

TOWN BOARD AGENDA

July 14, 2022

CALL TO ORDER 7:00 PM

Boardroom
Supervisor Farnholz
Pledge of Allegiance

APPROVAL OF MINUTES _____ 2ND _____ 06/23/2022

GUESTS:

Mark Boylan, Atty

EXECUTIVE SESSION:

OLD BUSINESS:

1. Auction Date – Impounded Vehicles

NEW BUSINESS:

1. Decommissioning Agreement – Resolution - Rte 5 Storage Solar Project -
2. Governor’s Gun Control Legislation

COMMITTEE REPORTS:

Highway:	Stauffer/Johnson
Clerk:	Canfield
Assessment:	Kirsch
Code Enforcement:	Steinbrenner/Risewick/Podolak
Parks & Recreation:	Farnholz
Insurance:	Armitage
Building: <i>Basement Issues</i>	Armitage, Fox
Cemetery:	Paddock
Utilities:	Paddock, Fox
IT:	Farnholz
Transfer Station:	Johnson
Courts:	Armitage
Fire Commission:	Johnson
Ambulance:	Johnson
GAM/Spvsr:	Farnholz, Fox

PUBLIC COMMENTS:

AUTHORIZATION TO PAY BILLS – By: _____ 2nd _____

MOTION TO ADJOURN AT _____ PM By: _____ 2nd _____

DECOMMISSIONING AGREEMENT

THIS DECOMMISSIONING AGREEMENT (this “Agreement”), dated as of June __, 2022 (the “Effective Date”), is made by and among the **Town of LeRoy**, a municipal corporation with a principal place of business located at 48 Main Street, LeRoy, NY 14482 (referred to as the “Town”), **AES Rt 5 Storage Solar, LLC**, a limited liability company, with principal offices at 282 Century Place, Suite 2000 Louisville, CO 80027 (referred to as the “Operator”) and **Route 5 Storage, LLC** with an address of 7054 W Main Road, LeRoy, New York 14482 (referred to as the “Landowner”). The Town, the Operator and the Landowner may each be referred to herein as a “Party” and collectively, as the “Parties”.

WHEREAS, Operator intends to permit, construct, operate and maintain a community solar energy facility with an estimated size of 5 megawatts of alternating-current (AC) nameplate capacity that will generate electric power (the “Project”), as shown on the Site Plans entitled Rt 5 Solar Project Site Plan, (hereinafter, the “Site Plan”), copies of which are attached as **Schedule A**, on real property owned by the Landowner and leased to the Operator, and more particularly identified hereto on **Schedule B**, and commonly known as 7054 W Main Road, LeRoy, New York (Tax IDs: 183689-029-000-0001-012-001 and 183689-029-000-0001-013-002) in the Town of LeRoy, Genesee County, New York (“the Property”); and

WHEREAS, on April 28, 2022, based on the Operator’s application, the Town, by its Town Board, issued a Negative Declaration under the State Environmental Quality Review Act for the Type I Project, on condition that, the applicant receive site plan approval from the Town Planning Board; and

WHEREAS, on May 17, 2022, based on the Operator’s application, and after duly noticed public hearing(s), the Town, by its Planning Board, granted site plan approval (hereinafter “Approval Resolution”) for the Project, on condition that, among other things, the applicant submit a final decommissioning plan and decommissioning security and that the applicant provided the Town with access to funds for the Decommissioning (as defined below) of the Project; and

WHEREAS, a copy of said Approval Resolution is attached hereto as **Schedule C**; and

WHEREAS, the Parties now desire to enter into this Agreement to set forth the “Decommissioning Plan” for the Project, attached hereto as **Schedule D**, as required by the Town Planning Board and to agree upon terms and conditions of the financial surety provided to the Town for the purpose of Decommissioning the Project;

