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Division of Corporations, State Records and Uniform Commercial Code
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Town of Farmington, Ontario County, New York

Local Law no. 6 of the year 2017
Solar Photovoltaic (PV) Systems Regulations.

A local law amending Chapter 165, Article II, Terminology, Section 10. Definitions, by adding terms used in Chapter 165, Article V, Section 65.3., entitled Solar photovoltaic (PV) systems; and amending Chapter 165, Article V, Supplemental Regulations, of the Town Code, by adding a new sub-section §165-65.3., to be entitled Solar photovoltaic (PV) systems.

Be it enacted by the Town Board of the

Town of Farmington as follows:

Section 1: §165-10. Definitions.

The following terms are herby added to Chapter 165, Article II, Section 10, and are inserted in alphabetical order and shall have the following meanings in this Chapter of the Town Code:

BUILDING-INTEGRATED SOLAR PV SYSTEM - A solar PV system that is designed and constructed as an integral part of a principal or accessory building. Components of a building-integrated system are designed to replace or substitute for architectural or structural elements of a building and generally complement, blend with or form part of a building's architectural appearance. Such components will generally maintain a uniform plane with and/or form a part of the walls, window openings,

roofing and/or other building elements into which they are integrated. Such a system is used in lieu of a separate solar PV system where components of the system are designed and attached to a building independent of building architecture. A building-integrated system may occur within vertical facades, replacing view glass, spandrel glass or other facade material, with semitransparent skylight systems, within roofing systems, replacing traditional roofing materials, or within other building envelope systems.

BUILDING-MOUNTED SOLAR PV SYSTEM - A solar PV system that is attached to the roof of a building.

ENVIRONMENTAL MANAGER (EM) - An individual possessing the skills and knowledge to effectively develop a site for use as a solar PV system and then reclaim the site restoring it, to the greatest extent practical, to its' original use.

GROUND-MOUNTED SOLAR PV SYSTEM - A solar PV system, including its specialized solar racking or other mounting system, which is installed on the ground and not attached to any other structure.

GROUND-MOUNTED SOLAR PV SYSTEM, LARGE-SCALE - A ground-mounted solar PV system that has a system capacity greater than 25kW or generates more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

GROUND-MOUNTED SOLAR PV SYSTEM, SMALL-SCALE - A ground-mounted solar PV system that is limited to a system capacity of 25 kW or generates no more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

KILOWATT (kW) - A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used; 1,000 kW is equal to one megawatt (MW).

KILOWATT-HOUR (kWH) - A unit of energy equivalent to one kilowatt of power expended for one hour of time.

LOT COVERAGE - Notwithstanding the definition of lot coverage found elsewhere in the Town Code, for the purpose of regulations pertaining to solar PV systems, lot coverage shall also include the area covered by a solar panel (or physically connected group of panels) as measured on a horizontal plane projected from the perimeter of said panel (or group of panels) vertically to the ground. For panels where the tilt angle is adjusted by week, month, season or other time period, lot coverage shall be determined by the tilt angle producing the greatest lot coverage.

NET METER - A meter used to measure the flow of electricity from the solar PV system to the electric utility grid for the purposes of net metering.

ON-SITE NET ENERGY METERING - The acceptance by utilities of balancing out the total amount of energy consumed from decentralized sources with the total amount of energy stored on-site by a solar PV system.

REMOTE NET METERING - An arrangement with the electric utility that allows for the kilowatt hours (kWH) generated from a solar PV system located at a specific site to be credited towards kWh of consumption at a different location.

SOLAR ARRAY - Any number of electrically connected solar photovoltaic (PV) panels that are connected to the same inverter.

SOLAR PANEL - A large, flat piece of equipment containing photovoltaic cells that use the sun's light or heat to create electricity.

SOLAR PHOTOVOLTAIC (PV) SYSTEM - A solar energy collection system consisting of solar photovoltaic cells, panels and/or arrays, and other related equipment, which rely upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation. A solar PV system may be building-mounted, ground-mounted or building-integrated.

Section 2: There is hereby established a new subsection of Chapter 165, Article V, Supplemental Regulations, to be known as §165-65.3. Solar Photovoltaic (PV) Systems.

Section 3: §165-65.3.1. Purpose.

