

## **HOST COMMUNITY BENEFIT AGREEMENT**

THIS HOST COMMUNITY BENEFIT AGREEMENT ("Agreement"), dated as of the \_\_\_\_\_ day of May, 2021 (the "Effective Date"), is by and between the TOWN OF MARILLA, a municipal corporation and political subdivision of the State of New York (the "Town"); and RPNY SOLAR 2, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York (the "Company").

### **RECITALS:**

WHEREAS, the Company is undertaking a solar project on property located at Bullis Road (SBL No. 139.00-12-14) in the Town (the "Project"); and

WHEREAS, the Company intends to submit an application to the Erie County Industrial Development Agency ("ECIDA") requesting a twenty-five (25) year payment in lieu of real estate taxes agreement with respect to the Project, which agreement will provide for the Company to make annual payments in lieu of real estate taxes to the Town, the County of Erie (the "County") and the Iroquois Central School District in an amount equal to \$2,333.00 per megawatt (MW)ac, subject to an annual increase of two percent (2%) for the first twenty (20) years of the term, and decreasing annually thereafter at a rate of two percent (2%) for the remaining five (5) years of the term of the agreement (the "PILOT Agreement"); and

WHEREAS, the Company recognizes that the Project will impact the surrounding community, and in particular the Town as the host community for the Project; and

WHEREAS, in consideration for the impacts on the community with respect to the Project, the Company has agreed to pay a Host Community Benefit Fee (as such term is defined in Section 2.1 below) to the Town as set forth in this Agreement; and

WHEREAS, the Town and the Company wish to memorialize the terms and conditions associated with the payment of the Host Community Benefit Fee.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

### **ARTICLE I**

#### **Representations and Warranties of the Parties**

Section 1.1 Representations and Warranties of the Town. The Town makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Town has the power to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder.

(b) The Town has been duly authorized to execute and deliver this Agreement.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which the Town is a party or by which it is bound, or will constitute default under any of the foregoing.

Section 1.2 Representations and Warranties of the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is duly organized and validly existing under the laws of the State of New York, has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would materially diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

## **ARTICLE II**

### **Payment of Host Community Benefit Fee**

Section 2.1 Host Community Benefit Fee. In consideration for the impacts on the community with respect to the Project, the Company agrees to make a lump sum payment to the Town at the address set forth in Section 4.2 of this Agreement in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Host Community Benefit Fee"). The Host Community Benefit Fee shall be due and payable within (5) business days of the date that the Project achieves commercial operation;. The term "commercial operation" shall mean the later of when the Project has (i) been issued a certificate of completion by the Town, or (ii) commenced generating electricity (excluding any electricity generated during start-up and commissioning of the Project) for sale.

Section 2.2 Public Purposes. The parties agree and acknowledge that the Host Community Benefit Fee payment is for a public purpose and is intended to provide a community benefit to the Town with respect to the Project.

**ARTICLE III**  
**Term; Termination**

Section 3.1 The term of this Agreement shall commence on the Effective Date and continue until terminated as provided herein.

Section 3.2 This Agreement shall terminate upon payment of the Community Benefit Fee to the Town.

**ARTICLE IV**  
**Miscellaneous**

Section 4.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument. Counterpart signatures delivered by the parties in PDF or similar digital format shall be deemed originals for purposes of this Agreement.

Section 4.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Town:

Town of Marilla  
1740 Two Rod Road  
Marilla, New York 14102  
Attention: Town Supervisor

To the Company:

RPNY Solar 2, LLC  
879 Sanchez Street  
San Francisco, CA 94114  
Attn: President

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 4.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York. The parties hereby agree to submit to the personal jurisdiction of the federal or state courts located in or for Erie County, New York.

Section 4.4 The obligations and agreements of the Town contained herein shall be deemed the obligations and agreements of the Town, and not of any trustee, officer, agent or employee of the Town in his or her individual capacity, and the trustees, officers, agents and employees of the Town shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

Section 4.5 The obligations and agreements of the Company contained herein shall be deemed the obligations and agreements of the Company, and not of any member, officer, agent or employee of the Company in his or her individual capacity, and the members, officers, agents and employees of the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

Section 4.6 The failure of any party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach. Unless specifically stated, the selection of any specific remedy hereunder or under any applicable law, rule or regulation by either party shall not be deemed an election of remedies limiting either party's right to seek any other remedy otherwise allowed by this Agreement or applicable law.

Section 4.7 The Town may transfer or assign any of its rights or obligations under this Agreement, provided that such transfer or assignment is due to a Town-related financing transaction, without the prior written consent of the Company. The Company shall cooperate with the Town from time to time, including, without limitation, by entering into a consent and assignment or other agreements with the Town and the financing parties involved with any such financing or securitization in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by the involved financing parties.

Section 4.8 The Company may, without the consent of the Town, assign this Agreement to any (x) purchaser or successor in and to the Project, (y) affiliate or subsidiary of the Company that is controlled by, controlling or under common control with the Company, or (z) persons or entities providing financing for the Project ("Lender"), and such purchaser, affiliate, and Lender are collectively defined as a "Successor"), provided such Successor assumes and agrees to be bound by this Agreement by executing and submitting to the Town a notice of assignment and assumption of this Agreement ten (10) days prior to any effective date of such assignment. The Company may pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a "Lender's Lien"). A Lender shall have the absolute right to: (a) assign its Lender's Lien; (b) take possession of and operate the Project or any portion thereof solely in accordance with the Company's rights under this Agreement (and subject to the Company's obligations under this Agreement) and perform any obligations to be performed by Company or a Successor hereunder; or (c) exercise any rights of Company hereunder. The Town agrees to cooperate with

the Company, its affiliates and any Successor from time to time, including, without limitation, by entering into a consent and assignment or other agreements with such Successor and the Company in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor, including execution of a consent to the assignment of this Agreement. In the event this Agreement is assigned to a Successor, the Company shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer, but only if the Successor has in writing confirmed its acceptance of its obligations and Successor is not in breach of its obligations under this Agreement. Nothing herein shall limit in any way the right of the owners of the Company to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Company.

Section 4.9 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement may not amended except in writing and signed by both parties to this Agreement.

*[signature page follows]*

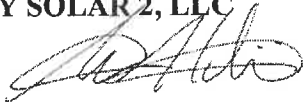
**[Signature Page to Community Benefit Agreement]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**TOWN OF MARILLA**

By:   
Name:  
Title:

**RPNY SOLAR 2, LLC**

By:   
Name: Aaron Halimi  
Title: President