

## JOINT DEVELOPMENT AGREEMENT

This Joint Development Agreement (Agreement) is made by, among and between Apple River Solar, LLC (Apple River Solar), the Towns of Clayton, Wisconsin (Clayton), Beaver, Wisconsin (Beaver), Apple River, Wisconsin (Apple River), Lincoln, Wisconsin (Lincoln) (each, a Town and collectively, the Towns), and Polk County, Wisconsin (County) (the Towns and County, together, are referred to herein as Local Governments). Apple River Solar and the Local Governments are referred to herein collectively as the Parties.

### RECITALS

1. Apple River Solar desires to develop, construct and operate a 100 megawatt (MW) solar photovoltaic electrical generating facility with necessary associated facilities such as a generation tie line, a new substation, power collection lines, and access roads near the Towns in the County (Project). In order to build the Project, Apple River Solar must apply for and receive a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission of Wisconsin (PSCW).
2. The Parties agree that it is in the best interests of each to memorialize the rights, obligations and responsibilities of the Parties with respect to the Project's use of, among other things, County and Town roads, rights-of-way and drainage systems during construction and operation of the Project.
3. The Parties agree that the Project is under the jurisdiction of the PSCW.
4. The Parties further agree that this Agreement is the product of joint negotiations and its primary purpose is to foster cooperation and good faith dealing.
5. Any amendment to this Agreement, must be negotiated among the Parties and agreed to by mutual consent of all Parties, which shall be in writing and signed by all Parties.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, the Parties to this Agreement hereby stipulate and agree as follows:

1. **Planning.** The Parties understand and agree that approval of the Project is solely under the jurisdiction of the PSCW and that the Project's preliminary site plans are subject to approval from the PSCW for substantive site design changes. The Parties further agree that the Local Governments may not require changes to the Project, unless there is a change in law which authorizes counties and local units of government to enforce laws and ordinances which they are prevented from enforcing by state law at the time this Agreement is executed.

- a. At least sixty (60) days prior to the start of construction, Apple River Solar will hold an on-site meeting inviting local emergency responders to discuss the construction site specific emergency action plan, emergency response information such as meeting points and locations of emergency equipment, and construction plans. During the course of construction, at least one emergency drill will be scheduled, at which local emergency responders will be invited to participate. As available, written copies of emergency actions plans and site maps will be provided to local emergency responders.
- b. At least sixty (60) days prior to the start of construction, Apple River Solar shall provide the construction start date to the Local Governments.
- c. At least thirty (30) days prior to the start of construction, representatives of Apple River Solar shall meet virtually or in person with the Local Government officials<sup>1</sup> responsible for roads and drainage and local emergency responders to present final plans for use of public roads, location of equipment laydown yards, finalize construction scheduling and discuss safety practices and further coordinate local emergency response capabilities (such meeting, the Pre-Construction Meeting). Apple River Solar shall advise attendees of the Pre-Construction Meeting of planned equipment and material delivery types and schedules. At the Pre-Construction Meeting, the Parties shall identify safety concerns and structural issues of any road or structure, if applicable, and propose mutually acceptable alternative routes or remediation methods for alleviating such concerns and issues.
- d. No later than the date of the Pre-Construction Meeting, Apple River Solar shall provide the contact person for each Local Government with copies of any glare, sound, electromagnetic frequency and storm water studies which were previously submitted in conjunction with the PSCW's CPCN review process.
- e. No later than ninety (90) days after the Commercial Operation Date (COD), Apple River Solar will schedule an on-site meeting inviting local emergency responders to discuss the operations site specific emergency action plan, emergency response information such as meeting points and locations of emergency equipment, and operation plans. No later than one (1) year after the COD, an emergency response drill we be scheduled by Apple River Solar, at which local emergency responders will be invited to participate.
- f. If required by applicable Local Government ordinances, Apple River Solar shall obtain approval from the Towns or County for all field access points to a public road.