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

1. Prior to the issuance of a notice to proceed from the Town (the “Notice to Proceed”) for the Project (the “Start Date”), the Operator shall post bond, in form and substance reasonably satisfactory to the Town (the “Security”) in the amount of \$402,946.00 for the benefit of the Town. The parties agree that the Security shall be used solely to pay for any Decommissioning costs of the Project. At least sixty (60) days prior to the end of each successive five (5) year period after

the execution of this Agreement, the Operator shall provide the Town with an updated decommissioning plan setting forth an updated estimate of security for the Decommissioning of the Project, which such updated estimate shall be subject to review and approval by the Town, which approval shall not unreasonably be withheld, conditioned or delayed. Within thirty (30) days after the Town's approval of such updated estimate, the Security shall be changed to reflect such updated estimate approved by the Town for such Decommissioning of the Project. Any such updated and approved decommissioning plan shall be deemed the "Decommissioning Plan" hereunder. For avoidance of doubt, the updated estimate of security will use the estimated decommissioning cost as a template in the updated Decommissioning during the operation of the Project provided that Operator complies with posting the Security in accordance with this Agreement. Nonetheless, in the event the actual third-party Decommissioning costs incurred by the Town exceed the amount covered by the Security, Operator or its successor in title to the Project shall be responsible for reimbursing the Town for any and all such excess costs, provided that the Town delivers to the Operator a reasonable written record of such costs.

2. "Decommissioning" as used in this Agreement shall mean the removal of all collectors, mounts and/or associated equipment and facilities that were installed in connection with the Project and the reasonable restoration of the Property to either of the following, at the Operator's option ("Decommissioning"): (i) the condition the Property was in prior to the development, construction and operation of the Project, including restoration, regrading, and reseeded, or (ii) the condition designed by a subsequent Operator or developer as reasonably agreed upon with the Town. Costs of Decommissioning under this Agreement include labor, professional services and any other costs reasonably associated with such Decommissioning.

3. Each of the circumstances described in clauses (a) and (b) below shall be a "Triggering Event" for purposes hereof:

- (a) construction of the Project is not completed within eighteen (18) months of receiving a Notice to Proceed, other than as a result of Force Majeure (defined below), or
- (b) the Project, after commencing commercial operation, "ceases to be operational" (as defined below) for more than twelve (12) consecutive months.

In the event the Operator fails to initiate Decommissioning of the Project within ninety (90) days after a Triggering Event (the "Decomm Deadline"), or Operator fails to provide a reasonable explanation for the delay in the construction or cessation of operation of the Project by the Decommissioning Deadline, then, the Town may issue a notice to Operator (the "Town Decommissioning Notice") and Operator shall have thirty (30) days to respond to the Town Decommissioning Notice with a reasonable explanation for the delay in the construction or the cessation of operation of the Project. In the event that (A) the Operator does not respond to the Town Decommissioning Notice in accordance with the forgoing sentence, or (B) Decommissioning is not commenced, within six (6) months after a Triggering Event, then the Town shall have the right, but not the obligation, to commence Decommissioning of the Project through use of the Security.

For purposes of this Agreement, “Force Majeure” means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that: (i) such event is not due to the affected Party’s negligence or willful misconduct; (ii) such event is not the result of any failure of the affected Party to perform any of its obligations hereunder; or (iii) the affected Party has given the other Party notice describing such event within twenty-four (24) hours of the occurrence of such event. Subject to the foregoing conditions, Force Majeure Events include, without limitation: acts of God; war; acts of the public enemy; terrorism; riot; civil commotion; sabotage; fire; floods; landslide; volcanic eruption; epidemics; pandemics; quarantine restrictions; embargos; governmental authority decreed official state of emergency; and government-mandated closures as a result thereof.

For the purposes of this Agreement, “ceases to be operational” shall mean no generation of electricity, other than due to Force Majeure, repairs, upgrades, permitting matters, casualty, or other issue regarding the Project that Operator is in good faith attempting to remedy, provided that in no event shall the Operator cease operation of the Project more than three (3) times per annum.

The parties agree that in all events, the Decommissioning shall be completed within twelve (12) months of the date that the Decommissioning commences.