It is the purpose of this section of the Town Code to encourage and promote the safe, effective and efficient use of installed solar photovoltaic (PV) systems that reduce on-site consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

Section 4: §165-65.3.2. Intent.

It is the intent of these regulations to:

(1) Meet the goals of the Town of Farmington Comprehensive Plan (hereinafter referred to as the Plan) to: enhance agricultural viability and preserve productive agricultural land resources; and provide public utilities, facilities and services that efficiently meet present needs and anticipate future needs of residents in accordance with the goals and objectives of the Plan; and
(2) Support green economy innovations; and
(3) Support New York State in meeting its renewable energy goals established by the 2015 New York State Energy Plan as implemented through the Reforming the Energy Vision Institute.

Section 5: §165-65.3.3. Applicability.

(1) This section applies to building-mounted, building-integrated and ground-mounted solar photovoltaic (PV) systems installed and constructed after the effective date of this Section of the Code.
(2) This section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location or placement of an existing solar PV system.

(3) Nonconforming solar PV systems, Nonconforming solar PV systems, existing on the effective date of this section may be altered or expanded provided such alternation or expansion does not increase the extent or degree of nonconformity.

(4) Properties with approved site plan, notwithstanding the requirements of §165-100 of this Chapter, entitled Site development plans, for any lot or parcel of land that has an approved site plan, the installation of "by-right" solar PV system on the lot shall not be considered a change to the approved site plan. This provision shall not be interpreted to exempt lots with an approved site plan from other requirements of this section.

(5) Prohibition. Solar PV systems attached to the side of a building are prohibited unless they are designed as a building integrated system.

Section 6: §165-65.3.4. Solar PV Systems Permitted by Right.

(1) By-right solar PV systems. In order to encourage use of solar PV systems in the Town of Farmington, the following systems shall be permitted by right in any zoning district in the Town, provided the system is generating electricity only for the land use(s) located on the same lot as the system, and further provided that the system meets the standards for by-right systems identified in §165.3.4.(2) below. By-right systems require a building permit.

[a] Building-integrated solar PV systems. Building-integrated solar PV systems are permitted to face any rear, side and/or front yard area.

[b] Building-mounted solar PV systems. Building-mounted solar PV systems. Building-mounted solar PV systems are permitted to face any rear, side and/or front yard area.

(2) Standards for by-right systems.

[a] Accessory use. All building mounted by-right solar PV systems shall be considered an accessory use.

[b] By-right Small Scale Ground-Mounted Solar PV Systems. Only Small Scale Ground-Mounted Solar PV Systems, as defined herein, shall be considered as By-right Systems. Such By-right System shall be limited to a capacity of 25kW and shall generate no more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s)existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

[c] By-right facilities shall comply with all applicable New York State Building Codes.

[d] In no event shall Lot Coverage for a Solar Photovoltaic (PV) System exceed fifty percent (50%) of the Lot Area.

(3) Building-mounted solar PV systems.

[a] For a building-mounted PV system installed on a sloped roof:

[1] The highest point of the system shall not exceed the highest point of the roof to which it is attached.

[2] Solar panels shall be parallel to the roof surface, or tilted with no more than an eighteen-inch gap between the module frame and the roof surface. This measurement shall not be taken from any parapet which might be considered part of a roof.

[b] For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than five feet above the height of the roof.

Section 7: §165-65.3.5. Solar PV Systems requiring a Special Use Permit.

(1) Solar PV systems requiring a special use permit. Except as provided in §165-3.4., solar PV system Facilities permitted by right, no other type of ground mounted solar PV system shall be constructed or installed without first obtaining a special use permit and site plan approval from the Planning Board pursuant to Articles VI and VIII of this Chapter. In addition, all ground mounted solar PV systems shall require a Building Permit. Solar PV systems requiring a special use permit and site plan approval shall include, but not be limited to:

[a] Large Scale Ground-mounted solar PV systems.

[b] Building-mounted and building-integrated solar PV systems that have a system capacity greater than 25kW or generate more than 110% of the kWh's of electricity consumed, over the previous twelve-month period, by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

[c] Solar PV systems, regardless of size, that generate and provide electricity, through a remote net metering agreement or other arrangement, to an off-site user or users located on a lot(s)or parcel(s) of land other than the lot or parcel of land on which the system is located.

