

**WILSON HILL SOLAR, LLC –**  
**TOWN OF HOOSICK ROAD USE AGREEMENT**

THIS AGREEMENT (the “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2023 by and among the Town of Hoosick, in Rensselaer County, New York (the “**Town**”) and Wilson Hill Solar, LLC a Delaware limited liability company (the “**Developer**”). The Town and Developer may each be referred to herein as a “**Party**” and together, as the “**Parties.**”

**WITNESSETH:**

**WHEREAS**, Developer is in the process of developing a new solar farm in the Town of Hoosick (the “**Project**”) and, in connection therewith, is utilizing roads within the Town in order to transport equipment and materials; and

**WHEREAS**, the Town has expressed concern to Developer about damage which may occur along Town Roads as a result of the Project by Developer and has requested that a Road Bond be put in place to ensure that the cost of any damage to Town Roads which may be caused by such Project is paid for by Developer; and

**WHEREAS**, in connection with the Project, the Parties desire to address certain issues related to the roads owned, operated and maintained by the Town designated in Exhibit A attached hereto and made a part hereof (the “**Town Roads**”) over which it will be necessary for Developer and its respective agents, contractors, subcontractors, material suppliers, vendors, employees, and designees (collectively the “**Development Group**”) to, among other things, (i) transport heavy equipment and materials over the Town Roads, which may in certain cases be in excess of the load or weight limits of the Town Roads; (ii) transport certain locally sourced materials, such as concrete and gravel, on such Town Roads and (iii) only to the extent necessary, make certain modifications and improvements to the Town Roads to permit such equipment and materials to pass; and

**WHEREAS**, Developer has provided to the Town a preliminary site layout plan requesting access to the Town Roads, a copy of which is attached hereto as Exhibit “A” (the “**Town Route Map**”); and

**WHEREAS**, the Town and Developer wish to set forth their understanding and agreement as to Development Group’s use of the Town Roads in connection with the Project.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein set forth, the Parties, intending to be legally bound, agree as follows:

Section 1. Town Approvals. Subject to the terms and conditions herein, the Town hereby agrees that the Development Group may use the Town Roads in accordance with the Town Route Map and Road Access Points in connection with the Project.

Section 2. Developer Undertakings. Developer hereby agrees, and shall cause the Development Group to agree, to undertake the following in connection with the Development Group's use of the Town Roads:

(a) Developer shall comply in all material respects with the rules and regulations associated with the driveway access permits. Whenever work is being performed that blocks any part of a Town Road, flaggers shall be present to control traffic. Any temporary entrances shall be removed from the right of way when not in use.

(b) While the Project is under construction, if requested by the Town Highway Superintendent, Developer shall provide transport schedules to the Town Highway Superintendent.

(c) If any of the Town Roads show signs of rutting, rolling, breaking or pumping that is not documented in the Pre-Project Roadway Condition Survey (defined in Section 3) while construction of the Project is ongoing due to the transporting of oversize or overweight loads or other material deliveries by the Development Group or Developer, at the reasonable request of the Town Highway Superintendent shall cause necessary repairs to be implemented to ensure safe passage of the motoring public within a reasonable time, unless immediate hazards exist, in which case Developer shall take immediate action to make such repairs. If Developer fails to act, the Town Highway Superintendent may take remedial action and may close the road to traffic and close all Town Roads to all Project traffic until the road is made safe.

(d) Developer shall, upon request, provide copies to the Town Highway Superintendent of any delivery ticket bound for or delivered to the Project site in connection with the Repair Work (as hereinafter defined) so that the Town Highway Superintendent may monitor the actual weights of construction vehicles which do not require permits for overweight loads. Copies of the delivery tickets shall be in the cab of the delivery vehicle during the transport.

(e) Developer shall comply with applicable time limits with respect to any requested closures of Town Roads. Developer shall provide reasonable notice to the Town Highway Department and local law enforcement agencies, affected rural mail providers, affected school districts and fire protection and ambulance service providers, as applicable, of road closings prior to closing any roads, portion of roads or intersections. In the event this provision is violated by Developer or the Development Group, the Town Highway Superintendent may impose a fine of \$500.00 for each one-hour increment that the approved road closure period is exceeded. All road closures require at least 24-hour notice to the Town Highway Superintendent prior to closing the road if different than the schedule set during the weekly meetings.

(f) In the event that Developer or the Development Group moves a traffic control device to accommodate its construction traffic, such sign shall be promptly replaced by Developer in accordance with the Manual on Uniform Traffic Control Devices (the New York Supplement and any updates thereto) issued by NYSDOT at its expense.

