

AGREEMENT FOR ROAD USE, REPAIR AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR AND IMPROVEMENTS (this "Agreement") is made and entered into this ____ day of _____, 2019 by and among the TOWN OF _____, a municipal corporation with offices at _____), the COUNTY OF JEFFERSON, a body corporate and politic under the laws of the State of New York with an office at 175 Arsenal Street, Watertown, New York (the "COUNTY") and OYA Solar, NY LP, a New York Limited Partnership with offices at _____, New York _____ ("OYA or "COMPANY").

RECITALS

1. The Company has been developing a solar-powered electric generating facility located in the _____ Orleans Jefferson County, New York (the PROJECT").
2. The PROJECT has a planned nameplate capacity of up to approximately 20 MW (15 MW in Orleans and 5 MW in the _____ (the "Project") and is owned by OYA, LLC a limited liability company currently owned by OYA.
3. The PROJECT advances the County's and Town's desire for environmentally sound production of electrical power.
4. The Town is responsible for the maintenance of certain roads and highways within Jefferson County.
5. In connection with the development, construction, operation and maintenance of the Project, it will be necessary for OYA and its contractors and subcontractors or designees to:
 - (i) transport heavy equipment and materials over the certain roads and highways located in each of the Town and County (the "Designated Roads"), which may in certain cases be in excess of the design limits of the Designated Roads;
 - (ii) transport certain locally sourced materials, such as concrete and gravel, on such Designated Roads;
 - (iii) widen certain Designated Roads and make certain modifications and improvements (both temporary and permanent) to such Designated Roads (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and
 - (iv) place certain electrical cables for the Project adjacent to, under or across certain roads for the purposes of carrying electrical current from the Project to the point of interconnection substation on _____ in the Town of _____.
6. The Town, the County and OYA wish to enter into an agreement for the use,

repair and improvement of the Designated Roads by OYA, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I USE OF DESIGNATED ROADS BY OYA

Section 1.1 Use of Designated Roads by OYA.

In connection with the development, construction, operation and maintenance of the Project, the Town and County hereby acknowledges and agree that OYA, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the "OYA Parties") may use the roads and highways located in the Town and County identified on Appendix A hereto (the "Designated Roads"). Except in exceptional circumstances, concrete or other aggregate material trucks are limited to use from 6:00 AM to 8:00 PM, seven days a week ("Period of Use"). The Designated Roads may be used by OYA and the OYA Parties only in connection with the development, construction, operation, and maintenance of the Project, including the transportation of heavy equipment and materials to and from the Project. The Parties understand that deviations from the Project schedule may cause monetary and other harm to OYA. Accordingly, the Town agree to use best efforts to accommodate the use of the Designated Roads by OYA and the OYA Parties outside the Period of Use during construction. In addition to identifying the Designated Roads that will be used by OYA, Appendix A identifies the routes over the Designated Roads that will be used for:

- (i) transportation and delivery of wind turbine equipment and components and other materials and equipment to be used in connection with the Project;
- (ii) truck transportation leaving the Project site following delivery of equipment and materials; and
- (iii) transportation and delivery of locally sourced materials, including concrete and gravel (provided, however, that in the event the materials contemplated by the Parties in the development of the routes in Appendix A are not reasonably available, the Parties shall cooperate in good faith to amend the routes so as to allow for the alternate sourcing of those materials).

Subject to the terms of the foregoing and the other terms of this Agreement, the Parties agree that, to the extent OYA's requirements for the Designated Roads change as a result of modifications to OYA's haul routes, the Parties shall substitute such other roads for the Designated Roads as OYA reasonably requests. OYA shall provide the Town Highway Superintendent reasonable notice that it anticipates the use of substitute roads. Substitute roads may only be used on consent of the Town Highway Superintendent and such consent shall not be unreasonably withheld. In the event that the Town Highway Superintendent does not respond within three (3) business days of a request to use a substitute road, the Town Highway

Superintendent shall be deemed to have agreed to such substitute road being used. The Parties also agree that the restrictions in this Agreement pertaining to Designated Roads and Period of Use are restricted to concrete or other aggregate material trucks and do not apply to usage by passenger vehicles, light duty trucks or other vehicles that are properly licensed for use on public roadways in the State of New York.

Section 1.2 Construction Period Meetings. Beginning with commencement of construction of the Project, OYA and a representative from the Town and County (each, a "Designee" and collectively, the "Designees") shall meet on a weekly basis to discuss the expected use of the Designated Roads in the next succeeding week, including the construction schedule and the haul routes to be used. The Designees shall have authority to act on behalf of the Town and County, including the right to allow use of the Designated Roads outside the Period of Use and approve use of substitute roads. To the extent necessary, the Designees and OYA may invite certain landowners to attend the weekly meetings if their property is near or adjacent to the areas of use. Within ten (10) days after the execution of this Agreement by the Parties, the Town and County shall provide the names and contact information for each of its respective Designees. It is OYA's sole responsibility and obligation to inform the OYA Parties of all obligations, restrictions and liabilities contained within this Agreement and specifically that, without limiting any other rights to use Town and County roads and highways, the OYA Parties are permitted the limited right to use the Town and County roads and highways as set forth herein or applicable law.

