a device that stores energy and makes it available in an electrical form.

Q. UNIFIED SOLAR PERMIT: an expedited solar permitting process has been developed by the NY-Sun public-private partnership, which utilizes a standard, unified permit across municipalities in New York State.

**§ VI. Applicability.**

The placement, construction and major modification of all solar energy systems within the boundaries of the Town of Willing shall be permitted only as follows:

A. A building permit issued by the Town of Willing shall be required for the installation of any solar energy system.

B. All solar energy systems existing on the effective date of this local law shall be allowed to continue in usage as such presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this Law.

C. No solar energy system shall hereafter be erected, moved, reconstructed, changed or altered except in conformity with these regulations.

D. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations, and industry standard as reference in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”) and the Town of Willing Law.

E. Any applications pending for the solar energy system on the effective date of this local law shall be subject to the provisions of this Law.

F. This local law shall take precedence over any inconsistent provisions of the Local Laws of the Town of Willing.

**§ VII. Use Areas/Where Allowed.**

All solar energy systems are subject to site plan review by the Town of Willing Planning Board, or designee of the Town Board. Subject to the provisions of this Law, certain solar energy systems shall be allowed as follows:

A. Tier 1 solar energy systems are permitted in all areas in the Town. Tier 1 solar energy systems shall be regulated subject to the requirements as stated in this Law.

B. Tier 2 solar energy systems are permitted as accessory structures in all areas in the Town. Tier 2 solar energy systems shall be regulated subject to the requirements as stated in this Law.

C. Tier 3 and Tier 4 solar energy systems are subject to restrictions and regulated in all areas in the Town.

1. Tier 3 and Tier 4 solar energy systems are not consistent with the Town of Willing's Comprehensive Plan. All large-scale solar energy systems, regardless of size and regardless of whether siting approval is granted by the State government, shall be subject to further requirements as stated in this Law.

**§ VIII. Permitting Requirements for Solar Energy Systems (appendix attached).**

A. A building permit shall be required for the installation of all solar energy systems.

B. Issuance of permits and approvals by the Town Board shall be subject to review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").

C. Siting of solar installations shall conform to the Town of Willing Comprehensive Plan.

D. All solar panels shall have anti-reflective coating(s) not identified as hazardous material by the EPA, unless an applicant demonstrates the hazardous material is unlikely to cause harm to people, plants or animals when released by spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The applicant shall adhere to all federal and state laws, regulations and guidelines regarding PFAS and polytetrafluoroethylene (PTFE) films. All solar energy systems shall be designed, erected, and installed so as to prevent undue glare from falling on adjoining properties or creating traffic safety issues.

E. 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.

F. The use of any pesticides is prohibited in the operation and construction of solar energy systems.

G. On site storage restrictions: storage of out of service (>3 months) or damaged panes on site is prohibited.

H. FCC Class B Emissions: panels shall be installed with proper grounding to prevent FCC Class B Emissions to prevent radio frequency interferences as per applicable codes.

**§ IX. Tier 1 Solar Energy Systems.**

Tier 1 Solar Energy Systems shall be permitted in all areas subject to the following requirements for each type of solar energy system:

A. Roof mounted solar energy systems may be attached to any lawfully permitted

building or structure and shall incorporate the following design requirements:

1. Roof mounted solar energy systems shall not exceed the maximum height restrictions of the district within which they are located and are provided same height exemptions granted to building mounted mechanical devices or equipment.

2. Solar panels on pitched roofs shall be mounted with a maximum distance of 12 inches between the roof surface and the highest edge of the system.

3. Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

4. Glare: all solar panels shall have anti-reflective coating(s).

B. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for any building containing such systems and shall meet the following requirements:

1. Building-integrated solar energy systems shall not be located or extend more than 7 feet from the building wall and in no instance shall any part of the system extend beyond the roof line or parapet wall.

**§ X. Tier 2 Solar Energy Systems.**

Tier 2 Solar Energy Systems shall be permitted in all areas as accessory structures. Site plan approval is required for Tier 2 Solar Energy Systems to be built or modified for the production of electricity principally for on site use for a commercial or industrial business within the Town of Willing. All other Tier 2 Solar Energy Systems, including systems for farm operations, are exempt from site plan approval.