(g) Road and lane closures shall be marked and signed in accordance with the Manual on Uniform Traffic Control Devices (New York Supplement and any updates thereto) issued by

NYSDOT and any other applicable requirements set forth in State statute or regulation or Town ordinance.

(h) In accordance with permits issued by State authorities and to the extent required by the New York Vehicle and Traffic Law (and regulations promulgated thereunder), oversized/overweight vehicles shall display slow moving vehicle emblems and provide escort vehicles and related signage and lighting, to the end of protecting public safety and property.

(i) At all times during the Project and Repair Work (as defined in Section 4(a)) performed on Town Roads, Developer shall ensure that Town Roads being utilized by the Development Group are free and clear of mud, dirt, debris, garbage, obstructions or hazards. Upon request of the Town Highway Superintendent, Developer shall clear any mud, dirt, debris, garbage, obstructions or hazards from the Town Roads' right-of-ways arising from any of the Development Group's transportation for the Project within a reasonable time after the Town's request.

(j) If the Project or the Repair Work is suspended for an extended period, due to seasonal conditions or other cause, Developer, at Developer's expense, shall take such measures as installing barriers, posting signs and providing interim protections as may be reasonably required to render Town Roads safe for vehicular traffic during the period such work is suspended.

(k) The Town Highway Superintendent and/or his designee shall have unfettered access to the Town Roads to inspect the roads, culverts and adjacent ditches.

(l) The Developer shall cause the Development Group to submit oversized and overweight vehicle permit applications to the Town and/or the Town Highway Superintendent, to the extent required.

(m) To the extent required, the entity within the Development Group that will be performing Repair Work on Town Roads in connection with the Project shall be pre-qualified by NYSDOT to perform the work such parties are hired to perform. Upon request, Developer shall provide to the Town Highway Superintendent documents establishing that a contractor or subcontractor has been pre-qualified by NYSDOT.

(n) Developer shall provide written notice to the Town Highway Superintendent identifying the name, address and both regular and emergency contact information of Developer's on-site representative for communication purposes regarding this Agreement and the Project. Developer's on-site representative may be changed and any such change and change in contact information shall be communicated to the Town Highway Superintendent in writing.

Section 3. Pre-Project Roadway Condition Survey. A pre-Project roadway condition survey (the "**Pre-Project Roadway Condition Survey**") shall be undertaken via aerial videography or ground-level survey prior to commencement of the Project in the Town of Hoosick and provided to the Town showing the condition of the Town Roads specified in the Town Route Map. The Town will acknowledge receipt of the survey footage and reports and review its findings.

#### Section 4. Developer's Payment and Obligation to Repair Town Roads.

(a) Except to the extent any repair work is being undertaken by the Town pursuant to Section 4(d) below, Developer hereby agrees that upon written notice from the Town Highway Superintendent at any time during construction or within 120 (one hundred and twenty) days after the Date of Final Acceptance, it shall, at its expense, repair, or cause to be repaired, any damage to the Town Roads caused by oversize or overweight vehicles or other material deliveries in connection with the Project (the "**Repair Work**") whether such damage is caused by Developer or the Development Group or their respective successors or assigns. "**Damage**" shall include damage to the road surface, subsurface, culverts, bridges, guardrail, drainage tiles, drainage facilities, signs and adjacent ditches. All Repair Work shall be constructed in a good and workmanlike manner and place the Town Roads in the same or better condition than the condition shown in the Pre-Project Roadway Condition Survey.

(b) All Repair Work shall be completed within one hundred and twenty (120) days of written notice from the Town Highway Superintendent, unless additional time is agreed to by the Town Highway Superintendent. The limits and type of Repair Work shall be at the discretion of the Town with review by Developer. If the Town and Developer cannot agree on the scope and type of Repair Work, the Town Highway Superintendent and Developer shall jointly select an independent Road engineering firm to determine the scope and type of Repair Work (the "**Independent Engineer**"). The determination of the Independent Engineer shall be binding upon the Parties hereto. The cost of the Independent Engineer shall be split equally between Developer and the Town. Once the scope and type of Repair Work has been determined, Developer shall complete such Repair Work by thirty days after the determination of the Independent Engineer, unless additional time is agreed to by the Town Highway Superintendent. Repair Work on aggregate roads will include materials furnished by Developer to the Town Roads and labor and equipment to grade the aggregate furnished by the Town. All such actions undertaken by Developer shall be subject to the supervision and approval of the Town Highway Superintendent. All materials shall be NYSDOT approved.

