

ROCHELLE SOLAR, LLC
ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (this “Agreement”), made and entered into this 8th day of July, 2019, by and between the City of Rochelle, an Illinois Municipal corporation (hereinafter referred to as the “City”), by and through its Mayor and City Council (herein the “Corporate Authorities”), and Rochelle Solar, LLC, a Delaware limited liability company (hereinafter referred to as the “Beneficial Owner”). The City and the Beneficial Owner shall be referred to in this Agreement individually as a “Party” and collectively as the “Parties”.

RECITALS

A. Under an Option Agreement with Greffe Family Trust No. 1 (the “Current Owner”), the Beneficial Owner is the contract purchaser of real property which is the subject of this Agreement, consisting of one parcel containing approximately 93.29 acres, more or less, in total located at 15537 E. Twombly Road, in unincorporated Ogle County, Illinois on the South side of Twombly Road. The Property is legally described in **Exhibit A** attached hereto and made a part hereof, and assigned Permanent Index Number 25-18-100-005 (the “Property”); and

B. The Property constitutes land which is contiguous to and may be annexed to the City, as provided in Illinois Municipal Code 65 ILCS 5/7-1-1; and

C. The Beneficial Owner desires that upon consummation of its purchase of the Property, the Property be annexed to the City and developed under the terms and conditions of this Agreement for the construction and operation of a solar electric generating facility (the “SEGF”) for purposes of generating electrical energy for sale on the electric grid; and

D. The Corporate Authorities have concluded that the annexation of the Property to the City, under the terms and conditions hereinafter set forth, would enable the City to control development of the area and best serve the interest of the City; and

E. Pursuant to the provisions of Illinois Municipal Code 65 ILCS 5/11-15.1-1, *et seq.*, this proposed annexation agreement was submitted to the Corporate Authorities, and all required public hearings were held thereon pursuant to proper notices, as required by law; and

F. Pursuant to the provisions of Illinois Municipal Code 65 ILCS 5/11-13-1, *et seq.*, the Corporate Authorities of the City have held a public hearing on the proposed re-zoning of the Property; and

G. The Beneficial Owner has filed with the City a Petition for Annexation executed by the Beneficial Owner and Current Owner and has represented that it has the authority to move forward with its petition and, upon consummation of the purchase of the Property by the Beneficial Owner, the annexation of the Property to the City (the “Annexation”); and

H. The City and the Beneficial Owner have performed or will perform and execute all acts required by law to effectuate the Annexation; and

I. It is understood and agreed that this Agreement in its entirety, together with the Petition for Annexation, shall be null, void and of no force or effect unless the Property is purchased by Beneficial Owner and is validly annexed, zoned and classified by proper City ordinances before the SEGF commences operation and power generation, all as herein provided; and

J. This Agreement is made pursuant to and in accordance with the provisions of Sections 11-15.1-1, *et seq.*, of the Illinois Municipal Code (65 ILCS 5/11-15.1-1, *et seq.*).

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

A. OBLIGATIONS OF THE CITY.

1. Annexation Agreement. The City shall adopt an Ordinance approving this Agreement.

2. Annexation. The Annexation shall be completed upon each of the following conditions precedent occurring no later than December 31, 2019: (i) the City's receiving notice from the Beneficial Owner that the Beneficial Owner has obtained title to the Property along with all offsite easements necessary for the operation of the solar generating facilities to be situated on the Property, (ii) the City's receiving the plat of annexation for the Property from the Beneficial Owner prepared at the Beneficial Owner's cost, and (iii) the City's adopting an ordinance annexing the Property which the City shall do promptly after and upon the occurrence of completion of the conditions in (i) and (ii). This Agreement shall be deemed terminated as of December 31, 2019 if each of conditions (i) and (ii) have not been completed by such date, and neither the City nor the Beneficial Owner shall have any further obligations hereunder, except for those obligations explicitly stated in this Agreement to survive termination of this Agreement. Time is of the essence.

3. Zoning and Special Use. Subject to the conditions and provisions of this Agreement, the City agrees to and shall, within thirty (30) days of the City's approval of this Agreement, adopt an ordinance or ordinances to zone the Property and take such other actions, all to be effective upon completion of the Annexation, as set forth below:

A. The City shall adopt an ordinance amending the City's Zoning Map to include the Property as part of the City; and

B. The City shall adopt a text amendment to add Solar Farm for solar electrical production as a Special Use under the (RD) Rural Development District; and

C. The City shall adopt an ordinance to classify the Property as (RD) Rural Development District, with a Special Use, subject to the conditions determined by the City to be required for

Solar Farms, for a Solar Farm for solar electrical production for a forty-year term, following the submission of a petition by Beneficial Owner after the execution of this Agreement.