**2. Project's Use of Roads and Road Repair Obligations.** The Parties agree that Apple River Solar will construct twelve to twenty (12-20) foot wide Project site roads to provide access to public roadways and on-site equipment for construction and operation. The roads will be constructed primarily at grade to maintain the site

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<sup>1</sup> Representatives under this provision shall be designated by each Local Government entity.

drainage characteristics. Apple River Solar may install culverts in areas of confined/preferential flow to maintain surface water flow under the constructed access roads. Apple River Solar will begin construction of the internal site roads by removing the topsoil and organic material, then compact and construct the subgrade per civil design requirements, before adding and compacting a layer of road base.

The Parties agree that the Project may use public roads. The Parties acknowledge that in connection with construction, operation and maintenance of electric collection lines, communications cables and other equipment (the Facilities), that Project Facilities may cross road rights-of-way and/or drainage systems. The Project agrees that it shall seek and obtain all permits typically required of others under the applicable Local Government ordinances for use of public roads, such as driveway permits and rights-of-way crossing permits. All underground borings shall commence and terminate outside of the right-of-way, unless otherwise approved by the applicable permitting entity.

3. **Project's Drainage Repair Obligations.** Apple River Solar shall develop an Erosion Control Plan and Stormwater Management Plan for the Project (Erosion Plan) or similar plan as required by the PSCW. Apple River Solar shall provide these documents to the contact person for each Local Government thirty (30) days prior to the start of construction.

If not provided in the Erosion Plan, Apple River Solar shall have ninety (90) days from the completion of Project construction to provide the applicable Local Government with a plan in which to (a) remedy damage to public drainage infrastructure, if any, within the Project footprint, caused by construction activities that negatively impact drainage systems, and if applicable, and/or (b) compensate the applicable Local Government to repair such public drainage infrastructure to a level comparable to the pre-construction level.

4. **Utility Shared Revenue Payments.** The Parties acknowledge that the Project will be subject to the annual license fee under Wisconsin Statutes §§ 76.28 or 76.29 (Annual License Fee). Pursuant to Wisconsin Statutes § 79.04, the Wisconsin Department of Administration is required to distribute a certain amount of the Annual License Fee to certain counties and municipalities (Utility Shared Revenue Payment). The Parties estimate that the Project will generate annually over its useful life up to \$400,000.00 in Utility Shared Revenue Payments.<sup>2</sup> The Local Governments hereby agree among themselves that the Utility Shared Revenue Payment may be distributed by the State of Wisconsin as follows:

- 1) Up to \$27,333.39 annually for Clayton
- 2) Up to \$0 annually for Beaver

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<sup>2</sup> The total amount of Utility Shared Revenue Payments and allocation of the same are based on current Project design as of the time of execution of this Agreement, including no payments to Beaver because there are no Primary Array panels located in Beaver. These amounts and recipients may change based upon final Project design and construction.

- 3) Up to \$81,000.16 annually for Apple River
- 4) Up to \$58,333.45 annually for Lincoln
- 5) Up to \$233,333.00 annually for the County

**5. Community Fund.** The Parties acknowledge that payment of the Annual License Fee is in lieu of all other taxes on all property used and useful in the Project and that the Amery and Clayton School Districts (the Districts) do not directly receive any portion of the Utility Shared Revenue Payment. Apple River Solar shall establish a community fund (Community Fund) to provide the Districts a total of \$200.00 annually per each installed MW of alternating current (AC) at the Project within each District's boundaries. The Community Fund payment shall be made once per year for a total of twenty (20) years beginning the first year of commercial operation of the Project. The Community Fund payment shall be prorated in years where the Project was not in commercial operation for the full calendar year, and in no event will exceed the annual amount described in this Section 5. Apple River Solar shall distribute the Community Fund payments between the Districts in the amounts jointly agreed upon by the each of the Districts as set forth below:<sup>3</sup>

- 1) Eighty (80) percent of the total annual payment to the Amery School District
- 2) Twenty (20) percent of the total annual payment to the Clayton School District