A. Tier 2 Solar Energy Systems shall be subject to the following requirements:

1. Setbacks: Tier 2 solar energy systems shall be subject to the setback regulations for a building or accessory structure.

2. Location: Tier 2 solar energy systems shall be located in the side or rear yard of a property. No placement in front or side yard shall be permitted unless the locations is a minimum distance of 200 feet from the road and entirely concealed from view from the road due to topography or landscape conditions that must be maintained for the life of the said system.

3. Height: Tier 2 solar energy systems shall not exceed the maximum height of 15 feet as measured from the highest point of any solar panel (oriented at maximum tilt) or solar energy equipment, to the ground directly beneath it.

4. Glare: all solar panels shall have anti-reflective coating(s).

5. Screening and visibility: All Tier 2 solar energy systems shall be screened so that the view of such systems is minimized from adjacent properties to the extent reasonably practicable. Evergreen tree plantings may be required to screen portions of the site from nearby residential property, public roads and from public sites known to contain important views or vistas, such as gateway entrances to the Town. Solar energy equipment

shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

B. Tier 2 Solar Energy Systems with Agricultural Residential Conservation – 3 Districts (ARC-3), Agricultural Residential Conservation – 5 Districts (ARC-5) and which are a part of a farm operation as defined by Article 25 AA of the New York State Agriculture and Markets Law, shall not be subject to site plan review and shall be subject to the following requirements:

1. Setbacks: Tier 2 solar energy systems shall be subject to the setback regulations for a building or accessory structure within the underlying areas, whichever setback is greater.

2. Height: Tier 2 solar energy systems shall not exceed a maximum height of 15 feet as measured from the highest point of any solar panel (oriented at maximum tilt) or solar energy equipment, to the ground directly beneath it.

3. Glare: all solar panels shall have anti-reflective coating(s).

**§ XI. Permitting and Substantive Requirements for Tier 3 and Tier 4 Solar Energy Systems.**

A. Tier 3 and Tier 4 Solar Energy Systems are permitted with a Special Use Permit approved by the Town of Willing Board, after reviewing recommendations from the Planning Board, and subject to site plan review by the Town of Willing Planning Board and Town Board of the Town of Willing, and the physical limitations on area and other substantive requirements set forth in this section and related appendices. Applications for the installation of Tier 3 and Tier 4 solar energy systems shall be subject to the following procedures and substantive requirements. In the event a body of competent jurisdiction waives the use prohibition on Tier 4 solar energy systems, the substantive standards applicable to Tier 3 solar energy systems set forth in this law shall apply to any Tier 4 solar energy system for which the use prohibition is waived.

B. Applications for a special use permit shall be subject to a public hearing to hear all comments for and against the application. The Applicant shall have a notice printed in the newspaper of general circulation in the Town at least 5 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least 10 days prior to such a hearing. Proof of publication and mailing shall be provided to the Town Board at the public hearing.

C. Lot Coverage: the facility area shall not exceed 40% of the total area of any tax parcel. This coverage limit may be further reduced by the Town Board if it determines a lower coverage limit is necessary to accommodate environmental, aesthetic or health and safety concerns.

D. Lot Size: the minimum acreage size required for Tier 3 and Tier 4 solar energy systems is 25 acres.

E. Setbacks: the minimum setback from the fence line of any facility shall be:

1. 500 feet from all adjacent property lines.

2. A setback of 500 feet from all adjacent DEC wetlands, creeks and streams.
3. A setback of 500 feet from any inhabited residence, or residential primary structure, or sensitive visual receptor, on adjoining lots.
4. A minimum setback of 500 feet from any public road (from center of road).
5. A minimum setback of 500 feet from all property lines bordering a school, park or public place that may be adversely impacted by the solar energy system.