Section 1.3 Additional Conditions of Use. The use of Designated Roads by OYA and the OYA Parties is subject to the following conditions:

- a) In the event of an exceptional circumstance and OYA and the OYA Parties determine it is necessary for the Project to use the Designated Roads outside the Period of Use, then OYA or, if applicable, the OYA Parties shall seek approval of the Designees, describing in detail such use and the reasons therefore. The Designees will take into account weather conditions and the conditions of the roads in making their determination to grant permission for use of the Designated Roads outside of the Period of Use under this Section 1.3, which permission shall not be unreasonably withheld. In the event that the Designees fail to respond within five (5) business days, the Designees shall be deemed to have agreed to such use.
- b) In the event OYA and the OYA Parties determine it is necessary for the Project to use roads and highways of the Town and County not identified on Appendix A as Designated Roads, then OYA or, if applicable, the OYA Parties shall notify the Designees, describing in detail such use and the reasons therefore. OYA shall provide the Designee reasonable notice that it anticipates the use of substitute roads. Substitute roads may only be used on consent of the Designees and such consent shall not be unreasonably withheld. In the event that the Designees do not respond within three (3) business days of a request to use a substitute road, the Designees shall be deemed to have agreed to such substitute road being used.

- c) Once construction begins on the Project, the Designee shall be entitled, at any time, to notify OYA and the OYA Parties that use of the Designated Roads may result in excessive damage to the Designated Roads due to weather conditions. OYA shall work with the Designee to develop a plan to mitigate or prevent the effect of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such damage, then OYA and the OYA Parties may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, OYA and the OYA Parties may propose an alternate route to the Project site for approval by the Designees of the Town (such approval not to be unreasonably withheld).

Section 1.4 Surveys of Designated Roads. Prior to the commencement of construction at the Project site, the Town, the County and OYA shall select a third party to survey the Designated Roads to document the conditions of such roads prior to their use ("Initial Survey"). The Initial Survey shall include for each road or road section: (i) Town specifications applicable to the construction of the existing road; (ii) the period of time since the road was constructed or last maintained; (iii) an assessment of the condition of the road based on visual inspection and any information available through road testing. A scope of the road testing work is attached to this Agreement as Appendix G. The Initial Survey shall also include a survey of the roads and highways within the boundaries of the Town and County anticipated to be used by OYA and the OYA Parties as alternate routes from time to time (the "Non-Project Roads"). The third-party surveyor shall take photographs of or videotape the Designated Roads and Non-Project Roads, which photographs or video shall be accompanied by a written summary of findings regarding the condition of the Designated Roads and Non-Project Roads (the "Road Report"). Such Initial Survey, Road Report and any subsequent surveys or road reports shall be completed to the reasonable satisfaction of the Designees. Copies of the photographs or video and the Road Report shall be provided to the Designees and OYA. Within fourteen (14) days from the execution of this Agreement, the Town and County agree to provide OYA a list of locations whereby the Town and County have identified that core samples are required to fully delineate the conditions of the roads. The parties agree to negotiate in good faith and with reasonable efforts to identify a final list of road coring locations which shall be added to this Agreement as Appendix E. The results of these core samples will be incorporated into the Road Report. The costs of the Initial Survey and Road Report will be borne by OYA. OYA shall request the third party surveyor to conduct an additional survey following completion of construction of the Project to determine the then current condition of the Designated Roads and Non-Project Roads. Additional surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by OYA. OYA agrees that the Initial Survey shall include an assessment of the haul routes identified in Appendix A for rutting conditions and potential for rutting. The post construction road inspection shall assess rutting for the locations identified.

Section 1.5 Trash Removal: Unnecessary Materials and Equipment. Throughout the term of this Agreement, OYA shall be responsible for keeping, at its cost, the Designated Roads and Non-Project Roads clean and free from rubbish and debris resulting from OYA's use of the Designated Roads and Non-Project Roads. Materials and equipment of OYA or the OYA

Parties, if any, shall be removed from the Designated Roads and Non- Project Roads as soon as they are no longer necessary.

Section 1.6 Plowing. The Parties agree that OYA may plow seasonal or minimum maintenance roads along the Winter Access Route identified as Appendix A, as needed during or after construction of the Project. Nothing herein shall require the Town or County to plow seasonal or minimum maintenance roads during or after construction of this Project.