This Agreement and the Special Use to be granted as contemplated by this Agreement are subject to compliance by the Beneficial Owner with each of its obligations and conditions hereunder and pursuant to the Special Use ordinance adopted by the City.

B. OBLIGATIONS OF THE OWNER.

1. Permits. Prior to commencement of construction by the Beneficial Owner of a SEGF on the Property, the Beneficial Owner shall obtain a building permit from the City.

2. Engineering and Planning Documents. The improvements on the Property shall be in general compliance with the site plan prepared by Energy Renewal Partners, LLC, consisting of 1 page, with a most recent revision date of April 22, 2019 (the "Site Plan"), which is incorporated herein by this reference. The Site Plan, among other things, designates an area on the Property where Beneficial Owner may conduct any activities necessary to develop, construct, operate and maintain the SEGF.

3. Chemical Storage. No chemicals, oils, fuels, or items or products of a similar nature, except those needed for ordinary operational activities, shall be stored or kept on the Property.

4. Days and Hours of Operation. Operations at the Property, excluding construction of the SEGF, shall be permitted to occur twenty-four (24) hours per day, seven (7) days per week, year-round. Construction on the Property shall only take place from 7:30 a.m. to 6:00 p.m.; except in the event of an emergency in which case the Beneficial Owner shall take such action relative to the Property as it reasonably believes necessary to preserve the health, safety and welfare of the public.

A. Entrances. The entrances to the Property as set forth in the Site Plan shall remain unchanged without permission from the City.

B. Fencing. The Beneficial Owner shall cause the external boundaries of the SEGF to be enclosed by a fence. A gate shall be placed at the main entrance that will be kept locked whenever the Beneficial Owner or operator, or their agent, is not on site.

5. Compliance with Federal, State, County and City Regulations. The Beneficial Owner shall comply with all applicable federal, state, county and City regulatory requirements.

6. Site Maintenance. The Property shall be maintained in a neat and orderly condition, free of all debris, junk, trash, waste products or materials, and abandoned equipment which are no longer used, or capable of being used, by the Beneficial Owner in its operations. Buildings, if any, shall be maintained in good repair and appearance. Fences shall be maintained to present a neat appearance free from all litter.

7. Inspection. During the term of the Special Use granted herein, the City shall have access to the Property upon reasonable telephonic notice to the Beneficial Owner to enable the City to monitor compliance with this Agreement and applicable law. No inspection fees will be required for the duration of this Agreement. For purposes of this paragraph, “inspection fees” does not mean “fines, fees, penalties and court costs” associated with any statutory, code, or ordinance enforcement action by the City.

The Beneficial Owner shall provide the City with a contact name and telephone number for emergencies or for the City to gain access to the Property and, for emergencies, a code, if any, to access the Property.

8. Professionals’ Fees. The Beneficial Owner agrees to reimburse the City for the City’s reasonable attorneys’ fees, engineering consultant’s costs, and any other professional costs incurred by the City in connection with the application for zoning and annexation approval, and the monitoring of this Agreement (the “City Consultants Costs”). Upon written request by the Beneficial Owner, the City shall furnish detailed invoices for services provided by the City’s retained consultants. The obligations pursuant to this Section survive the termination of the Agreement in the event annexation is not completed as provided in Sections A. 2. and 3. The City agrees to utilize best practices in overseeing, monitoring and controlling its City Consulting Costs.

A. The City acknowledges the receipt and initial sufficiency of deposits paid by the Beneficial Owner prior to the commencement of the annexation and zoning proceedings to begin defraying the costs of engineering, planning and legal services for the City as incurred. The City shall provide receipts to the Beneficial Owner for such deposits, notify the Beneficial Owner should deposits become depleted, and provide Beneficial Owner with an accounting of such deposits, at least annually, held in escrow by the City and used to defray such incurred costs of the City. If depleted deposits are not replenished upon notice from the City, no additional engineering plan submittals shall be reviewed or approved, no new building, occupancy or any other permits shall be reviewed or approved, and no other action upon a request or application of Owner or Beneficial Owner shall be reviewed and approved until said deposits are restored.

B. Other fees as may be required and established by the City Council from time to time and in effect at the time of building permit issuance shall be paid by the Beneficial Owner provided fees are established by ordinance and applied equally to all developments of a similar nature in the City.