F. Minimization of environmental impacts. Development and operation of solar energy systems shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Willing or other federal or state regulatory agencies. Lands which have the highest ecological values as evidenced by large, contiguous areas of forest, undisturbed drainage areas, federal or NYSDEC state recognized wetlands, Genesee River Watershed, freshwater streams and rivers, or NYSDEC identified critical habitats or rare plants and animal populations shall be avoided.

G. Vehicular Paths. Vehicular paths and emergency access ways within the site shall be capable of bearing the weight of emergency vehicles and sufficiently wide to permit access to emergency vehicles such as fire trucks and ambulances so that emergency vehicles may pass each other without leaving the road. Applicants, their successors and assigns shall be responsible for keeping all access roads clear and passable by emergency equipment at all times. Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.

H. Signage:

1. A sign, not to exceed 8 square feet, shall be displayed on or near the main access point and shall list the facility name, owner, and phone number.
2. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations, not to exceed 4 square feet.
3. As required by the National Electric (NEC), disconnect and other emergency shut off information shall be clearly displayed on a light reflective surface. Multiple remote shut off locations will be installed to the extent technically feasible and shall be accessible by first responders.

I. Transmission Lines. All onsite utility and transmission lines shall, to the extent feasible, be placed underground.

J. Access. Major systems or solar installations shall not obstruct solar access to adjacent properties.

K. 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 6 inches in diameter

must be submitted with any application to the Town 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.

L. Glare. All solar panels shall have anti-reflective coating(s) subject to the limitations of the section and shall minimize reflective glare and/or glint toward any inhabited buildings on adjacent properties and roads.

M. Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties with fiU cutoff and should not encroach outside of the fenced perimeter.

N. Screening, Visual Impact and Vegetation Management.

1. Applications shall include a screening and landscaping plan drafted and endorsed by a licensed landscape architect, and shall consist of:

a. A visual impact assessment (“VIA”) of the solar energy system on public roadways and adjacent properties. At a minimum, the VIA must include a line-of-site profile analysis.

b. Photographic simulations of the facility area showing visual conditions after installation of the solar energy system.

c. A landscaping and screening plan including images of the screening from each compass direction (and/or additional views, if requested by any Board) shown at time expected intervals of:

i. At installation.

ii. At the two-year anniversary after installation.

iii. At the five-year anniversary after installation.

iv. The screening plan and site plan must be submitted for review by the Planning Board and the Planning Board shall provide recommendations as appropriate.

v. Depending upon the scope and potential significance of the visual impacts, additional impact analysis, including additional digital rendering and/or viewshed report may be required by the review board.

2. The landscaping and screening plan shall also include:

a. A topographic map specifying the locations, elevations, height, plant species, and/or materials that will comprise the structures and landscaping used to screen and/or mitigate any adverse aesthetic effects of the system.

b. Visual impact mitigation requirements include, but are not

limited to:

i. Screening of a permanent nature that will appropriately screen sightlines of the proposed solar energy system to significantly diminish the site lines from all adjacent property.

ii. The screening and landscaping plan shall minimize visual impact on public roadways and adjacent properties, as reasonably practical, through use of adequate screening measures such as landscaping, grading, berms or other means.

c. Visual screening is required for all facility components within 1,000 feet of any road or residence.

d. The Tier 3 or Tier 4 solar energy system shall be completely screened from any adjacent property. To accomplish this screening, existing vegetation shall be utilized to the fullest extent practicable, or an applicant may install at least 2 rows of native evergreen shrubs or other screening acceptable to the Town Board, which is capable of forming a continuous visual barrier that will meet or exceed the panel height at 2 years after planting. The solar energy system owner shall be responsible for maintaining and replacing the vegetative visual barrier until decommissioning for the project is complete in accordance with this Law. The minimum screening requirement may be waived if the Town Board determines that some other suitable onsite vegetation already exists to achieve complete screening.

e. Native vegetation should be used to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. These plantings shall cover the ground area throughout the solar panel fenced in area.

f. Existing vegetation onsite may be used to satisfy all or a portion of the required landscape screening.