[d] Solar PV systems, regardless of size, mounted on carports or canopy structures covering parking facilities.

(2) Classifications: Solar PV systems requiring a special use permit may be classified as either an accessory use or a principal use as set forth below.

[a] Principal use. A solar PV system constructed on a lot or parcel of land and providing electricity to an off-site user or users through a remote net-metering agreement or other arrangement, shall be classified as a large scale solar PV system and shall be considered a principal use. All ground-mounted solar PV systems that are classified as a principal use shall adhere to the area, yard and build requirements of the zoning district in which the system is located, unless modified herein by §165-65.3.6. below.

[b] Accessory use/accessory structure. A solar PV system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use or building(s) located on the same lot or parcel of land as the system.

Section 8. §165-65.3.6. Standards for facilities requiring a special use permit.

Solar PV systems requiring a special use permit shall be subject to the following standards.

(1) Large-scale ground-mounted solar PV systems and ground-mounted systems classified as a special use.

[a] Setbacks. Large-scale ground-mounted solar PV systems are subject to the minimum yard and setback requirements for the zoning district in which the system is located. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar PV related equipment or parts.

[b] Setback to residential district. The location of large scale ground mounted solar collectors shall meet all applicable setbacks for accessory structures in the zoning district where the project is to be located, but not less than twenty-five (25) feet from any public highway right-of-way, utility easement and natural vegetation shall be preserved within this buffer zone and, where possible, augmented.

The setbacks are intended to provide a visual buffer between the PV system and adjacent dwellings. Plantings within this area are to be at a height so as to provide, as much as practicable, a visual screen of the large-scale ground-mounted system from residential uses. The species type, location and planned height of such landscaping shall be subject to the approval of the Planning Board.

(1) Large-scale ground-mounted solar PV systems located in a residential district shall be set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot or parcel of land located in an A-80 Agricultural District or other residential district unless said property contains soils classified as Prime or Unique (Soils Group 1 - 4) and the land is being actively farm. In this instance, the minimum setback shall be 40 feet from the property line. This additional setback dimension shall also apply to the front yard setback when the lot or parcel of land on the opposite side of the street is located in a residential district.

(2) Large-scale ground-mounted solar PV systems located in commercial or industrial districts shall be set back an additional 110 feet from the minimum yard setback along all property lines that abut a lot located in an A-80 Agricultural District and the other residential districts or an incentive zone district. This additional setback

dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential or an incentive zone district.

(3) Large-scale ground-mounted solar PV systems located upon Farmland located within the delineated Town of Farmington Active Farmland Map, Number 8, page 92 of the adopted Town of Farmington Farmland Protection Plan, shall be allowed on soils classified as Class 1 through 4 as documented upon the Soil Group Worksheets prepared by the Ontario County Soil and Water Conservation District and used by the Town Assessor in calculation of the Agricultural Use Exemption Values, a part of the New York State Department of Agriculture and Markets Agricultural Districts Law, once it can be determined, by the Planning Board, that there is no feasible alternative. The following standards are to be implemented by the Planning Board as part of site plan approval:

[a] Where Large-scale ground-mounted solar PV systems are to be located on Class 1 through 4 soils then the following shall apply to the construction, restoration and follow-up monitoring of solar energy projects impacting such lands. Depending upon the size of the project, the project sponsor is to hire an Environmental Monitor (EM) to oversee the construction, restoration and follow-up monitoring in agricultural fields. The EM is to be on-site whenever construction or restoration work is occurring on the Class 1 through 4 soils and is to be coordinated with the Ontario County Soil and Water Conservation District and/or the New York State Department of

Agriculture and Markets to develop an appropriate schedule for inspections to assure these lands are being protected the greatest extent possible.

[b] Fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland are to be assessed and mitigated to the greatest extent possible.

[c] Structures for overhead collection lines are to be located upon the nonagricultural areas and along field edges where possible.

[d] Access roads are to be located along the edge of agricultural fields, in areas next to hedgerows and field boundaries and in the nonagricultural portions of the site.

[e] There shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours to the greatest extent possible.

[f] The width of access roads across, or along agricultural fields is to be no wider than twenty (20) feet so as to minimize the loss of agricultural lands and comply with the state of New York fire access code.