9. Fees Payable and Services Provided to the City. The Beneficial Owner shall pay an annexation fee of Twenty Thousand Dollars and Zero Cents (\$20,000.00) payable as follows:

(i) Ten Thousand Dollars and Zero Cents (\$10,000.00) (i.e., Fifty percent (50%)) upon completion of the Annexation (as provided in Section A. 2. above) and the Property becoming part of the City.

(ii) Ten Thousand Dollars and Zero Cents (\$10,000.00) (i.e., Fifty percent (50%)) on the first anniversary of the completion of the Annexation and the Property becoming part of the City.

Each payment made to the City, as set forth above, once made is nonrefundable to the Beneficial Owner, even if the Annexation is not completed and this Agreement is terminated as a result.

10. Surety for public improvements. Beneficial Owner shall post a performance bond equal to 110% of the cost of the estimated public improvements for road improvements, sanitary sewer and water on the Subject Property. This performance bond is required prior to the issuance of any permits for the improvements to the Subject Property.

11. Dedication of Right of Way and Utility Easements. Beneficial Owner shall dedicate right of way for road expansion, sanitary sewer and water utilities, and easements for the electrical utility as set forth in the preliminary and final plat, attached hereto as Exhibit B.

C. MISCELLANEOUS

1. General Application of Ordinances. Except as otherwise specified herein, all City ordinances of general applicability shall apply to the Property, the Beneficial Owner and all successors and assigns in title.

2. Less Restrictive Ordinances or Codes. If during the term of this Agreement, except as otherwise specifically agreed upon in this Agreement, the City's regulations affecting the zoning, construction of improvements or any other development of any kind or character upon the Property are amended or modified in a manner to impose less restrictive requirements on development of, or construction upon, properties in similarly zoned and developed parcels within the City not subject to annexation agreements, then at the Beneficial Owner's election the less restrictive requirements shall be binding upon the Beneficial Owner, its successors and assigns.

3. More Restrictive Ordinances or Codes. If during the term of this Agreement, except as otherwise specifically agreed upon in this Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings or appurtenances, or any other development of any kind or character upon the Property are amended or modified in a manner to impose more restrictive requirements on zoning, subdivision, development of, or construction of improvements, buildings or appurtenance upon, properties in similarly zoned and developed parcels within the City not subject to annexation agreements, then the more restrictive requirements shall be binding upon the Beneficial Owner, its successors and assigns and anything to the contrary contained herein notwithstanding, the completion of any incomplete or new development of, or construction upon, the Property shall be subject to the more restrictive amendment or modification.

4. Grandfathering. During the term of this Agreement, and for any subsequent renewal period, the Beneficial Owner shall be allowed to maintain the use of farming on the Property.

5. Covenants Running with the Land. The covenants and agreements contained in this Agreement shall inure to the benefit of and be binding upon the successors in title and assigns of the Beneficial Owner and each of them, and upon the successor Corporate Authorities and each of them, and upon the successor municipalities of the City, and shall constitute covenants running with the land.

6. Term. This Agreement shall be valid and binding upon the Parties hereto, their respective successors and assigns, for a term ending twenty (20) years after commencing as of the date hereof. Upon written certification by Beneficial Owner to the City that Beneficial Owner has not exercised its option to purchase the Property and such option has expired or otherwise been terminated and not replaced, this Agreement shall terminate effective on the date of receipt by the City of such written certification.

7. Severability. If any provision of this Agreement, other than the provisions relating to the requested zoning changes and the ordinances adopted in connection therewith, is held invalid by any court of competent jurisdiction, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein.

8. Prior Agreements. This Agreement supersedes all prior agreements, negotiations and exhibits which conflict herewith, and is a full integration of the entire agreement of the Parties.

9. Amendment. This Agreement may be amended only by the mutual consent of the Parties, by adoption of an ordinance by the City approving said amendment as provided by law, and by the execution of said amendment by the Parties or their successors in interest. The Parties acknowledge that certain future amendments may affect only a portion of the Property. In such event, this Agreement may be amended by written agreement between the City and the legal owner of fee title to that portion of the Property which are subject to and affected by such amendment as provided by law; provided, however, that such amendment, if not executed by the then owner of other portions of the Property, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this Agreement as they pertain to such other portions of the Property.

10. Enforceability. In the event that either Party files suit to enforce the terms hereof, the prevailing Party shall be entitled to recover, as part of the costs otherwise allowed, its reasonable attorney's fees incurred therein.