O. Blasting: any and all types of blasting is prohibited at all stages of the project.

P. Noise: once in operation, sound pressure level at the exterior of any residence or non-participating property line, expressed in terms of dBA Leq-8hr, shall not exceed existing background ambient noise, expressed in dBA Leq-8hr as measured by a qualified acoustician, by more than 6dB.

Q. Height: the maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 15 feet above grade in height above the ground in Tier 3 and Tier 4 solar energy systems.

R. Fencing Requirements: all mechanical equipment, solar collectors, including any structure for storage batteries, shall be entirely enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

1. Chain-link fencing around Tier 3 and Tier 4 solar energy systems shall be visually screened wherever visible from roads, residences or visually sensitive resources, at the

discretion of the Town Board. Other types of fencing surrounding Tier 3 and Tier 4 solar energy systems may require visual screening at the discretion of the Town Board.

2. The use of barbed wire, razor wire or electric fencing around solar energy facilities are prohibited unless expressly required pursuant to state or federal law.

3. There must be 6-inch gaps at the bottom of all fences to allow for wildlife passage unless such a gap is demonstrated to pose a risk to health and safety of the community. Alternatively, a fence designed specifically to permit small animals will always be allowed.

S. Agricultural Resources: for all projects located on agricultural lands.

1. Any Tier 3 or Tier 4 solar energy system located on the areas that consist of Prime Farmland/Farmland of Statewide Importance shall not exceed 10% of the area of Prime Farmland/Farmland of Statewide Importance on the parcel. Tier 3 and Tier 4 solar energy systems on Prime Farmland/Farmland of Statewide Importance shall be required to seed 100% of the total surface area of all solar panels on the lot with native perennial vegetation designed to attract pollinators.

2. To the maximum extent practicable, Tier 3 and Tier 4 solar energy systems located on any agricultural land shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets.

3. Tier 3 and Tier 4 solar energy system owners shall develop, implement and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, song birds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

4. Solar energy systems shall not occupy more than 2% of all Prime Farmland/Farmland of Statewide Importance located in the Town of Willing as classified by the U.S. Department of Agriculture, New York State or the Natural Resources Conservation Service.

T. Decommissioning.

1. Permit Time Frame and Abandonment:

a. The Special Use Permit and site plan approval for a solar energy system shall be valid for a period of 12 months, provided that a building permit is issued for construction and construction has commenced.

b. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board within 12 months after approval, the applicant(s) may apply for an extension. The Town of Willing may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

c. Solar energy systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the owner and/or operator's expense, which at the owner's option may come from any security benefitting the Town of

Willing as set forth in this section.

d. If the owner and/or operator fails to comply with decommissioning upon abandonment, the Town of Willing may, at its discretion, utilize the funds in escrow or funds associated with a letter of credit for the removal of the solar energy system and restoration of the site in accordance with the decommissioning plan.

2. A decommissioning plan (see Appendix A) signed by the owner and/or operator of the solar energy system shall be submitted by the applicant, addressing the following:

a. The projected cost of removing the solar energy system if decommissioning is required during the first 3 years after construction is complete, as determined by a qualified and independent third-party assessor or other consultant agreeable to both the facility owner and the town.

b. The time required to decommission and remove the solar energy system and any ancillary structures.

c. The time required to repair any damage caused to the property by the installation and removal of the solar energy system.

U. Security.

1. The deposit, execution or filing with the Town Clerk of cash or a letter of credit shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the state or local permit and provide for the removal and restorations of the site subsequent to removal. The amount of the letter of credit or cash escrow payment shall be 125% of the cost of removal of the Tier 3 or Tier 4 solar energy system and restoration of the property in accordance with any state or local permit conditions, with an escalator of 3% annually, or by a percentage equal to annual inflation rate as calculated using the Consumer Price Index published by the Labor Department Bureau of Labor Statistics for the previous calendar year, whichever is greater, for the life of the solar energy, except in any year where the decommissioning cost is recalculated as set forth below. The amount of security shall not be reduced by the potential value of salvage.