[g] All existing drainage and erosion control structures such as diversions, ditches, and tile lines or take appropriate measures to maintain the design and effectiveness of these structures. Repair any structure disturbed during construction to as close to original condition as possible, unless such structures are to be eliminated based upon a new site plan for the large scale project.

[h] The surface of solar farm access roads to be constructed through agricultural fields should be level with the adjacent field surface where possible.

[i] Culverts and waterbars are to be installed to maintain natural drainage patterns.

[j] All top soil areas to be used for vehicle and equipment traffic, parking, and equipment laydown and storage areas, are to be stripped.

[k] All vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas, are to be limited in size to the greatest extent practical.

[l] No vehicles or equipment is to be allowed outside the work area without prior approval from the landowner and the EM.

[m] Where an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional work space may be required as part of site plan approval.

[n] All topsoil stripped from work areas (parking areas, electric cable trenches, along access roads)is to be stockpiled separate from other excavated materials (rock and/or subsoil).

[o] A maximum of 50 feet of temporary workspace is to be provided along "open cut" electric cable trenches for proper top soil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. No topsoil shall be removed from the site. The site plan shall clearly designate topsoil stockpile areas in the field and on the construction drawings.

[p] Electric interconnect cables and transmission lines are to be buried in agricultural fields wherever practical.

[q] Interconnect cables and transmission lines installed above ground shall be located outside agricultural field boundaries. When above ground cables and transmission lines must cross agricultural fields, taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.

[r] All buried electric cables in cropland, hayland and improved pasture shall have a minimum depth of forty-eight (48) inches of cover. At no time is the depth of cover to be less than twenty-four (24) inches below the soil surface.

[s] The Ontario County Soil and Water Conservation District is to be consulted concerning the type of intercept drain lines whenever buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns.

[t] In pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.

[u] Excess concrete used in the construction of the site is not to be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.

[v] All permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

(4) Restoration Requirements.

All agricultural areas temporarily disturbed by construction shall:

[a] Be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, remove all rocks 4 inches in size or greater from the surface of the subsoil prior to replacement of topsoil. Replace the topsoil to original depth and re-establish original contours where possible. Remove all rocks 4 inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided after October 1st of each year.

[b] Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the approved site design by the Planning Board.

[c] Seed all restored agricultural areas with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

[d] All damaged subsurface or surface drainage structures are to be repaired to preconstruction conditions, unless said structures are to be removed as part of the site plan approval. All surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the EM, Soil and Water Conservation District and the Landowner.

[e] Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded and subsoil should not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No Project restoration activities are to occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist.

[f] Following site restoration, remove all construction debris from the site.

[g] Following site restoration, the Project Sponsor is to provide a monitoring and remediation period of no less than two years. General conditions to be monitored include topsoil thickness, relative content of rack and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.

[h] Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and large stones are to be removed from the site.

[i] All above ground solar array structures are to be removed and all areas previously used for agricultural production, are to be restored and accepted by the landowner, the Soil and Water Conservation District and the State Department of Agriculture and Markets.

[j] All concrete piers, footers, or other supports are to be removed to a depth of 48 inches below the soil surface. Underground electric lines are to be abandoned in place. Access roads in agricultural areas are to be removed, unless otherwise specified by the landowner.

(5) Utility connections. Utility lines and connections from a large-scale ground-mounted solar PV system shall be installed underground, unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

(6) Fences. Notwithstanding the provisions found in §165-61.A. of this chapter, fences not exceeding eight feet in height, including open-weave chain-link fences and solid fences, shall be permitted for the purpose of screening or enclosing a large-scale ground-mounted solar PV system regardless of the district in which the system is located, provided said system is classified as a principal use, in instances where the provisions of §165.61.A. would allow a fence greater than eight feet in height, the less restrictive provision shall apply.

(7) Barbed wire. Notwithstanding provisions for barbed wire found in §165.61.A.of this chapter, fences intended to enclose a large-scale ground-mounted solar PV system may contain barbed wire canted out.

(8) Height. Large-scale ground-mounted solar PV systems may not exceed 12 feet in height.

(9) Minimum lot size. Large-scale ground-mounted solar PV systems shall adhere to the minimum lot size requirements for the zoning district in which the system is located, except that for residential districts, the minimum lot size shall be one acre.