ARTICLE II REPAIR OF DESIGNATED ROADS AND NON-PROJECT ROADS

Section 2.1 Obligation to Repair Town Roads. In the event that any of the (i) Designated Roads or related appurtenances, including bridges, culverts and other road fixtures, (ii) modifications and improvements made pursuant to Section 3.1 and described on Appendix B, or

(iii) Non-Project Roads are damaged as a result of the use by OYA or the OYA Parties, OYA agrees to repair (or cause to be repaired) such damage and to restore such road(s) or related appurtenance to the condition they were in prior to the use (as near as is reasonably practicable having due regard for normal wear and tear) under this Agreement. OYA shall either (i) restore Designated Roads in accordance with the specifications set forth on Appendix C or; (ii) ensure that the restored roads match core samples taken prior to construction. The Parties will mutually agree upon the best alternative and ensure said alternative is representative of the conditions of the Designated Roads which are to be used by OYA in excess of their design limits, both before and after construction in which specified roads are to be used by OYA in excess of their design limits. The Parties shall rely upon the Initial Survey and the Road Report conducted pursuant to Section 1.4 for purposes of determining whether the repair has been performed in accordance with the standard set forth in this Section 2.1. Any repair and restoration shall be promptly performed at such times as mutually agreed by OYA and the Designee, having due regard for time of year, weather, status of construction activities, safety, the presence of emergency conditions and the costs of such repairs compared with other times of year. Following completion of such repair, the Designee and OYA shall jointly inspect the repair to determine that it has been satisfactorily completed.

Section 2.2 Repairs of Designated Roads at the Request of Designees: Failure to Repair. The Designee may request in writing that OYA repair damage shown to be caused by OYA and the OYA Parties to the Designated Roads and related appurtenances and return such roads and appurtenances to the condition such roads and appurtenances were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Designees and OYA shall meet to review the damage in relation to the Initial Survey, Road Report or most recent subsequent survey, as applicable. OYA shall repair (or cause to be repaired) such damage and restore the road(s) to the standard set forth in Section 2.1, unless OYA or the OYA Parties demonstrate to the reasonable satisfaction of the Designees that the damage was not caused by OYA or the OYA Parties. Any repair and restoration shall be promptly performed at such times as OYA and the Designees determine, having due regard for the time of year, weather status of construction activities,

safety, the presence of emergency conditions and the costs of such repairs compared with other times of year. In the event that OYA fails to repair such roads and appurtenances within the agreed period, then, unless the Parties mutually agree otherwise, the applicable Town or County may make such repairs and shall invoice OYA for the costs incurred by the Town in connection with the repair. OYA shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice. The burden shall be on OYA to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Section 11.2.

Section 2.3 Repairs of Non-Project Roads at the Request of Designee Failure to Repair. To the extent that permission is granted for the use of Non-Project Roads, the Designee may, from time to time, request in writing that OYA repair damage caused by OYA and the OYA Parties to the Non-Project Roads that are used by OYA or OYA Parties, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Designee and OYA shall meet to review the damage in relation to the Initial Survey, Road Report or most recent subsequent survey, as applicable. OYA shall repair (or cause to be repaired) such damage and restore the road(s) to the standard set forth in Section 2.1, unless OYA or the OYA Parties demonstrate to the reasonable satisfaction of the Designees that the damage was not caused by OYA or the OYA Parties. Any repair and restoration shall be promptly performed at such times as OYA and the Designees determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that OYA fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, and if OYA fails to agree to undertake such repairs within five (5) days of its receipt of notice from the Town where the road is located, then the Town may make such repairs and shall invoice OYA for the costs incurred by the Town in connection with the repair. OYA shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice. The burden shall be on OYA to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Article 11.2.

Section 2.4 Term of Obligation to Repair. Notwithstanding anything herein to the contrary, the obligations of OYA and the OYA Parties to repair certain roads in accordance with Sections 2.1, 2.2 and 2.3 shall terminate 240 days from completion of construction or such earlier date as the parties may agree. OYA shall notify the Town where the road is located in writing sixty (60) days prior to the date on which completion of construction is anticipated to occur.

ARTICLE III IMPROVEMENT AND MODIFICATIONS TO DESIGNATED ROADS

Section 3.1 Improvements and Modifications to Designated Roads. The Parties acknowledge and agree that certain modifications and improvements to the Designated Roads and related appurtenant structures are necessary to accommodate the use of the Designated Roads by OYA and the OYA Parties contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment

and materials to be transported on the Designated Roads. The modifications and improvements that shall be made by OYA are described in detail on Appendix B hereto. Modifications shall also include necessary tree clearing and trimming of overhead branches within the public right of way. OYA reserves the right to amend this Agreement to add roads and appurtenant structures if deemed necessary upon five (5) days' notice to the Town or County. The Town, County and OYA agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix C. Notwithstanding anything herein to the contrary, upon the reasonable request of OYA, the Designees of the Town are authorized from time to time to grant consent to deviations from the specifications set forth on Appendix C.

Section 3.2 List of Materials and Construction Techniques. Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article III, OYA shall deliver to the Designees of the Town and County a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the Designees of the Town and County (not to be unreasonably withheld).

Section 3.3 Review of Designated Road Construction. Within seven (7) business days following completion of the work contemplated in Section 3.1, the Highway Superintendent in the Town where the road is located and County Highway Superintendent, as applicable, may review the pre-construction improvements and modifications.

Section 3.4 Compliance with Law. OYA agrees that all modifications and improvements shall comply with all applicable laws, and be in compliance with all applicable permits and other authorizations for the Project.

