

VISUAL SCREENING MAINTENANCE AGREEMENT

THIS VISUAL SCREENING MAINTENANCE AGREEMENT made the ___ day of _____, 2021, by and between the **Town of Duanesburg**, a municipal corporation duly established in Schenectady County with a principal place of business located at 5853 Western Turnpike, Duanesburg, NY 12056 (the "Town"), [**Oak Hill Solar I, LLC and Oak Hill Solar II, LLC**], limited liability companies formed under the laws of the State of New York with principal offices at 333 Broadway, Suite 460, Troy, NY 12180 (collectively referred to as the "Operator") and Richard B. Murray (the "Landowner"). The Town, Operator and Landowner may each be referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, the Operator intends to permit, construct, operate and maintain two solar energy facilities with battery storage with an aggregate size of 5 Megawatts of alternating-current nameplate capacity that will generate electric power (the "Project"), as shown on the Site Plans entitled "Proposed Site Plan Oak Hill Solar 1 and 2", prepared by Environmental Design Partnership LLP, last revised September 15, 2019, hereinafter the "Site Plans) on real property leased to the Operator, and more particularly identified hereto in **Schedule A**, and commonly known as 13590 and 13686 Duanesburg Road Delanson, NY (Tax Map Parcel # 74.00-2-5.1 and 75.00-2-5.2) in the Town of Duanesburg, Schenectady County, New York ("the Properties"); and

WHEREAS, as a condition of the approval of the Operator's application for a Special Use Permit under the Town's Local Law No. 1-2016, the Town requires that the Operator establish and maintain a visual screen composed of a mix of spruce and fir trees of approximate six to eight feet in height, planted twenty (20) feet on center on a staggered basis along the 1600 foot property boundary (the "Visual Screening"); and

WHEREAS, as a further condition of the approval of the Operator's application for a Special Use Permit under the Town's Local Law No. 1-2016, the Town requires that the Operator enter into this agreement with the Town to set forth the terms and conditions governing the Operator's maintenance of the Visual Screening.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto as set forth herein, the Town and the Operator agree as follows:

1. This Agreement binds the Operator, its successors and assigns to the maintenance standards and provisions set forth herein.
2. The Operator shall maintain and replace the Visual Screening, including, without limitation, the replacement of dead or dying trees, throughout the existence of the Project and until such time as the Project is decommissioned in accordance with the Decommissioning Agreement by and among the Operator, the Town and the Landowner dated March 11, 2021.

3. In addition to any other easements separately granted by the Operator to the Town, the Operator hereby grants a limited right of entry, ingress and egress to the Town, its agents and employees, over the Properties for the purpose(s) of maintenance, inspections, repairs of the Visual Screening, and/or the performance of the Operator's obligations under this Agreement. Prior to entering the Properties, the Town shall provide reasonable prior notice to the Operator of the date of inspection. No additional documents or filings shall be necessary to formalize the Town's access easement specified herein.
4. The Operator and Landowner agree that in the event the Visual Screening is not completely installed or maintained by Operator as required by the terms of this Agreement, the Town may enter the Properties and cause the Visual Screening to be completed and/or maintained as reasonably necessary upon notice to the Operator as provided for in Paragraph "7(c)," below, or may, at its option, direct that the Operator undertake and perform such measures. Such measures shall be commenced within five (5) days from the date written notice of such requirement is given to the Operator and shall be completed within ten (10) days from the date of such notice, unless the completion cannot reasonably be effectuated within the ten (10) day period due to weather, in which event the Operator shall have a reasonable amount of time for such completion provided the Operator commences such measures as soon as weather permits. The Town may also take actions to enforce this Agreement by way of specific performance and the costs associated with such action shall be charged to and payable on demand by the Operator.
5. To the fullest extent allowed by applicable law, the Operator hereby agrees to indemnify, defend and hold the Town, its affiliates and respective managers, members, officers, directors, employees and agents, harmless from and against any and all claims, losses, costs, damages, liabilities, or expenses (including, without limitation, reasonable attorneys' fees) arising from or in relation to the negligence or willful misconduct of the Operator (or any person acting at its direction or on its behalf) in the performance of any inspections, maintenance, repairs and/or construction activities under this Agreement.
6. This Agreement shall be recorded in the Office of the County Clerk, County of Schenectady and, together with the deed for the property, if any, shall run with the land, and shall operate as an affirmative covenant of the Operator.
7. MISCELLANEOUS
 - a. No waiver or modification of any condition or limitation herein contained shall be valid unless in writing and duly executed by both Parties.
 - b. No waiver of any term or condition of this Agreement shall be deemed or constituted as a waiver of any other term or condition nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach concerning any provision of this Agreement.
 - c. Any notice, demand or other communication required to be given under this Agreement by either Party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail to the address of the other as given above, or by facsimile or electronic means such as electronic mail where delivery confirmation of the said notice can be readily printed without the requirement of administrative or judicial intervention.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals the day and year first above written.

TOWN:

Town of Duanesburg

By: _____

Name: Roger Tidball

Title: Town Supervisor

OPERATOR:

Oak Hill Solar I, LLC

By: _____

Name:

Title:

Oak Hill Solar II, LLC

By: _____

Name:

Title:

LANDOWNER:

By: _____

Name:

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) ss.:

On the ____ day of _____ in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared **Roger Tidball**, personally known to me or proved to me on the basis of satisfactory evidence to be the Town Supervisor of the Town of Duaneburg whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his 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 _____) ss.:

On the ____ day of _____ in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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 he executed the same in his capacity, and that by his 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 _____) ss.:

On the ____ day of _____ in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SCHEDULE "A"

DESCRIPTION OF PROPERTIES