**6. Assurances in Support of Decommissioning.**

- a. On or before the first anniversary of the Project's COD, Apple River Solar shall provide the County with cash, a bond, or a letter of credit (Financial Assurance) to cover twenty (20) percent of the estimated costs of the decommissioning plan filed with the PSCW, net of any salvage value if not otherwise accounted for in the decommissioning plan costs.
- b. On or before the fourth anniversary of the COD, Apple River Solar shall provide the County with Financial Assurance to cover fifty (50) percent of the estimated costs of the decommissioning plan filed with the PSCW, net of any salvage value if not otherwise accounted for in the decommissioning plan costs.
- c. On or before the eighth anniversary of the COD, Apple River Solar shall provide the County with Financial Assurance to cover one hundred (100) percent of the estimated costs of the decommissioning plan filed with the PSCW, net of any salvage value if not otherwise accounted for in the decommissioning plan costs.
- d. The Financial Assurance set forth herein and the decommissioning plan filed with the PSCW shall survive the termination of this Agreement until decommissioning is complete as determined by the PSCW.

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<sup>3</sup> The Community Fund payment allocation is based on the student enrollment count for each of the Districts as of January 8, 2021. The payment allocation will remain fixed throughout the 20-year payment period per the terms of Section 5 regardless of any changes to District enrollment.

**7. Setbacks, Equipment Height, Vegetation, and Fencing.**

- a. Project Setbacks. The Project design shall incorporate a minimum one hundred (100) foot setback to all above ground Project components from non-participating inhabitable buildings (excluding fences and access roads) existing at the time of Project CPCN application submission to the PSCW.
- b. Equipment Height. The height of the Project's equipment shall be no higher than forty (40) feet (with the exception of the Project substation and generation tie-line).
- c. Vegetation Management. Apple River Solar shall comply with the vegetation management plan filed with and approved by the PSCW. If the vegetation management plan is not approved by the PSCW, Apple River Solar shall comply with the version last filed with the PSCW.
- d. Fencing.

- 1) Apple River Solar shall install deer fencing around the solar equipment at the height of eight (8) feet or a height mandated by the PSCW to mitigate changes to the aesthetics of agricultural landscape and to prevent larger animals from gaining access to solar equipment. In the event of a conflict between a height of eight (8) feet or a height mandated by the PSCW, the height mandated by the PSCW shall control.

- 2) In the event that wildlife trails are identified, the Project shall include areas where larger wildlife such as deer will have crossings or passage at such locations, and at other locations as needed. The WDNR will be contacted to provide guidance on locations and any guidance resulting from such consultation shall be provided to the conservation department or equivalent authority of each Local Government before construction of any fencing.

- 3) The Project's substation fence may utilize chain link and barbed wire, as required by electrical code.

- 4) No fence shall cross a "navigable" waterway.

- e. Aesthetics. Apple River Solar shall maintain all facilities in a manner to preserve the aesthetics of all facilities including, but not limited to, not allowing equipment or fencing to deteriorate or remain in a state of disrepair within view of the public or adjoining landowners.

**8. Assignment of Interest.** Apple River Solar shall have the sole and exclusive right to sell, assign, or lease any or all portions of its Project to any non-Party entity at any time and with prior notice to the Local Governments unless such notice violates any confidentiality agreement(s) between Apple River Solar and the acquiring non-Party. In such event, such non-Party entity shall, with Apple River Solar or, in the event of

total sale, assignment or lease, in lieu of Apple River Solar, have the same rights and obligations as Apple River Solar as set forth in this Agreement, to operate the Project in, along, under, and across the same road rights-of-way and drainage systems. Apple River Solar shall also have the sole and exclusive right (without consent from the Local Governments required) to collaterally assign its interest in this Agreement to any parties providing debt, equity or other financing for the Project to Apple River Solar or any of its affiliates. For the avoidance of doubt, no direct or indirect change in control of the ownership interests of Apple River Solar, LLC, or any sale of direct or indirect ownership interests in Apple River Solar, LLC (including any tax equity investment or passive investment) shall constitute an assignment requiring the consent of the Local Governments under this Agreement.