Section 3.5 Collection System Cabling. The Parties acknowledge that OYA may desire to route certain wires, cables, conduits and/or lines (and their associated equipment) related to the transmission of electricity at a voltage of up to ____ kV from the Project below ground at a location adjacent to, under or across certain Designated Roads, as identified on Appendix D (the "____ kV Installation"). The ____ k V Installation will include a fiber-optic communication cable that will be installed in conjunction with the electrical cables. In connection with the ____ kV Installation, the Parties further agree that OYA shall be responsible for obtaining all private land rights as are necessary to permit OYA to complete the ____ kV Installation and make the modifications and improvements to the Designated Roads contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Roads. In connection with the ____ kV Installation, the Town and County hereby grants to OYA all such authorizations and approvals from the Town and County as are necessary to complete the ____ kV Installation, subject only to OYA's obtaining all private land rights as are required in connection therewith.

Section 3.6 Permits. OYA shall obtain all necessary governmental permits and approvals that are necessary to permit OYA to make the modifications and improvements to the Designated Roads other than permits required from the Town and County which are provided herein.

**ARTICLE IV
WARRANTIES BY OYA**

Section 4.1 Workmanship and Material Warranties.

- a) OYA's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Roads and Non-Project Roads shall be carried out in accordance with generally accepted engineering practices, and OYA's construction responsibility shall be carried out in accordance with sound construction practices, subject to the provisions of Section 3.2. OYA shall require from its construction contractors and subcontractors the same standards of engineering and construction practice. OYA warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

- b) OYA warrants during the Applicable Warranty Period (as defined below) that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. OYA shall remedy any defects in the repairs, modifications and improvements performed hereunder, workmanship, materials and equipment, including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors, in accordance with Section 4.2 which appear during the "Applicable Warranty Period". A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (i) does not conform to the terms of this Agreement, (ii) fails to comply with the standards set forth in Section 4.1 (a), (iii) is not of specified quality, (iv) is of improper or inferior workmanship, or (v) is not suitable for use under the applicable climatic and range of operating conditions. As used herein, "Applicable Warranty Period" means, with respect to any repair, modification, or improvement by OYA hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are identified by OYA to the Town where the road is located as complete and ending on the date that is twelve (12) months after such completion date.

Section 4.2 Remedies. During the Applicable Warranty Period, the affected Town and County shall notify OYA in writing within fifteen (15) days of discovery of any defects in the repairs, modifications or improvements, provided that any delay by the Town beyond such fifteen (15) days in notifying OYA shall relieve OYA from liability only to the extent of any additional expense which may arise as the direct result of such delay. At no additional cost to the Town and County, OYA shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. OYA shall be available either at the Project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis. OYA shall not be obligated to remedy any materials, equipment, repairs, modifications or improvements which becomes defective as a result of improper operation or maintenance by the Town or County or which results from normal wear and tear or use by parties other than OYA or the OYA Parties. In the event that OYA fails to repair such roads within the agreed period, then,

unless the Parties mutually agree otherwise, and if OYA fails to agree to undertake such repairs within thirty (30) days of its receipt of notice from the Town where the road is located and/or County, then the Town and/or County may make such repairs and shall invoice OYA for the costs incurred in connection with the repair. OYA shall pay such invoiced amounts within forty-five (45) days following receipt of the invoice. The burden shall be on OYA to establish that an invoice is unjustified or unreasonable subject to the dispute resolution provisions set forth in Section 11.2.

Section 4.3 Warranty. OYA warrants that all repairs, modifications, improvements, maintenance and materials furnished in connection with the performance by OYA and the OYA Parties under this Agreement shall be free and clear of all liens.

ARTICLE V POST CONSTRUCTION USE OF TOWN ROADS AND HIGHWAYS

Section 5.1 Operating, Maintaining, and Decommissioning Project. In the event operating, maintaining, or decommissioning of the Project requires the use by OYA of oversized or overweight vehicles, prior to entry upon roads and highways with such vehicles, OYA shall survey the condition of the affected roads and highways pursuant to this Agreement and produce to the Town an updated Post-Construction Report ("Updated Post Construction Report"). In the event of subsequent damage caused by operating, maintaining, or decommissioning of the Project (measured against the Updated Post-Construction Report), the Parties agree that this Agreement would be re-instated for a term necessary to repair such damage, in which event OYA's rights and obligations hereunder, including the warranty provisions of Article IV, shall be restored for the period necessary to repair such damage, if any. In no event shall the post-construction road use obligations limit the use of ordinary commercial trucks (i.e. pick-up trucks) in use for the Project.

ARTICLE VI INDEMNIFICATION; LIMITATION OF LIABILITY

Section 6.1 Indemnification by OYA. OYA hereby releases and agrees to indemnify and hold harmless the Town and the County and their respective officers, employees and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Town and County Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Town and County Releasees arising out of or relating to the performance by OYA and the OYA Parties of their respective obligations under this Agreement. More particularly, but without in any way limiting the foregoing, OYA hereby releases the Town and County Releasees and agrees to indemnify and hold harmless the Town and County Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road or Non-Project Road by OYA, the OYA Parties and their respective employees, agents, representatives or

contractors.