2. Beginning on the 3<sup>rd</sup> anniversary of completion of construction, and every 3<sup>rd</sup> year thereafter until decommissioning is completed, a qualified and independent third party assessor or other consultant agreeable to both the facility owner and the town will recalculate the projected cost of decommissioning over the next five year period, and the applicant shall adjust the amount of the letter of credit to match 125% of the recalculated decommissioning cost.

3. Change in ownership: the obligation to maintain a decommissioning security letter of cred or cash escrow benefitting the Town of Willing is a continuing obligation that may not be transferred without written consent of the Town of Willing which consent shall not be unreasonably withheld.

4. In the event the applicant is in default of its obligation to decommission the facility under any applicable law or permit, and after proper notice and expiration of any

cure periods, the cash deposit, letter of credit or security shall be forfeited to the Town which shall be entitled to maintain action thereon. The cash deposit, letter of credit or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

5. In the event of default under this section or the conditions of any permit for construction and operation of the solar energy system or abandonment of the solar energy system shall be decommissioned as set forth herein.

## **§ XII. Site Plan Application.**

For any solar energy system requiring a Special Use Permit, site plan review and approval shall be required. In addition, the site plan application shall include the following information and be subject to the following additional substantive standards.

A. A three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components and electrical interconnection methods, with all National Electrical Code (NEC) compliant disconnects and overcurrent devices.

B. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of the building permit.

C. 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 the building permit.

D. Name, address, phone number and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.

E. Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

F. Prior to the issuance of the Special Use Permit or final approval by the Town Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State Licensed Professional Engineer or NYS Registered Architect.

G. Special Use Permit, additional requirements. Written and signed confirmation of compliance with solar panel restrictions and design requirements as detailed in this law must be signed and submitted as part of permit submission.

H. Building Permit, additional requirements. Prior to building permit approval

1. A clearing, grading, storm water and erosion control plan shall be submitted to the Town for approval.

2. The plan must demonstrate potential adverse impacts to soils, wetlands and/or Class I and II streams have been mitigated, as well as the banks and vegetation along these areas. Applicants must demonstrate they have minimized erosion and sedimentation and show plans for restoring the soils to the state which they existed prior to construction. This will

include plans for stripping and stockpiling topsoil from roadways or other areas that will be disturbed, de-compacting these areas following construction or decommissioning and replacing the topsoil and revegetating these areas.

3. The Town of Willing and its representatives shall be given access to the project site by the developer or the landowner to evaluate the project impact on environmental, vegetation and wildlife, soil, water or drainage.

4. Ownership changes. If the owner or operator of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, and the successor owner or operator assumes, in writing, all of the obligations of the special use permit, site plan approval and decommissioning plan. A new owner or operator of the solar energy system shall notify the code enforcement officer of such change in ownership or operator within 30 days of the ownership change.

### **§ XIII. Battery Energy Storage Systems (BESS)**

A. Tier 1 (Small), Tier 2 (Medium), Tier 3 (Large) and Tier 4 (capacity greater than 1mWh used to store energy for any purpose) battery energy storage systems shall meet the requirements of any applicable fire prevention code, building code and design requirement when in use and, when no longer used, shall be disposed in accordance with the laws and regulations of the Town of Willing and any applicable federal, state or county laws or regulations. Fire prevention codes, building codes, design requirements and applicable federal, state, and county laws or regulations include but are not limited to standards and requirements set forth in the:

1. Energy Code: the New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

2. Fire Code: the fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

3. Nationally Recognized Testing Laboratory (NRTL): a U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

4. NEC: National Electric Code

5. NFPA: National Fire Prevention Association

6. Uniform Code: the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

B. Small battery energy storage systems are a permitted use in all areas and require site plan approval.

C. Medium battery energy storage systems are permitted in all areas and require

site plan review and a building permit.

D. Large battery energy storage systems are not permitted on soils classified as prime farmland, prime farmland if drained or soils of statewide importance by the U.S. Department of Agriculture, New York State, farmland or the Natural Resources Conservation Service. In addition, large battery energy storage systems shall not be sited on more than 10% of any parcel containing prime farmland, prime farmland if drained or soils of statewide importance.

E. Large battery energy storage systems require a special use permit, site plan review and a building permit.

**§ XIV. Safety.**

A. Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.

B. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 or Tier 4 solar energy system is located in an ambulance district, the local ambulance corps.

C. A piece of equipment that meets the definition of “oil-filled operational equipment” at 40 CFR Part 112.2 (e.g. transformers, capacitors and electrical switches) shall comply with the secondary containment procedures of that regulation.

D. Emergency Response Plan: as part of the special permit documentation the applicant must submit an emergency response plan for any potential hazard situation: fire, lightning, hailstorms, etc.

1. The plan must include requirements for documented training of the fire department and other first responders prior to installation.

2. The plan must include a list of possible events that could occur and provide a training guide for first responders detailing best practices and potential hazards.

3. The owner of the solar energy system shall be responsible to provide the local fire department with the proper equipment necessary to handle an emergency event.

**§ XV. Enforcement and Annual Inspections.**

A. Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the land use regulations of the Town of Willing.

B. If the applicant is in default of the requirements for a Special Use Permit, or any other applicable permit or law, the Town of Willing Code Enforcement Officer shall have authority to pursue all remedies provided by state and local law, including but not limited to revocation of the permit and commencement to decommissioning pursuant to this section.

C. The town and its representatives will be given access to the project site by the developer or landowner to evaluate project impact on environmental, vegetation and wildlife,

soil, water or drainage.

**§ XVI. Inspection.**

A. As part of a special use permit approval or renewal an inspection shall be requested. Upon reasonable notice, the Town of Willing Code Enforcement Officer 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. Advance notice of 48 hours will be provided to the owner/operator or designated contact.

B. Upon approval of a special use permit, the facility will undergo an annual inspection. The inspection will include:

1. Confirm pollinator program is in compliance and screen plan remain in place, require replacement of any dead/lost screening or ground cover in compliance with screening plan.
2. Inspect for out of service panels.
3. Inspect for brush fire risk in close proximity to panels.
4. Inspection of fencing – for security.
5. Require documented inspection of output to be included with special use permit approval

C. Note: failure to receive approval for the special use permit or failure to receive renewal within six months after its expiration shall result in a request to discontinue and to initiate the decommissioning plan.

**§XVII. Town of Willing Road Preservation.**

A. Notwithstanding anything to the contrary contained therein, the applicant must comply fully with the recommendations from the Town of Willing Highway Superintendent to ensure that public used roadways are repaired and adequate for use for the life of each solar energy facility. For this Solar Energy System Facility Law, the definition of High Frequency Truck Traffic shall be a vehicle or related vehicles that have 3 or more axles which traverse/travel any miles of Town roads or other town property during any 5 consecutive days. This definition shall be used for both individual permits and blanket permits. Traffic routes: construction and delivery vehicles for solar energy system facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:

1. Minimizing traffic impacts from construction and delivery vehicles.
2. Minimizing solar energy system facility related traffic during times of school bus activity.
3. Minimizing wear and tear on local roads.
4. Minimizing impacts on local business operations.
5. Solar energy system facility permit conditions may limit solar energy

system facility related traffic to specific routes and include a plan for disseminating traffic route information to the public.

B. Road Remediation: the applicant shall be responsible for remediation of damaged roads upon or if necessary, during the construction of or completion of the installation of solar energy system facility. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Highway Superintendent, Town Board, Town Planning Board, sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant.

**§ XVIII. Severability.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.

**Appendix A**

Decommissioning Plan

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by the Town of Willing, [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the “Facility”).

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power for 12 months
3. The system is damaged and will not be prepared or replaced

The owner of the facility, shall restore the property to its condition as it existed before the facility was installed, pursuant to which may include the following: removal of all concrete, metal, wires, contaminated soil or any other remnants of the solar energy system or batter energy storage system; removal of all fill material or road building materials that were brought in from off-site, decompaction of all disturbed soil areas and replacement of stockpiled topsoil in order to restore the soils to the state in which they existed prior to construction. The decommissioning plan shall include this property restoration.

<b>To</b>	
<b>Cc</b>	
<b>Bcc</b>	
<b>Subject</b>	