(10) Lot coverage requirements. Large-scale ground-mounted solar PV systems shall adhere to the maximum lot coverage requirement for principal uses within the zoning district in which they are located. The lot coverage of a large-scale ground-mounted solar PV system shall be calculated based on the definition of lot coverage found in §165, Article II, Section 10 of this chapter.

(11) Signs. Large-scale ground-mounted solar PV systems classified as a principal use shall adhere to the sign requirements for the zoning district in which they are located.

(12) Location in front yard. Notwithstanding the requirements regulating location of accessory structures found elsewhere in the chapter, large-scale ground-mounted solar PV systems classified as an accessory use shall be prohibited in a front yard, including location in any front yard of a corner lot.

Section 9. §165-65.3.7. Placement on nonconforming buildings.

Notwithstanding the area, lot and bulk requirements of this chapter, building-mounted and building-integrated solar PV systems may be installed on nonconforming buildings as follows:

(1) On the roof of a nonconforming building that exceeds the maximum height restriction, provided the bounding-mounted system does not extend about the peak or highest point of the roof to which it is mounted.

(2) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

(3) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

Section 10. §165.65.3.8. Abandonment and decommissioning.

(1) Applicability and purpose. This section governing abandonment and decommissioning shall apply to large-scale ground-mounted solar PV systems with a rated capacity of 25 kW or more, hereinafter referred to as large scale solar PV systems. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Farmington by requiring abandoned large scale solar PV systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact upon the Town. Abandoned large scale systems may become unsafe by reason of their energy-producing capabilities and serve as an attract nuisance.

(2) Abandonment. A large scale solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A commercial solar PV system also shall be deeded abandoned if following site plan approval initial construction of the system has commenced and is not completed within 18 months of issuance of the first building permit for the project.

(3) Extension of time. The time at which a commercial solar PV system shall be deemed abandoned may be extended by the Planning Board for one additional period of one year, provided the system owner presents to the Board a viable plan outlining the steps and schedules for placing the system in service or back in service, within the time period of the extension. An application for an extension of time shall be made to

the Planning Board by the commercial solar PV system owner prior to abandonment as defined herein. Extenuating circumstances as to why the commercial solar PV system has not been operating or why construction has not been completed may be considered by the Board in determining whether to gain an extension.

(4) Removal required. A commercial solar PV system which has been abandoned shall be decommissioned and removed. The commercial solar PV system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the commercial solar PV system shall be in accordance with decommissioning plan approved by the Planning Board.

(5) Decommissioning and removal.

[a] Decommissioning and removal of a commercial solar PV system shall consist of:

(1) Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site.

(2) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

(3) Restoration of the ground surface and soil.

(4) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

[b] Upon petition to the Planning Board, the Board may permit the system owner to leave certain underground or aboveground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment and to not adversely affect community character or the environment.

[c] Decommissioning plan. All applications for a commercial solar PV system shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in §165.65.3.(5) above and include:

(6) Special use permit conditions. The following conditions shall apply to all special use permits issued for a Large Scale Ground-Mounted Solar PV Systems. No special use permit shall be issued unless the Planning Board finds that the conditions have been or will be met.

[a] A licensed engineer's estimate of the anticipated operational life of the system.

[b] Identification of the party responsible for decommissioning.

[c] Description of any agreement regarding decommissioning between the responsible party and the landowner.

[d] A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work.

[e] A cost estimate prepared by a licensed professional engineer estimating the full cost of decommissioning and removal of the solar PV system.

[f] A financial plan to ensure that financial resources will be available to fully decommission the site.

[g] A acceptable form of surety is to be approved by the Planning Board and accepted by the Town Board and filed with the Town Clerk in an amount specified in the above referenced financial plan. Said acceptable form of surety is to remain in effect for the above referenced anticipated operational life of the system. In the event the anticipated operational life of the system is amended, then a revised acceptable form of surety is to be approved by the Planning Board, accepted by the Town Board and filed with the Town Clerk.

[h] Financial surety. Prior to the issuance of a building permit and every three (3) years thereafter, the commercial solar PV system owner and/or landowner shall file with the Town Clerk evidence of financial surety to provide for the full cost of decommissioning and removal of the solar PV system in the event the system is not removed by the system owner and/or landowner. Evidence of financial surety shall be in effect throughout the life of the system and shall be in the form of an irrevocable acceptable form of surety or other form of surety acceptable to the Planning Board and approved by the Town Board. The irrevocable acceptable form of surety shall include an auto extension provision to be issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw upon the acceptable form of surety in the event that the commercial solar PV system owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town Board to terminate the acceptable form of surety. In the event ownership of the system is

transferred to another party, the new owner (transferee) shall file evidence of financial surety with the Town Board at the time of transfer, and every three (3) years thereafter, as provided herein.