Section 6.2 Indemnification by the Town and County. The Town and County hereby release and agree to indemnify and hold harmless OYA and its members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively (“OYA Releasees”) from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the OYA Releasees arising out of or relating to the performance by the Town and County of their obligations under this Agreement. More particularly, but without in any way limiting the foregoing, the Town and County hereby release the OYA Releasees and agree to indemnify and hold harmless the OYA Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road by the Town and County, their respective employees, agents, representatives or contractors or their respective employees, agents or representatives.

Section 6.3 Limitation of Liability. Except as expressly set forth herein, the acts of each party are provided hereunder without warranty of any kind, express or implied, and each party hereby disclaims any such warranty including, without limitation any warranty of merchantability or fitness for a particular purpose. The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

ARTICLE VII INSURANCE

Section 7.1 Required Insurance. OYA shall at all times throughout the term of this Agreement maintain or cause to be maintained in full force and effect worker's compensation insurance in an amount required by applicable law and general liability insurance, naming the Town and County as additional insureds, in an amount of Five Million Dollars (\$5,000,000) in the aggregate. OYA may utilize any combination of primary and/or excess insurance to satisfy this requirement. OYA may elect to self-insure any or all of the insurance requirements contained in this Agreement. OYA will provide proof of such insurance in the form of a certificate of insurance or proof of self-insurance upon request of either Town or County. If a Town or County performs the repair, OYA shall have no obligation relative to indemnity or insurance for work completed and the Town or County performing the repair shall be responsible for its own insurance protection.

ARTICLE VIII
TERM; DEFAULT AND REMEDIES

Section 8.1 Term of Agreement. This Agreement shall become effective as of the date first written above and shall remain in effect, unless terminated earlier in accordance with this Agreement, until the date that is thirty (30) days after the date on which the Project facilities are decommissioned.

Section 8.2 Events of Default. The occurrence of anyone or more of the following events shall constitute an "Event of Default" hereunder:

- a) Failure by OYA to make any payment or reimbursement due under the terms of the Agreement when due and payable, and such failure continues for thirty (30) days after receipt by OYA of written notice of such failure from the affected Town or County.
- b) Any representation or warranty made by OYA in this Agreement or in any report, certificate, financial statement, or other instrument furnished at any time under or in connection with this Agreement shall prove to have been false, misleading, or incorrect in any material respect as of the date made.
- c) Failure by OYA to comply with any covenant, agreement or obligation contained in this Agreement, and such failure continues for thirty (30) days (or such longer period as the Parties may agree if such failure is not susceptible of cure within such thirty (30) day period) after receipt by OYA of written notice of such failure from the affected Town or County.
- d) OYA's:
 - i. application for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property;
 - ii. admission in writing of its inability to pay its debts as such debts become due;
 - iii. making of a general assignment for the benefit of its creditors;
 - iv. commencing a voluntary case under the United States Federal Bankruptcy Code (as now or hereafter in effect);
 - v. filing of a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or
 - vi. failure to controvert in a timely or appropriate manner, or acquiesce in

writing to, any petition filed against itself in an involuntary case under the United States Federal Bankruptcy Code.

- e) The institution of a case or proceeding against OYA in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up or composition or readjustment of debts of OYA; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of OYA or of all or any substantial part of its assets, unless such proceeding or case is dismissed within sixty (60) days thereafter.

Section 8.3 Remedies Upon Default. Whenever an Event of Default described in Section 8.2 shall have occurred, the affected Town shall have the right to take any or all of the following actions:

- a) Declare OYA in default and to seek immediate payment of any amount due hereunder from any surety guaranteeing OYA's full and faithful performance hereunder, such payment to be immediately due and payable together with interest thereon at the rate of nine percent (9%) per annum from the date of default through the date of payment, without any further notice of demand of any kind or any presentment or protest.
- b) Take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, agreements, or covenants of OYA under this Agreement.

Section 8.4 Remedies Cumulative. The rights and remedies of the Town and County under this Agreement shall be cumulative and shall not exclude any other rights or remedies the Town and County may have at law or in equity with respect to any Event of Default under this Agreement.

Section 8.5 Arbitrary and Capricious. If at any time OYA shall disagree with the Designees, OYA may commence an Article 78 or other proceeding to determine whether such Designees have acted in an arbitrary or capricious manner. Any such litigation may only be commenced in Supreme Court, Jefferson County, or within the same judicial district.

Section 8.6 Attorney's Fees. In the event that the Town or County have to take any actions to enforce this Agreement or otherwise obtain compliance with its terms, OYA agrees to reimburse the Town and the County for all costs so incurred, including reasonable attorney's fees.