9. **Cooperation.** Apple River Solar and the Local Governments shall communicate and cooperate in good faith concerning the safe construction and operation of the Project and preventing or correcting any adverse conditions that may be created by the Project.
10. **Compliance and Complaint Process.** Apple River Solar shall identify to the contact person for each Local Government a Project contact for compliance and complaints, if any (Project Contact). During construction, the construction site manager of the engineering, procurement, and construction firm selected by Apple River Solar will be designated as the Project Contact. After construction completion, at least one member of Apple River Solar's full-time operations team will be its Project Contact. Complaints shall be submitted in writing via electronic mail at an address provided by Apple River Solar.
11. **Disputes.** Apple River Solar will have sixty (60) days from the time in which any Local Government notifies it of any dispute related to this Agreement to 1) make a determination of its validity, and if so determined to be valid, 2) provide a plan in which to reasonably remedy such complaint. In the event such a dispute cannot be resolved at the end of the sixty (60) days when either steps 1) or 2) above has occurred, the applicable Local Government shall provide written notice of said dispute to Apple River Solar within fifteen (15) days after the occurrence of the sixty (60) day period resulting in steps 1) or 2) (Notice of Dispute). The Notice of Dispute shall include a description of the nature of the dispute and the remedy sought by the disputing Local Government. The Parties shall endeavor to resolve the dispute by mediation with a mediator mutually acceptable to the Parties. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) days, or as soon thereafter as possible, of the issuance of a Notice of Dispute. The costs of the mediator shall be equally shared by the Parties. If the Parties cannot agree on a mediator, either Party may petition the Polk County Circuit Court for appointment of an arbitrator. Such arbitration shall be in accordance with Wis. Stat. Chapter 788 Arbitration in effect at the time of the dispute.

12. **Indemnification.**

- a. Apple River Solar agrees to defend, indemnify, and hold harmless each Local Government and its supervisors, trustees, administrators, employees, and representatives (collectively the Local Government Indemnified Parties) against any and all losses, damages, claims, expenses, including reasonable attorneys' fees, and liabilities for physical damage to the property of the Local Government and for physical injury to any person, to the extent the same is a result of any activities or operations of Apple River Solar, its agents and employees, for the performance or non-performance of its duties pursuant to this Agreement, except to the extent caused by the negligence or intentional misconduct of one or more of the Local Government Indemnified Parties. Furthermore, Apple River Solar agrees to defend, indemnify, and hold harmless the Local Government Indemnified Parties from any third party claims arising out of terms and conditions of this Agreement, except to the extent that such claims are caused by the negligence or intentional misconduct of one or more of the Local Government Indemnified Parties. This indemnification obligation shall survive the termination of this Agreement.
  
- b. The Local Governments agree to defend, indemnify, and hold harmless Apple River Solar and its owners, employees, representatives, and subcontractors (collectively the Apple River Solar Indemnified Parties) against any and all losses, damages, claims, expenses, including reasonable attorneys' fees, and liabilities for physical damage to the property of Apple River Solar and for physical injury to any person, to the extent the same is a result of any activities or operations of the Local Governments, its agents and employees, for the performance or non-performance of its duties pursuant to this Agreement, except to the extent caused by the negligence or intentional misconduct of Apple River Solar Indemnified Parties. Furthermore, the Local Governments agrees to defend, indemnify, and hold harmless the Apple River Solar Indemnified Parties from any third-party claims arising out of terms and conditions of this Agreement, except to the extent that such claims are caused by the negligence or intentional misconduct of Apple River Solar. This indemnification obligation shall survive the termination of this Agreement.

**13. Compliance with Laws.** Apple River Solar shall at all times comply in all material respects with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments, and other valid orders of any government authority with respect to its activities associated with the Project and shall obtain all material permits, licenses, and orders required to conduct any and all such activities unless otherwise preempted by Apple River Solar's receipt of a CPCN.

**14. Entire Agreement.** This Agreement, including all other documents and agreements referenced herein, constitutes the entire Agreement among the Parties hereto in respect to the Project. However, this Agreement shall be deemed and read to include and incorporate any related approvals of the Local Governments if Apple River Solar agrees to such related approvals pursuant to this Agreement. In the event of a conflict between this Agreement, any related approvals by the Local Governments, or the

PSCW, the PSCW's requirements shall be deemed controlling. No modification, waiver, amendment, or change of this Agreement shall be valid unless the same is in writing and signed by the parties.

**15. Relevant Law.** Any and all disputes arising under this Agreement and/or relating to the actual development and/or construction of the Project shall be resolved pursuant to the laws of the State of Wisconsin.