4. The parties hereto acknowledge that the Decommissioning is intended to occur outside the winter months. Upon removal of the infrastructure and disposal of the components of the Project from the Property, and restoration of the Property to its pre-project state, or to the condition designed by a subsequent Operator or developer as agreed upon with the Town, Operator shall have no further obligation under this agreement, the security shall be returned to the Operator, and this agreement shall terminate. Notwithstanding the foregoing, Operator shall remain responsible and liable for the remediation, clean up and removal of any contamination caused by broken, damaged or deteriorated solar panels, including any such contamination discovered following the completion of the Decommissioning. The obligations in the Section 4 shall survive the expiration or termination of this Agreement for a period of time not to exceed six (6) months.

5. In the event that the Town elects to complete Decommissioning under Section 3 of this Agreement, Operator (or its successors or assigns) agrees to give the Town the right of reasonable access to the Property to Decommission the Project. In the event the leases between Landowner and Operator are terminated or Landowner otherwise has control over the Property at the time of the Decommissioning, Landowner (or its successors or assigns) agrees to give the Town the right of reasonable access to the Property in order to perform Decommissioning in accordance with this Agreement.

6. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

7. Operator, or the operations and maintenance provider of the Operator, shall provide the Town with proof that it either carries sufficient workers’ compensation insurance coverage for any employees in New York involved in the Decommissioning as required under applicable law or that it is exempt from such requirement.

8. The Parties agree to execute and deliver any additional documents or take any further action as reasonably requested by another Party to effectuate the purpose of this Agreement.

9. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York, without regard to its conflict of laws principles. The Parties hereby consent to exclusive venue and jurisdiction in the state and federal courts located in the State of New York. **EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH REGARD TO ANY DISPUTE RELATED HERETO.** If one or more of the provisions hereof are deemed by a court of competent jurisdiction to be unenforceable, in whole or in part, the scope of such provisions shall be reduced to the extent necessary to make them enforceable or, if such reduction is not possible for any reason, such provisions shall be severed from this Agreement entirely, without effect upon the balance hereof.

10. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all Parties.

11. A memorandum of this Agreement, executed by the Town and Operation shall be recorded in the Office to the Genesee County Clerk at the Operator's expense.

12. Any and all notices required to be sent by a Party to another Party hereunder shall be addressed as follows by certified mail or mail courier service:

To the Town:

Town of LeRoy
48 Main St.
LeRoy, NY 14482
Attn: Town Supervisor
Telephone No: 315-232-2632
Email: townclerk@leroyny.org

With a copy to:

Mark Boylan, Esq.
45 W Main Street
LeRoy, NY 14482
Telephone No: (585) 768-8148
Email: mboylan@boylanlawoffice.com

To Operator:

AES Rt 5 Storage Solar, LLC
282 Century Place, Suite 2000

Louisville, CO 80027
Attn: Adam Wingard
Telephone No: 720-454-2692
Email address: adam.wingard@aes.com

With a copy to:

Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12260
Attn: Terresa M. Bakner, Esq.
Telephone No.: (518) 487-7615
Email address: tbakner@woh.com

To Landowner:

Route 5 Storage, LLC
7054 W Main Road
LeRoy, New York 14482
Telephone No.: 317-389-0049
Email address: olivia.panno@aes.com

With a copy to:

Cathy Ronchelli-Pinney, AFSB, CIC, CRM
Assistant Vice President-Surety Services
USI Insurance Services, LLC
1383 N. McDowell Blvd Ste 170 Petaluma, CA 94594

[Signature Page Follows]

**IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby,
have duly executed this Agreement as of the date first written above.**

Town:

Town of LeRoy

By: _____

Name: James Farnholz

Title: Supervisor

OPERATOR:

AES Rt 5 Storage Solar, LLC

By: _____

Name:

Title:

LANDOWNER:

Route 5 Storage, LLC

By: _____

Name:

Title:

Schedule A

Site Plan

[to be attached]

Schedule B
Description of Property

Schedule C
Approval Resolution

Schedule D
Decommissioning Plan
[to be attached]