ARTICLE IX PROVISION OF SECURITY FOR PERFORMANCE

Section 9.1 Form of Security. For the period commencing on the date that construction of the Project begins and ending on the date that commercial operation of the Project is

achieved, OYA agrees to furnish a payment and performance bond or other reasonably equivalent form of security or guarantee (including, without limitation, an escrow agreement, letter of credit or parental guarantee) which OYA may elect to provide (i) in the amount of One Million Dollars (\$1,000,000.00) for the joint and several benefit of the Town and County, with such surety and on such terms as are reasonably satisfactory to the beneficiaries, guaranteeing (i) the full and faithful performance of the repairs, modifications and improvements by OYA and the OYA Parties hereunder and (ii) the payment of all liens of all persons performing labor or providing services, materials, equipment, supplies, machinery, and other items in connection with the performance of such repairs, modifications and improvements by OYA and the OYA Parties hereunder. The amount of the payment and performance bonds is not intended to limit in any way the obligation of OYA to perform its obligations, all in accordance with this Agreement.

Section 9.2 Release of Security. Upon the achievement of commercial operation of the Project and the completion of the repair work to the reasonable satisfaction of the Designees, the Designees shall issue to OYA a certification in writing that the performance is accepted in the form provided in Appendix F. If further repair work is required to return roads to a condition that is not worse than the conditions identified in the initial survey, the bond shall be reduced to an amount to cover the reasonable "repair" expenses for the remaining pre-construction repair work. Upon completion of the post-construction repair work, the Town or County shall issue the certificate contained in Appendix F, and release the funds remaining in the bond or other form of security. At such time the security provided pursuant to Section 9.1 shall be returned to OYA.

ARTICLE X FORCE MAJEURE EVENT

Section IO.I Force Majeure Event Defined. As used in this Agreement, "Force Majeure Event" means, causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes; earthquake; unavailability of equipment; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this Section IO.I; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

Section 10.2 Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

- a) the non-performing Party will give the other Parties written notice within forty

eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

- b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- c) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and
- d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Parties written notice to that effect.

ARTICLE XI DISPUTE RESOLUTION

Section 11.1 Disputes Regarding Repair Work. In the event OYA or the OYA Parties and the affected Town or County do not agree regarding the quality or completeness of any repair work conducted pursuant to this agreement, OYA and the affected Town or County shall commence mediation for adjudication of the dispute by notifying the independent engineer identified pursuant to this Agreement as the "mediator". If the mediator is satisfied with the quality and completeness of the repair work, no further work shall be required. If the mediator is satisfied with the scope of the repair work, the affected Town or County shall be responsible to pay the full amount of the mediator's invoice within 45 days. If the mediator is not satisfied with the quality and completeness of the repair, OYA shall perform the repair activities identified by the mediator but shall not be required to perform repair beyond what the affected Town or County had requested of OYA. If the mediator determines that the additional work was necessary, the mediator shall determine the appropriate amount of work which shall be performed by OYA. In the event that the work was deemed inadequate, OYA shall pay the full cost of the mediator's invoice.

Section 11.2 The mediator for such disputes regarding road work shall be _____ unless changed by mutual agreement of the parties.

**ARTICLE XII
MISCELLANEOUS PROVISIONS**

Section 12.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions in such state.

Section 12.2 Amendments and Integration. This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. This Agreement may be amended only by a written agreement signed by all of the Parties.

Section 12.3 Assignment.

- a) Except as provided in subsections (b), (c), and (d) below, no Party to this Agreement shall assign, transfer, delegate or encumber this Agreement or any or all of its rights, interests or obligations under this Agreement without the prior written consent of the other Parties. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned or delayed; and (ii) without limiting the foregoing, in the case of the Town and County, the respective Town's approval and the County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of OYA pursuant to this Agreement.
- b) OYA may with reasonable notice to the Town and County, assign this Agreement or any or *all* of its rights, interests or obligations under this Agreement to
 - (i) an affiliate of OYA or (ii) an entity to which OYA has conveyed or leased the Project provided the assignment is in connection with the conveyance or lease of the Project; provided further that, the OYA assignee agrees in writing to be bound by the terms of this Agreement.
- c) OYA may, without the consent of the Town or the County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any lender providing financing for the Project as security for OYA's obligations under the financing agreements (including a trustee or agent for the benefit of its lenders) (a "Permitted Collateral Assignee"). In connection with any such collateral assignment to a Permitted Collateral Assignee, each of the Town and County shall, upon the request of OYA, deliver to OYA and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by OYA and the Permitted Assignee and which shall contain customary provisions.

- d) OYA may, without the consent of the Town, assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any corporation, partnership, limited liability company or other business entity that acquires all or substantially all of the assets used in connection with the Project or (ii) any corporation, partnership, limited liability company or other business entity that acquires all or a portion of the membership interests in OYA, provided that, in each case, such OYA assignee agrees in 'Writing to be bound by the terms of this Agreement.