[i] Amount. The amount of the surety shall be determined by the Town Engineer based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent annual reports. The amount of the surety may be adjusted by the Town Board, upon receipt of a favorable recommendation from the Planning Board of an annual report containing an updated cost estimate for decommissioning and removal. Any revised surety is to be filed with the Town Clerk's Office.

[j] Annual report. The commercial solar PV system owner shall on a yearly basis from the Certificate of Compliance issued by the Code Enforcement Officer provide the Town Code Enforcement Officer a written report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve month period. The report shall also identify any change of ownership of the solar PV system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The actual report shall be submitted no later than 45 days after the end of the calendar year.
Every third year, to coincide with the filing of evidence of financial surety, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the large scale solar PV system. The Town Board may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and

removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties in Article X of this chapter.

[k] Decommissioning and removal by Town. If the commercial solar PV system owner and/or landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

(7) Determination of abandonment.

Upon a determination by Code Enforcement Officer that a commercial solar PV system has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail:

[a] to the case of a facility under construction, to complete construction and installation of the facility within 180 days; or

[b] in the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.

(8) Failure to perform notification.

Being so classified, if either the system owner, landowner and/or permittee fails to perform as directed by the Code Enforcement Officer within the one-hundred eighty-day period, the Code Enforcement Officer shall notify the system owner, landowner and permittee, by certified mail, that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that

the permittee may appeal the Code Enforcement Officer's determination to the Town Board and request a public hearing upon the matter.

[a] Said appeal and request for hearing must be made and received by the Town Board within 30 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the thirty-day period will result in the special use permit being deemed revoked as stated herein.

[b] In the event the permittee appeals the determination of the Code Enforcement Officer and request a hearing, the Town Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Town Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board or whether to revoke the special use permit and order removal of the solar PV system.

[c] Upon a determination by the Code Enforcement Officer or Town Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town Board may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town Board may collect the required surety and use said funds to implement the decommissioning plan.

[d] Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a commercial solar PV system, including legal costs and expenses, shall be reimbursed from the surety posted by the

system owner or landowner as provided in § 165.65.3. herein. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

Section 11: If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgement shall have been ordered.

Section 12: This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law number 6 of 2017, of the Town of Farmington, was duly passed by the Town Board on September 26, 2017 in accordance with the applicable provisions of law.

2. ~~(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law number of 2017 of the Town of Farmington was duly passed by the ..... on ..... 2017, and was (approved) (not approved) (repassed after disapproval) by the ..... and was deemed duly adopted on ..... 2017, in accordance with the applicable provisions of law.~~

3. ~~(Final adoption by referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law number of 2017 of the Town of Farmington was duly passed by the Farmington Town Board on 2017, and was (approved) (not approved) (repassed after disapproval) by ..... on 2017. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on 2017, in accordance with the applicable provisions of law.~~

4. ~~(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~ ~~I hereby certify that the local law annexed hereto, designated as local law number ____ of 2017 of the Town of Farmington was duly passed by the Farmington Town Board on _____ 2017, and was (approved) (not approved) (repassed after disapproval) by the _____ on _____ 2017. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 2017, in accordance with the applicable provisions of law.~~

~~• Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.~~

5. ~~(City local law concerning Charter revision proposed by petition.)~~ ~~I hereby certify that the local law annexed hereto, designated as local law number ____ of 2017 of the City of _____ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on _____ 2017, became operative.~~

6. ~~(County local law concerning adoption of Charter.)~~ ~~I hereby certify that the local law annexed hereto, designated as local law number _____ of 2017 of the County of State of New York, having been submitted to the electors at the General Election of November ____ 2017, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Michelle Lacey

Clerk of the Town
designated by local legislative body

(Seal)

Date: 9/27/17

(Certification to be executed by Town Attorney.)

STATE OF NEW YORK
COUNTY OF ONTARIO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Title

Town of Farmington

Date: _____