(c) Developer shall provide written notice to the Town Highway Superintendent when Developer has completed construction, or, if required, completed the Repair Work (the "**Completion Notice**"). Attached to the Completion Notice shall be proof of payment to contractors, subcontractors and material suppliers and lien waivers executed by all contractors, subcontractors and material suppliers who have performed the Repair Work. Developer shall include footage from a post-construction survey ("**Post-Project Roadway Condition Survey**") with the Completion Notice. The Post-Project Roadway Condition Survey shall be undertaken via aerial videography or ground level observation and show the condition of the Town Roads specified in the Town Route Map following completion of construction, or, if required, completion of the Repair Work. The Completion Notice and lien waivers and a duplicate set shall be delivered by personal service upon the Town Highway Superintendent or by certified mail, return receipt requested.

(d) Upon receipt of the Completion Notice and lien waivers by the Town Highway Superintendent, the Town Highway Superintendent shall have twenty-one (21) days to inspect the Repair Work, review the Post-Project Roadway Condition Survey, and provide written notice to

Developer of rejections of the Repair Work in whole or in part (the “**Rejection Notice**”). The Rejection Notice, if any, shall be delivered by certified mail, return receipt requested to the address for Developer provided hereinafter in Section 10(g).

i. If no Rejection Notice is tendered by the Town Highway Superintendent, then the Bond (as hereinafter defined) shall be released.

ii. If a Rejection Notice is tendered by the Town Highway Superintendent, then:

(a) Developer shall make repairs as identified in the Rejection Notice. Upon completion of such additional repair work, Developer shall serve the Town Highway Superintendent with a supplemental Completion Notice and the notice procedures set forth herein shall apply; or

(b) Within ten (10) days of receipt of the Rejection Notice, Developer may provide written demand to the Town Highway Superintendent requesting that the Town Highway Superintendent and Developer select an independent engineering firm to inspect the Repair Work and determine if additional repairs as demanded by the Town Highway Superintendent in a Rejection Notice are reasonably required. The Parties shall select an Independent Engineer within twenty-one (21) days of Developer’s written demand. The Independent Engineer shall complete its inspection within thirty (30) days and issue a written report. The determination of said Independent Engineer shall be binding upon the parties hereto. The cost of the Independent Engineer for such inspection and report shall be divided evenly between the Parties.

iii. The “Date of Final Acceptance” of all road repairs shall be the latter of the following:

(a) The date of the delivery of the Completion Notice to the Town Highway Superintendent if no Rejection Notice is given by the Town Highway Superintendent to Developer; or

(b) If a Rejection Notice is given by the Town Highway Superintendent to Developer, then either:

(1) the date the identified repairs are completed to the reasonable satisfaction of the Town Highway Superintendent; or

(2) the date of the written report by the independent engineering firm showing no further repairs are necessary or reasonably required.

Section 5. Town Undertakings. In consideration for the obligations of Developer under this Agreement, the Town agrees as follows:

(a) Upon execution of this Agreement by all parties, the Town shall permit the Development Group to use the Town Roads. The Town may limit times and days the Town Roads are open for use during the “Spring Postings” period. Oversize and overweight loads will be issued a written permit for each trip as permit requests are received by the Town. Permits will be delivered to the applicant and to Developer at the address provided hereinafter in Section 10(g). In the event the Road Bond is not received within seven days of the execution of this Agreement, the Agreement is suspended until the Road Bond is received by the Town Highway Superintendent.

(b) The Town will coordinate and cooperate with Developer and the Development Group to minimize the impact of their use of the roads on normal local traffic.

Section 6. Insurance. Developer shall furnish the Town with evidence of liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) (United States Currency) per occurrence covering Developer’s use of the Town Roads as contemplated by this Agreement. Developer shall provide a letter of insurance to the Town Clerk and Town Highway Superintendent before the Development Group uses the Town Roads for the Project. The insurance policy shall provide for a thirty (30) day “prior notice of termination” provision in favor of the Town. Should Developer allow such liability insurance to terminate prior to the completion of the construction and road Repair Work contemplated by this Agreement, the Town shall have recourse against the Road Bond for funds sufficient to cause the liability insurance to be reinstated until the completion of the road Repair Work. The Town, the Town Board, and the Town Highway Superintendent shall be named as additional insureds on the policy.