Section 12.4 Notices. All notices, requests, demands and other communications required or permitted to be given by the Parties hereunder shall be in writing and shall be delivered in person or by facsimile or by first class certified mail, postage and fees prepaid, to the address of the intended recipient as set forth below. Notice delivered in person shall be acknowledged in writing at the time of receipt. Notice delivered by facsimile shall be acknowledged by return facsimile within twenty-four (24) hours, excluding Saturdays, Sundays, and public holidays. All such notices, requests, demands and other communications shall be deemed to have been received by the addressee, if by first class certified mail, three (3) days following mailing; if by facsimile, immediately following transmission; or if by personal delivery, upon such delivery. All such notices, requests, demands and other communications shall be sent to the following addresses:

To Town:

To the County: Jefferson County
 Attn: County Manager
 175 Arsenal Street
 Watertown, NY 13601

To OYA:

With a copy to:

Jefferson County
Attn: County Manager
175 Arsenal Street
Watertown, NY 13601

OYA
ATTN:

The foregoing addresses may be changed by any Party by giving written notice to the other Parties as provided above.

Section 12.5 Exercise of Rights and Waiver. The failure of any Party to exercise any

right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

Section 12.6 Independent Contractor: Relation of the Parties. The status of OYA under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, OYA and its officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the Town or the County. As an independent contractor, OYA shall accept full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability or other coverage required by law.

Section 12.7 Severability. In the event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

Section 12.8 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply. All Appendices and Exhibits referenced in this Agreement are incorporated in and form a part of this Agreement.

Section 12.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 12.10 No Third Party Beneficiary. No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

Section 12.11 Confidentiality. All data and information acquired by the Town and the County from OYA (or its affiliates, representatives, agents or contractors) in connection with the performance by OYA of its obligations hereunder, including information regarding the Project, shall be confidential, subject to the limitations on confidential records and the related

provisions of the NY Freedom of Information Law, and will not be disclosed by the Town or the County to any third party, and upon request of OYA will be returned thereto, except that the Town will not be obligated to return any such information contained in documents generated by the Town or the County that are stored electronically by the Town and the County. With respect to any such retained electronically stored confidential information, the Town and the County will continue to comply with the obligations of this Section 12.11, subject to the Town' and County's obligations under the New York Freedom of Information Law. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for OYA and the Town and the County to perform their respective obligations under this Agreement. This provision will not prevent the Town and the County from providing any confidential information or in response to the reasonable request of any government agency charged with regulating such party's affairs, provided that, if feasible, the Town and the County will give prior notice to OYA of such disclosure and, if so requested by OYA, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstance, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

Section 12.12 Representative of OYA. OYA shall appoint a representative to act as the manager and coordinator of this Agreement on OYA's behalf ("OYA Representative"). The OYA Representative shall act as liaison for OYA's communications with the Town, and their respective Designees. All written communications given to or received from the OYA Representative shall be binding on OYA.

Section 12.13 Safety. OYA and the OYA Parties shall perform the work hereunder in a safe manner and shall obey all safety requirements of OYA that may be established from time to time. While work is being done on Designated Roads, OYA shall cause the OYA Parties to (i) place signs stating that people and vehicles are entering a construction area, (ii) identify certain hazards that may be present on the road, and (iii) act in accordance with the Manual of Uniform Traffic Control Devices where applicable. OYA also agrees to cause the OYA Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by OYA or the OYA Parties under this Agreement.

Section 12.14 Dust Control. Prior to commencing work under this Agreement, OYA shall prepare a plan for dust control during periods of construction or repair of the Designated Roads, which plan shall be subject to approval by the Designees of Town and County (which shall not be unreasonably withheld, conditioned or delayed). If the Plan is not reviewed and either approved or disapproved within 5 business days, the plan is deemed approved. OYA agrees to use environmentally approved chemicals to control dust in necessary areas where water is not a sufficient source to keep dust under control for safety and visibility reasons. OYA shall maintain reasonable dust control measures throughout construction including applying water or other dust control palliative on the Designated Roads used during construction. In the event OYA does not maintain a reasonable level of dust control, the Highway Department for the affected Town or County, after notifying OYA of their failure to maintain proper level of dust control, will apply liquid dust control during Project construction and OYA agrees to reimburse the affected Town or County for said costs.

Section 12.15 Excess Materials. OYA and the OYA Parties agree that in connection with certain improvements to be made hereunder, there may be certain materials removed that are no longer necessary (the "Excess Materials"). OYA agrees to remove such materials from Town roads and intersections and stockpile them for use by the Town and County. The Designees of the Town and County agree to designate a place on Town property or such other location as the parties reasonably agree in which the Excess Materials will be stored.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WIINESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement for Road Use, Repair and Improvements this _____ day of _____, 2019.

Town of [REDACTED]

By:
Title: Town Supervisor

Jefferson County

By:
Title:

OYA, LLC

By:
Title:

APPENDIX A DESIGNATED ROADS
[Must be Agreed to Prior to Construction]

APPENDIX B
IMPROVEMENTS AND MODIFICATIONS

Please see attached figure which may be provided prior to construction. Additional minimal improvements may be made at road intersections and we will supplement this figure upon completion of our final evaluation.