11. Waiver. The failure of any Party to insist, in any one or more instances, upon performance of any terms or conditions of this Agreement, shall not be construed as a waiver of future strict performance of any such term, covenant or condition and the obligations of the other Party shall continue in full force and effect.

12. Notice. Unless notified in writing, all notices, requests and demands shall be in writing and shall be delivered to or mailed by certified mail, return receipt requested, postage prepaid, as follows:

To the City: City of Rochelle
420 North 6th St.
Rochelle, Illinois 61068
Attention: Jeff Fiegenschuh, City Manager

With a copy to: City Attorney
Dominick Lanzito
Peterson, Johnson & Murry Chicago, LLC
200 West Adams St., Suite 2125
Rochelle, IL 61068

To the Beneficial Owner:

Rochelle Solar, LLC
c/o SunEast Development LLC
121 W. Miner Street-Suite 1E
West Chester, PA 19382
Attention: General Counsel

Enel Green Power North America, Inc.
100 Brickstone Square, Suite 300
Andover, MA 01810
Attention: General Counsel

With a copy to: James A. Rodriguez
Guyer & Enichen, P.C.
2601 Reid Farm Rd., Suite B
Rockford, IL 61114

The signed return receipt or an affidavit of mailing or proof of service shall be sufficient proof of delivery for all purposes.

13. Venue. Each proceeding pursuant to or in connection with this Agreement or amendment thereto shall be brought in the 15th Judicial Circuit, Ogle County, Illinois, and the City and the Beneficial Owner hereby consent to jurisdiction and venue in that Court. This Agreement has been negotiated, executed and delivered at and shall be deemed to have been made in the City of Rochelle, Ogle County, Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of any present or future domicile or principal place of business of the Beneficial Owner. The Beneficial Owner and the City hereby consent and agree that the Circuit Court of Ogle County, Illinois, shall have exclusive jurisdiction to hear and determine any claims or disputes between the City and the Beneficial Owner pertaining to this Agreement or to any matter arising out of or related to this Agreement. The Beneficial Owner and the City expressly submit and consent in advance to such

jurisdiction in any action or suit commenced in such court, and the Beneficial Owner and the City hereby waive any objection which the Beneficial Owner and the City may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens*.

14. Sale of Property. It is expressly understood and agreed that the Beneficial Owner may sell or convey all or any part of the Property or its beneficial ownership interest and rights in the Property for the purposes of development, and upon each sale or conveyance, the purchaser shall be bound by the obligations and entitled to the benefits of this Agreement with respect to the part of the Property or interests and rights sold or conveyed. The Beneficial Owner shall notify the City of such purchase or agreement or assumption of responsibilities. A selling owner of all or any portion of or interest or rights in the Property, however, shall only be released where:

A. Provision has been made that all such public improvements to be installed by the time of the sale and as required by this Agreement or City ordinance for the development of the portion of the Property being sold will be installed and guaranteed in accordance with this Agreement and the ordinances of the City; and

B. The City has remaining in place assurances of performance to assure the City that any development responsibilities related to the SEGF started but not yet satisfactorily completed by the Beneficial Owner anywhere on or offsite of the Property will be completed as well as other existing obligations of the Beneficial Owner to the City such as fees due and owing to the City will be paid and any outstanding ordinance violations will be corrected; and

C. Any outstanding monetary obligations of the Beneficial Owner due and payable to the City as of the time of conveyance have been satisfied in full, including payment of the Annexation Fee; and

D. There does not currently exist any uncured violation by Beneficial Owner of the City's ordinances or this Agreement.

15. Consent of Lender. The Beneficial Owner shall provide the City with written approval satisfactory to the City of any mortgagee, lien holder or holder of any security interest, affecting title to the Property or any part thereof so that this Agreement shall be superior to any such mortgage, lien or other security interest and Beneficial Owner shall provide same to the City prior to execution and recording of this Agreement.

16. Beneficial Owner's Agreement Not to Disconnect the Property. Notwithstanding any rights that the Beneficial Owner may have to disconnect the Property from the City pursuant to the Illinois Municipal Code (the "Code"), including but not limited to Section 7-3-6 of the Code, the Beneficial Owner agrees to i) waive any and all rights to disconnect the Property from the City in exchange for the benefits conferred upon the Property by this Agreement and ii) not to, at any time, seek to disconnect the Property from the City.

17. Time of Essence. It is understood and agreed by the Parties that time is of the essence to this Agreement, and that the Parties will make every reasonable effort, including the calling of special meetings, to expedite the matter. It is further understood and agreed by the Parties that the successful consummation of this Agreement requires their continued cooperation.