Section 7. Bond.

(a) Not less than one (1) day prior to the date any of the Development Group will commence using any of the Town Roads, Developer shall provide to the Town Highway Superintendent a performance bond in the amount of \$30,000 to protect the Town as provided in Section 4 (the “**Road Bond**”) for the Town Roads.

(b) Within 30 days after the Date of Final Acceptance, Developer shall have no further obligation to maintain the Bond(s) and the Bond(s) shall be released and returned to Developer.

Section 8. Future Work by Developer. This Agreement is limited to the Project as described in the recitals to this Agreement.

Section 9. Miscellaneous.

(a) Incorporation of Recitals. The Recitals set forth above are hereby incorporated herein and made a part of this Agreement.

(b) Remedies and Enforcement. Each of the parties hereto, their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party, or their successors or assigns, which default is not cured for a period of ten (10) days after written notice to the defaulting party of such default or to the extent such default cannot be cured within 10 days and the party fails to commence cure within 10 days, the party

seeking to enforce said provisions shall have the right of specific performance. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

(c) Due Authorization. Developer hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Developer. The Town hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the Town.

(d) Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.

(e) Entire Agreement. This Agreement contains the entire understanding of the parties as to the matters set forth herein, and this Agreement supersedes any prior agreements or understandings by and between the parties.

(f) Amendments. No waiver of a party's rights hereunder shall be binding unless it shall be in writing and signed by the party against whom enforcement is sought. Any amendment or modification to this Agreement shall be in writing and executed by each party hereto.

(g) Notices. All notices shall be in writing. Any notice shall be deemed to be delivered (i) on the date of personal service; (ii) five (5) days after being sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) on the next business day if sent by overnight delivery service (e.g. Federal Express) to the parties hereto at their respective addresses set forth below. Notice may be sent via email to an email address; provided, however, notice via email shall be followed by notice delivered by personal service or via registered or certified mail, return receipt requested, postage prepaid or by overnight delivery.

Notices shall be addressed as follows:

If to Developer:

Wilson Hill Solar, LLC  
101 Summer St, Flr 2  
Boston, MA 02110  
Attn: Kamran Idrees  
Telephone:  
Facsimile:  
Email: KIdrees@nexamp.com

If to the Town:

Town of Hoosick Highway Superintendent  
80 Church Street  
Hoosick Falls, NY 12090  
Telephone: 518-686-4571

or to such other party or address as any party hereto may from time to time designate in a written notice to the other parties.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by fax or e-mail shall be as effective as delivery of a manually signed counterpart to this Agreement.

(i) Commencement of Project. This Agreement shall be void if the Project is not commenced within one year of the date of this Agreement.

(j) Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York (the state in which this Agreement is deemed to have been executed and delivered), irrespective of any conflict of laws provisions.

(k) Forum Selection. The parties agree that any disputes arising out of, related to, or connected with this Agreement shall be litigated, if at all, solely in the Supreme Court in the Fifth Judicial Circuit, Onondaga County, New York.

(l) Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors, assignees and legal representatives. This Agreement may not be assigned without the written consent of the other parties hereto; provided, however, that Developer may collaterally assign this Agreement, without the consent of



the Town, in connection with any financing or refinancing of the Project. Any such collateral assignment will not relieve Developer of its obligations under this Agreement. In the event of such a permitted assignment, Developer shall, seven (7) days after such assignment, provide written notice to the Town Highway Superintendent of the name, address, entity type and state of incorporation of the assignee, as well as the name and address of the assignee's registered agent in the State of New York.

(m) No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

(n) Attorney's Fees and Costs. If any action at law or in equity is brought by any Party to enforce this Agreement, the prevailing party in such litigation shall be entitled to receive from the non-prevailing party reasonable attorneys' fees and costs incurred.

(o) Except as required by law, the Town shall not issue publicity news releases, grant press interviews, or disseminate any information regarding the Agreement or its terms or its intentions therewith within the duration of the project without the prior written consent of Developer. In the event the Town is presented with a request for documents by any administrative agency, in connection with a freedom of information act request, or with a subpoena duces tecum regarding any records, data, or documents which may be in the Town's possession by reason of this Agreement, the Town shall, to the extent permissible by law and to the extent not prohibited by the terms of such subpoena, immediately give notice to Developer, with the understanding that Developer shall have the opportunity to contest such process by any means available to it before such records or documents are submitted to a court or other third party, provided, however, that the Town shall not be obligated to withhold such delivery beyond that time as may be requested by a court, any governmental agency, in connection with a freedom of information act request, or administrative agency of competent jurisdiction, unless the subpoena or request is quashed or the time to produce is otherwise extended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