**16. Notices.** Notices, requests, demands, and other communications shall be sent to the following addresses:

If to Apple River Solar, LLC:

8400 Normandale Lake Boulevard, Suite 1200, Bloomington, MN 55437

If to Polk County:

Polk County Planner  
Environmental Services Division  
Polk County Government Center  
100 Polk County Plaza, Suite 120  
Balsam Lake, WI 54810

If to Town of Clayton:

Clerk  
Town of Clayton  
164 70th Ave  
Clayton, WI 54004

If to Town of Beaver:

Clerk  
Town of Beaver  
1541 10th Street  
Turtle Lake, WI 54889

If to Town of Apple River:

Clerk  
Town of Apple River  
612 US Highway 8  
Amery, WI 54001

If to Town of Lincoln:

Clerk  
Town of Lincoln  
661 85th Street  
Amery, WI 54001



All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next Business Day if sent by overnight delivery service (e.g. Federal Express) to the notified Party at its address set forth above. These addresses shall remain in effect unless another address is substituted by written notice.

Notices may be also sent via email transmission to the email addresses provided below, however, notice sent via email shall be followed by notice delivered by personal service or by registered or certified mail, return receipt requested, or by overnight delivery.

If to Apple River Solar, LLC:

NAME: Michael Young  
TITLE: General Counsel  
EMAIL: [myoung@nationalgridrenewables.com](mailto:myoung@nationalgridrenewables.com)

NAME: Kara Heffelbower  
TITLE: Developer  
EMAIL: [kara@nationalgridrenewables.com](mailto:kara@nationalgridrenewables.com)

If to Polk County:

NAME: Tim Anderson  
TITLE: County Planner  
EMAIL: [tim.anderson@co.polk.wi.us](mailto:tim.anderson@co.polk.wi.us)

If to Town of Clayton:

NAME: Tracy LaBlanc  
TITLE: Clerk  
EMAIL: [tclayton@amerytel.net](mailto:tclayton@amerytel.net)

If to Town of Beaver:

NAME: Wendy Coleman  
TITLE: Clerk  
EMAIL: [townofbeaverclerk@gmail.com](mailto:townofbeaverclerk@gmail.com)

If to Town of Apple River:

NAME: JoAnne Agne  
TITLE: Clerk  
EMAIL: [arclerk@amerytel.net](mailto:arclerk@amerytel.net)

If to Town of Lincoln:

NAME: Stephanie Marciniak  
TITLE: Clerk  
EMAIL: [linctown@amerytel.net](mailto:linctown@amerytel.net)

APPLE RIVER SOLAR, LLC:

By: Nathan Franzen, Vice President, Development

Approved this 23 day of February, 2021.

By: *Nathan Franzen*

~~POLK COUNTY:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

~~TOWN OF CLAYTON:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

~~TOWN OF BEAVER:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

~~TOWN OF APPLE RIVER:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

APPLE RIVER SOLAR, LLC:

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

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

POLK COUNTY:

By: Chris Nelson, Polk County Board Chair

Approved this 18<sup>th</sup> day of February, 2021.

By: 

~~TOWN OF CLAYTON:~~

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

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

~~TOWN OF BEAVER:~~

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

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

~~TOWN OF APPLE RIVER:~~

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

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.~~

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

APPLE RIVER SOLAR, LLC:

By:

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

POLK COUNTY:

By:

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

TOWN OF CLAYTON:

By: William Vanda, Clayton Town Board Chairman

Approved this 14 day of February, 2021.

By: William Vanda

TOWN OF BEAVER:

By:

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

TOWN OF APPLE RIVER:

By:

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

~~If to Town of Lincoln:~~

~~NAME:~~

~~TITLE:~~

~~EMAIL:~~

~~APPLE RIVER SOLAR, LLC:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.~~

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

~~POLK COUNTY:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.~~

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

~~TOWN OF CLAYTON:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.~~

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

~~TOWN OF BEAVER:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.~~

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

TOWN OF APPLE RIVER:

By: <sup>Rick Scologio, Chair</sup>

Approved this 8 day of MARCH, 2020.

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

~~TOWN OF LINCOLN:~~

~~By:~~

~~Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.~~

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