

**PAYMENT IN LIEU OF TAXES AGREEMENT BETWEEN  
THE TOWN OF MILFORD AND MILFORD SPARTAN SOLAR, LLC**

This Payment in Lieu of Taxes (PILOT) Agreement (hereinafter “Agreement”) is made under New Hampshire Revised Statutes Annotated (NHRSA) 72:74, this \_\_\_\_\_ day of \_\_\_\_\_ 2020, between the Town of Milford, New Hampshire (“Town”) and Milford Spartan Solar, LLC, (“MS”), a Delaware limited liability company having an office at c/o OED Granite Apollo, LLC, 114 North Main Street, 3<sup>rd</sup> Floor, Concord, NH 03301 (hereinafter together “the Parties”).

**Background**

MS seeks to develop a renewable solar-powered electric generating facility (the “Facility”) erecting solar arrays and transmissions lines in the Town of Milford. The Facility will be located near Perry Road. MS intends to build a portion of the Facility on land owned by Not Too Dusty, LLC, with the remainder on land owned by the Town. MS estimates that the Facility will have 16 MW of generation capacity.

MS will construct the facility on land it will lease from Not Too Dusty, LLC, identified on Town tax maps as tax lot 39-74 and on land leased from the Town, identified on Town tax maps as tax lots 38-4, 38-5, 38-5-1, 38-9, 38-11, 38-12, 38-13, and 38-14.

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.

MS 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.** MS 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 MS. 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, as defined in both of the lease documents, shall be the period beginning when MS obtains possession of the properties listed above and ending on the earlier of two years after the date of possession, or the Commercial Operations Date, unless extended by agreement of MS and the Town. Throughout this document, Commercial Operations Date has the same meaning as defined in the Land Lease Option and Lease Agreement (Solar Farm) between the Town and MS. During the Construction Term, MS shall make the following PILOT payments to the Town:
  - a. Twenty-Four Thousand and 00/100 Dollars (\$24,000.00) within thirty (30) days of the start of the Construction Term;
  - b. A second Twenty-Four Thousand and 00/100 Dollars (\$24,000.00) within thirty (30) days of the one (1) year anniversary of the start of the Construction Term;
  - c. If the Commercial Operations Date does not occur within twenty-four (24) months of the start of the Construction Term, and MS still plans to complete construction and operate the Facility, then MS and the Town will enter into good faith discussions to identify further interim PILOT payments during the

Construction Term. If the Parties cannot reach an agreement, then this Agreement shall terminate.

4. PILOT Payments for Forty (40) Year Ordinary Term. The Ordinary Term begins on the Commercial Operations Date. Subject to possible adjustments under Section 5 below, annual PILOT payments to the Town for the forty (40) year Ordinary Term shall begin at the rate of Forty-Eight Thousand and 00/100 Dollars (\$48,000.00) per year in the tax year that begins April 1 following the Commercial Operations Date. The rate for annual PILOT payments will increase 2% (two percent) cumulatively in each successive year of the Ordinary Term.

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

<u>Year</u>	<u>Payments in lieu of Taxes</u>
1	48,000.00
2	48,960.00
3	49,939.20
4	50,937.98
5	51,956.74
6	52,995.87
7	54,055.79
8	55,136.91
9	56,239.65
10	57,364.44
11	58,511.73
12	59,681.96
13	60,875.60
14	62,093.11
15	63,334.97
16	64,601.67
17	65,893.70
18	67,211.57
19	68,555.80
20	69,926.92
21	71,325.46
22	72,751.97
23	74,207.01
24	75,691.15
25	77,204.97
26	78,749.07

27	80,324.05
28	81,930.53
29	83,569.14
	<b><u>Payments in</u></b>
<b><u>Year</u></b>	<b><u>lieu of Taxes</u></b>
30	85,240.52
31	86,945.33
32	88,684.24
33	90,457.92
34	92,267.08
35	94,112.42
36	95,994.67
37	97,914.56
38	99,872.85
39	101,870.31
40	103,907.72

5. Potential Adjustment of PILOT Payments.

- a. Increase in Capacity: In the event MS upgrades the Facility during the term of this Agreement in such a way as to increase the Facility's total capacity, then MS will adjust PILOT payments upward beginning in the next tax year by the percentage of the increase in capacity.
- b. Reduction in Capacity: If the Facility'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 Facility's operations, as evidenced by the removal of all solar panels, the PILOT payment will be adjusted downward based on the percentage of the Facility 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, MS shall make the PILOT payments to the Town due hereunder for any given tax year in the Ordinary Term in two equal installments on June 1 and December 1.

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 MS 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, MS agrees to make an additional payment to the Town of \$11,145, in lieu of land use change taxes with respect to tax lot 39-74.
  
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 Administrator  
Town of Milford  
1 Union Square  
Milford, NH 03055

For MS:

Milford Spartan Solar, LLC  
c/o OED Granite Apollo, LLC  
114 N. Main Street, 3<sup>rd</sup> 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 (MS 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. Contingency. This Agreement shall only be effective upon rezoning of tax lot 39-74 into a zoning district on which the Facility will be a permitted use.

13. 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. MS 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. MS 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 MILFORD, NEW HAMPSHIRE  
By its Select Board:

\_\_\_\_\_  
Gary Daniels, Chair

\_\_\_\_\_  
Paul Dargie, Vice Chair

\_\_\_\_\_  
Mike Putnam, Member

\_\_\_\_\_  
Laura Dudziak, Member

\_\_\_\_\_  
Chris Labonte, Member

MILFORD SPARTAN SOLAR, LLC

By: \_\_\_\_\_  
Michael Caplan, \_\_\_\_\_ (title)