Wilson Hill Solar, LLC

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

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

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

Town of Hoosick Highway Department

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

Name: Paul Hoag

Title: Town Highway Superintendent

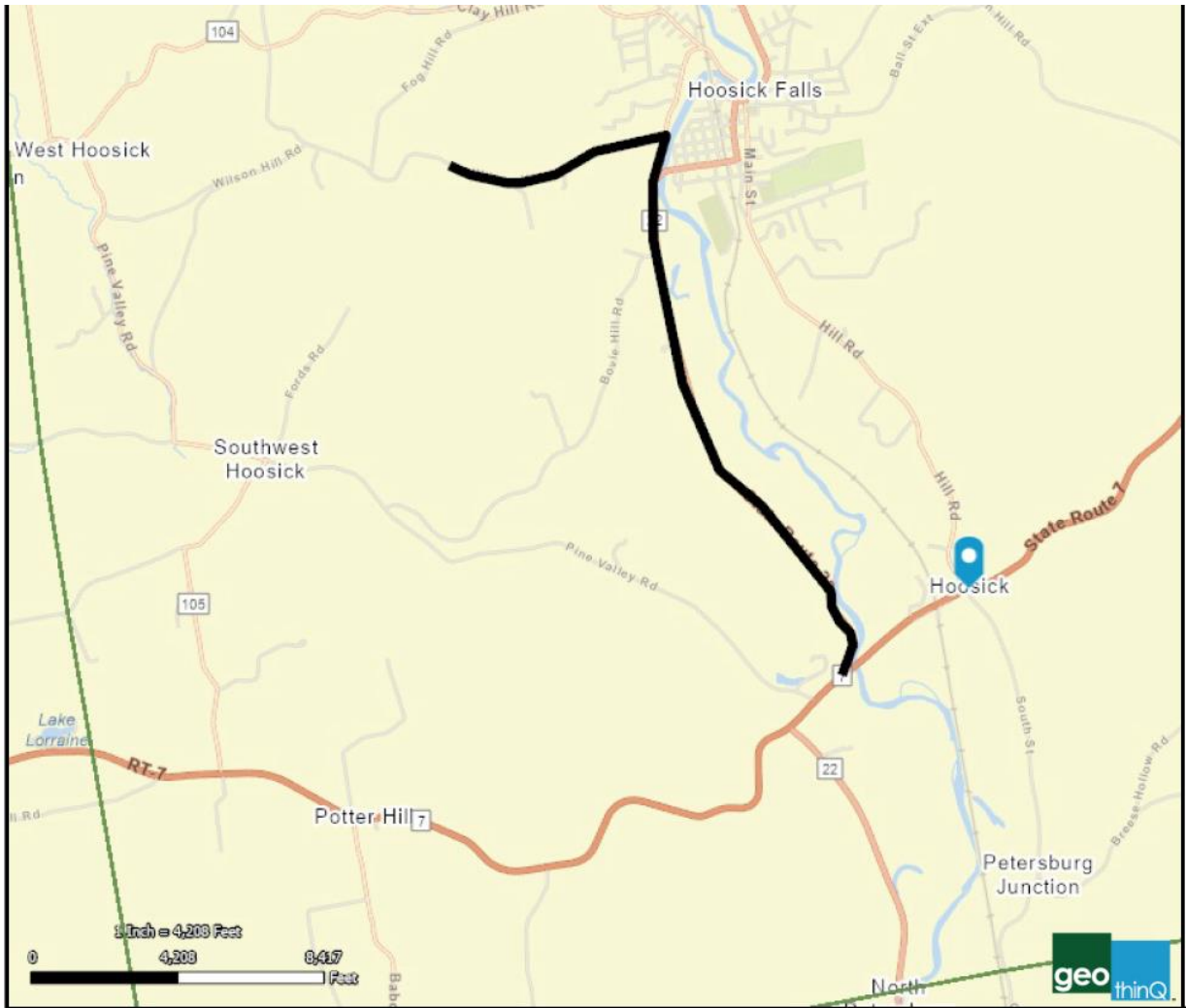
Town of Hoosick

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

Name: Mark Surdam

Title: Town Supervisor

EXHIBIT A  
Town Route Map



From State Route 7 to County Route 22 (N or S) to Wilson Hill Road (E or W) to site.