18. Indemnity. The Beneficial Owner shall defend, indemnify and hold harmless the City, its past, present and future officers, employees and agents from and against all claims, liabilities, losses, taxes, judgments, costs, fees, including expenses and reasonable attorneys' fees, arising out of and in connection with this Agreement and the annexation and development of the Property.

19. Temporary Code Waiver. Given the use of the Property, the Beneficial Owner is hereby excused from installing well and septic systems to provide potable water and washroom facilities for the Property, until such time as the property is developed for another use other than a solar farm. Once the Property is redeveloped for another purpose, other than a Solar Farm and public water or sewer facilities of the City are located within 250 feet of the Property, then Beneficial Owner shall connect to such public water or sewer facilities at Beneficial Owner's cost and terminate the use of its self-installed septic and well system if directed by the City as determined in the City's sole discretion.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. This Agreement may be transmitted via facsimile or other similar electronic means and a signature of the undersigned transmitted via such means shall be deemed an original signature for all purposes and have the same force and effect as a manually-signed original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

ROCHELLE SOLAR, LLC

CITY OF ROCHELLE

By: _____
F. Reed Wills, Authorized Party

By: _____
Jeff Fiegenschuh, City Manager

ATTEST:

By: _____
Sue Messer, City Clerk

Prepared by:
James A. Rodriguez
Guyer & Enichen, P.C.
Rockford, IL 61114
Ph: (815)636-9600

STATE OF ILLINOIS)
)
COUNTY OF OGLE)

I, _____, a Notary Public in and for said county, in the state aforesaid, do hereby certify that _____ is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and official seal, the ____ day of _____, 2019.

Notary Public

(Notary Stamp)

STATE OF ILLINOIS)
)
COUNTY OF OGLE)

I, _____, a Notary Public in and for said county, in the state aforesaid, do hereby certify that Jeff Fiegenschuh, the City Manager of the City of Rochelle, and Sue Messer, the Clerk of the City of Rochelle, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and official seal, the ____ day of _____, 2019.

Notary Public

(Notary Stamp)

EXHIBIT A
LEGAL DESCRIPTION

PARCEL: 25-18-100-005

PART OF THE NORTHEAST QUARTER AND PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST FRACTIONAL QUARTER OF SAID SECTION 18; THENCE NORTH 89 DEGREES 32 MINUTES 21 SECONDS EAST ALONG THE NORTH LINE OF SAID NORTHWEST FRACTIONAL QUARTER, A DISTANCE OF 417.42 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED TRACT OF LAND; THENCE SOUTH 0 DEGREES 15 MINUTES 55 SECONDS EAST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST FRACTIONAL QUARTER, A DISTANCE OF 417.42 FEET; THENCE 89 DEGREES 32 MINUTES 21 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST FRACTIONAL QUARTER, A DISTANCE OF 402.42 FEET TO A POINT 15 FEET EAST OF, AS MEASURED PERPENDICULAR TO THE WEST LINE OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE SOUTH 0 DEGREES 15 MINUTES 55 SECONDS EAST PARALLEL WITH SAID WEST LINE, A DISTANCE OF 2206.17 FEET TO THE SOUTH LINE OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE NORTH 89 DEGREES 45 MINUTES 31 SECONDS EAST ALONG SAID SOUTH LINE AND THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 18, A DISTANCE OF 1707.48 FEET TO THE EAST LINE OF THE WEST 13 1/3 RODS OF SAID NORTHEAST QUARTER; THENCE NORTH 0 DEGREES 03 MINUTES 19 SECONDS WEST ALONG SAID EAST LINE AND PARALLEL WITH THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1604.33 FEET; THENCE SOUTH 89 DEGREES 32 MINUTES 21 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID SECTION 18, A DISTANCE OF 340.00 FEET; THENCE NORTH 0 DEGREES 03 MINUTES 19 SECONDS WEST PARALLEL WITH THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1026.00 FEET TO THE NORTH LINE OF THE NORTHWEST FRACTIONAL QUARTER OF SAID SECTION 18, SAID POINT BEING 119.99 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE SOUTH 89 DEGREES 32 MINUTES 21 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 974.71 FEET TO THE POINT OF BEGINNING, CONTAINING 91.40 ACRES, MORE OR LESS, ALL SITUATED IN THE TOWNSHIP OF DEMENT, THE COUNTY OF OGLE, AND THE STATE OF ILLINOIS.