APPENDIX C

SPECIFICATIONS FOR IMPROVEMENTS AND MODIFICATIONS

The majority of the Designated Road modifications and improvements will be accomplished using conventional earth excavating equipment employing traditional cut and fill procedures. Rock excavation techniques may be warranted in certain locations to achieve the required grades. Road widening within the Town's and County's road limits shall be accomplished as follows:

- After the removal of soft, wet or otherwise unsuitable materials from within the shoulder areas, the exposed sub grade of the area to be widened shall be proof-rolled with approved construction equipment such as a loaded 10 wheel tandem dump truck or loaded pan. This measure will help increase the density of the existing ground and help locate any isolated soft spots, which are too unstable to accommodate compacted fill.
- Unstable areas shall, as mutually agreed to by the parties, be excavated and, prior to fill placement, an approved geogrid shall be incorporated to stabilize abridged soft areas on an as needed basis. Alternative subgrade stabilization methods other than geogrid may be proposed by OYA and approval shall not be unreasonably withheld.
- New fill will not be placed on surfaces that are muddy or frozen, or have not been approved by testing and/or proof rolling.
- All sloping areas upon which fill is to be placed shall be benched or "notched" so that a smooth interface between existing ground and new fill will not be present.
- For permanent improvements or modifications, controlled fill slopes shall be constructed at 2.5H: 1 V slopes or flatter. All fill slopes will have final grades sloped such that surface water from precipitation is directed away from the face of the slopes. In addition, erosion matting may be used to help establish and maintain vegetative growth on the face of the slopes.
- All fill areas shall be sufficiently sloped and properly sealed with a smooth drum roller at the end of each workday to help prevent softening from surface water infiltration.
- For County Roads: A minimum surfacing thickness of 6" inches minus crushed limestone shall remain on all aggregate roads.
- For Town Roads: A minimum surfacing of thickness of 4" inches minus crushed limestone shall remain on all aggregate roads.
- Upon the completion of the project and in conjunction with the repair of the Designated Roads, all ditches along those roads shall be cleaned and all culvert pipes shall, to the extent they have been damaged by OYA, be replaced.

Both coarse and fine aggregate materials to be used for improving Designated Roads will primarily be obtained from local quarries to the extent the materials meet the required specifications and the cost is competitive with other sources for material. Shale shall not be used as fill material except on road shoulders and for temporary roads; provided however; that OYA shall not use shale on road shoulders in the Town. The typical fill section will utilize coarse aggregate such as a crusher run in the deeper portion of a fill and be capped with finer aggregate meeting the requirements of a NYDOT approved road sub base material. The use of geogrids will be utilized as needed, to stabilize and/or bridge soft, wet or otherwise unsuitable soil conditions. If the improvements extend beyond the affected Town' and/or County's right of way, it is OYA's responsibility to obtain the appropriate landowner's consent.

APPENDIX D
_____ Kv COLLECTION LINE INSTALLATION

1. Underground and Overhead Collection Lines - See Attached Map

Underground collection lines may be routed across and along and parallel to the following Designated Roads (exact locations and distances are subject to final engineering and approval by the Designee, not to be unreasonably withheld). The list of roads shall be set forth here and provided to the Town and County prior to construction.

The description of the location of the overhead crossings shall be provided prior to construction.

There are a total of _____ crossings, _____ Town Roads, _____ County Roads. The following is a list of these crossings:

(to be provided prior to construction]

APPENDIX E
IDENTIFICATION OF LOCATIONS FOR ROAD CORING

[To be Provided Prior to Construction]

**APPENDIX F
FORM OF RELEASE**

**RECEIPT OF REPAIR ESTIMATE PAYMENT AND
RELEASE FROM ROAD REPAIR OBLIGATIONS**

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN KNOW THAT the TOWN OF [REDACTED], a municipal corporation duly organized and existing under the laws of the State of New York, as RELEASOR, in consideration of good and valuable consideration, received from OYA, LLC, an limited partnership with offices at _____, New York, as RELEASEE, receipt whereof is hereby acknowledged, releases and discharges RELEASEE, its successors and assigns, of any claims for damages or otherwise for repair and reconstruction of roads or road structures in the Town of [REDACTED] relating to, or arising out of, in any way, the construction of the Project and to hold Releasee harmless without responsibility for any damages incurred by the Town of [REDACTED] as a result.

Releasor hereby covenants to Releasee, and its principals, agents, members and/or managers, that Releasor will not sue or otherwise assert any claim of any nature or description whatsoever against Releasee with regard to, or associated with, any claims for or arising out of repair and reconstruction of roads or road structures in the Town of [REDACTED].

This release may not be changed orally.

In Witness Whereof, the Releasor has executed this Instrument on the _____ day of _____, 2019

TOWN OF [REDACTED]

By:
Title: Town Supervisor

STATE OF NEW YORK
COUNTY OF JEFFERSON

On _____, 2019 before me, the undersigned personally appeared personally known to be as proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed in the within instrument and acknowledged to be that he executed the same in his capacity and that his signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

Notary Public

APPENDIX G

(scope of work for road inspection testing)